

*Brief to the Royal Commission
on Aboriginal Peoples*

PUTTING NATURE FIRST:

**Conservation Principles to
Guide the Settlement of
Aboriginal Land Claims**



FEDERATION OF
**Ontario
Naturalists**

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FOREWORD

This document was prepared by a Land Claims Work Group of the Federation of Ontario Naturalists (FON). It addresses three tasks set out in the FON's undertaking with the Royal Commission on Aboriginal Peoples (RCAP):

To conduct research by reviewing current conservation efforts in Ontario, and by meeting with Aboriginal representatives in four parts of the province where outstanding claims involve areas designated as parks.

To develop and articulate a set of conservation principles and policies that will help guide the processes to settle comprehensive and specific claims in areas that include parks and other areas of biological significance.

To educate FON members about the rights, needs, and aspirations of native peoples and how these can be integrated with and supportive of a new era of conservation.

In addition, the Work Group felt the need to add a fourth task:

To describe for the benefit of the Commission and others, the history and philosophy behind non-native concepts of conservation, the naturalists' perspective on conservation, and special areas of concern arising from land claims.

This document does *not* discuss the merit of Aboriginal claims or the application of Aboriginal rights. They will be decided in other forums and at other times. This brief proposes principles that should be applied to promote conservation *where a claim or right is acknowledged and is the subject of negotiations.*

The Land Claims Work Group was comprised of L.R.L. (Ric) Symmes (Chair), Jenny Fraser, and John Lounds. They wish to thank the many people who have offered advice and comments on early drafts of the document, and would welcome comments and suggestions on the issues addressed in this paper. Please send comments to:

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Table of Contents

EXECUTIVE SUMMARY	v
INTRODUCTION	1
Important Terms	1
Document Development	1
Organization of the Document	2
 PART ONE: BACKGROUND—CONSERVATION IN ONTARIO	
I. THE HISTORY OF CONSERVATION AND PARKS IN ONTARIO	5
1. Early Resource Management	5
2. Conservation Approaches	6
3. Conservation and Parks in the 20th Century	7
II. CONSERVATION MEASURES IN ONTARIO TODAY	11
1. Measures Other Than Parks	11
2. The Park System	12
3. The Value of Parks	13
III. THE INADEQUACIES OF ONTARIO'S PARK SYSTEM	15
1. Deficiencies in Conservation Measures Outside of Parks	15
2. Lack of Parks	16
3. Deficiencies Within Parks	17
 PART TWO: BACKGROUND—ABORIGINAL PEOPLE AND PROTECTED AREAS	
I. ABORIGINAL AND TREATY RIGHTS	18
1. Treaty Rights and Parks	19
2. Aboriginal Rights and Conservation	19
3. Provincial Initiatives	20
II. ABORIGINAL LAND CLAIMS AND PARKS	21
1. Land Claims: Current Practice	21
2. The Impact of Aboriginal land Claims on Parks and Protected Areas	22
III. COMMON GROUND AND POINTS OF DISAGREEMENT	23

**PART THREE: PROMOTING CONSERVATION IN THE
SETTLEMENT OF LAND CLAIMS IN AREAS
CONTAINING PARKS AND OTHER AREAS OF
BIOLOGICAL SIGNIFICANCE:
GUIDANCE FOR NEGOTIATORS**

I.	PUTTING NATURE FIRST	27
II.	PROTECTING WHAT EXISTS	29
III.	INCREASING PROTECTION (AREA AND FUNCTION)	31
IV.	IMPROVING PLANNING AND MANAGEMENT TO PROTECT AND PRESERVE THE DYNAMICS OF NATURAL SYSTEMS	32
	1. Provide a Stronger Voice for Nature in Decision-Making	32
	2. Create Flexible Ecosystem Management Systems	33
	3. Integrate Aboriginal Knowledge Into the Management of Protected Areas	34
	4. Integrate the Science of Ecology Into Park Management Design	35
	i) Protect Enough Area to Sustain a Viable Population	36
	ii) Use Buffer Zones to Protect the Edge	37
	iii) Link Natural Areas Through Corridors	37
V.	ENSURING THAT MANY OF THE BENEFITS OF PROTECTED AREAS FLOW TO ABORIGINAL PEOPLE	38
	1. Include Aboriginal People in Park Management	39
	2. Ensure Aboriginal People Have the Means to Participate in Conservation	40
	IN CONCLUSION	42
	APPENDICES	43
	Appendix I: FIRST NATIONS AND ONTARIO PARKS	44
	1. The Algonquin Golden Lake First Nation and Algonquin Provincial Park	44
	2. The Saugeen Ojibway First Nation and Bruce Peninsula National Park	47
	3. The Lac LaCroix First Nation and Quetico Provincial Park	49
	4. The Mushkegowuk Tribal Council and Polar Bear Provincial Park	51

Appendix II:	OTHER MODELS	54
	A. Northern Canada	54
	1. The Inuvialuit Claim	54
	2. Nunavut Settlement Area	54
	3. Yukon Parks	55
	B. British Columbia	56
	Gwaii Haans (South Moresby) Park	56
	C. Australia	56
	1. Kakadu National Park	56
	2. Uluru National Park	57
Appendix III:	IUCN CLASSIFICATION SYSTEM FOR PROTECTED AREAS	59
Appendix IV:	A STATEMENT OF COMMITMENT TO COMPLETE CANADA'S NETWORKS OF PROTECTED AREAS	60

EXECUTIVE SUMMARY

Aboriginal land claim negotiations—along with self government initiatives and greater recognition of the rights of Aboriginal people—promise to change some of the patterns of land ownership, management, and use in Ontario. One of the issues which has generated the most attention is the use of parks by Aboriginal people.

In the discussion of this issue, a great deal of noise and conflict has arisen over the allocation of fish caught and moose killed. Little has been heard of the "allocation for nature", those lands and resources that should be left relatively untouched. It is this important aspect of land claims that most interests the Federation of Ontario Naturalists (FON) and its members.

By far the most important measure for the protection of natural areas in Ontario are the national and the provincial park systems, which includes 265 parks and covers some 630,000 square kilometres of lands and waters. The provincial system includes six classes of parks, offering varying degrees of protection. Within each park, a zoning system provides a further breakdown of land use. The most restrictive of these are the wilderness or nature reserve zones. In such "sanctuaries", to the greatest degree possible:

- nature is allowed to function and species interact without disturbance by humans and their works;
- human activities are limited or prohibited to ensure protection of those functions and species; and
- all issues and uncertainty are resolved in favour of nature, over all other considerations.

Such sanctuaries are complementary to areas where wild life is harvested since they provide a reservoir of species to resupply surrounding areas should natural disaster or mismanagement intervene.

The protection of natural areas is critical to conservation and ultimately to the health of the planet. The park systems are the most effective means of protecting large natural areas. They are, however, inadequate in both their extent and the degree of protection they currently offers. The use of parks by Aboriginal people is seen to put additional pressure on conservation, both because it may expand the amount of hunting, fishing, and trapping in parks—particularly in sanctuaries—and because of the technologies associated with these activities.

At the same time, land claim negotiations offer opportunities to enhance protection of natural areas by:

- formalizing current Aboriginal land stewardship activities;
- establishing more compatible land use practices in the areas surrounding parks; and
- establishing new management mechanisms which take advantage of local ecological as well as scientific knowledge, and which create alliances to include a stronger voice for conservation.

The FON and the Land Claims Work Group (authors of this brief) are grateful for the opportunity to present their views on the protection of natural areas and the opportunities for conservation offered through land claim settlements. They appreciate, further, the opportunities this process has presented for naturalists and Aboriginal people to exchange their views and concerns about conservation.

The Work Group's findings can be summarized as follows:

- (i) Protection of air, water, soil and wildlife and maintenance of the integrity of ecosystem dynamics are paramount.
- (ii) Protected natural areas represent a unique mechanism for the benefits of humans and the earth. Parks are presently the best way in Ontario to ensure the protection of natural areas and as such are worthy of the highest degree of support. Furthermore, within parks, measures which promote sanctuaries are crucial to conservation.
- (iii) Government obligations such as those arising from Aboriginal rights or land claims should not be resolved at the expense of this critical resource. Any settlement should not be at the expense of the area or function of the parks system.
- (iv) Where it is proposed that a right or claim can be resolved by permitting certain activities within a park, the burden of proof should be upon the government and on those who would "harvest", develop or otherwise exploit parks, to prove on a balance of probabilities that the proposed use is not only sustainable, but will not cause material damage, degrade the park, or impair the park's contribution to the goals of conservation. This constraint should be applied considering cumulative environmental effects, and uncertainties should be resolved by following a policy of least impact.
- (v) As well, during land claim negotiations, the government should be responsible for ensuring that decisions about protected areas fit into the wider provincial conservation mandate.
- (vi) Where the right of Aboriginal people to harvest and use modern technologies in sanctuaries or proposed sanctuaries exists, governments should pursue the negotiation of

agreements whereby such rights would not be exercised, and compensation should be granted where a First Nation chooses to severely restrict or chooses not to exercise these rights. Such compensation could include the provision of exclusive harvesting rights in areas outside of parks.

- (vii) Where there is any case where a park is protected from resource extraction (whether it be any one of logging, mining, hydro-electric development, hunting or fishing or any other extractive use), and where aboriginal rights or claims to extract resources from the area are to be recognized **and** exercised, the government must either negotiate the establishment of mutually acceptable rights elsewhere and/or a package of compensation if a First Nation chooses not to exercise such rights, or must add new park area which provides those function(s) that have been lost, **satisfying naturalists and other ecological experts on a balance of probabilities**, that the functions have been replaced.
- (viii) In settling claims every opportunity should be taken to
 - (a) expand the area of sanctuaries (wilderness and nature reserves), and the total area of parks.
 - (b) increase the degree of protection within parks and sanctuaries or enhance their effectiveness.
 - (c) encourage the establishment of First Nation Nature Reserves or other similar mechanisms.
- (ix) Claims & rights negotiations are resulting in new bodies to determine the interests of conservation and the means for its management. Such bodies must have a balanced membership and include members from the naturalist community as well as government and Aboriginal people so as to provide a strong voice for sanctuaries within larger protected areas, and to ensure that there are voices at the table speaking for non-consumptive uses of nature such as nature appreciation and scientific study.
- (x) When land claim settlements include the establishment of planning and management strategies, such strategies should include a regular review of ecosystem protection strategies, bearing in mind local requirements.
- (xi) Where settlements and agreements include the establishment of management bodies for areas or responsibilities which include parks, negotiators should consider, and the mandate of these bodies should include and be appropriate for:
 - the traditional knowledge of and management regimes of Aboriginal people.
 - ecosystem-based management and the conservation of biodiversity.
 - objectives which incorporate the enhancement of park function through increased size, improved buffer zones, and (especially in Southern Ontario) the establishment of corridors.

- (xiv) Land claim settlements and legislation should ensure that where parks or proposed parks overlap with their traditional territory, Aboriginal People are involved in a meaningful way in the management or selection of such parks. This may include ownership and co-management in accordance with conservation.
- (xv) Land claim settlements and legislation should ensure that First Nations have the resources to document and enforce their own conservation codes. These codes must integrate and support the conservation principles presented elsewhere in this document.
- (xvi) Land claim settlements in areas containing parks and other protected areas should include mechanisms to ensure that the First Nation has the appropriate skills and financial resources to participate in the management of those areas and research and document their own traditional resource management strategies.

The rationale and principles presented in this document are only an initial step in an ongoing dialogue about conservation and land claims. The FON and the Land Claims Work Group therefore invite comment on this document and the further development of the ideas it contains.

INTRODUCTION

The Federation of Ontario Naturalists (FON) was founded in 1931 to study and protect natural areas in Ontario. The original 28 members and 7 regional clubs have grown to approximately 15,000 members and 63 federated clubs located in communities throughout the Province. The dedicated and gifted individuals who established the FON recognized early on the need for a provincial voice for the protection of the habitat and natural treasures of Ontario. Since its founding, the FON has maintained a consistent interest in natural area protection, and in parks in particular.

The Federation has many activities including: natural history research, such as the Ontario Rare Breeding Bird Program and the Mammal Atlas of Ontario; development of original educational materials for use in schools; advocacy on behalf of natural areas and wildlife; nature appreciation trips and tours for thousands each year; the quarterly publication of *Seasons* magazine; and public education to promote the protection of natural areas and wildlife.

Because of their interest in natural history and the protection of natural areas, FON members spend a great deal of time exploring parks. As a result of this interest, they have particular knowledge of their character and importance. The expertise of members and staff has made FON advice sought and valued by government agencies, the media, and the general public. It is consistent with the Federation's long standing interest in parks that it should suggest principles and mechanisms that might be applied in the resolution of Aboriginal land claims within parks and nature reserves.

Recent court decisions and the expressed determination of both the Federal and Ontario Governments to address and resolve claims, have added importance to informed negotiation of issues related to the use of parks by native peoples. A great deal of noise and conflict has arisen between native people and non-native people over the allocation of fish caught and moose killed. Little has been heard of the "allocation for nature", those lands and resources that should be left relatively untouched. It is this important aspect of land claims and aboriginal rights that most interests the FON and its members. The Federation appreciates the opportunity to explain the basis for its concerns, and the opportunities for improved understanding and protection of nature that arise from land claim discussions.

IMPORTANT TERMS

The terms, "sustainable yield", "protected area", "park", and "sanctuary" appear frequently in this document.

"Sustainable yield" or "sustainable harvest" refers to the consumptive use of renewable natural resources in a way that conserves the resource in perpetuity and does no permanent damage to the ecosystem that supports the resource.

A "protected area" is an area which provides special treatment to life forms and ecosystems. Within protected areas, measures which promote sustainable harvest, prohibit consumptive use, or minimize the impact of human beings may all apply. There are a number of different types of protected areas in Ontario.

A "park" is one category of protected area. There are a number of different types of parks in Ontario, each of which affords a different degree of protection for the habitat and wildlife within its boundaries.

A "sanctuary" is a protected area of land and water, usually established within a park where, to the greatest degree possible:

- nature is allowed to function and species interact without disturbance by humans and their works;
- human activities are limited or prohibited to ensure the protection of ecosystems; and
- all issues and uncertainty are resolved in favour of nature, over all other considerations.

In practical terms, then, a sanctuary is an area which excludes harvesting, resource extraction, motorized activity, permanent structures, or other human disturbance. There are two types of park zoning that meet the sanctuary criteria: wilderness and nature reserve. "Natural environment" is the next strongest conservation zoning, not quite meeting the "sanctuary" criteria. When the term "Sanctuary" is used in this document, it can be used interchangeably with wilderness or nature reserve parks, or wilderness or nature reserve zones within parks.

DOCUMENT DEVELOPMENT

The Land Claims Work Group reviewed a broad selection of the literature on conservation, Aboriginal resource management, Aboriginal and treaty rights, the settlement of land claims, and Aboriginal peoples and protected areas in order to identify some of the issues inherent in a discussion of land claims and parks.

Early on in the development of the document, the Group also organized a workshop attended by respected Ontario naturalists, many of whom have had a long association with the FON and extensive experience in Ontario. This workshop clarified the concerns of naturalists, and established the foundation for the views on conservation put forward in this document.

