

The Freshwater Fishery Delegation: The Politics of Jurisdictional Transfer

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Between 1986 and 1989, both the Northwest Territories and Yukon Governments entered into negotiations with Ottawa concerning the transfer of freshwater fisheries management. These measures were part of a broader initiative announced by the federal government in 1985, aiming to devolve a wide range of provincial-style responsibilities still in federal hands. The freshwater fisheries case was neither the simplest nor the most complicated of these jurisdictions. Part of the wildlife management field dealing with terrestrial mammals had been devolved to the Yukon Territorial Government (YTG) and the Government of the Northwest Territories (GNWT) decades earlier. Other parts, covering migratory birds, ocean fish and sea mammals, seemed destined to remain in federal hands for the foreseeable future. Consequently a transfer of freshwater fisheries, which encompasses much of the river and inland lakes system, would serve to extend but not complete the territorial jurisdiction over wildlife.

The fisheries case also holds interest by virtue of the players involved. Most of the prospective devolution transfers flow from Ottawa's lead agency for the North, the Department of Indian and Northern Affairs (DINA), to the two territorial governments for which it holds ultimate constitutional responsibility. Indeed, the guiding strategy for political devolution has been devised and co-ordinated under Departmental auspices.¹ This is not true of the present case, however, where the prime federal agency is the Department of Fisheries and Oceans (DFO). While there is probably no such thing as a "normal" form of devolution, the fact that this transfer unfolds at a distance from DINA adds an intriguing wrinkle to the case. In order to understand the policy stakes at many levels of northern government and society, it will be necessary to examine the past and present contours of fisheries policy. This will make clear how such transfers of powers will alter the channels of political representation, and through this the substantive prospects for future policy.

Finally, the freshwater fisheries transfer provides an opportunity to consider the political consequences of inter-jurisdictional devolutions of

power. Territorial authorities may discern several advantages to policy devolution. Insofar as each transfer advances a territory toward provincial status, it represents a step in constitutional maturation. Within the territories this goal enjoys broad popular support based on the accumulated resentments at absentee control and neglect. At the same time, however, it will be evident that transfers from Ottawa to the territorial governments represent only one avenue of enhancing resident or local control. As clearly illustrated by the fisheries question, popular involvement at least by native peoples is also being established at the land claims table. The fact that devolution coincides with aboriginal claims settlements in both territories complicates both the process of transfers and the status of the devolution outcomes.

The balance of the discussion will take the following order. After a brief introduction to the devolution phenomenon, the physical and social dimensions of the freshwater fishery will be outlined for each territory. Next the policy context of northern fisheries is explored at federal and territorial levels. From here the devolution question is addressed in terms of issue definition, negotiation and outcome. Finally, conclusions will be drawn about the significance of devolution as a political initiative, setting it against the alternative processes for transforming the control structures for fisheries management. In the course of the discussion, illustrations will be drawn from both the Northwest Territories and Yukon. However, there should be no suggestion that conditions are precisely equivalent between the two. Indeed one of the sub-themes in this discussion is the need to recognize the differential determinants and outcomes of the transfer process in the two territories.

Fisheries Jurisdiction and Devolution

The distinction between freshwater and saltwater fisheries derives from the constitutional framework which has developed over the past century between Ottawa and the provinces. In 1867, the *British North America Act* granted jurisdiction over fisheries to the central authority. This gave way, under the force of judicial review, to a limited provincial power based on river and lake bed ownership of inland waters.² This, in turn, led to the delegation by Ottawa of its regulatory and administrative role for freshwater fisheries to the provinces, beginning with Ontario in 1897. As the prevailing arrangement today in provinces from Quebec to British Columbia, this effectively defines the horizons of territorial ambition in the fisheries field. It marks the limit of what federal politicians will concede, if not the appetites of territorial politicians to acquire.

The implicit province-building agenda associated with devolution politics is nowhere more clearly evident.

The provinces built their standing in the fishery from constitutional claims, which opened the way for administrative "delegation." In practice, this meant that the legislative authorization remains the federal *Fisheries Act*.³ Authority is exercised in the name of the federal Minister, with the pertinent regulations being issued by Ottawa, on advice from provincial authorities. Drawing on this statutory authority, the provincial management agencies regulate harvests and habitats. Further to formalizing such arrangements, a series of inter-governmental agreements authorize the financing of research and fishery development projects within each province.⁴ Under these agreements, the actual project work is authorized by subsidiary agreements which spell out specific undertakings.

It is important to note that the territorial governments' cases for the control of inland fisheries cannot draw on a proprietary claim similar to the provinces. Indeed, Ottawa's crown claim to land north of 60 is unqualified. While the prevailing arrangements in the provinces undoubtedly offer a model for the territorial transfers, they also highlight the difference between a delegation of management responsibility, and a devolution of powers (actually a legislative delegation from Parliament to the Territorial Assemblies through amendments to the *Northwest Territories Act* and *Yukon Act*). For the federal Department of Fisheries, a delegation of the former type simply extends to the North a practice well-established in the south. By contrast to other federal agencies participating in the northern devolution process, the DFO will not completely vacate the freshwater field on completion of the process. Most significantly, statutory instruments of regulation will still be issued by the federal Minister under the *Fisheries Act*, albeit on the advice of territorial authorities. The distinction is subtle but important, though it is not always acknowledged in the North, where the fishery is often seen as a case of devolution rather than delegation.

