THE ROLE OF OJIBWE TRIBES IN THE CO-MANAGEMENT OF NATURAL RESOURCE IN THE UPPER GREAT LAKES REGION: A SUCCESS STORY

Tom Busiahn – USFWS
Jonathan Gilbert - GLIFWC

ABSTRACT

A historic transformation took place in the 1980s in the management and conservation of living resources in the upper Great Lakes region, the territories ceded by the Ojibwe tribes more than a century earlier in treaties with the United States. As the Ojibwe tribes collectively asserted their treaty-protected rights to harvest fish and wildlife, they also established culturally appropriate, science-based resource management capabilities. State agencies, with involvement by federal agencies in some cases, had held the full responsibility for managing and conserving fish and wildlife resources. Tribal involvement in resource management, often termed "co-management," raised concerns that management may become politicized and decision-making more cumbersome, with resulting risks to the health of the resources. Tribes developed inter-tribal programs, notably the Great Lakes Indian Fish & Wildlife Commission, to help increase their collective capabilities for scientific assessment of the resources and evaluation of harvests. However, other positive occurrences including formal, multi-year agreements, tying culture to resources, and available support, facilitated successful implementation of co-management systems. Additional scrutiny and analysis provided by tribal biologists in most cases improved resource management decision-making. Overall, inter-tribal involvement in resource management has clearly been a positive development that has promoted sustainability of the natural resources and benefited all users of the resources, not just Ojibwe tribal members.

INTRODUCTION

This paper will take a broad view of co-management of natural resources, specifically fish and wildlife and other living and renewable resources in the Upper Great Lakes region. It will examine how the Ojibwe tribes (specifically with the member-tribes of the Great Lakes Indian Fish & Wildlife Commission, Bad River, Bay Mills, Fond du Lac, Keweenaw Bay, Lac Courte Oreilles, Lac du Flambeau, Lac Vieux Desert, Mole Lake, Mille Lacs, Red Cliff and St. Croix) have affected the course of resource management in recent decades through the implementation of co-management structures and processes. The conclusion will be that inter-tribal involvement has been a positive development that has promoted sustainability of the natural resources, and benefited all users of the resources, not just Ojibwe tribal members.

Looking back over recent centuries, fish and wildlife of North America, including the Upper Great Lakes, have been targeted for use by greater numbers of people, using more efficient and effective technology to harvest the resources. Until the mid-19th century, the Ojibwe people were the primary users of the resources and took advantage of resource abundance by moving throughout their home-land harvesting resources as the resources became seasonally available.

During the "treaty making era" of the 1800's the Ojibwe tribes entered into a series of treaties that first delineated Ojibwe territories (1825), then ceded vast acreages of land to the United States (1836, 1837, 1842), and finally ceded northeast Minnesota and created reservations (1854). In each of the cession treaties (1836, 1837, 1842, 1854) the Ojibwe leaders specifically reserved the rights to hunt, fish, trap and gather resources from these ceded territories.

In the mid-1800's the states of Michigan, Minnesota and Wisconsin were formed. In the early 1900's a conservation ethic developed among non-Indian users that was embodied by the "North American Wildlife Model". The model's basic principles were that fish and wildlife belong to all North American citizens, and fish and wildlife should be managed in such a way that their populations will be sustained forever. In practice, the States encouraged use of less efficient gear, with restricted seasons and bag limits, to accommodate an ever-increasing number of users. Harvest regulations were enacted to implement this inefficiency.

By the early 1900's tribes had been relegated to their reservations and denied the ability to roam the ceded territories harvesting resources as they became seasonally available. They could harvest from the reservation under tribal customs and laws, but not off-reservation, despite the reservation of such rights in the treaties. They were increasingly disenfranchised from the mix of users and completely left out of decision making.

In the 1970s and 1980s, the rights of the Ojibwe bands to harvest natural resources were successfully asserted and affirmed by United States courts. This brought about resurgence in resource harvesting by tribal members using traditional methods and seasons, under regulations promulgated by tribal governments in areas long off limits to them. It also

brought about recognition of the need to have scientifically trained resource managers to represent tribes in various forums.

The Great Lakes Indian Fish & Wildlife Commission (GLIFWC hereafter) was formed by 11 Ojibwe tribes who had the rights to hunt, fish and gather natural resources from the ceded territories. It was GLIFWC that assisted the member tribes in the assertion of their treaty protected rights and the management responsibilities that went along with those rights.

State fish and wildlife managers had great difficulties accepting the exercise of treaty rights because it challenged their fundamental worldview. The exercise of treaty-protected harvesting rights off-reservation by tribal members under their own culturally appropriate rules challenged the principle that fish and wildlife was to be managed by states for all citizens. Resource managers were not used to being scrutinized by their peers working for Indian tribes. Opinion leaders and the general public predicted disastrous outcomes because of the exercise of treaty rights. They warned that Ojibwe harvesting methods would devastate populations; that tribal involvement in management decisions would be unworkable; and that the public would never accept treaty rights despite their status as the law of the land.

Co-management in the upper Great Lakes region was born in the shadow of the court during this time of uncertainty.