Members of the Work Group visited four First Nations with lands on or in close proximity to parks:

- the Lac LaCroix First Nation adjacent to Quetico Provincial Park;
- the Saugeen Ojibway Nation, Chippewas of Nawash near Bruce National Park;
- the Weenusk First Nation, a member of the Mushkegowuk Tribal Council, at Polar Bear Provincial Park; and
- the Algonquin Golden Lake First Nation near Algonquin Park.

These visits allowed members of the Work Group to become better acquainted with the aspirations of the First Nations, the details of their claims, their relations with the park in question, and their views on conservation. Questions developed during the naturalist workshop aided discussion during these visits.

The visits were supplemented by a workshop involving members of the Work Group, members from three of the four communities visited, and several naturalists with links to the FON. The participants enhanced their mutual understanding, and identified common ground as well as areas of difference. They also agreed to ongoing communication.

Finally, the document was drafted and circulated for comment. While every effort was made to understand and respond to the views and aspirations of all participants in the process, this document represents solely the views of the Work Group. At the same time, it promotes a vision for "putting nature first" that will ultimately provide widescale long term benefits.

ORGANIZATION OF THE DOCUMENT

Parts One and Two of this document provide background and a context for the principles and recommendations in Part Three.

Part One describes the fundamentals of conservation in Ontario. "Conservation" has come to mean different things to different people. A brief history of conservation in Ontario describes how these different approaches evolved and the importance of the concept of sanctuaries. The next section describes current conservation measures in Ontario and the critical role of parks, followed by commentary on the serious deficiencies of the current parks system.

Part Two provides background on land claims and conservation. It includes an overview of the nature of land claims, Aboriginal rights, and the common ground and differences between Aboriginal people and naturalists. It explains the ways in which claims offer opportunities for and put pressure on conservation.

Part Three outlines the rationale, principles and some mechanisms that should be applied in addressing land claims within parks. In terms of the tasks outlined for the Royal Commission, this is the key section of the brief.

PART ONE: BACKGROUND — CONSERVATION IN ONTARIO

I. THE HISTORY OF CONSERVATION AND PARKS IN ONTARIO

1. Early Resource Management

Human activities have had an impact on natural systems for thousands of years. Some of these activities likely involved deliberate manipulation to ensure the health of natural systems and an ongoing supply of resources. In the Americas, there is strong evidence for the existence of Aboriginal wildlife and fisheries management strategies long before European contact.¹ Some of these strategies have been passed on through history, and are still evident in current aboriginal practices. As an example, the Aboriginal residents of Walpole Island in southwestern Ontario have regularly burned their grasslands for many generations, thereby maintaining a distinctive and productive ecosystem.

To most of the early European settlers in Ontario, the supply of natural resources likely seemed limitless, even overwhelming. The few resource management techniques practised by these settlers were aimed at preserving a convenient local supply of "useful" species such as beaver. A trapper, for example, might leave one beaver lodge on each lake untouched. Top predators such as wolves were hunted with particular vigour, partly because they were competitors for deer and other meat species, but also because they were a threat to livestock and occasionally to humans.

Long-term changes in population, land use, technology, wealth creation, and the human understanding of nature have altered this approach. By the late 19th century there was ample evidence across North America that humans could have a devastating impact on wildlife and the natural environment. Two centuries of European settlement had profoundly changed the landscape of Ontario. In the southern part of the province, farms, roads, and cities replaced grasslands, pine forests, and wetlands. Water, soil and air was contaminated. Ecosystems were fragmented and their healthy dynamic interrupted.

¹ Patrick C. West and Steven R. Brechin, ed. *Resident Peoples and National Parks*, University of Arizona Press, Tucson, 1992. p. 334.

Interest in formal conservation practices led in Ontario to the establishment in 1893 of Algonquin Park. In 1894, the citizens of Essex County raised a petition to protect Rondeau Point as a park. This early interest in conservation and recreation led to the establishment of other provincial parks: Quetico (1913), Presqu'île (1922), Ipperwash (1938) and Lake Superior and Sibley (1944).²

2. Conservation Approaches

Current conservation practices employed by government in Ontario reflect two different, but not mutually exclusive, approaches to nature that have evolved over the past century. In the one, certain species are valued above others for the material benefits they provide. In the other, the entirety of nature is valued for its human benefits and for its own sake.

The dominant approach to conservation at the end of the nineteenth century could be described as a "doctrine of utility and profit"³ or "usefulness". Algonquin Park, for example, was originally set aside to protect a steady supply of quality timber from settlers, and to protect the Nippising watershed to ensure adequate water flow for the spring log drive. Wildlife management was oriented to the protection of "good" animals or birds. Parks such as Algonquin and Quetico were seen as stocking grounds for valuable fish, game, and fur-bearers. In some parks, "bad" predators such as wolves were killed to allow deer to thrive and multiply for the benefit of hunters. Efforts to feed and protect Canada Geese were applauded; so too was the practice of slaughtering owls and other predators perceived to be a threat to geese. Nature as an ecosystem was not fully understood.

The adherents of the "doctrine of usefulness"—including many loggers and other "harvesters" such as hunters and anglers—argued that humans must not destroy natural "capital", but may harvest the "interest". This approach was certainly an enlightened one for the day and the men and women who advocated for such conservation measures at the turn of the last century are owed a debt of gratitude. Indeed, this approach is the basis for many of the resource management strategies used by governments today.

At the turn of the century, a number of individuals put forward another approach. US environmentalist John Muir, sometime resident of Ontario, and founder of the Sierra Club, advocated the protection of untouched wild areas. The Federation of Ontario Naturalists—established in 1931—was among the first Ontario organizations to promote this more protectionist approach. FON leaders included academics with formal training in the new science

² Stewart G. Hilts, Malcolm D. Kirk, Ronald A Reid, *Islands of Green* (Ontario Heritage Foundation) Toronto. 1986.

³ Gerald Killan, "Ontario's Parks 1893-1993: We made progress in jumps", *Islands of Hope*, Wildlands League, Firefly Books, Willowdale. 1992 p 27.

of ecology and in wildlife management, who proposed that wilderness and representative natural areas should be protected for recreational, aesthetic, scientific and educational reasons.

The FON recommended that the province set aside a system of "sanctuaries" or "nature reserves" to preserve wildlands, and protect indigenous plant and animal communities. These ideas were laid out in a landmark document "Sanctuaries and the Preservation of Wild Life in Ontario" produced in 1934. In this document the FON argued that "overemphasis upon the conservation of a particular form may prove detrimental to the preservation of nature as a whole". It described sanctuaries as areas where "nature, not certain elements of it only, but **all** nature, is sacred from interference". According to the document, sanctuaries:

provide reservoirs of game and fur-bearing animals from which they overflow into neighbouring territories. They also offer opportunities for the enjoyment of those who derive pleasure and inspiration from the contemplation of unspoiled nature. In properly preserved sanctuaries there are, moreover, the conditions necessary to the scientist investigating the laws underlying the ceaseless ebb and flow in the numbers of animals found in nature.

To this list, modern naturalists would add that sanctuaries are vital because they conserve species of possible future value to humans—including species potentially important to medicine—and because they protect valuable genetic resources. In a modern form, sanctuaries provide for:

- the free play of natural forces;
- the preservation or restoration of healthy, self-regulating, and sustainable natural systems;
- the preservation or restoration of a healthy and varied landscape, including biological and ecosystem diversity and a full range of ecosystem types;
- the protection of species for their own intrinsic value; and
- the protection of critical ecosystems and the health of the entire planet.

Other mechanisms have been adopted which support this approach to conservation, such as the *Endangered Species Act* and related programs. The provision of sanctuaries and adoption of measures which value nature for its own sake have become a larger part of conservation efforts in the second half of this century, and is consistent with the FON's current approach to conservation. This approach promotes, in large part and to the extent possible, efforts which are directed at recreating or maintaining the same dynamic in natural systems that existed before European settlement.

3. Conservation and Parks in the 20th Century

With support from the FON and other naturalist groups, the protection of natural areas slowly became part of the overall approach to conservation in Ontario. From the early 1920's urban tourists looked to Algonquin Park for recreational opportunities. By the 1940's public demand for outdoor recreation in natural environments had increased dramatically, adding to pressure on parks. The FON warned that wild lands, particularly those in parks, were at risk from recreation as well as other uses particularly logging in Algonquin and Quetico. The compromise position adopted by the government in Algonquin, and later in Quetico and other parks, was "multiple use". This allowed logging to continue in Algonquin, for example, but also set aside a small area of wilderness within the Park.

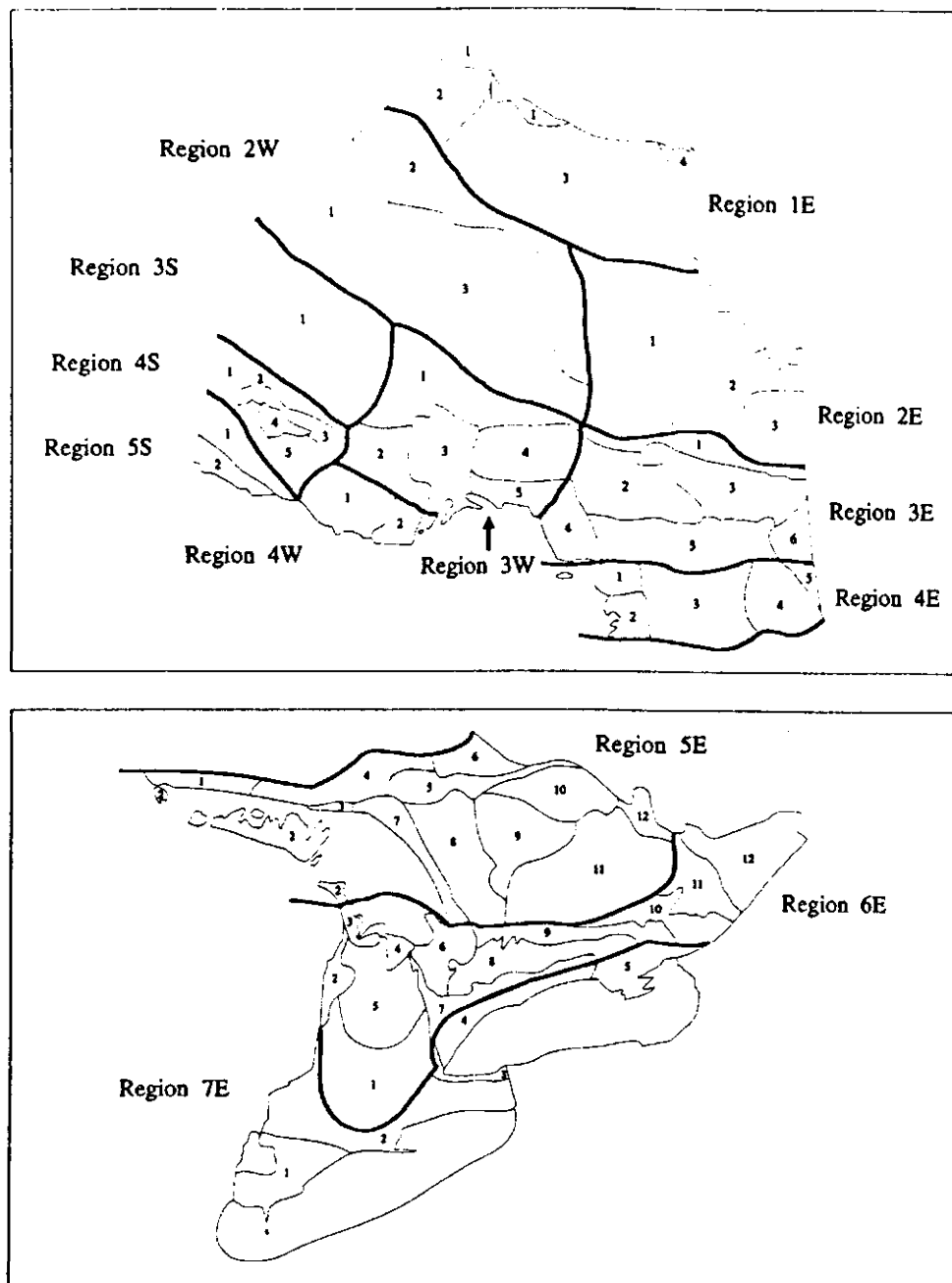
The second half of the 20th century saw the emergence of conservation as a major force both inside and outside the park system. Over all, a more objective and scientific effort was undertaken to protect soil, water, air and wildlife using university, government and private resources. Some of the formal measures developed through this effort are described in the following section.

The approach to parks changed as well. In "Outline for a Basis for a Parks Policy for Ontario", a document written in 1958, the FON criticized the dominance of recreation and other uses in parks. It demanded a greater emphasis on protecting natural areas and proposed that the province set aside a representative system of nature reserves. This inspired the province to move towards protecting a number of areas which later became parks. The FON joined other conservationists in recommending the creation of a classification system for parks. They noted that not all park objectives could be met on one piece of land. They proposed a system of zoning to manage individual pieces of land "so as to preserve its values for the specific purpose for which it is best adapted".

In 1959, the government of Ontario introduced a more systematic approach to parks based on the protection of representative ecosystems. This approach identified 13 site regions and 65 natural and earth science site districts in the province (map 1). It led to the development by 1965 of a system which classified parks according to the degree of protection they offered and the park uses allowed. While still incomplete, this approach provided objectives and a planning rationale. Notwithstanding the high principles, powerful timber and mining interests were allowed to continue their non-conforming uses in some parks—notably logging in Algonquin and Lake Superior Parks.

The park management system continued to change. In 1978, the government set out the goals and objectives of the provincial park system in the Ontario Provincial Parks Planning and Management Policies manual—known as the "Blue Book". In 1983, the government more than doubled the number of new parks in the system—to a total of 260, including five new wilderness parks (map 2). At the same time, it reduced the size of many proposed parks, discarded many proposed nature reserves, and established new programs to protect land. Most significantly, the government reintroduced mining, hunting, trapping and commercial tourism to a number of

Map 1:
Site Regions and Districts in Northern and Southern Ontario



Source: Ontario Ministry of Natural Resources

Map 2:

ONTARIO PROVINCIAL PARKS



Source: Ontario Ministry of Natural Resources

parks where these activities had been prohibited. In 1985, the government reviewed park initiatives and reinstated "blue book" management policies. It allowed hunting and commercial tourism to continue, however, in almost two-thirds of the parks in Ontario.

The overall provincial approach to conservation has evolved through a similar series of compromises, struggles, triumphs and disappointments. In general, provincial conservation efforts have attempted to address both sustainable yield and protection objectives. The point at which either sustainable yield or protection priorities take precedence is not static; it has shifted over time in response to social, political, and economic changes, and as science provided new insights into the workings of the natural environment.

II. CONSERVATION MEASURES IN ONTARIO TODAY

In Ontario, the provincial government is responsible for decisions on the development, management, and preservation of natural resources, particularly in the 87 percent of the province which is provincial Crown land. The federal government plays a direct role only on "lands reserved for the Indians" and on designated federal lands which include five national parks as well as Migratory Bird Sanctuaries and National Wildlife Areas.

Ontario's approach to conservation includes a bewildering network of laws, regulations, conventions and agreements. Some of these measures promote "sustainable" use of renewable resources such as wildlife, soil, water and trees. Others promote varying degrees of protection for rare, threatened and endangered species, landscapes, natural areas, and ecosystems. The establishment of parks, while one of the strongest mechanisms available to the government, is only one component of this collection of conservation measures.