The Freshwater Fisheries Sector

As in any area of wildlife management, the fisheries field relies on a mix of policy instruments, including legal regulation, scientific research, and habitat protection. Here we will focus primarily on the inland or freshwater segment of the northern fishery, with only secondary reference to the ocean fishery as it bears upon management in general. From an early date the law focused on regulating those who fish, with a

concern for limiting the total harvest as well as the means by which it is taken. This has meant distinguishing the harvesting constituency according to type of use, acknowledging the fact that this shapes the behaviour, not to mention the needs, of fishermen. This also pointed to one of the most intractable problems of fisheries management, namely determining the respective shares of the harvest to be allocated to the different sectors. The subsistence sector includes both native fishermen and non-native "domestic" users, who utilize fish for their household needs (food and dog rations). The commercial fishery involves harvest for sale on the market, while the sports fishery is a recreational pursuit for anglers (those who fish with a hook, line and bait). Since the late 19th century, regulations issued under the *Fisheries Act* have required the licensing of all northern fishermen under one of these categories. Within them the volumes and instruments of harvest can also be controlled.

The two territories offer a contrast in both the structure of their fishery resource, and its exploitation. In the Yukon the freshwater stock is of major consequence, though it is joined by an anadromous stock of Pacific salmon. By far the predominant sector in the Yukon fishery is the sports sector, accounting for as much as 95% of all fish taken. It embraces almost three-quarters of the resident population, as well as an extensive tourist traffic. The expansion of the sports sector is reflected in the near doubling of the number of anglers since the 1970s. This renders the remaining sectors rather small by comparison, with current estimates setting the non-native domestic catch at approximately 1 per cent while the aboriginal harvest, without reliable figures, is estimated at similar levels. Domestic licenses stipulate the area, the techniques (net size, etc.) and allowable level of harvest. Aboriginal licenses are issued without charge, and carry no enforcement conditions since Indians hold the right of unrestricted fishing for their own use. As a consequence, most native fishermen do not choose to take out licenses. The commercial fishery serves primarily local markets. Here licenses are only issued on lakes for which a freshwater commercial quota has been established. In aggregate, only about 10% of the total allowable catch was being taken in the mid-1980s.⁵

The Northwest Territories presents a different picture. By contrast to the minority position of aboriginal peoples in the Yukon, the native majority in the NWT has meant that the subsistence fishery ranked much higher in significance. Seasonal fishing by Dene, Métis and Inuit band and camp groups has been a traditional fixture at hundreds of locations across the North. In the Mackenzie District, the freshwater staples are found primarily in the lakes and rivers of the Mackenzie

drainage system. In the Arctic barrenlands, anadromous fish such as char assume prime importance. The commercial sector of the NWT fishery began in 1945 and has continued to be based on Great Slave Lake. While it involves relatively few people, by the 1970s it accounted for about 50% of the territorial fish harvest. While precise figures are once again lacking for the subsistence fishery, it clearly plays a much more prominent role in the NWT than in the Yukon, while the sports sector is considerably smaller than its Yukon counterpart. Taken as a whole, these contrasting structures prove particularly significant in determining the political interests and coalitions seeking to shape policy.

Fisheries Policy in the North

Armed with powers conferred by the *Fisheries Act*, the federal Department of Fisheries (now Fisheries and Oceans)⁶ has been Ottawa's administrative agent for the North since the nineteenth century. The 1886 *Fisheries Act* was the first to mention the NWT (according to its original boundaries), primarily by way of confirming the special rights of Indians to fish for their own use, without restriction by season or method. Over time, Fisheries Officers were equipped with a set of powers, some of which applied to native fishermen.⁷ It was not the inland fishing of the Dene and Métis, but the hunting of Arctic marine mammals, which triggered the first statutory restrictions on the *size* of northern harvests. The mounting kill of walrus, prompted the first Walrus Protection Regulations to be issued in 1928. The increasing policy concern with coastal harvesting was manifest in subsequent marine mammal regulations dealing with seals, whales and narwhals.⁸

Although the *Fisheries Regulations* had long allowed for a class of commercial licenses, their first application to the North occurred on Great Slave Lake after the Second World War. This marked a decisive shift in the overall regulatory perspective. The native subsistence fishery had never really been a candidate for management, partly due to the harvesting rights guaranteed by treaty. Moreover, the annual catch was never perceived as a danger to sustainable stocks. The arrival of commercial fishing changed the stakes considerably, however, in large part due to the vastly expanded potential catch. A biological assessment of Great Slave in 1944 provided the basis for an annual quota on the commercial fishery (taking account of the continuing subsistence catch in the lake). As it happened, the initial quota fell "far below the estimate of available sustained production".⁹ However, the extension of the Mackenzie Highway to Hay River in 1948 brought new entrants to the industry,

requiring an expanded quota, though still well within sustainable limits. By contrast to the native subsistence fishery, the commercial sector drew early attention on both the research and regulatory fronts.