1. Measures Other Than Parks

In the southern, more settled part of Ontario, land use is regulated through the provincial Planning Act. This Act gives local governments power to establish land use policies and provides a process for establishing these policies. Natural areas can be identified and protected, to a certain degree, through this process. For example, the Wetlands Policy established recently under the Planning Act is designed to prevent development on Class 1, 2, and 3 Wetland. Over and above the Planning Act, some areas—such as the Niagara Escarpment—are placed under "development control" to restrict land use and preserve natural values. To prevent erosion and flooding, some lakes and river valleys are protected through watershed based "Conservation Authorities".

In the northern part of Ontario, the vast majority of the land is under the stewardship of the provincial Crown and reserved for the use of various economic interest groups, including logging and mining companies and tourist outfitters. Crown lands are managed, not through the Planning Act, but through a variety of statutes which apply to the conservation and use of

provincial resources such as forests, minerals, and wildlife. The Public Lands Act gives the Ministry of Natural Resources (MNR) the power to zone provincial Crown land as open, deferred, or closed for management purposes, and to designate restricted areas. In 1983, MNR released a series of District Land Use Guidelines designed to accommodate and integrate the needs of different user groups and include some conservation concerns as well as the provincial park development strategy.

Most renewable resources in Ontario—with the exception of species afforded strict protection as under the *Endangered Species Act*—are available in designated areas at designated times for harvest. Management strategies for these species are intended to ensure sustained production from the total resource base. They include the establishment of hunting seasons, methods, harvest quotas and efforts to monitor and enforce compliance with these quotas (*Game and Fish Act*). They also include efforts to replace and rebuild stocks, as with fish restocking and reforestation. Fishing, hunting, trapping, and the extraction of forest products are managed in this way. Although the provincial government through MNR takes most of the responsibility for the development and enforcement of resource management strategies, some Aboriginal governments do the same within their own territories. Private organizations do some work in restocking fish and other animals.

Within the overall provincial approach to the management of land and resources, a more limited range of measures provides some additional protection. On private lands, protective measures include voluntary land stewardship agreements, management agreements which protect specific aspects of a natural area, Woodlands Improvement Agreements, restrictive leases, and, to a limited extent, conservation easements. Natural areas can also be designated as Game Preserves, Environmentally Sensitive Areas (ESAs), or Areas of Natural and Scientific Interest (ANSIs)—which can include both public and private lands.

2. The Park System

By far the most important measure for the protection of natural areas in Ontario are the national and provincial park systems. There are 260 provincial parks in Ontario, including some 630,000 square kilometres of lands and waters. The provincial system includes six classes of parks, offering varying degrees of protection:

"Wilderness parks" are set aside as "substantial areas where the forces of nature are allowed to function freely and where visitors travel by non-mechanized means and experience expansive solitude, challenge and personal integration with nature".

"Nature Reserves," which are relatively small, emphasize protection of distinctive natural habitats and landforms and discourage recreational use.

"Natural Environment Parks" combine the protection of representative natural and cultural heritage with outstanding recreational features and opportunities for use.

"Waterway Parks" are intended to protect river corridors and associated natural areas.

"Historical Parks" and "Recreational Parks" may include protective zones although they do not focus specifically on the conservation of nature.

Within each park, a zoning system provides a further breakdown of land use. The most restrictive of these are the wilderness and the nature reserve zones, areas that the FON has described as most closely meeting the idea of "sanctuaries" (see definition, page 2). For example, within Algonquin, which is classified as a Natural Environment Park, 40,200 hectares of land are zoned as nature reserves where hunting and fishing are prohibited. In southern Ontario, Algonquin is the closest thing there is to a wilderness park. In a true wilderness park such as Quetico, restrictive zoning of this type may cover the entire park.

3. The Value of Parks

From the earliest days of conservation, naturalists have focused their efforts on the establishment of parks, especially wilderness and nature reserve parks, in order to protect natural resources from the pressures of development, and for recreational, aesthetic, scientific, and educational purposes. The FON continues to believe that parks are presently the most effective way to protect large natural areas in the province. In general:

- Ontario parks are backed with comprehensive legislation, the Provincial Parks Act;
- park policy includes protection as a specific objective;
- park managers have the resources and authority to provide this protection;
- parks have proven to be the best way to set aside large areas;
- parks have proven to be the best way to enforce the most stringent standards of protection for natural areas; and
- parks have proven to be the best way to protect the greater long-term public interest against short-term exploitation.
- measures employed outside of parks, such as the identification of ANSIs (which include many important natural areas, often on private lands) have, unlike parks, no formal permanent protection mechanisms associated with them.

For these reasons, and for the benefit of present and future generations, Ontario's parks are worthy of vigorous defence. National and international bodies agree that protected areas such as parks are crucial to conservation. Last year, the Tri-Council Minister's of Parks, Wildlife and Environment in Canada made a statement of commitment to complete Canada's networks of

protected areas. Parks and protected areas are clearly a national and international priority (see Appendix IV). The World Conservation Strategy points out that:

a system of protected areas is the core of any programme that seeks to maintain the diversity of ecosystems, species, and wild genetic resources; and to protect the world's great natural areas for their intrinsic, inspirational and recreational values.⁴

Such a system, the document states, safeguards:

- natural and modified ecosystems that are essential to maintain life-support systems, conserve wild species and areas of particularly high species diversity, protect intrinsic and inspirational values, and support scientific research;
- culturally important landscapes (including places that demonstrate harmonious relationships between people and nature);
- sustainable use of wild resources in modified ecosystems;
- traditional, sustainable uses of ecosystems in sacred places or traditional sites of harvesting by indigenous peoples;
- recreational and educational uses of natural, modified and cultivated ecosystems.

A system of protected areas, notes the Conservation Strategy, can also contribute to human development. Contributions that are of particular relevance in Ontario include the ability of protected areas to:

- regulate and purify water flow, notably by protecting wetland and forests;
- maintain wild genetic resources or species important in medicine;
- protect species and populations that are highly sensitive to human disturbance;
- provide habitat that is critical to harvested, migratory or threatened species for breeding, feeding, or resting;
- provide income and employment, notably from tourism.

⁴*Caring for the Earth. A Strategy for Sustainable Living*, IUCN/UNEP/WWF, Gland, Switzerland, 1991.

Some of the benefits described by the World Conservation Strategy can only be realized through the establishment of sanctuaries (see "Conservation Approaches") and the parks system is about the only mechanism currently available for establishing sanctuaries. Unfortunately, despite the critical importance of parks to conservation and to development, and despite the effectiveness of parks as a mechanism to protect natural areas, the current system of parks in Ontario is far from adequate.

III. THE INADEQUACIES OF ONTARIO'S PARK SYSTEM

Problems with the park system are best described by looking at deficiencies outside of parks, the lack of parks, and deficiencies within parks.

1. Deficiencies in Conservation Measures Outside of Parks

Pervasive development is altering and damaging those parts of Ontario that lie outside parks. Development of land for urban, industrial, agricultural, forestry or transportation has many "unnatural" consequences, including loss of tree cover diversity and species. These effects are difficult to avoid since they seldom result from a single decision. They are caused by the accumulated stress of many insignificant human actions. Those small actions include the removal of a single tree to build a house, or the detergent used in a batch of laundry. But trees removed one at a time effectively denuded Essex County, and the detergent used by thousands of households caused the death of fish in Lake Erie.

Progress has been made in restoring Lake Erie, but there are many other problems including contaminants like PCB's, introduced by humans, that resulted in changes and distortion of the natural environment. Introduction of species like the alewife, coho salmon, lamprey eels, and most recently the zebra muscle are all examples of actions that have damaged the natural environment. For example, the Royal Commission on the Future of the Toronto Waterfront (1992) found that the number of fish species found along the Lake Ontario shoreline had dropped from 51 to an average of about 24, with some areas as low as 10. Such actions will continue to happen because of the intense pressure of human development. While our knowledge is growing, we are ignorant of many of the mechanisms in nature, and we are currently powerless to restore some species such as the Lake Trout in Lake Ontario.

Vast areas of the province are devoted to agriculture. Practices such as the removal of trees, the removal of fencerows and shrubs, drainage of wet areas, and the extensive application of chemicals have removed all but a few species from large tracts. Most of the fragments of ecosystems that survive in southern Ontario outside of parks and reserves are too small to protect the native species.

Similarly, in Northern Ontario, the forest industry has employed massive clear cuts. What replanting has taken place has favoured a few preferred species. The consequence has, in some areas, been the creation of a different forest regime, impacting the composition of native species living in the forest.

Development in Ontario may slow, but is unlikely to stop. Many of the damaging actions that result from development are extremely difficult to control. As a result, conservation outside of parks is falling far short of environmentally sustainable levels, and this deficiency makes effective protection within parks specially important.

Therefore, though Ontario promotes conservation through a variety of measures, the province is far from achieving conservation goals. Problems with the overall provincial approach to conservation outside of parks include:

- failure to plan on an ecosystem basis;
- inadequate monitoring and measurement of natural resources (such as fish);
- lack of knowledge of how to restore certain species, and certain natural systems, such as the lake trout fishery in Lake Ontario;
- lack of resources for the restoration of natural areas and species;
- lack of means or mechanisms to consistently protect life forms such as trees and areas such as ANSIs even where their value is obvious.

These deficiencies make the protection of a system of natural areas even more critical. The existing park system, however, is inadequate in both extent and in the degree of protection it offers.

2. Lack of Parks

The amount of land protected by the existing park system in Ontario falls short of figures proposed by national and international organizations. Provincial parks currently account for only about six percent of Ontario's land base. Fully 40 percent of this total is contained in one provincial park—Polar Bear. In the settled south—which includes two of the 13 natural site regions in the province—there are no wilderness parks at all, and no natural areas left which could fit that designation.

The park system envisioned for Ontario in 1978 calls for the establishment of two more large wilderness parks of over 100,000 hectares, ten natural environment parks (or their equivalent in terms of nature zones established within other protected areas) as well as other park categories. This would bring the total for the park system, when complete, to roughly seven percent of the land base of the province. The former Minister of Natural Resources, Bud Wildman stated publicly that the park system was under-represented, and the government pledged to expand the protection of "endangered spaces".

Even with the addition of other types of protected areas, the total amount of protected area in the province is still only about eight percent, well short of the 12 percent target proposed by the Brundtland Commission and supported by a number of Canadian conservation groups. More importantly, protected areas in Ontario are under represented in a number of the natural site regions and site districts in the province.

In addition, naturalists also identify systemic inadequacies in the management of Ontario's parks. These will be discussed further in Part Three of this document. In general, however, park management and design do not adequately incorporate ecological principles such as buffer zones, connecting corridors, and ecosystem planning in the areas surrounding parks.

3. Deficiencies Within Parks

Quite apart from the inadequacies of the park system as a whole, there are also intrinsic problems within existing parks. Not all parks are large enough or are configured to be ecologically viable. Not all offer an adequate degree of protection.

Extensive extraction continues in Algonquin Park, where 75 percent of the land base is open to logging. Recreational use causes material damage in Sturgeon Bay and other parks. Hunting interferes with the non-extractive, recreational use of Presque'ile and the potential of the park to be a sanctuary. Some parks protect only part of an ecosystem—with undesirable consequences. The extermination of predators in and around Rondeau Provincial Park, for example, has led to a problematic rise in the deer population, threatening the understory of the Carolinian forest, one of the important values that Rondeau is designed to protect. Finally, within the park system, too little land is reserved as sanctuary. In southern Ontario, the 40,200 hectares of nature reserve in Algonquin Park—representing only 5.3 percent of the park's total area—make up the bulk of the area under strict protection. The extractive use of renewable natural resources is prohibited in less than half of all protected areas—only 2.3 percent of the total land in the province. In the rest of these "protected areas", fishing and hunting, (or even logging, in the case of Algonquin) may be carried out on a sustainable yield basis. The area of virtually untouched land available as a scientific benchmark remains pitifully small.

To sum up, with the continuing degradation and pressure on lands outside of parks and indeed, the pressure on parks themselves, the importance of parks is great and growing. The area protected by parks is deficient, and the degree of protection within and around existing parks is inadequate. It is in this context that naturalists are concerned that governments will retreat from the need and obligation to strengthen Ontario's park system in negotiating the resolution of Aboriginal Land Claims and in recognizing aboriginal and treaty rights involving parks. At the same time, naturalists are hopeful that First Nations, in their efforts to right an unquestionable series of injustices against their peoples, will seek resolutions that provide for sanctuaries and thereby protect our natural world for the benefit of all peoples.

PART TWO: BACKGROUND — ABORIGINAL PEOPLE AND PROTECTED AREAS

Land ownership, use and management patterns developed by settlers over the last two centuries have been largely incompatible with those historically developed by Aboriginal people. In this sense, parks have been a mixed blessing for Aboriginal people.

When parks and other protected areas were established in Ontario, the government excluded Aboriginal people from lands and waters crucial to their survival and did so without the participation of Aboriginal people in the decisions. The people of the Lac LaCroix First Nation, for example, lost access to their primary hunting grounds when the Quetico Game Preserve was established. Local Aboriginal people also lost access to their lands and livelihoods when Missinaibi Park and the Chapleau Game Preserve were set aside for conservation—with devastating health and social consequences. Aboriginal people have continued to point out that such exclusions were a violation of their rights.

On the other hand, the proximity of parks to Aboriginal communities has helped protect a way of life based on the land. For example, Quetico Park and the U.S. Boundary Waters Canoe Area Wilderness have helped protect the fish and wildlife the people of the Lac LaCroix First Nation continue to rely on. Algonquin Park has helped protect moose and deer populations which the people of the Golden Lake First Nation—among others—rely on for food and hides. And Bruce Peninsula National Park has helped stop development and maintain wildlife populations in the adjacent hunting areas of the Saugeen Ojibwa Nation.

Self government initiatives, greater recognition of these rights, and land claim settlements are changing the relationship between Aboriginal people and protected areas. Among the basic requirements of self government and self-determination, for example, is access to land, resources and decision-making authority. In many parts of the country, therefore, Aboriginal people are looking for recognition of their rights to harvest within parks. Through land claim settlements, they are seeking to re-establish ownership and/or control of their traditional territories, including those lands within parks.

I. ABORIGINAL AND TREATY RIGHTS

Aboriginal people are the only group in Canada with a Constitutional right to harvest resources. Aboriginal rights are those rights that ensue to Aboriginal people through their long occupancy and use of the land, and their status as sovereign peoples before European contact. Treaty rights ensue to Aboriginal people through legal agreements with the British Crown or the governments of Canada and the provinces. These may include the right to harvest resources within a territory ceded through such a treaty. They usually also include access to specific compensation for the

surrender of Aboriginal land in the form of money, goods, services such as education and health care, or other lands. Until recently, the majority of Aboriginal people in northern Canada and in British Columbia had never signed a treaty. This is not the case in Ontario, where most First Nations signed treaties before or shortly after Confederation.

Both types of rights are recognized and protected through Section 35 of the Canadian Constitution. They have also been interpreted through Canadian courts, which have tended to support the continuation of traditional activities such as fishing and hunting.

1. Treaty Rights and Parks

Where rights are recognized by treaty, the original wording and intention of the treaty may determine whether Aboriginal people may hunt, fish, or carry out traditional gathering activities in a park. For example, the "numbered treaties" signed after Confederation allow Aboriginal people to harvest resources on "unoccupied" Crown land, subject to government regulation. Whether or not this designation includes parks, however, is an area of disagreement.