The Department overhauled its regulatory framework in 1961, while at the same time expanding its coverage to much of the Mackenzie District and part of the Keewatin. Eight control areas were demarcated, as the basis for more discriminating regulation. Within each area, certain lakes were set aside exclusively for angling or domestic fishing, while a quota was applied to others.¹⁰ On this basis many smaller lakes became candidates for commercial fishing as well, with projects begun in the Keewatin, and in the interior of the Mackenzie District.¹¹

The Department of Fisheries's early management efforts can be classified as regulatory and scientific. Conspicuously lacking was an equivalent recognition of the social side of the fishery across the North. The most glaring omission here was the domestic aboriginal fishery. Both scientific interest and resources tended to be driven by administrative need, and since the subsistence fishery was felt to pose no threat to stocks, it drew little policy attention. What modest recognition there was came from other agencies, namely the Indian Affairs Branch (of the Department of Citizenship and Immigration) for Dene and the Northern Affairs Branch (of the Department of Northern Affairs and National Resources) for Inuit. As far back as the late 1940s, both agencies were aware that the changing patterns of northern residence meant that important wildlife species and populations might go under-utilized as people withdrew from the more distant hunting, trapping and fishing hinterlands. Against the argument that changing demographics meant the end of a viable hunting and trapping economy, it could be argued that incentive programs could restore a more even spatial distribution of harvesting effort, and thus a more balanced pressure on wildlife. If as many areas were under-utilized as over-utilized, a task of wildlife policy was to facilitate adjustment in the human-land relationship. This perspective did not draw much support in wildlife management circles. Instead its advocates were the agencies bearing wider responsibilities for the social and economic welfare of native peoples.

Throughout the period of declining fur markets in the 1950s, the Indian Affairs Branch attempted to reinforce the economic viability of the Dene hunting-trapping enterprise. On the one hand this took the form of a grub-stake program, offering credit advances to trappers and marketing support. The other side of the trapping enterprise was the need to supply most key subsistence products on the land. To this end, the Branch provided nets and other simple fishing equipment to band

mentation that DFO take the lead role in implementing an Arctic marine strategy.¹⁹

The “hard-line” period for northern fisheries administration began to pass by 1986. The DFO released a proposal on marine conservation late in 1987, which endorsed the principle of “shared responsibility for decision-making” involving all user groups as well as integrated resource planning and knowledge.²⁰ Nevertheless, the fact that Ottawa lagged significantly behind territorial government thinking on such matters not only served to retard the land claims process, but also to lend support to the northern advocates of jurisdictional devolution.

Territorial Governments and the Fishery

The period from 1965-1985 saw the territorial councils and administrations direct continuing attention to fishery questions. While the legislative and policy intentions sprang from separate concerns, the objectives proved to be remarkably similar in the two territories. In each case, elected councils demonstrated greater political sensitivity to the northern fishing constituency than did the responsible federal agencies. The two governments sought to service these interests, and also identified a direct presence in the fishery with expanded territorial autonomy and the road to provincial status. In each case, the solution was defined as immediate jurisdictional transfer.

In the NWT, the Council tended to view the fishery as an instrument of economic growth. From this followed two corollaries: first, that its maximum exploitation would more likely result from territorial government control, and, secondly, that the secret to an expanded commercial fishery lay in the economic infrastructure, including marketing. The two themes were intrinsically related. Particularly in the era when the GNWT was expanding, it resented the absentee control of a major resource by the Fisheries Department. Winnipeg (the regional headquarters) and Ottawa were not only physically distant, but also lay beyond the Council’s capacity to scrutinize. As a result, as early as 1969 a resolution was adopted, calling for the transfer to Yellowknife of a significant fisheries jurisdiction.

In the interim, if the administration of the powerful *Fisheries Act* lay beyond its control, the Council could still monitor the GNWT’s efforts to support the commercial sector. Here the absentee theme was again reinforced, once the Freshwater Fish Marketing Corporation became operational in 1969. With responsibility for marketing all freshwater fish from the prairie provinces and the NWT, the Corporation was

designed as a marketing agency which could bring advantages of scale to many small and rather isolated fisheries. Almost from the outset, its operating procedures drew criticism from the commercial fishermen of Great Slave Lake. Administrative task forces were struck in 1974 and again in 1984, to review contentious issues.²¹ The Council consistently provided a sympathetic hearing to the Great Slave Lake fishermen. Indeed their organization, the NWT Federation of Fishermen, was treated by Council as the expert voice of the harvester. Councillors whose constituencies bordered on the lake regularly brought the fishermen's concerns before the Council, which frequently passed motions censuring the federal agencies.²²

While these efforts tended to focus on mediating the disputes among the fishermen, the Corporation and to a lesser extent the Fisheries Service, wider questions pertaining to the management regime were being addressed in other quarters. A federal-territorial administrative committee reported in 1972, after a review of the entire framework of fisheries management. It outlined a five-year "development plan". Although the latter was never enacted, the report continues to offer a set of sound proposals on which to base policy. Challenging the premise that northern waters offered unlimited commercial opportunities, the Task Force argued that "sustainable yield from these stocks is small in spite of what appears to be an abundance of fish". Consequently quotas should be set conservatively in all cases. It advised that the aboriginal fishery be designated the primary sector, while suggesting caution in opening up any new commercial ventures. It documented extensive potential for new sports fisheries which could be tied to tourist programs. Above all lay the need for accurate information as the basis of a management system.²³

In the face of such a wide-ranging report, it is striking that the administrative follow-up was so fragmented. In 1973, the Fisheries Minister answered the Council's demands with an proposal to transfer the administration of sports fishing to the Yellowknife.²⁴ This fell far short of the Council's expectations. Its Committee on Provincial-Style Responsibilities designated the entire "inland fisheries" as one of nine priority areas for transfer. The sports fishery proposal mirrored the deal that Ottawa had struck with the Yukon Territory the previous year.²⁵ The ultimate transfer, effected on 1 April 1976, made it clear that the commercial fishery, the ocean fishery and the research responsibility remained in federal hands, while:

the Commissioner of the NWT will be responsible for printing, distribution, sales, revenue and accounting relating to administration of the licensing system for the sport fishery in the Territory, and any revenue therefrom shall accrue to the NWT consolidated revenue fund, and the Commissioner of the NWT recommends to the Department of Environment, Fisheries and Marine Service, any changes or amendments in the sport fishery regulations that the Commissioner deems necessary.²⁶

The sport licenses had become little more than a distraction to the federal department. However, in territorial hands, this apparently modest jurisdiction could be creatively pursued. The licensing authority was applied, not only to individual anglers, but also to sports lodges and outfitters. Over the following years the GNWT developed a regulatory system based on water-front acreage and size of establishment, with the goal of relating the level of sports fishing activity to lake capacity.

In Yukon, the situation was somewhat different, owing much to the greater prominence of the sport fishing sector and the more marginal status of the commercial fishery. The Yukon Assembly was perhaps more vehement than its NWT counterpart in pursuing jurisdictional transfers. However, this dovetailed with a growing concern about the declining freshwater stock and its impact on both resident and tourist pursuits. Several factors were bound together here. Just as the federal fisheries in the NWT operated as a District within the Central Region based in Winnipeg, the Yukon District was part of the Pacific Region based in Vancouver. The frustration bred by distance from centres of policy initiative and accountability was reinforced in the Yukon case by evidence that the freshwater stocks were virtually neglected by the tilt of federal concern with salmon. This in turn combined with the growing support in Whitehorse for an integrated renewable resource management program, which hinged upon program transfers from federal agencies.

The first of a number of such strategies was mapped out in 1977, in an internal policy review.²⁷ The YTG momentum accelerated in the following years. A 1981 review of the sports fishing management system concluded with a recommendation that "management responsibility for the Yukon inland fishery, exclusive of anadromous fish, be transferred to the Yukon Territorial Government within the next four years."²⁸ With the advent of the NDP Government in 1985, and the prolonged regional economic recession, the importance of a renewable resource strategy was repeatedly underlined.²⁹ This generated expectations for devolution in areas such as fish, forests, lands and water.

What the territories share in common here is a growing capacity to articulate and confront the complicated distributional conflicts attached to a managed resource. The competing claims of native and non-native; of sport, subsistence and commercial harvesters; of species management, tourist promotion and marketing support, are increasingly articulated by politicians and administrative managers in the North. It is extremely significant that debates about the exercise of freshwater fisheries jurisdiction predate, and serve to condition, the transfer negotiations of the late 1980s.

The Transfer Negotiations: Yukon

The fisheries issue arose first in the Yukon in 1986. The process was triggered by an exchange of letters between federal and territorial Ministers, setting out a framework for negotiation and specifying the issues eligible for discussion. Ottawa stipulated, for example, that the range of negotiable issues could not exceed those already transferred to the provinces. It also followed that the instrument of agreement would closely resemble the federal-provincial umbrella fisheries agreement, with separate sub-agreements covering discrete project work. The framework also excluded any discussion of anadromous fish or marine mammals. With the framework in place, each side proceeded to examine and document the existing level of federal freshwater programming. This included the study of personnel and budget levels, capital expenditures and accumulated real assets.

Given a relative consensus on the substance of jurisdiction, it was clear that the financial terms of transfer would pose the most contentious issue. An added complication flowed from the fact that only part of the northern fisheries program was at stake. Considerable administrative energy was devoted, on both sides of the table, to sheltering, uncovering and discovering potentially relevant expenditures and assets. Indeed, it often proved difficult to separate that portion of a field job or office position which was devoted to freshwater subjects from that involving anadromous fish, marine mammals, or administrative tasks in general. In the case of the Yukon, Ottawa contended that 99% of its previous work had been directed to the salmon (anadromous) fishery. In the event, the initial DFO financial package consisted of three-fifths of one person-year, plus \$25,000 for operations and maintenance.

For its part the Yukon Territorial Government sought to establish the resources necessary to mount an adequate freshwater program. This served two purposes. In the first place, it could highlight the deficient

level of past federal effort, and introduce the issue of catch-up provisions. Secondly, it provided a standard of comparison, enabling the Yukon Cabinet to judge the acceptability of any settlement, while acknowledging the residual costs to the YTG of assuming the freshwater responsibilities. The extent of the “gap” was apparent from the estimate that an establishment of 8 civil servants, an annual O&M budget of \$650,000, as well as \$1 million for “catch-up” inventory research, would be required.³⁰ The Yukon position was that Ottawa was delegating not only the *management responsibility* for the freshwater sector, but also the *fiscal resources* for its reasonable prosecution. Consequently, any past neglect by Ottawa in meeting its statutory responsibilities could not be ignored in establishing a floor for the future. Given the distance between opening positions, it is not surprising that movement was slow. Indeed much of 1987 and early 1988 was taken up by a “Mexican dance of the drafts”, as proposals bounced between Ottawa and Whitehorse.