Aboriginal people consider park lands to be "unoccupied" and are asking for access for subsistence and other purposes. Both the federal and Ontario governments consider parks to be "occupied" Crown lands. As a matter of policy, the provincial government "allows" Aboriginal people to harvest in some northern parks. The federal government, through the *National Parks Act*, has affirmed the rights of Aboriginal people to harvest in parks north of the 60th parallel. This recognition, with one exception (Pukaskwa National Park in Ontario), has not been extended to southern parks.

Canadian courts have commented further on the status of park lands. In the Sioui decision (1990) four Huron men were charged with cutting trees, camping and making fires in a Quebec provincial park, contrary to regulations. They argued that a 1760 agreement guaranteed them free exercise of their customs and religious beliefs. The Supreme Court ruled in favour of the Hurons, and stated that provincial laws—such as those which established the park—should not overrule treaty rights. The court held that it was up to the Crown to prove that its occupancy of the land "cannot be accommodated" to the "reasonable exercise" of treaty rights. Furthermore, the exercise of these rights "must be contrary to the Crown's purpose and prevent the realization of that purpose to be incompatible".

2. Aboriginal Rights and Conservation

Where Aboriginal people have signed no treaty and have maintained their traditional practices, their Aboriginal rights are still intact. On this basis, for example, the Algonquins of Golden Lake claim the right to harvest resources in Algonquin Park, part of their traditional territory.

Canadian courts have helped to define the relationship between conservation and Aboriginal rights. The landmark Sparrow decision (1990) in the Supreme Court of Canada defined the legal interpretation of Section 35 of the Constitution. The Court ruled that a member of the Musqueam First Nation in British Columbia who violated the federal Fisheries Act had a right to do so because he was fishing on tribal lands.

In its decision, the Court emphasized that the relationship of governments with Aboriginal people should be based on fairness and trust and that Aboriginal rights should be defined with sensitivity to native traditions. What is more, said the Court, these rights should be affirmed in a "contemporary form", that is, in exercising their rights, Aboriginal people should not be confined to the use of primitive technologies.

The Sparrow case determined that when federal (and likely provincial) legislation does interfere with Aboriginal rights, the government must be able to prove this legislation pursues a valid objective, such as public safety or conservation. Conservation measures, ruled the court, should interfere as little as possible with Aboriginal use, should be developed in consultation with Aboriginal people, and may involve compensation for any expropriated rights. After public safety and conservation, Aboriginal access to the fishery for food is the top priority; if there are insufficient resources for all, Aboriginal people may displace other users.

3. Provincial Initiatives

In response to the guarantee of Aboriginal rights in the Canadian Constitution and to court decisions such as Sparrow, the Ontario government established an Interim Enforcement Policy which took effect in May of 1991. The Policy is to be replaced by negotiated agreements and appropriate legislation on the Aboriginal harvest of game and fish. In the meantime, Aboriginal people may harvest or transport game or fish for personal and community uses including consumption and social and ceremonial purposes. These activities can be limited by the needs of public safety and conservation.

The Interim Policy applies only to status Indians fishing or hunting in the area covered by their treaty, or in the area where they have established a tradition of harvesting. It requires that the province negotiate Sub-agreements before Aboriginal people hunt and fish in provincial parks, except where Aboriginal rights to hunt and fish are already recognized. One such Sub-agreement authorizes the Golden Lake First Nation to hunt in Algonquin Park and establishes a Conservation Committee to negotiate wildlife management issues.

The Ontario government has also signed a statement of political relationship with First Nations, thereby recognizing aboriginal peoples not just as an interest group, but a group represented by a government. This government-to-government approach represents an important step in negotiations with First Nations.

II. ABORIGINAL LAND CLAIMS AND PARKS

Aboriginal land claims are part of the wider discussion on self-government and rights now in progress between First Nations and the governments of Canada and the provinces. When dealing with these claims, Canada and Ontario take different approaches.

1. Land Claims: Current Practice

The federal government views virtually all land claims as either 'comprehensive' or 'specific'. Comprehensive claims are those based on Aboriginal title, where no treaty exists and Indian land has been appropriated—usually by the Crown or an agency of the Crown. Most are in northern Canada or British Columbia. Aboriginal people and the federal government have recently settled a number of comprehensive land claims, including those for Nunavut (eastern Arctic), Inuvialuit (western Arctic), and the Gwich'in lands (Yukon).

Federal comprehensive land claims policy recognizes that Aboriginal people have a legitimate interest in environmental concerns—particularly wildlife management and the use of land and water. The northern settlements recognize the rights of Aboriginal people to harvest animals and plants in parks and other protected areas, subject to conservation. The Nunavut Settlement Area agreement gives all Inuit free and unrestricted right of access for the purpose of harvesting in parks and conservation areas. The Inuvialuit Agreement establishes a new national park and gives the Inuit exclusive rights to harvest game, as well as priority over sports fishing.

Negotiations at the federal level have included wide-ranging discussion of conservation including definition of terms, non-consumptive uses of natural areas, ecosystem based management, and the protection of important harvesting sites. For the most part, the settlements themselves focus on mechanisms for ensuring conservation—such as the establishment of conservation boards—and leave the details of extraction and protection for the future consideration of these boards.⁵ The Land Claims Work Group, along with many other naturalists, believes these arrangements focus too much on the "allocation of the harvest" and do not yet adequately represent the case for sanctuaries and "the allocation for nature". This document will address this issue further in Part Three.

Under the federal classification system, specific claims relate to situations in which the terms of an existing treaty have not been fulfilled—usually when payment in land, money, or goods has not been made—or where Indian land covered by a treaty has been taken illegally. Almost all native communities in Ontario for which land has been set aside have one or more specific claims. The Ontario government classifies these as "Indian reserve claims", or claims which grew out of treaties in which a First Nation agreed to surrender parcels of land from its larger

⁵ Janet Harper, Assistant Negotiator, Claims Research and Assessment Directorate, Indian and Northern Affairs Canada, June 30, 1993, personal communication.

territory expressly or a reserve. The provincial government currently recognizes over 100 Aboriginal land claims and is developing a new policy framework and guidelines for negotiating these claims along with self government and land and natural resource agreements. Although the Province is involved in 20 land claim negotiations, no provincial claims have yet been settled.

2. The Impact of Aboriginal Land Claims on Parks and Protected Areas

The Work Group recognizes that in some cases Aboriginal people may have a constitutional or treaty right to harvest resources in protected areas, that some Aboriginal communities depend on these resources, and that access to them can be critical to Aboriginal self-determination. Further, it is important to note that in a society which has valued "progress" based on resource development, the needs of both "nature" and Aboriginal people have been largely ignored. It is time now to redress past injustices in both areas.

Virtually all land claims in Ontario include land set aside for conservation—including existing and proposed parks. These claims—as well the application of Aboriginal rights—are likely to put pressure on the system of protected areas within the province. The main pressure, in the opinion of the Work Group, comes from two areas: an expansion of the use of modern technologies and motorized vehicles in parks; and an expansion of hunting, fishing, and trapping in parks—particularly in sanctuaries.

On the other hand, Land claim negotiations also offer a number of opportunities to enhance protection and therefore conservation. An analysis of the impact of land claims on northern parks concludes:

Native negotiators...see park lands as an opportunity to protect these areas and significantly influence their management without selecting them as part of their final land allocation. Park officials, on the other hand, see the claims process as an alternative approach to adding areas of importance to the park system.⁶

Land claim settlements can add to the system of protected areas by:

- formalizing current Aboriginal land stewardship activities;
- preventing destructive activities by non-Aboriginal peoples on designated lands;
- improving the quality of protection through the establishment of buffers and corridors; and

⁶ Ken M. East, "Joint Management of Canada's Northern National Parks", in *Resident Peoples and National Parks*, p.338

- establishing new management mechanisms which take advantage of local ecological as well as scientific knowledge, and which create alliances to include a stronger voice for conservation.

The challenge is to minimize the conflicts which will arise and to maximize the opportunities that exist when attempting to redress both the injustices against Aboriginal people and the inadequate protection of natural areas. These options will be described further in Part Three—Promoting Conservation in the Settlement of Land Claims in Areas Containing Parks.

III. COMMON GROUND AND POINTS OF DISAGREEMENT

With the exception of parks and other areas with formal protected status, some of the largest areas of green in southern Ontario are on First Nation reserve lands. This illustrates that there is much common ground between naturalists and Aboriginal people on conservation issues. A number of common conservation themes, in fact, did emerge from discussions the Work Group held with members of the four First Nations. The Work Group identifies these themes as:

- a belief that air, water, soil, and wildlife must be protected;
- a belief that natural ecosystem dynamics must be maintained;
- the need to increase protection for nature and the earth;
- the need to set aside sanctuaries at certain times and for certain purposes;
- a belief that the land has value beyond its obvious material benefits; and
- a belief that humans are part of nature.

Some of these themes are elaborated and discussed in further detail in other parts of this brief. The Work Group also identified a number of approaches to the management of the land which both naturalists and Aboriginal people can support, for the most part:

- the need for more information about natural systems;
- the need to integrate scientific and Aboriginal knowledge;
- the need to involve Aboriginal people in a meaningful way in the management of parks;
- the belief that the government and society at large must rethink its overall approach to resource management and use.

Some of these approaches are discussed in further detail in Part Three of this brief. Finally, the Work Group also identifies areas of disagreement between naturalists and Aboriginal people. Key among these are the means and extent of sanctuaries (where hunting would be prohibited and motorized access would be severely restricted) and the appropriateness of harvesting activities in parks.

Aboriginal communities in general voice strong support for the protection of natural areas. In the eastern Arctic, for example, the Inuit themselves called for the creation of three new parks. All four of the First Nations contacted in the development of this brief have expressed a similar commitment to the preservation of the adjacent park. Naturalists and Aboriginal people, however, are likely—though not always—to disagree on the degree to which natural areas must be protected from human activities such as hunting, fishing, and gathering. Aboriginal people tend to disagree with measures which isolate them from the land and impinge on their rights. Their reasons for doing so are both practical and philosophical. Access to lands and resources is critical to the success of Aboriginal self government, and First Nations are therefore committed to ensuring such access. They point out that the protection of natural areas for the "greater good" must not be at the expense of Aboriginal communities.

The traditional Aboriginal world view also stresses the importance of a human presence in nature. According to this world view, humans are integral parts of the circle of life which includes the land and its creatures. The land provides for all human needs—spiritual, cultural and physical. At the same time, Aboriginal people care for and preserve the land through their everyday activities. As the people of the Lac LaCroix First Nation explain:

the land and all creation...is something to be lived and celebrated...it is something to be a part of...We...have no quarrel with the creation of wilderness parks because these parks protect small islands of the Earth Mother...We are also aware that something very important is missing from this wilderness area [Quetico]. The people who cared for and loved these traditional lands are no longer there. The people who gave this area of the Earth Mother its rich cultural and historic significance are no longer there. We the Ojibwa of Lac LaCroix are no longer there.⁷

While many naturalists recognize the legitimate needs, rights and aspirations of Aboriginal communities, and acknowledge that human activities have always been part of the dynamic of natural systems, they are concerned that the balance between humans and the rest of nature has been upset. As a result, human influence must be severely restrained in some areas to compensate for those areas where natural systems have been severely impacted, and to provide for scientific and education purposes which cannot be met elsewhere.

When Aboriginal people do support the establishment of such sanctuaries, they may dispute the location and size of such areas. In general, sanctuaries are now selected according to biological criteria. These, however, may not include the needs of Aboriginal people for access to resources for food, social and ceremonial purposes, although, in most instances, the access to such areas for social and ceremonial purposes is consistent with the FON view of sanctuaries. Hunting and technology used for hunting are the areas of disagreement. The eastern side of Algonquin Park, for example, is under consideration for zoning as a wilderness and nature reserve zone,

⁷ "The Lac LaCroix Story", Lac LaCroix First Nation, *Quetico Provincial Parks Plan Amendment Proposal*, January 1992.

where hunting would be prohibited. In the same area, the people of Golden Lake claim the right to harvest.

Naturalists and Aboriginal people would agree that the land itself should dictate the creation of sanctuaries. The aboriginal view that became clear during our discussions was that, when necessary for conservation, areas of land should be set aside for a specific time period rather than in perpetuity. Gary Potts, Chief of the Teme-Augama Anishnabai First Nation illustrates this principle thus:

We say the authority [to decide what can be done on the land] comes from the land itself. You assess what the forest needs to sustain itself and be healthy. You may find you can take 10 percent of the trees or game and not interfere with the forest replenishing itself. But if the land can't support any more, then you lay your chain saw down. You don't use your gun. You find other ways to live. But you don't kill any life on the land. In some areas you may find that five or even ten more generations of trees need to live and die so the earth can replenish itself. Meanwhile, you document how life exists in that area or make other uses of it during that time.⁸

The longer term view expressed by Chief Potts runs counter to the shorter term bias inherent in our socio-economic system. This system is not capable of operating in time lines of "five or even ten more generations of trees". It is here that, for the practical purposes of protecting natural areas using the inadequate tools we have available, naturalists and aboriginal people share a frustration that the land, and nature, are not considered first priorities.

⁸ Gary Potts, "The Land is Boss: How Stewardship Can Bring Us Together", from *Nation to Nation, Aboriginal Sovereignty and the Future of Canada*, ed. Diane Engelstad and John Bird, House of Anansi Press, 1992.

PART THREE: PROMOTING CONSERVATION IN THE SETTLEMENT OF LAND CLAIMS IN AREAS CONTAINING PARKS: GUIDANCE FOR NEGOTIATORS

The previous sections of this brief have described current conservation mechanisms in Ontario and the crucial role of protected areas—and parks in particular (see Part One, Section II). They have also pointed out that serious deficiencies exist within the park system (Part One, Section III). Against such a backdrop, Aboriginal claims present both challenges and opportunities for conservation—specifically for the protection of natural areas.

The Work Group holds that protection and the "allocation for nature" are largely ignored in land claim and rights discussions (see Part Two, Section II). Part of the difficulty lies in the fact that any discussion of natural systems and the environmental imperatives facing the province, Canada and the world is affected by, but is substantively different from a, discussion of the legitimate rights and aspirations of one group in society — in this case, aboriginal peoples. Bridging this gap is viewed by naturalists and aboriginal peoples as important. The Work Group has attempted to bridge this gap by looking at both the systemic problems in the approach to protecting natural areas and the lack of inclusion on management bodies of those people whose primary concerns are natural values and ecosystem integrity. In this section, a number of principles which are of the utmost importance in preserving or enhancing the park system, and are therefore critical to "putting nature first" are described. It also suggests ways in which these principles can be applied in the settlement of claims to ensure that such settlements support or enhance conservation in Ontario.

These principles and suggestions are presented as follows:

- *Putting Nature First* emphasizes the importance of protecting nature's building blocks, the need for protected areas, and the need to shift the burden of proof in favour of natural areas
- *Protecting What Exists* outlines suggestions to ensure that no loss of area or function occurs in the park system as a result of negotiations
- *Increasing Protection* explores some opportunities that arise from negotiations to meet the needs of aboriginal peoples and improve the park system
- *Improving Planning and Management to Protect and Preserve the Dynamics of Natural Systems* makes suggestions for inclusion of naturalists on management advisory bodies, the establishment of

ecosystem strategies, the inclusion of traditional aboriginal knowledge in management, and the inclusion of ecosystem-based management in the mandate of these advisory bodies.