The negotiating framework specified that the value of existing commitments at the time of transfer should determine the floor for Ottawa’s budget obligation. This led the YTG to search for ways of remedying the obvious deficiency in the fiscal capacity conveyed with the transfer. In the end, a compromise emerged by negotiating a separate one-shot allotment, which could be applied against the start-up costs of the new program, without committing Ottawa to additional permanent base funding. Yukon proposed an envelope of \$900,000 over five years, while Ottawa opened with a \$300,000 figure. Ultimately an agreement was secured at \$750,000, accelerated over three years, with Ottawa dropping any conditions on the use of this “Conservation Fund”. The final terms were settled at the ministerial level in June 1988. The Yukon Minister of Renewable Resources, David Porter, met the federal Fisheries Minister, Thomas Siddon, in Vancouver on the occasion of a Canadian Wildlife Federation convention. Their letter of intent, which served as the basis for finalizing the agreement, called for \$85,000 in base (continuing) funding, the \$750,000 enhancement allotment, and a commitment by the YTG to triple its fish licensing fees within three years.

Having overcome the financial roadblock, a series of secondary issues were then resolved. Much of this pertained to the range of policy matters to be covered in the agreement. From the outset it was understood that a “non-prejudicial” clause relating to aboriginal claims negotiations was essential. Other matters were less consensual: the nature and number of issues to be worked out after the main agreement had been signed; the formal acknowledgement of the YTG role in the North Pacific Salmon negotiations; the reference to fisheries research and to fisheries inspec-

tion; and the establishment of an oversight committee for the agreement and an annual reporting procedure on its progress.

In the final agreement, which received Cabinet approval at both levels, the transfer date was set for 1 April 1989. Given a lag in staffing the new Fisheries Section in the Yukon Department of Renewable Resources, the formal transfer of administrative operations from the DFO District Office in Whitehorse was delayed. Similarly, the first instalment of the three-year enhancement fund was postponed until April 1990. Once the administrative transition is complete, discussions can be expected to begin on two sub-agreements dealing with aquaculture, and habitat protection.

Given the ramifications of this issue for the land claims process, the question of native involvement was important from the outset. The Council for Yukon Indians (CYI) was invited to participate in the discussions along with the two governments. CYI officials attended the initial meetings. However, following the lengthy hiatus associated with the financial deadlock, native participation was not resumed. Nonetheless, a considerable level of informal consultation appears to have taken place throughout the negotiating period. In addition, the Yukon Minister, Mr. Porter, is an aboriginal person, and was well positioned to deal directly with the CYI leadership. It is significant to note that the period when the talks resumed in 1988 coincided with increased land claims activity. In this context, there is no question that the claims table commanded overriding priority. On its own, the non-prejudice clause could not completely assuage the CYI's political concerns about the freshwater delegation. Yet in the end, the CYI did not adopt a formal position either supporting or opposing the final transfer agreement.

A brief consideration of the parallel events unfolding at the land claims table helps to put the fisheries transfer into context. Although the Yukon Indians presented their first claims proposal in 1973, the current round of talks began in the mid-1980s.³¹ By 1988 the discussions had reached a particularly critical and complex stage. The three parties (Ottawa, Whitehorse and the CYI) had organized their talks by discrete subject areas, to be negotiated one by one and then consolidated to form the basis of the final agreement. Leading items on the negotiating agenda included land ownership, use and administration, renewable resource harvesting and management, financial compensation, taxation, royalty sharing, and Indian self-government.

As in all of the northern claims, the provisions affecting Yukon fish and wildlife were regarded as fundamental to a successful settlement. In the cumulative *Framework Agreement* released in February 1989, the

wildlife sub-agreement emerged as the most comprehensive and detailed of the twenty-four components.³² On the one hand, it defines a set of aboriginal harvesting rights for hunting, trapping, fishing and gathering, which on implementation of the Agreement will enjoy constitutional status. At the same time, it establishes a joint (aboriginal-government) management regime under public authority. A brief description of its scope should illustrate the key departures in decision-making and power relationships. At the centre of the proposed system is the *Fish and Wildlife Board*, with First Nations and Government sharing equal appointment powers. In addition to its comprehensive policy advisory mandate, the Board exercises certain decision-making powers as part of the management program, most notably in setting the “total allowable harvests” for various species. Operating parallel to the Board, but reporting to the Federal Minister of Fisheries, is the *Salmon Sub-Committee*, whose mandate covers anadromous fish. Each of these bodies addresses the Yukon as a whole. Within the traditional territory of each of the thirteen First Nations, a *Renewable Resources Council* is established. The RRCs are similarly constituted to address local wildlife and fishery issues. While they advise the Board and Committee on policy matters in general, the Councils also determine the top priority “basic needs levels” for aboriginal harvesters, and (where conservation requires) allocate harvest quotas to local users.