- *Ensuring that many of the Benefits of Protected Areas Flow to Aboriginal People* describes the FON's support for co-management, the documentation and enforcement of conservation codes, and the development of skills and financial resources.

Findings and recommendations of the Work Group are shown in italics.

I. PUTTING NATURE FIRST

Discussions with First Nations reveal that the majority of naturalists and Aboriginal people share the belief that protection of the earth is of fundamental importance. *Protection of air, water, soil and wildlife and maintenance of the integrity of ecosystem dynamics are paramount.*

However, while over the past century many people and organizations have worked to make conservation part of the mainstream approach to development and resource management, during this period the overall state of the natural environment has continued to deteriorate. Outside the boundaries of designated protected areas, logging has decimated the white pine forests of southern Ontario and large tracts of the northern boreal forest. Overfishing has depleted provincial fish stocks. Old agricultural practices have destroyed topsoil and poisoned soil and waterways. Urban development has paved over some of the best farmland in the province. And industrial progress has been at the expense of soils, air and water.

The reasons for this are complex. There is much that is poorly understood within nature. Some natural systems are quite resilient, and others finely balanced and sensitive to change. It is often not possible to forecast reliably the consequences of human impact within an ecosystem.

A significant reason for the continuing deterioration of the environment is a bias of our socio-economic system against nature. This systemic bias manifests itself in the encouragement of the unsustainable use of resources. It allows the costs and benefits of exploiting nature to be unevenly distributed. It allows an individual to profit from resource exploitation at the expense of the larger community. It allows the benefits of clear-cutting a forest to be realized today in the form of furniture, paper, shelter or heat, while the cost of lost habitat, increased erosion or a decline in the water table will only turn up in the future. Future costs are often poorly understood by humans and heavily discounted when compared with benefits here and now. When governments, communities and individuals act in their own short-term interest, conservation usually suffers. We begin to withdraw not only natural "interest" but natural "capital" as well—with often disastrous consequences.

Government and legal processes currently reflect this systemic bias against nature, even within parks. All land in the province covered by the Planning Act, for example, must currently be zoned for some type of development and use. Areas set aside for nature are not seen as having a "use", but rather as exclusions from the norm. In addition, the courts and the Constitution have also helped to define the relationship between the rights of Aboriginal people and conservation. For the most part, however, the courts help put forward a limited interpretation of conservation. So while the Sparrow decision clearly placed conservation ahead of Aboriginal rights, it placed the burden of proof on conservation. It made it clear that those who would restrict access in the name of conservation must prove the necessity of such restriction. The result has been ad hoc decisions—in areas where no treaties apply—to allow consumptive uses in parks such as Algonquin based on Aboriginal rights, without full consideration of ecosystem dynamics. Based on recent decisions, it appears that courts will uphold any treaty rights to hunt and fish in parks unless the Crown can prove the exercise of these rights is not compatible with the goals of the parks.⁹

A management system that places the burden of proof on the protectors of nature will result in a continuous degradation of the system through unforeseen consequences, as has been the history of conservation efforts to date. The Work Group believes strongly that the burden of proof should favour conservation everywhere in the province, and that it is imperative that this be done with respect to protected areas.

We must start by putting nature first in parks. One way is to take action to neutralize this systemic bias by, perhaps, shifting the burden of proof onto those who would exploit nature. Within parks, therefore, the protection of nature should take priority over all else, and the burden of proof should be shifted to those who would take or use resources, or otherwise interfere with ecosystem dynamics.

It needs to be emphasized that the FON's concern regarding burden of proof is directed at our current systems, systems not derived from traditional Aboriginal practices, but from European practices. It is a general problem that applies not just to issues involving claims, but to all development and use issues concerning parks. It therefore is a government responsibility, not the responsibility of aboriginal peoples, to address this problem.

Where it is proposed that a right or claim can be resolved by permitting certain activities within a park, the burden of proof should be upon the government and on those who would "harvest", develop or otherwise exploit parks, to prove on a balance of probabilities that the proposed use is not only sustainable, but will not cause material damage, degrade the park, or impair the park's contribution to the goals of conservation. This constraint should be applied considering cumulative environmental effects, and uncertainties should be resolved by following a policy of least impact.

⁹ Cara L. Clairman, "First Nations and Environmental Groups in Ontario's Parks—Conflict or Cooperation?", *Canadian Native Law Reporter*, 1993 [1].

As well, during land claim negotiations, the government should be responsible for ensuring that decisions about protected areas fit into the wider provincial conservation mandate.

II. PROTECTING WHAT EXISTS

As development takes its toll on nature, the need for protected areas increases. It is therefore of great concern that the system of protected areas—and the park system in particular—is also falling short, both in the area protected and in the degree of protection it offers (see Part One, Section II). The conclusion presented earlier bears repeating: *Protected natural areas represent a unique mechanism for the benefits of humans and the earth. Parks are presently the best way in Ontario to ensure the protection of natural areas and as such are worthy of the highest degree of support. Furthermore, within parks, measures which promote sanctuaries are crucial to conservation.*

The Ontario park system already fails to protect enough lands and waters to meet the minimum needs of conservation. "Putting nature first" therefore must begin by protecting the existing park system from any losses in both area and function. *Government obligations such as those arising from Aboriginal rights or land claims should not be resolved at the expense of this critical resource. Any settlement should not be at the expense of the area or function of the parks system.*

For instance, all parks prohibit mining and hydro-electric development. Most parks prohibit logging, and many parks prohibit hunting. Such restrictions have been established to meet the conservation and use objectives of parks. Any degradation of these restrictions reduces the conservation value of a park. When hunting is allowed in an area of a park where it had previously been prohibited, such as in Algonquin, it represents a step backward in the efforts to create an adequate park system (see Part One, section III), and actually a degradation of the current system and its conservation value to the province.

With regard to aboriginal claims and rights, the most visible point of disagreement between naturalists, aboriginal peoples, and the provincial government regards harvesting of wildlife within parks and the technologies used to conduct a harvest. While the concern of naturalists about how such activities degrade the conservation value of the parks system extends to parks in general, it is most critical with regard to sanctuaries and proposed sanctuaries.

Sanctuaries (Part I, Section II) are critical to conservation because, among other things, they provide:

- relatively untouched natural areas that help to mitigate against the environmental damage occurring in urban and industrial areas;
- examples of the free play of natural forces;
- maximum protection for species and genetic resources;
- reservoirs from which species can restock surrounding areas;
- opportunities for the scientific study and understanding of natural

systems.

In the interests of conservation, it is therefore important that sanctuaries continue to exclude most human activities. Within sanctuaries such as wilderness parks and zones and nature reserves parks and zones, park policy should continue to exclude harvesting, resource extraction, motorized activity, permanent structures, and other human disturbances.

Regarding harvesting technologies, a limited amount of hunting and other harvesting has been part of the dynamics of natural systems in Ontario for thousands of years. In the past century, however, both the landscape and the technology used in harvesting have changed extensively. Hunters with modern technology are capable of threatening species and damaging terrain.

Traditional technologies were tested over time and were compatible with traditional knowledge of nature, traditional resource management measures, and the long term sustainability of local ecosystems. Modern technologies, however, "have the potential to impose irreversible transformations on the environment that cannot be predicted by traditional knowledge (i.e. cumulative knowledge specific to the local environment)."¹⁰ The use of motorized vehicles in particular has a detrimental impact on natural systems (compaction, drainage, pollution, introduced species [e.g. seeds]). Furthermore, remaining natural areas are subject to more stressors—including pollution, climate change, and recreational use—and are therefore less resilient than in the past.

In the interests of conservation, reasonable limitations must be placed on the use of technologies for harvest. At the same time, Aboriginal people claim the right to move on from "romantic primitivism" and use the same modern time and energy-saving devices as the rest of the population.

The Work Group recognizes that Aboriginal people have, in a number of cases, a constitutional or treaty right to hunt and fish in parks. As mentioned at the opening of this brief, decisions on rights will take place in other forums. However, the Work Group believes there are opportunities for First Nations, in negotiating with the provincial and federal governments, to decide not to exercise their rights, where they exist. Such opportunities will depend, of course, on the imagination and the ability of negotiators on all sides to develop solutions that meet the needs and aspirations of First Nations and ensure that the values represented in the park system are maintained. Sanctuaries, in addition to their critical conservation role, are one of the most important legacies we can leave for future generations and are integral components of the park system.

¹⁰ Arturo Gomez-Pompa and Andrea Kaus, "Taming the Wilderness Myth", *BioScience*, Vol. 42, No. 4, p.274.

It follows then that *where the right of Aboriginal people to harvest and use modern technologies in sanctuaries or proposed sanctuaries exists, governments should pursue the negotiation of agreements whereby such rights would not be exercised, and compensation should be granted where a First Nation chooses to severely restrict or chooses not to exercise these rights. Such compensation could include the provision of exclusive harvesting rights in areas outside of parks.*

And with regard to parks in general, in order to ensure that the area and function of the park system is protected, *where there is any case where a park is protected from resource extraction (whether it be any one of logging, mining, hydro-electric development, hunting or fishing or any other extractive use), and where aboriginal rights or claims to extract resources from the area are to be recognized and exercised, the government must either negotiate the establishment of mutually acceptable rights elsewhere and/or a package of compensation if a First Nation chooses not to exercise such rights, or must add new park area which provides those function(s) that have been lost, satisfying naturalists and other ecological experts on a balance of probabilities, that the functions have been replaced.*

III. INCREASING PROTECTION (AREA AND FUNCTION)

While the measures described above are needed to maintain the integrity of the current system, the amount of protected area in Ontario falls well short of figures proposed by national and international organizations. As mentioned (Part One, section III), the area of protected lands in the province is woefully inadequate and there is a lack of representation of the ecological regions and districts in Ontario.

The necessary expansion of the park system, however, is difficult. In southern Ontario, much of the land is already developed or in private hands. In the "near north", the use of Crown land has been divided amongst a number of user groups: logging and mining companies, railways, transportation, hydro, and private lease holders. The establishment of new protected natural areas—as well as Aboriginal land allocations—must compete against these claims, and may compete against each other. It is only in the far north of Ontario that it has been possible to set aside large parks in recent years.

Increasing protection has become more difficult in the current fiscal climate. With falling government revenues, the provincial government has cut its conservation budgets. What little money is allocated to conservation will likely go towards securing only the natural "jewels" of the province and maintaining current conservation activity levels. At this point, the allocation of significant additional public funds to purchase and maintain natural areas is unlikely. It is also unlikely that the government can afford to buy out other interests in order to set aside Crown land.

It is therefore important that more flexible solutions be developed. One such solution could involve mechanisms to increase protection within parks. In most provincial parks, some form of extractive use is allowed—usually fishing, hunting, or even logging. The extractive use of

renewable natural resources is prohibited in less than half of all protected areas—only 2.3 percent of the total land in the province. This means that the area of virtually untouched land available as a scientific benchmark is pitifully low. To strengthen protection within parks, the FON advocates that the area of the province covered by sanctuaries should be expanded. One way to do this would be to extend the policy of excluding harvesting, resource extraction, motorized activity and permanent structures within sanctuaries to the natural environment zones of parks as well.

Another solution is the creation of First Nation Nature Reserves incorporating relatively unspoiled natural areas where traditional cultures live in harmony with the natural environment.¹¹ These would be managed to support traditional lifestyles—most likely on a sustained yield basis—and in this way add to the total amount of protected land in the province. They would in many cases formalize efforts to protect the land already underway. Some First Nations—including Six Nations and Cape Croker—have already formalized such protection, while others, including Walpole Island are investigating the idea. For First Nations entering into such arrangements, a key need is to set up some means by which they maintain control of their lands.

In settling claims every opportunity should be taken to

- (a) expand the area of sanctuaries (wilderness and nature reserves), and the total area of parks.*
- (b) increase the degree of protection within parks and sanctuaries or enhance their effectiveness.*
- (c) encourage the establishment of First Nation Nature Reserves or other similar mechanisms.*

IV. IMPROVING PLANNING AND MANAGEMENT TO PROTECT AND PRESERVE THE DYNAMICS OF NATURAL SYSTEMS

1. Provide a Stronger Voice for Nature in Decision-Making

Land claim settlements in northern Canada have tended to establish committees or boards—consisting of Aboriginal and government representatives—to deal with conservation (see Part Two, Section II). The FON believes that such committees or boards, subject to the recommendations in this section, are currently the best way of handling conservation matters. Naturalists, however, are generally sceptical about the ability of governments—who may profit from the sale of licenses and fees—and other extractive user groups to put nature first when faced with development and other political pressures. It is often just these groups, however, who make decisions about resource use. As a result, the debate about conservation focuses all too often on how much of a given species or resource can be harvested without causing a decline

¹¹ *A Natural Heritage Areas Strategy for Ontario*, p.12.

in that species or resource, and the allocation of this harvest to various user groups, rather than whether harvesting should occur at all.

The Fisheries Framework Agreement established by the Union of Ontario Indians and the provincial government illustrates the point. One of the goals of the Agreement is to ensure that conservation takes precedence. The Agreement recognizes that the assessment of resource availability is a scientific and technical question, and that the number of fish available should shape the fisheries management regime. It therefore proposes the creation of an arms-length body to determine resource availability and establish sustainable yield. The Agreement proposes, however, that this body should include representatives from the various extractive users of the fisheries—sports fishermen, tourist operators, commercial fishermen, and Aboriginal people—as well as the province. It does not specify the inclusion of naturalists and those who would speak in favour of an allocation for nature and for non-consumptive uses such as increased protection, biodiversity, and ecosystem dynamics.

Claims & rights negotiations are resulting in new bodies to determine the interests of conservation and the means for its management. Such bodies must have a balanced membership and include members from the naturalist community as well as government and Aboriginal people so as to provide a strong voice for sanctuaries within larger protected areas, and to ensure that there are voices at the table speaking for non-consumptive uses of nature such as nature appreciation and scientific study.

2. Create Flexible Ecosystem Management Systems

The science of ecology teaches that natural systems are dynamic and constantly changing. Deer overwinter in different areas from year to year, depending on snow conditions. Fire can change an ecosystem overnight. On a larger scale, the greenhouse effect may shift entire forest ecosystems northwards. To respond to such changes, park management must be flexible, and future options must be preserved.

For example, within parks, areas of strict sanctuary may need to be expanded or moved in response to ecological demands. Even the boundaries of parks themselves may need to be shifted or expanded at some later date, for the same reason. In order to preserve these options, it is important that the dynamics of natural systems be preserved within parks, and that the lands and waters surrounding parks be managed in such a way that their use can change if need be to meet the needs of conservation.

Measures to achieve the protection of natural areas must also reflect the realities of place and time. For example, because only remnants of the Carolinian forest of southern Ontario remain, management strategies for this forest must err generously on the side of protection. In addition, management strategies for protected areas must be flexible enough to reflect new knowledge and changing circumstances. One way to encourage such flexibility is through the periodic review and modification of park management strategies.

When land claim settlements include the establishment of planning and management strategies, such strategies should include a regular review of ecosystem protection strategies, bearing in mind local requirements.

3. Integrate Aboriginal Knowledge Into the Management of Protected Areas

Government and Aboriginal resource management systems bring different strengths to resource management:¹² Government resource management typically treats resources as state assets allocated to users on a competitive basis. The knowledge base of government resource managers is traditionally gained through objective experimental methods. It often includes information which can be applied across a wide range of ecosystems. Resource management decisions are generally based on science, available technology, economics, and political realities. This form of resource management has as its strength an awareness of the larger picture and an ability to measure and compare.

In contrast, traditional knowledge, still alive in many Aboriginal communities, provides a detailed understanding of the local ecosystem based on centuries of occupation and use of the same territory. Such ecological knowledge is based on the shared subjective experience of all those who harvest resources. Aboriginal tradition emphasizes the shared use of resources on a community basis and an approach in which humans are considered an integral part of nature. Resource management methods integrate aspects of Aboriginal culture and spirituality. This form of resource management has as its strength an ability to notice the fine nuances of local ecosystem health.

Some First Nations—including the Shoal Lake 39 First Nation in Northwestern Ontario—are documenting their traditional approach to resource management. The Algonquins of Golden Lake have developed a written hunting code based on traditional and modern management theory. The Saugeen Ojibway are developing a detailed knowledge base on fisheries which incorporates traditional management techniques with modern scientific findings.

Aboriginal people, by virtue of their culture, tradition, location and lifestyle have knowledge of natural systems which is important to ecosystem management. Land claim negotiations offer an opportunity to develop resource management regimes that take advantage of both western science and Aboriginal knowledge systems.

¹² Adapted from Shoal Lake 39 First Nation, "Presentation/Proposal to the Honourable Bud Wildman, Minister of Natural Resources and Minister Responsible for Native Affairs, the Honourable Ruth Grier, Minister of the Environment, Government of Ontario, with respect to the Shoal Lake 39 First Nation and Environmental/Resource Development Planning and Management for the Shoal Lake Watershed", October 1990.

Where settlements and agreements include the establishment of management bodies for areas or responsibilities which include parks, the mandate of these bodies should include and be appropriate for the traditional knowledge of and management regimes of Aboriginal people.

4. Integrate the Science of Ecology into Park Management and Design

At the time the park system in Ontario was established, little was known about the science of protecting natural systems. Early conservation measures, for example, focused on protecting individual species or features—usually those useful to human beings. But limiting the number of ducks each hunter can shoot has little value if duck habitat is destroyed or alien species displace those plants ducks feed on. Years of study have led to a better—although still incomplete—understanding of the complex interrelationships between different species and other aspects of natural systems.

This understanding, however, has yet to be fully integrated into the management of the park system. Some current management activities ignore the integrity of natural system dynamics. These include:

- the stocking of non-indigenous fish species in lakes and rivers so that these species can then be harvested, which manipulates natural systems to create a sustained yield;
- the suppression of regular fire regimes and insect infestations in parks and other protected areas; and
- selective logging operations, as in Algonquin Park, which change the composition of forest species over time.

The ultimate goal of establishing a sanctuary is the conservation of biodiversity by allowing for the free play of natural forces. The unfortunate truth, however, is that years of management may be required before a damaged ecosystem is able to function in this way. Even pristine natural areas, when set aside, do not automatically retain their biological integrity. Some ecosystems depend on traditional or formerly natural land use practices which actually increase biodiversity and improve ecosystem integrity—as does the regular burning of the tall grass prairie on the Walpole Island reserve near Sarnia. Smaller protected areas often require ongoing management. In Rondeau Provincial Park and surroundings, natural predators are absent and deer populations must be culled to keep numbers in check and preserve park vegetation. For all these reasons, management is often necessary in parks. The goal of such management, however, should always be healthy, self-regulating if possible, and sustainable natural systems.

When land claim settlements include the establishment of management bodies, the mandate of these bodies should include ecosystem-based management and the conservation of biodiversity.

The study of natural systems suggests three key design principles for maximizing protection of species and natural areas. These are: to include a big enough area, to leave buffer zones intact, and to provide corridors for wildlife.

i) Protect Enough Area to Sustain a Viable Population

In general, it is important to preserve entire ecosystems—defined for the purposes of management to be the land base needed to maintain all species relationships. While currently a subject of debate, it would appear that a large protected area is better than a collection of smaller ones containing the same amount of territory.

To provide adequate protection for a species, natural areas must:

- be big enough to contain a healthy population;
- contain territory to spare in case of periodic natural disturbances such as fire or insect infestations; and
- include critical habitat such as mating, nesting, feeding and seasonal sites.

The long term survival of any one species depends on the number of individuals in a protected population. Larger populations are more likely to survive disease or environmental stress than smaller and more isolated populations. Although there is no "magic number" that applies to all species, one average estimate is that a population with 50 breeding pairs will survive less than 100 years. For longer survival, some 500 breeding pairs are needed.¹³

Different species also need different amounts of space—sometimes within specialized habitat—to survive. The majority of the territorial species in Ontario need at least 100 hectares of land per breeding pair. Large carnivores—wolves and bears—and species which live in specialized habitats need much larger territories. The design of a protected area should therefore take their territory into account. According to Ontario park planning policy, the average size of wilderness parks should be 100,000 hectares, and such parks should be no less than 50,000 hectares in size.

¹³ Graham J. Forbes, "The Preservation of Genes, Populations, and Habitat Specialists in Natural Heritage Areas", *Size and Integrity Standards for Natural Heritage Areas in Ontario*, proceedings of a Seminar, Ontario Ministry of Natural Resources, 1993, p.34-46.

ii) Use Buffer Zones to Protect the Edge

The use of land at the edge of a protected area can interfere with ecosystem dynamics within the area. Logging activities which are approaching the boundary of Quetico Park, for example, are putting watersheds within the park at risk. To maintain ecosystem dynamics, all parks should be surrounded by a protective "buffer zone" where sustainable land use is carried out and where extractive activities are limited to meet the needs of conservation. Park management should include the management of this buffer zone. Sanctuaries lying within a park should also be surrounded by zones affording strict protection.

iii) Use Corridors to Link Protected Areas

It is possible to improve the health of populations by encouraging travel between natural areas. This can be done through the development of "corridors" of protective vegetation and terrain linking one natural area to the next. In southern Ontario, where development limits the size of parks, corridors help protect large species which require more territory. It is important, however, that corridors not expose animals to high predation. Even when connected by corridors, separate natural areas must be close enough to perform their ecological function and ensure adequate habitat for wide-ranging species and a healthy gene pool.

The design and management principles described above suggest existing protected areas can be enhanced by:¹⁴

- acquiring land adjacent to existing natural areas, if and when the opportunities arise; and
- cooperating with groups operating outside the boundaries of protected natural areas to restore landscape for conservation, where possible. For example, farmers who initiate "sustainable agriculture" initiatives such as the planting of trees and hedgerows are also providing corridors to help wildlife move between fragments of protected habitat.

¹⁴ adapted from Thomas D. Nudds, "Use of Estimated "Pristine" Species-Area Relations to Generate Indices of Conservation Value for Nature Reserves", *Size and Integrity Standards for Natural Heritage Areas in Ontario*, proceedings of a seminar, Ontario Ministry of Natural Resources, 1993.

The Ministry of Natural Resources has recognized these design elements:

While...islands of green are needed to retain the elements of natural heritage, they cannot be sustained in isolation. They can only be protected, if they are fully integrated into the larger landscape. The management of these areas must be combined with the concepts of buffering, linkages, sustainable uses and the overall greening of the province...¹⁵

In addition, the international community and Canada have committed to buffer zones under the Convention on Biological Conservation.

When settlements and agreements include the establishment of management bodies, negotiators should consider, and the mandate of management bodies should include, objectives which incorporate the enhancement of park function through increased size, improved buffer zones, and the establishment of corridors (especially in Southern Ontario).

V. ENSURING THAT MANY OF THE BENEFITS OF PROTECTED AREAS FLOW TO ABORIGINAL PEOPLE

Experience in Canada and elsewhere has shown that local support is important to the success of parks in achieving their conservation goals. Proposed parks in Ontario, for instance, have been held back through conflicts over land use—including Aboriginal land claims. An important principle to apply in promoting conservation, therefore, is to maximize the benefits of parks to local people.

Parks can provide a number of benefits to Aboriginal communities. The majority of such communities—including those in southern Ontario—still have close ties to the land and many still rely on "country" food, fishing and trapping. They therefore have a strong vested interest in the health of the lands and waters within their traditional territories. Protected areas can contribute to the economic health of Aboriginal communities through the general preservation of watersheds and gene pools. They can also contribute directly to economic development in surrounding local communities. For example, a worldwide survey of parks and indigenous people found that:

¹⁵ *A Natural Heritage Areas Strategy for Ontario, Responding to the Endangered Spaces Challenge*, Provincial Parks and Natural Heritage Policy Branch, Policy Division, Ministry of Natural Resources, draft for discussion, February 17, 1992. p.6.

the strict preservation of natural conditions in protection zones is a critical ecological condition for the long-term viability of cranberry agriculture in resource use zones...the protection of steep mainland forested slopes from deforestation is critical to the viability of the marine-based fishery [in the Caribbean]...traditional conservation methods that protect zones for fish spawning...are critical to sustained yield use in other marine zones.¹⁶

By encouraging tourism, protected areas sometimes provide economic benefits to nearby Aboriginal communities. Tourism is likely to benefit Aboriginal communities when: tourist numbers are adequate; local and Aboriginal operators perform the bulk of tourist operations; and the hiring of Aboriginal people in parks provide real benefits to the whole local community.¹⁷ The Lac LaCroix First Nation is looking to Quetico Park in the long term for a broader and more sustainable economy based on: training and employment of First Nation citizens within the park; development of a cultural and interpretive centre; greater involvement of the First Nation in the management and operations of the park; and establishment of a park entry station, including camping facilities, on the reserve.

The benefits of protected areas to Aboriginal communities can be maximized by recognizing that Aboriginal people have a real role in the management of such areas and by ensuring they have the means to participate in these activities.

1. Include Aboriginal People in Park Management

Aboriginal communities in Ontario—including the Lac LaCroix First Nation, the Saugeen Ojibwa, and the Algonquins of Golden Lake—are looking at management models that include them in the planning and operation of nearby provincial parks. There are precedents for inclusion in Canada and abroad. In northern Ontario, the people of the Weenusk First Nation and the Mushkegowuk Tribal Council already participate in the management of Polar Bear Provincial Park. In 1979, the federal government amended its Parks Policy to allow for joint management of parks, with the government retaining final power over decisions. This has been carried further in recent land claim settlements which establish local boards—including Aboriginal people—to make practical park management decisions. Although the government can "disallow" any such decision, it can do so only within a limited range of circumstances.

A management model in which Aboriginal people have real responsibility for protected areas can enhance conservation where it reduces conflicts over land use and encourages the sharing of

¹⁶ Patrick C. West and Steven R. Brechin, "National Parks, Protected Areas, and Resident Peoples: A Comparative Assessment and Integration", from *Resident Peoples and National Parks*, p. 388.

¹⁷ West and Brechin, p.389-394.

knowledge, skills and other resources. Every opportunity should therefore be taken to include Aboriginal people in the management of parks and other protected areas in their traditional territories.

Land claim settlements and legislation should ensure that where parks or proposed parks overlap with their traditional territory, Aboriginal People are involved in a meaningful way in the management or selection of such parks. This may include ownership and co-management in accordance with conservation.

The provincial approach to conservation includes the development and enforcement of a set of rules and regulations governing the extractive use of resources such as fish and game, and the protection of natural areas. In many cases, Aboriginal people also developed unwritten "conservation codes" which have guided their daily activities for generations. Some First Nations are adapting these codes to the existing conservation framework. As part of their interim hunting agreement with the Province, for example, the Algonquins of Golden Lake are developing a conservation code that integrates provincial hunting regulations and traditional practices.

Turning regulation and enforcement over to Aboriginal communities can help boost local support for conservation and protected areas. Those who violate Algonquin Law, for example, are to appear before an Algonquin tribunal and receive sentences ranging from community service work to the suspension of hunting and fishing rights. The First Nation also has the authority to send repeat violators before the provincial courts.

Land claim settlements and legislation should ensure that First Nations have the resources to document and enforce their own conservation codes. These codes must integrate and support the conservation principles presented elsewhere in this document.

2. Ensure that Aboriginal People Have the Means to Participate in Conservation

To participate in a meaningful way in the management of parks and other protected areas, Aboriginal people must have appropriate skills and financial resources. Land claim settlements in areas containing parks and other protected areas should therefore ensure that these skills and resources are available to First Nations. In general, financial revenues from admission fees, licenses, or other such mechanisms decrease First Nation reliance on other governments and are more appropriate than grants or regular transfer payments. Uluru and Kakadu National Parks in Australia provide a much-studied example of such mechanisms. They are located on land

owned by Aboriginal people, which is leased back to the national government as a national park, and the Aboriginal people receive a percentage of park admission fees and additional income and skills training through employment in the parks.

Land claim settlements in areas containing parks and other protected areas should include mechanisms to ensure that the First Nation has the appropriate skills and financial resources to participate in the management of those areas and research and document their own traditional resource management strategies.

IN CONCLUSION

The use of parks by Aboriginal people has generated much attention in Ontario. In the discussion of this issue, little has been heard of the "allocation for nature", those lands and resources that should be left relatively untouched. It is this aspect of conservation that the Federation of Ontario Naturalists has attempted to address in this brief.

The protection of natural areas is critical to conservation and ultimately to the health of the planet. The provincial park system is the most effective means of protecting large natural areas. It is, however, inadequate in both its extent and the degree of protection it currently offers. The use of parks by Aboriginal people is seen to put additional pressure on conservation, both because it may expand the amount of hunting, fishing, and trapping in parks—particularly in sanctuaries—and because of the technologies associated with these activities.

Land claim negotiations offer opportunities to enhance protection of natural areas by, among other things:

- formalizing current Aboriginal land stewardship activities;
- establishing more compatible land use practices in the areas surrounding parks; and
- establishing new management mechanisms which take advantage of local ecological as well as scientific knowledge, and which create alliances to include a stronger voice for conservation.

The FON and the Land Claims Work Group are grateful for the opportunity to present their views on the protection of natural areas and the opportunities for conservation offered through land claim settlements. They appreciate, further, the opportunities this process has presented for naturalists and Aboriginal people to exchange their views and concerns about conservation.



APPENDICES

APPENDIX I: FIRST NATIONS AND ONTARIO PARKS

The Land Claims Work Group met with members of four First nations with lands overlapping or adjoining parks to:

- gain insight into the common ground between naturalists and Aboriginal people;
- highlight the ways in which Aboriginal interests diverge from those of naturalists; and
- identify ways in which land claim settlements can further the interests of conservation.

Description of these First Nations and their relationship with the nearby park follow.

1. The Algonquin Golden Lake First Nation and Algonquin Provincial Park

Algonquin Park consists of some 76,000 hectares set aside in 1893 to prevent agricultural development and to ensure a continued supply of quality timber, to provide a breeding ground for game and fur-bearing animals, and to protect the watershed of the Nipissing District to facilitate the spring log drive.

The current Park Goal is "to provide protection of natural and cultural features, continuing opportunities for a diversity of low intensity, recreational, wilderness and natural environmental experiences; and within this provision continue and enhance the park's contribution to the economic, social and cultural life of the region."