To put this system in perspective, it is important to note that on all “advisory” matters, the Ministers ultimately retain the power to accept, vary, set aside, or replace recommendations from the Board, Committee and Councils. On a more limited range of issues involving harvest levels, basic needs and sub-allocations, the joint bodies would appear to possess full decision-making authority within the legislative framework.

By creating these new structures, and guaranteeing aboriginal participation at all levels, it is clear that the successful conclusion of the Yukon claim will transform the terms of fishery and wildlife management. In effect, this highlights an alternative vision of devolution, not as inter-governmental jurisdictional transfer, but as power-sharing between the state and organized groups and communities, opening new channels of resident and local control. Even while a Final Agreement remained to be formulated, pressure mounted among the CYI leadership and among Band Chiefs for the “pre-implementation” of the Wildlife Sub-Agreement provisions, particularly those involving the Renewable Resources Councils. This point was posed sharply during the summer of 1989, during a controversy over policing the native food fishery. After an Indian elder was charged with a net violation, the Band Chief Robert

Hagar convened a "fish-in" protest at his river camp near Mayo. By taking salmon without reporting the catch, the organizers sought to withdraw their support for the management process until First Nation involvement was firmly institutionalized.³³ Against the wider political canvas of land claims settlement, the fishery delegation assumes rather modest dimensions for Yukon natives. This contrasts with the far greater stature it holds for Yukon state officials and other exponents of provincial status.

Turning to an assessment of the fishery transfer agreement, it is important to consider not only the financial terms, but also the symbolic and substantive stakes of both governments. On the financial side, it is clear that concessions were significant on both sides. While Ottawa refused to expand the base funding for the freshwater program, its enhancement funding went a considerable distance toward closing the research component of the gap. For its part, the YTG was obliged to scale down its staffing projections from eight persons to five, and rely on contract services for the balance. In addition, its trebling of licensing fees stood to generate several hundred thousand dollars which could augment the base budget for fisheries.

It is evident that the building of a freshwater program will carry a considerable added monetary cost to the YTG. It may yet bring sound value if it meets additional policy goals. From the perspective of the Yukon's broad constitutional strategy, the delegation of freshwater management puts the Territory on a similar footing to a province. There are also advantages to the Yukon in controlling a positive management program. It constitutes one further step toward the desired integrated renewable resource portfolio. It allows the fisheries program to be co-ordinated with tourism and economic development priorities, and with habitat protection requirements. Given the importance of the freshwater component to the overall Yukon fishery, resident political control opens the way to a more sensitive management regime and a more publicly accountable policy framework. Perhaps it is in this broader context that one territorial wildlife official judged that three-quarters of the original Yukon objectives for this transfer had been realized. Another perspective emerges from the Devolution Office which serves to co-ordinate the wider YTG strategy of jurisdictional transfer. The fisheries case is regarded as one of the pioneering issues, with much to teach the subsequent process. From the standpoint of co-ordination, the sequence of events was far from ideal, since the fisheries negotiations were virtually complete before Whitehorse formalized its devolution strategy (in a Memorandum of Understanding on Devolution in September 1988).

As a model case, it also fell short on the grounds of the net financial cost which falls to the Yukon Government.

The Transfer Negotiations: Northwest Territories

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

In the Northwest Territories, the fisheries delegation faced more intractable problems at the political level. Chief among these was the implementation of the GNWT/Dene/Métis Memorandum of Understanding on aboriginal involvement. This April 1986 agreement was struck soon after Yellowknife committed itself to a devolution process. By its terms, any devolution matter which was also subject to negotiation at the aboriginal claims table was to be disposed in one of three ways: it could be deferred until a final claims settlement was in place, resolved as part of the claims settlement, or negotiated in the interim with the agreement of the Dene/Métis. Inland fisheries clearly fell into this category of issue, since the Lands and Resources Sub-Agreement initialled in July 1985 dealt widely with these questions. The MoU required that the three parties conclude a prior "participation agreement", detailing the form of aboriginal involvement in the transfer talks. Although the exchange of letters and the preparatory studies were done during the summer of 1988, no formal notification had been made to the Dene/Métis. Obviously this called into question the procedural correctness of the talks, not to mention their political legitimacy in native eyes.

The Inuit followed a different tack. In 1986, the TFN refused Yellowknife's offer of an MoU, declaring its opposition to any form of devolution or delegation of powers prior to the final agreement stage of the claims process. Exceptions have been made to this policy in the cases of the Northern Energy Accord and the health transfer. However, as far as fisheries are concerned, the TFN position remained one of principled opposition to transfer.

In some respects, the Northwest Territories negotiations have mirrored the Yukon pattern. Throughout 1989, meetings were held at the administrative level, with the financial terms again proving the sticking point. Yet by contrast to the Yukon case, the level of past DFO commitment in the NWT is substantial. This has impeded the search for consensus on the actual levels of current federal expenditure. While little information has been publicly released, the difference between federal and provincial positions would appear to be significant, with Ottawa's expenditure profile falling significantly short of Yellowknife's estimates. Recalling the road to settlement in the Yukon, one might speculate (at the time of writing in January 1990) that this issue will be adjudicated ultimately at the ministerial level. Such a forum is uniquely suited to resolve differences when an impasse has occurred at the administrative stage. With or without such a compromise, the GNWT may then face the choice of accepting Ottawa's final offer, or declining any agreement and forgoing a freshwater transfer altogether.