Logging, which began in the 1800s, continues in 75 percent of the Park. Other consumptive uses include hunting, fishing, and trapping. Public hunting and licensed commercial trapping are to be phased out by 2010. Wilderness and nature reserve zones within the Park provide strict protection for some 31,000 hectares. The Park management plan calls for the addition of another 10,000 hectares to the nature reserve system, primarily on the east side of the Park. It also recommends the development of management strategies for vegetation and wildlife.

Aboriginal people and the park

The Algonquins of Golden Lake are the only recognized Algonquin community in Ontario. In 1983 the First Nation filed a claim to some 340,000 hectares of that part of their traditional territory lying within Ontario, including much of Algonquin Park. In so doing, the people of Golden Lake hope to achieve:

- recognition of Algonquin title to unsurrendered land;
- a just settlement for past and future use of their territory;
- restoration of their role in decisions that affect the lands and resources in their traditional territory; and
- restoration of control of their own internal affairs.

Both the federal and provincial governments have accepted the claim as valid and are involved in settlement negotiations. The First Nation has stated that where a settlement results in land ownership, control and/or management, its interest lies only in the Crown lands which make up slightly over one-third of the total claim area. The bulk of these Crown lands lie within the Park.

In the wake of the 1991 Interim Enforcement Policy, the Ontario government and the First Nation have negotiated sub-agreements for the hunting of moose and deer within the Park. These:

- commit both parties to conservation of wildlife, preservation of Park values, and protection of public safety;
- establish a hunting season within a portion of the Park;
- limit use of all-terrain vehicles to the retrieval of game;
- set harvest limits within the entire land claim area and within the Park itself; and
- establish an Algonquin tribunal to enforce these measures.

Negotiations concerning a fishing sub-agreement are ongoing. In the interim, First Nation members who continue to fish in the Park are monitoring and enforcing their own conservation measures with direction from the Ministry of Natural Resources.

As a condition of the interim hunting agreements, the Golden Lake First Nation is developing a conservation code based on traditional Algonquin Law and modern resource management techniques. This code restricts hunting in nature reserves, and wilderness and historic zones within the Park.

Conservation

The main conservation concerns within the park are:

- fragmentation of habitat by logging roads;
- the loss of old growth forest and overall change in species composition of forest due to logging and fire suppression;
- pressure on certain fish species;
- general degradation of campsites and wilderness caused by intensive recreational and commercial use;

- wolf populations based in the park may be endangered by hunting outside the park; and
- degradation of habitat within the park due to intensive use outside its borders.

A joint Coordinating Committee established to implement and monitor the hunting agreements have found them to be "effective in conserving wildlife, preserving the values of Algonquin Park, protecting public safety and respecting private property rights".

Potential impacts

The FON has noted that:

Unlike the other parks in which native exploitation of natural resources has been accepted, Algonquin has also been subjected to substantial pressure from white society...it is essential to look at *all* of these impacts, including native uses, to determine the maximum *total* level of activities that can be permitted consistent with the fundamental objective of ensuring that Algonquin Park is able to function as a protected core in which the natural ecosystems can continue to operate.

The FON is concerned that the interim hunting agreements and future land claim settlements will:

- reduce moose and wolf populations within the Park;
- prevent expansion of the nature reserve system and the creation of wilderness zones on the east side of the Park; and
- focus attention on the use of specific resources within the Park rather than the maintenance of overall ecosystem health.

First Nation members note they have hunted in the east side of the Park for generations. They have agreed to reduce hunting activities if wildlife populations are reduced. The First Nation has established an internal tribunal to deal with hunting and fishing offenses by Algonquin people, with sentences ranging from community service work to suspension of hunting and fishing rights.

The First Nation has made a commitment to enhance Algonquin Park and has noted that in settling the land claim, conservation--or biological sustainability--cannot be compromised. Goals include:

- certainty of title to the Park;
- enhancement and protection of the natural values of the Park and the conservation of wildlife;

- meaningful Aboriginal participation in the administration, planning, and control of the Park; and
- the economic, social, and natural resources in the Park.

The province, in its discussion paper on negotiations, has identified as an objective for the negotiations "Ensure the integrity of Algonquin Park as a provincial park with continuing provincial ownership".

2. The Saugeen Ojibwa First Nation and Bruce Peninsula National Park

Bruce Peninsula National Park was established in 1987 as part of the Niagara Escarpment biosphere reserve. It covers an area of roughly 14,000 hectares, divided into two parts by a highway and by Indian hunting lands. The landscape is among the most scenic and geologically significant in Ontario, and includes a diverse flora and fauna, with many rare plant species and the endangered Massasauga rattlesnake. The park objective is to protect and conserve a significant part of the West St. Lawrence Lowlands Natural Region, and to encourage public understanding, appreciation and enjoyment of this heritage so as to preserve it for generations to come.

The land managed by the park administration has been pieced together from a number of different sources. It includes the area previously known as Cyprus Lake Provincial Park and transferred by the province to the federal government. It includes the islands in nearby Fathom Five National Marine Park. It also includes other provincial lands which have not yet been transferred to the federal government because they are subject to Indian land claims. As opportunity arises, the park plans to purchase other adjacent lands. The park boundaries also include Indian and private lands--both of which are outside park jurisdiction.

Each year some 300,000 people visit the Upper Bruce Peninsula, most in the summer. About 25,000 campers a year visit Cyprus Lake Park, which is open year-round. While provincial regulations allow hunting in adjacent private lands, park regulations prohibit hunting, trapping, cleaning or storing game within the boundaries of the park. The federal government will compensate those who trapped within the park on Crown land in the three years before the park was established. Off-road vehicles are prohibited. No detailed management plan for the park yet exists.

Aboriginal people and the park

The Saugeen Ojibwa First Nation has a close connection to the Park. Its hunting lands are adjacent to and surrounded on three sides by the park. It also has a claim on lands and waters within the boundaries of the park based on an 1857 treaty. Through this treaty, the Saugeen Ojibwa ceded land to the federal Crown, which was to sell it at fair market value on behalf of

the First Nation. The Crown sold some of the land as arranged at a fair price but virtually gave away other pieces of land. In other violations of the treaty, the Crown sold land which the Indians wished to keep--including graveyards. Finally, the Crown kept some of the land--including lakes and road allowances--without ever compensating the First Nation.

There are some 2,000 hectares of this unsold, ceded land under dispute. It includes lakes and road allowances within the park boundaries. The Park will not accept lands subject to Aboriginal claims. When the Cyprus Lake conservation area, for example, was transferred to the Canadian Parks Service, the lake itself was not included. Under the 1867 Constitution Act, Ontario became responsible for enacting the terms of the 1857 treaty. A tripartite process has been established to deal with Saugeen Ojibwa land claims. In the interim, the First Nation--along with other local land owners such as the FON--participates in the management of the park through membership on a advisory committee.

The Saugeen Ojibwa have said their priority in settling the claim is land of equal value rather than money. They are also asking for a say in how the shoreline is developed and management of the fishery. They are examining co-management models, particularly those that involve a share in park revenues and income from the leasing of Aboriginal lands.

Conservation

The main conservation issues identified by naturalists in Bruce Peninsula National Park are:

- an already degraded ecosystem;
- ongoing damage due to heavy year-round use and easy access;
- sensitive resources including orchids, ferns, and certain animal, bird and reptile habitats; and
- that the size of the park needs to be increased to have ecological integrity.

The Cape Croker Saugeen First Nation has expressed concern that deer do not overwinter in the Park but migrate outside it for feeding. They have also expressed concern for the health of the offshore fishery. Specific concerns are:

- radical changes in species composition;
- radical changes to the entire lake ecosystem;
- MNR restocking practices based on non-indigenous fish.

The main focus of the Saugeen Ojibwa in recent years has been a court process involving commercial fishing and Aboriginal rights. The court ruled in favour of the First Nation in April, 1993. It recognized the rights of members of the First Nation to fish for food and for trade in their traditional territory. Because of this court case, the Saugeen Ojibwa have concentrated their conservation efforts on the fisheries issue. They are developing a critique of current MNR policy

on restocking and fishing. The First Nation also maintains that in negotiations with the province:

- the Bruce fishery will be conserved;
- the Saugeen Ojibwa will have a major share in this fishery; and
- the local sports fishery will be maintained or enhanced.

Potential impacts

The Saugeen Ojibwa have stated that land within the park may be an acceptable substitute for lands mismanaged under the treaty. They support the park concept in principle, but would like to be able to hunt in the park as part of their aboriginal rights.

The park has value in that it has stopped development and helps maintain wild life populations both within the park and in areas adjacent to the park. The establishment of the park and its improved road system have brought more visitors into the area with the potential to impact upon the wild life in the area. The park also provides training and employment opportunities for members of the First Nation.

3. The Lac LaCroix First Nation and Quetico Provincial Park

Quetico Provincial Park includes roughly 500,000 hectares west of Thunder Bay. The area was first set aside in 1909 as a forest and game reserve where hunting and trapping were prohibited. In 1917 it became a park, in part to protect "the large quantity of pine timber" found within its boundaries.

The park Goal is "to preserve Quetico Provincial Park, which contains an environment of geological, biological, cultural and recreational significance, in perpetuity for the people of Ontario as an area of wilderness that is not adversely affected by human activities." The principal objectives of the park include protection, recreation, and appreciation of natural and cultural heritage. A secondary objective is tourism, specifically "to encourage, where appropriate, the accrual of park tourism benefits to the Lac LaCroix Indian Reserve and the town of Atikokan, contributing to their long term viability."

Quetico is classified as a wilderness park, a place "where the forces of nature are permitted to function freely" and where visitors "experience expansive solitude, challenge and personal integration with nature." According to the Park Policy, "humans are not considered to be incompatible with Quetico's wilderness landscape; however, their presence is acceptable only within an ecological context whereby human numbers and technology participate rather than dominate." Appropriate uses include wilderness travel, outdoor education, and scientific research. There are restrictions on the number of people who can use the park. To promote local economic development, guiding and outfitting services are allowed to operate within the park. The use of motorboats is restricted.

Park regulations prohibit hunting but do allow licensed commercial trapping for beaver and marten. All traplines, except those licensed to members of the nearby Lac LaCroix First Nation, are to be phased out by 2010. Logging roads, snowmobiles, all terrain vehicles, and outboards of not more than 10 h.p. provide access to traplines. In addition, members of the Lac LaCroix First Nation who are also members of the Lac LaCroix Guides Association may use watercraft powered by not more than 10 h.p. for guiding on specific lakes, and unlimited horsepower on Wegwagum Bay.

Aboriginal people and the park

The Lac LaCroix First Nation occupies a reserve bounded on the north and east by Quetico Park, and on the south by the US Boundary Waters Canoe Area Wilderness. In 1873, the Indians of Lac LaCroix ceded land to the Crown in a treaty which recognized their rights to "pursue their avocations of hunting and fishing throughout the surrendered tract" except where lands were set aside for other purposes. The creation of Quetico effectively extinguished these treaty rights. During the winter of 1910-1911, for example, Indians were forcibly removed from Hunters Island--an important winter hunting area--which lay within the boundaries of the new park. This island was made a wildlife sanctuary. In 1913 an Indian reserve at the tip of Hunters Island was "cancelled" by the provincial government without compensation to the Indians.

Today, the First Nation contends, guiding--the most important economic activity of the First Nation--is affected by restrictions on mechanized travel within the park. The First Nation has therefore asked the Province for access by mechanized boat and canoe to additional lakes within the park, as well as for improved facilities for landing aircraft. The MNR has granted improved access by motorboat on an interim basis.

The First Nation has also put forward a series of recommendations designed to preserve its integral relationship with the park over the long term. These include: training and employment of First Nation citizens within the park; development of a cultural centre and an interpretive program on Ojibwa culture; greater involvement of the Lac LaCroix First Nation in the management, planning, and operations of the Park; and establishment of a Quetico entry station on the Lac LaCroix reserve, including camping facilities.

Conservation

The main conservation issues identified for the park are:

- changes in forest ecology due to fire suppression;
- the threat of serious crown fire;
- environmental deterioration due to intensive logging up to the boundary of the park;
- the threat of motorboats disturbing the park's wilderness quality and increasing access to fisheries;

- pressure on fisheries within the park;
- relatively high use of certain lakes; and
- e... .., will p... .. forests.

Potential Impacts

Although the Lac LaCroix First Nation has stated support for Quetico as a wilderness area, conservation groups and others are concerned that:

- the expansion of motorized boat traffic in the park will degrade the wilderness experience;
- easier access to fish stocks will lead to a deterioration in the quality of these stocks; and
- the Lac LaCroix First Nation may construct cottages to the west of the park.

The FON has taken the position that:

the short-term changes currently proposed for Quetico would destroy the wilderness that the park was established to protect...On the other hand, in looking at the long-term solutions suggested by the First Nation, we feel that some of these proposals are compatible with maintaining the Quetico wilderness, while, at the same time, offering the people of Lac LaCroix a real stake in the park and an opportunity to achieve a broader and more sustainable economic base.

4. The Weenusk First Nation and Polar Bear Provincial Park

Polar Bear is Ontario's largest park, covering 2.4 million hectares along the shore of Hudson's Bay. It represents two major vegetation regions: the transitional forest and the true treeless tundra. The park is home to more than 200 polar bears and contains an important denning area. In the spring, its coastline becomes a staging area for hundreds of thousands of lesser snow geese, and a breeding colony for 55,000 pairs. The current management plan is concerned primarily with protection of the Park's unique natural features.

The only practical way to reach Polar Bear is by air. The Park's remoteness restricts the number of visitors and helps preserve the wilderness qualities of the Park. Those who do make the trip can enjoy a limited range of activities: canoeing, fishing, and camping. Nature reserves provide additional protection. Park regulations prohibit mechanized vehicles, except for motorized canoes used by native guides on the Sutton and Winisk rivers and aircraft at four designated access

points. Both Aboriginal residents of the Park and MNR staff, however, use all terrain vehicles within a limited area and for limited purposes. Hunting is allowed only from goose camps at the Shagamu and Sutton rivers.

The Park plan recognizes Aboriginal rights to carry out traditional activities--subsistence hunting, fishing, trapping, and non-commercial gathering of other wild commodities. These activities are subject to MNR guidelines which ensure that:

- they are not expanded or extended; and
- they are reduced or terminated if significant damage to the resource is shown or anticipated.

Aboriginal people and the park

People of the Cree Nation have lived along the coast of Hudson's Bay for some 1,000 years. They moved from place to place according to the season and the resources available for harvesting. Their continuing rights to use the lands and waters which are now Polar Bear Provincial Park are guaranteed by treaty.

The Park was established with the full cooperation of the groups using these lands--the Weenusk First Nation and the Mushkegowuk Tribal Council. At the time, the Park was seen as a vehicle for economic development, bringing valuable tourist dollars into the area. Recreational use of the park--and the expansion of park facilities to serve visitors--has not materialized as expected.

Both the Weenusk First Nation and the Mushkegowuk Tribal Council have recognized that the park plan does not adequately address the needs of local residents for long term economic viability. They have asked that a new plan be developed which respects their needs and interests as well as those of the park. The native communities of Fort Severn, Peawanuk and Attawapiskat are developing solutions that will benefit them and be acceptable to interest groups and the general public. The results of the consultation process surrounding these proposed solutions are due shortly.