Conclusions

At the present stage of its resolution, the case of the inland fisheries delegation is as instructive for the light it sheds on the wider questions of wildlife management, as on the particular fisheries outcomes in their own terms. How positive and creative a development is the fisheries transfer likely to be? The discussion thus far points to several conclusions. To begin, the differential significance of this transfer in the two territories is amply evident. Except for the salmon resource, the Yukon will acquire virtually the entire fisheries field as a result of the transfer. It will extend its administrative control beyond sports fishing and will acquire a major research mandate. Moreover, by obtaining as well a prospective role in habitat protection, it will be able to address all aspects of the freshwater jurisdiction. This includes a capacity to implement new management schemes with the opportunity to co-ordinate all three fisheries sectors. In the NWT, the control of the inland fishery represents a smaller share of the total fisheries field, since it leaves marine mammals

and fish in federal hands. In one sense, the immediate result of the transfer will leave the fisheries jurisdiction *more* fragmented than before. The fisheries policy field will be skewed in another respect, since the expanded capacities of the GNWT will be of much greater consequence to harvesters in the Mackenzie region than in the Arctic region. For the Dene/Métis, the resident sport fishermen and the commercial fishermen, the freshwater jurisdiction will be politically more proximate when it shifts to Yellowknife. However, despite its future freshwater prospects, the Inuit fishery will remain sea-based and therefore federally controlled.

Despite their partial character, each of these delegations offers an advance over past management by the DFO. We have observed the low priority attached to the administration of northern fisheries, and the program's weak claim on departmental resources. This has become more problematical as the department's mandate has broadened from species protection to ocean protection. In this light, *any* enhanced territorial focus for management and legislation can be positive. It is instructive to contrast the federal fisheries record with the territorial record on terrestrial game policy. One relevant indicator is the degree of political responsiveness displayed at legislative and managerial levels. Here, the territorial records compare favourably to the virtual neglect of northern fisheries matters in the past, both in the federal Parliament and at the Standing Committee on Fisheries. On this basis, the prognosis for a devolved territorial fishery program should be quite optimistic.

On the other hand, the delegation of freshwater jurisdiction *per se* clearly runs contrary to the cause of integrated wildlife management regimes. The latter theme, so evident in the thinking of both aboriginal claims settlements and conservation strategies, is not furthered by fragmenting a hitherto unified jurisdiction. Interestingly, these delegations could prove to be neutral to the question of joint management arrangements. While the GNWT pioneered the practice, and the Yukon has embraced it more recently, the DFO appears to have abandoned a principled opposition to the practice, and has initiated some experimental projects in its own right. In any event, it seems clear that the overriding foundation for joint management will come from completing the claims settlement process north of 60. In this sense, the fisheries transfer might be viewed as a way station to more extensive integration of wildlife policy. Only with the collapse of comprehensive claims settlements would the fisheries delegation take on more than modest significance.

It is true that the territorial governments have, over recent decades, pursued provincial-style powers with differing degrees of intensity. In

the 1980s, these urges have been tempered by the acknowledgement that the claims arena carries equivalent or even paramount importance. It remains to see how far territorial constitutional ambitions will be pursued in concert with, or in contradiction to, the aboriginal settlement process. In the meantime, the freshwater fisheries case reminds us of the limited advances which may be wrought by jurisdictional transfer *per se*. It will remain for social interests within the two northern territories to confront the continuing contradictions of resource management. The contrasting character of the outcomes, over space and time, will provide the ultimate measure of the devolution initiative.³⁴

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NOTES

- ¹ See Department of Indian and Northern Affairs, *A Northern Political and Economic Framework*, Ottawa, June 1988.
- ² On the roots of federal-provincial delegation, see Richard W. Parisien, *The Fisheries Act: Origins of Federal Delegation of Administrative Jurisdiction*, Ottawa: Department of Environment, 1972.
- ³ Section 2 of the *Fisheries Act* defines its scope to include "shellfish, crustaceans, marine animals, marine plants and eggs, spawn, spat and juvenile stages of fish, shellfish, crustaceans and marine mammals".
- ⁴ See for example, the *Canada-Ontario Fisheries Agreement*, 1987.
- ⁵ For details, see Peter H. Pearce, *Turning the Tide: A New Policy for Canada's Pacific Fisheries*, Final Report, Commission on Pacific Fisheries Policy, Vancouver, 1982, Chapter 20.
- ⁶ Canada's fisheries administration betrays a complex history. For most of the post-Confederation period, a distinct Department of Fisheries administered the *Act*. With the establishment of the Department of the Environment in 1970, the key agency became its Fisheries and Marine Services Branch. In 1979, the program was restored to full departmental status in the form of the Department of Fisheries and Oceans.
- ⁷ A detailed survey of the evolution of the *Fisheries Act* as it applies to northern natives can be found in Inuit Tapirisat of Canada, *Brief on Inuit Hunting Rights in Relation to Sea Mammals*, Ottawa: September 1974.
- ⁸ Under the *Fisheries Act*, regulations were issued in 1949 for beluga whales and seals, and in 1971 for narwhals. A separate *Whaling Convention Act and Regulations* came into effect in the 1940s, to further Canada's commitment under the International Whaling Convention.
- ⁹ Department of Fisheries, *Expansion of the Fisheries in the Northwest Territories*, Pamphlet, 1961, p.1.
- ¹⁰ *Ibid.*, 5.
- ¹¹ See, for example, W.J. Barlshen and T.N. Webber, "A History of Attempts to Commercially Fish the Mackenzie River Delta, N.W.T.", March 1973. See also S. Sinclair, S. Trachtenberg and M.L. Beckford, *Physical and Economic Organization of the Fisheries of the Mackenzie District, N.W.T.*, Ottawa: Fisheries Research Board Bulletin 158, 1967.