The FON and other interest groups oppose proposals to establish new goose camps, although they support the improvement of existing operations and plans to use existing goose camps for non-consumptive activities such as photography, fishing, birdwatching, canoeing, hiking and research. They support some proposed economic development initiatives, including:

- construction of a road from the community of Peawanuck*, 10 kilometres inland from to Winisk on the coast;
- establishment of a small, quality lodge at Winisk--on land already exempt from the park--for fishing, whale watching, polar bear viewing, birdwatching, photography, and plant study; and

- provisions for native communities to participate in the co-management of the park and of fish and wildlife resources.

In 1990, the Mushkegowuk Tribal Council put forward a resolution to more than double the area of the park. The addition would incorporate areas of biological significance, including nesting habitats for golden eagles, polar bear denning territories, and significant and unique vegetation. It would also incorporate into the park areas with significant tourism potential.

Since the Mushkegowuk resolution was put forward, mining companies have indicated an interest in these additional lands. Mining activities could bring jobs and money into the region, but there is also a recognition that such development, in the long-term, could be the highest cost type of development. The First Nations are therefore reviewing carefully the management options for the park addition. These are:

- leaving the existing boundary and establishing additional co-management areas; or
- expanding the Park to include areas with high value natural, recreational, and cultural significance, but exclude areas with high value mineral potential.

Conservation

Naturalists have identified the following conservation concerns:

- the ecosystem in the Park is extremely fragile and environmental impacts are likely to be long-lasting;
- proposed facilities to support increased use will have a significant impact on the ecosystem;
- hunting may reduce goose populations; and
- mining activities may have a significant impact.

Some local Aboriginal people are concerned that low flying aircraft disturb geese on feeding grounds and interfere with native and commercial hunting activities.

*Peawanuck is a new community that was established after serious floods destroyed the community of Winisk.

APPENDIX II: OTHER MODELS

It is not only in Ontario that Aboriginal people have a stake in the establishment and management of protected areas. Examples from other jurisdictions--specifically Australia, British Columbia, and northern Canada--can prove valuable in establishing principles to promote conservation in the settlement of land claims.

In northern Canada, land claim settlements almost universally recognize the rights of Aboriginal people to harvest in protected areas, subject to public safety and conservation, and to play an important role in the management of such areas.

The determination of the Haida people of British Columbia to retain title to their land may set a Canadian precedent: Aboriginal ownership of the lands on which a national park is located.

Internationally, such a precedent has already been established. In Australia--where Aboriginal people have occupied and used their lands for up to 60,000 years--the federal government has returned to Aboriginal people lands taken over for parks. These parks continue to exist through joint management agreements between the government and the Aboriginal owners of the land.

A. NORTHERN CANADA

1. The Inuvialuit Claim

Canada and the Inuvialuit of the western Arctic signed a land claim settlement in 1984. As a result of this settlement, a number of communities in the western Arctic have become involved in conservation initiatives. In 1992, the Inuvialuit and the federal government agreed to establish a new national park on Banks Island, already the site of bird sanctuary. The agreement which establishes the park recognizes the exclusive right of the Inuvialuit to harvest wildlife in the park, and their priority use of the fishery. It calls for the involvement of the Inuvialuit in the development of management guidelines for the Park, as well as guarantees of employment, training, and contracting.

2. Nunavut Settlement Area

The federal government and the Inuit, represented by the Tungavik Federation of Nunavut, have finalized a settlement agreement covering the mainland, islands, and adjacent marine areas of the eastern Arctic. The agreement:

- provides certainty and clarity of rights to ownership and use of lands and resources;
- recognizes the Inuit right to harvest wildlife, and help use, manage, and conserve land, water, and resources; and
- provides the Inuit with financial compensation and economic opportunities.

At the urging of the Inuit, the settlement calls for the establishment of three national parks—each containing significant amounts of wilderness—as well as territorial parks and conservation areas. It also calls for Inuit involvement in the management of parks and adjacent areas, and preferential hiring and training of Inuit for park jobs. Within these parks, the Inuit are to have exclusive rights to harvest and use renewable resources, subject to public safety and conservation. A parks planning and management committee composed of Inuit and government representatives is to provide advice on park management, although the final authority for management decisions rests with Parks Canada and the federal Minister. The agreement calls for the integration of traditional and scientific knowledge in the management of parks, and the consent of the Inuit themselves before any restriction on the use of modern technology in harvesting.

3. Yukon Parks

Canada and Aboriginal people in the Yukon settled on a number of land claims. The final agreements for five First Nations include the creation of special management areas to preserve features of the natural and cultural heritage of the Yukon. These areas are to include national and territorial parks, park reserves, migratory game or bird sanctuaries, and watersheds. Under these agreements, Aboriginal people will have a more important role in the selection and management of parks, although ultimate authority will rest with existing institutions such as Parks Canada. With Aboriginal approval, protected areas may be established on settlement lands.

The Vuntut Gwich'in (Old Crow) First Nation is among those involved in the Yukon settlement. A final agreement released on July 16, 1993 sets aside over 4,400 square kilometres for the creation of a new national park to protect critical parts of the Porcupine caribou range. In a special management area that includes the park, the Gwich'in will have an exclusive right to hunt and trap and priority of access to the fishery. It also recognizes the Gwich'in right to use modern methods in carrying out these activities.

The agreement also refers to other parks and protected areas. In general, the harvesting of wildlife--except for fur bearers--inside the park is to be for personal use or for exchange with other Gwich'in. The Gwich'in may also gather plant material for food, medicine, cultural and other personal purposes and for purposes associated with hunting. To the extent that commercial and economic activities are permitted in parks, the Gwich'in have the right of first refusal for any new licences to carry out such activities. If wildlife management requires a controlled hunt, the Gwich'in have the right to conduct the hunt. The harvesting of wildlife, plants or trees by the Gwich'in may be restricted in areas set aside for conservation.

B. BRITISH COLUMBIA

Gwaii Haanas (South Moresby) Park, Canada

The struggle to protect this island archipelago in British Columbia resulted in the creation in 1990 of a National Park Reserve. The agreement which established the park provides for a joint management agreement between the federal government and the Haida people--the traditional owners of the islands. It establishes a management board in which the parties share equally in the planning and operation of the Park. This management board operates on a consensus basis in accordance with Haida custom.

Operation and management of the Park is to respect Haida culture as well as the environment, and preserve the archipelago as a benchmark for science and human knowledge. The agreement encourages the employment of Haida within the Park. It also recognizes the right of the Haida to harvest for subsistence, ceremonial and artistic purposes, to trap commercially, and to use the archipelago for activities which support fishing in adjacent waters.

Gwaii Haanas is still subject to a comprehensive land claim submitted by the Haida Nation. The Haida people have made it clear that as the result of any claim settlement they expect clear title to the Park.

C. AUSTRALIA

1. Kakadu National Park¹⁸

Kakadu National Park was established in 1979 and covers 19,804 square kilometres. It contains one of the highest densities of rock art in world as well as important natural features. The Park is on the World Heritage List and is listed under the Convention on Wetlands of International Importance Especially as Waterfowl Habitat. Much of the Park is owned by Aboriginal people and leased to the government on a 99-year basis. The Aboriginal owners continue to live in and use the Park. They form a majority on the Park board of management, and receive the lease payments as well a share in the revenues generated by the Park.

The management of the park recognizes Aboriginal interests as well as the needs of conservation. A primary management objective is to maintain the cultural relationship of the 300 Aboriginal people still living within the Park with their land. Conservation goals recognize that the activities of humans over the last 25,000 to 60,000 years has had an impact on park ecology and therefore treat long standing land use practices as integral components of the ecosystem. These practices include the use of fire to modify and shape the landscape, to control vegetation,

¹⁸ from *Kakadu National Park Plan of Management*, Australian National Parks and Wildlife Service, 1991.

and to enhance biological diversity. The park management plan aims to reestablish the traditional Aboriginal patterns of burning, especially in areas used extensively for hunting and gathering, and to reverse the consequences of recent human activity. The management plan also recognizes the rights of the Aboriginal residents to fish, hunt, and gather within the park, subject to conservation.

2. Uluru (Ayers Rock-Mount Olga) National Park, Australia¹⁹

Uluru is an outstanding and much-studied example of the way in which a park can support an Aboriginal community and teach outsiders about the culture of that community. The park includes 1325 square kilometres of arid landscape close to the centre of Australia. It contains famous and significant rock monoliths--Uluru (Ayers Rock) and Kata Tjuta (a series of rock domes)--as well as a range of desert ecosystems. The monoliths have powerful cultural and spiritual significance for Aboriginal people, and are important tourist destinations. Uluru National Park is listed as a biosphere reserve under the UNESCO Man and the Biosphere Program and included on the World Heritage List.

The park is on a reserve established in 1920 as part of a larger system of sanctuaries for aboriginal people. Tourism began in the 1940s. In 1958, an area including the rock formations was severed from the reserve and set aside as a future national park, which was formally declared in 1977. The Australian government returned the land to its aboriginal owners in 1985, and now leases back the land for AUS\$75,000 a year plus 20 percent of the park entrance fees. The management structure for Uluru is similar to that for Kakadu National Park and includes in addition a dispute resolution process which favours the Aboriginal owners of the park. Aboriginal people retain the rights to live in and use the park in traditional ways, including hunting and the gathering of food.

The main management objective for the park is to respect and interpret for others the culture, landscape, and belief system of the local Aboriginal people, the Anangu. These people are linked to each another and to the land through Tjukurpa--a philosophy which governs all aspects of life. Tjukurpa teaches that during the creation, powerful ancestral beings travelled across Australia. The travels and actions of these beings are recorded on the land. Uluru is the focus of many converging ancestral tracks, which connect the park with areas of the continent far beyond the boundaries of the park.

The Anangu interpret the landscape features of park as part of Tjukurpa. Their knowledge of the behaviour and distribution of plants and animals is considered to be knowledge of the Tjukurpa. They pass on this knowledge in association with the harvesting of resources. Stories

¹⁹ from *Uluru (Ayers Rock-Mount Olga) National Park Plan of Management*, Uluru-Kata Tjuta Board of Management, 1990? (no date)

of the travels of the ancestral beings link the travels of Anangu people while hunting and gathering with the unified scheme of all life. The Tjukurpa also regulates social relations and social behaviour. It establishes the rights and responsibilities involved in "caring properly for the land", for other people, and for the ancestral beings.

Tjukurpa was integrated into the park management plan through consultation with Aboriginal residents. Care was taken that development within the park--roads, parking lots, outhouses, hiking trails--was compatible with Tjukurpa. Hiking and interpretative trails, for existence, tend to follow ancient ancestral paths. The employment of Anangu in the park takes into account social and religious obligations by allowing for considerable flexibility in work hours. It also incorporates traditional avoidance relationships, appropriate work for men and women, and the precedence of old people over young in decision-making.

Park management recognizes that the responsibility of Anangu to care for the land may take precedence over other management considerations. Although many aspects of Tjukurpa are shared with park visitors, sites containing secret or restricted knowledge are fenced off. Normally such sites would remain secret; they are identified for their own protection and as a concession to tourism. All above-ground water sources within the park are associated with Tjukurpa and cannot be disturbed; visitor needs are therefore filled in alternative ways.

Park management includes the protection of rare and endangered plant species from trampling by visitors, changes in drainage from human activities, the activities of rabbits, and competition from non-indigenous plants. Areas of outstanding conservation significance are off-limits to visitors. Management also includes the reintroduction of some indigenous species to the park; the use of traditional Anangu fire management techniques; and the incorporation of Anangu knowledge of ecosystems and animal behaviour. Elders are employed as park rangers and in areas of traditional management expertise.

APPENDIX III: IUCN CLASSIFICATION SYSTEM FOR PROTECTED AREAS

The International Union for the Conservation of Nature (IUCN) established in 1978 a classification scheme for protected areas based on management objectives. These objectives also refer to the activities of Aboriginal people within parks.

Areas classified as "Scientific/Strict Nature Reserves" exclude all human use--including Aboriginal use--except field trips to obtain scientific knowledge.

Areas classified as "National/Provincial Parks" generally limit the activities of Aboriginal people to traditional uses. They do, however, protect these uses from the impacts of logging, mining, dams, and protect vegetation, fish and wildlife resources.

"Natural Monuments/Landmarks" are usually small areas of national significance which may be owned and operated by Aboriginal people in order to protect the natural feature from human disturbance.

"Nature Conservation Reserve/Managed Nature Reserves/Wildlife Sanctuaries" generally protect individual species. Where the management of these lands requires the manipulation of habitat or wildlife, Aboriginal people may be able to continue traditional hunting, gathering, and animal husbandry.

"Protected Landscapes" may represent special aesthetic qualities as a result of long periods of human interaction. In these, traditional land use practices associated with grazing, agriculture, and fishing are encouraged. "Anthropological Reserves"--natural areas of which humans are an integral component--would operate in the same way.

"Resource Reserves" is a short term designation which sets aside land under considerable development pressure or land which is isolated and relatively inhabited while decisions are made about its use. It tends to limit aboriginal use.

"Multiple Use Management Areas" are large areas set aside for the production of wood products, use of water, pasture, wildlife, and outdoor recreation. The objective is management on a sustained yield basis.

A "Biosphere Reserve" may include a part of or all of existing protected areas. It should be a representative sample of a major ecosystem. Indigenous people have a range of options for activities within such reserves, ranging from traditional ways to modern uses.

"World Heritage Sites" include in their criteria "man's interaction with his natural environment" and allow a range of human activities.

APPENDIX IV: A STATEMENT OF COMMITMENT TO COMPLETE CANADA'S NETWORKS OF PROTECTED AREAS

On the occasion of Canada's 125th Anniversary, the Canadian Council of Ministers' of the Environment, the Canadian Parks Ministers' Council, and the Wildlife Ministers' Council of Canada have come together to recognize that:

Canada's natural heritage—its wildlands, waters and wilderness unites and defines us all as Canadians

Canada has a special global responsibility to protect its natural heritage given that:

Canada is steward of almost 20% of the planet's wilderness*, 20% of its freshwater, and 24% of its remaining wetlands

Canada is one of the few nations that still has an opportunity to represent its natural regions and features, and to conserve its critical wildlife habitat

Protected areas have scientific, educational, inspirational and recreational values for humankind and contribute to sustainable development

Protected areas are essential to Canada's environmental health, biological diversity, and ecological processes

The ecological health of protected areas is affected by the quality of the surrounding environment

The opportunities to protect Canada's natural regions and wildlife habitat are quickly being foreclosed

Canada's natural heritage should be safeguarded through a variety of protected areas, including national and provincial parks, ecological reserves, wildlife management areas and migratory bird sanctuaries

Protected areas must be complemented by sound public and private stewardship of all of Canada's lands

*(excluding Antarctica)

Aboriginal peoples have a significant and unique role in the protection of Canada's natural heritage

The protection of Canada's natural heritage cannot be achieved by any one government or agency

And therefore, in the interest of present and future generations of Canadians, Council Members will make every effort to:

Complete Canada's networks of protected areas representative of Canada's land-based natural regions by the year 2000 and accelerate the protection of areas representative of Canada's marine natural regions

Accelerate the identification and protection of Canada's critical wildlife habitat

Adopt frameworks, strategies and time-tables for the completion of the protected areas networks

Continue to cooperate in the protection of ecosystems, landscapes, and wildlife habitat

Ensure that protected areas are integral components of all sustainable development strategies