- ¹² For a fuller discussion of these programs see Peter Clancy, "Caribou, Fur and the Resource Frontier: A Political Economy of the Northwest Territories to 1967", Ph.D dissertation, Queen's University, 1985, chapter 11.
- ¹³ Department of Fisheries, *Trends in the Development of the Canadian Fisheries*. Background Document for Fisheries Development Planning, Ottawa: April 1967.
- ¹⁴ For one description of this program, see C.S. Jessop and J.W. Lilley, *An Evaluation of the Fish Resources of the Mackenzie River Valley Based on 1974 Data*, Technical Report Series No.CEN/T-75-6, Winnipeg: Fisheries Service, 1975, p.90.
- ¹⁵ After several years of prolonged opposition led by the DFO, some revisions to the draft agreement opened the way for federal acceptance. See Government of Canada and Tungavik Federation of Nunavut, *Sub-Agreements on Wildlife*, 1986.
- ¹⁶ T. Fenge, P. Jacobs, R.F. Keith and S.J. Woods, "Toward a Northern Policy for the Department of Fisheries and Oceans", (Report of a Workshop Sponsored by the DFO, November 17-19, 1985), Canadian Arctic Resources Committee, n.d., p.3.
- ¹⁷ *Ibid.*, 26.
- ¹⁸ International Union for Conservation of Nature and Natural Resources, *World Conservation Strategy: Living Resource Conservation for Sustainable Development*, IUCN-UNEP-WWF, 1980.
- ¹⁹ Department of Indian and Northern Affairs, *Task Force on Northern Conservation*, Ottawa, 1984, pp.23-24.
- ²⁰ Department of Fisheries and Oceans, *Canadian Arctic Marine Conservation Strategy: Discussion Paper*, Ottawa: December 1987, pp.14-15.
- ²¹ See Department of Economic Development, Government of the Northwest Territories, *Task Force on the Great Slave Lake Fisheries*, Yellowknife: June 1975; and Great Slave Lake Fisheries Task Force, *Interim Report*, May 1984.
- ²² Of perennial concern was the tight monopoly position of the FFMC, which prevented the sale of fish to private buyers in the north. Another matter of controversy was the Department's application of quota and net restrictions on Great Slave Lake.
- ²³ *Where to Now? A Federal-Territorial Task Force Report*, Volumes 1 & 2. Yellowknife: Government of the Northwest Territories, 1972.
- ²⁴ Northwest Territories Council, *Debates*, 49th Session, 7th Council, 13 June 1973, p.91.
- ²⁵ Order in Council P.C. 1972-1756, 24 August 1972.
- ²⁶ Order in Council P.C.1976-535, 9 March 1976.
- ²⁷ Yukon Wildlife Branch, *Toward a Future for Yukon Wildlife, 1978-1987*, Whitehorse, 1977.
- ²⁸ Howard Paish and Associates, *The Yukon Sport Fishery: A Policy Oriented Assessment of Sport Fishing in the Yukon, Summary*, Vancouver, March 1981, p.18.
- ²⁹ See Department of Renewable Resources, *The Future of the Yukon's Renewable Resources*, Discussion Paper, December 1985; Select Committee of the Legislature, *Yukoners' Views on Managing Our Renewable Resources*, Whitehorse: December 1986; Government of Yukon, *The Things That Matter, and Yukon 2000, An Economic Strategy*, 1986.
- ³⁰ Howard Paish and Associates Ltd., *Transfer of Responsibility for the Administration and Management of the Yukon Freshwater Fishery from the Government of Canada to the Government of Yukon: A Discussion Paper on Programme Requirements*. Prepared for the Department of Renewable Resources. Vancouver: April 1985.
- ³¹ For the initial presentation see *Together Today for Our Children Tomorrow*, 1973. For a comprehensive analysis of the Yukon claims process, see Jonathan L. Pierce, "Indian Land Claims in the Yukon, 1967-1984", M.A. Thesis, Carleton University, 1988.
- ³² Yukon, Executive Council Office, Land Claims Secretariat. *Yukon Indian Land Claim Framework Agreement*, February 1989. Sub-Agreement 13: Fish and Wildlife Conservation and Use, pp.67-92.
- ³³ See *Whitehorse Star*, 20-28 July 1989.
- ³⁴ This article was completed in January 1990 and reflects developments to that date.