Co-management has been defined in various ways including:

- The sharing of responsibility and power for managing resources between a government agency and a resource user community. (symposia.cbc.amnh.org/archives/seascapes/glossary.html)
- In co-management, representatives of user groups, the scientific community, and government agencies share knowledge, power, and responsibility. (oregonstate.edu/instruct/anth370/gloss.html)
- Either informal or legal arrangements between government representatives and user groups. (www.lobsterconservation.com/glossary/)
- Sharing of management responsibilities among two or more agencies or parties.
- A process whereby management of the resource is shared by both government and community organizations, with each having specific management responsibilities and authorities, but control of the overall process does not rest with one group. (www.coastalcommunities.ns.ca/glossary.php).

The common word in each of these statements is ‘shared,’ as in shared authority, shared responsibilities, shared knowledge, shared stake in the outcome. It was this notion of sharing that became a lightning rod for those opposed to the exercise of treaty rights and the management responsibilities that those rights brought with them. It was also the reason co-management as a concept was never officially endorsed by Michigan, Minnesota, or Wisconsin.

None of those predicted fears of resource depletion or paralysis of the management systems were realized. Fish and wildlife populations have been sustained, and in many cases improved under cooperative management. Management decision-making is effective, depending on frequent and open communication and clear roles for technical and policy players. Public acceptance of the legal status of treaty rights has not hindered effective tribal involvement in cooperative management.

There have been several prerequisites proposed to ensure that co-management occurs with positive outcomes (Pinkerton 1987). These include a real or imagined crisis, agreements are formalized, legal and multi-year, resource use tied with culture, external support to increase capabilities is available and start small and build on successes (Pinkerton 1989). During the remainder of this paper we will use specific case studies to illustrate how these important prerequisites have been used in the upper Great Lakes to implement co-management with successful outcomes.

COOPERATIVE MANAGEMENT AMONG TRIBAL GOVERNMENTS

One of the major concerns about tribal involvement in resource management was that each tribal government is an independent sovereign entity. Individual tribes protect their sovereignty fiercely and are loath to surrender any of it. Yet in order to collectively manage and harvest these resources, some coordination and collaboration was required. This coordination and collaboration required some sharing of power and responsibilities and so it was the tribes that led the way in implementing a co-management system among themselves.

To address the need for collaboration and coordination, in the mid-1980s the tribes developed an agreement called *Chippewa Intertribal Agreement Governing Resource Management and Regulation of Off-Reservation Treaty Rights in the Ceded Territory*. The *Agreement* establishes "an effective intertribal mechanism for co-management of the resources subject to the treaty right" by assigning the primary responsibility for intertribal co-management and regulation to the "Voigt" Intertribal Task Force, and authorizing the Commission's Biological Services Director to close any harvest activity that is likely to result in an excessive harvest. Each of the tribal governments adopted the *Agreement* by resolution, giving it the effect of tribal law. The agreement calls for joint assessment of harvests and a pledge to collectively stay within biological harvest limits.

The co-management aspect of this Inter-tribal agreement becomes clear when viewed through the lens of walleye management. Walleye management has been highly successful within the inter-tribal context because of the relationships forged through the agreement. Each year biologists determine the number of fish that can safely be harvested from each lake within the ceded territory. This information is shared with tribal leaders and with spear-fishers. Spear-fishers (resource users) and tribal leaders jointly develop harvest declarations for each lake that they spear. At the inter-tribal level individual tribal harvest declarations are brought together and evaluated as a whole. In some cases the combined harvest is greater than desired levels (that is, desired by the tribes). It is up to

the individual tribes involved to collaboratively develop a unified harvest declaration. During the harvest season tribal biologists are present to help monitor harvests and to observe the spear-fishing process. After the season biologists and tribal spear-fishers review harvest statistics from lakes of interest. Population assessments are conducted during the summer and both population and harvest statistics are shared among the parties.

All of the prerequisites to positive co-management outcomes listed above are present in this system. There was certainly a crisis. The State of Wisconsin was trying to deny the tribes their rights. There was a formal, multi-year agreement within the Inter-tribal agreement governing resource management. This led to stability. Resource use is tied to the culture. This is especially true for spear-fishing. The name of one of the member tribes reservations (i.e. Lac du Flambeau) is named for this harvest technique. External support has been present. The sharing of information among the resource users and agencies has led to an educated group of spear-fishers who know the science behind the culture. This education has led to informed discussions and sometimes challenging decisions.

For more than 25 years this system has worked to protect lakes in northern Wisconsin. The system has resulted in increased knowledge shared among resource users and has facilitated inter-tribal communication. The walleye resource in the ceded territories is better off today because of this system than it was 25 years ago prior to intertribal co-management.

RESTORATION OF LAKE TROUT IN LAKE SUPERIOR

Fisheries on each of the Great Lakes are subject to a number of governmental jurisdictions from the U.S. and Canada. All waters of the Great Lakes fall within a state or province – i.e. there are no “shared” waters – but fish populations move freely across boundaries, requiring cooperation among the jurisdictions. Tribal governments manage fisheries within treaty-ceded waters that do overlap spatially with state jurisdiction.

In 1986 the tribes of the Great Lakes Indian Fish & Wildlife Commission endorsed the *Joint Strategic Plan for Management of Great Lakes Fisheries*, joining state, federal, and provincial agencies in implementing the plan. The *Joint Strategic Plan* assigns responsibilities for fishery management planning to the “lake committee” for each of the Great Lakes. These lake committees were comprised of technical experts in fisheries management. GLIFWC has been represented on the Lake Superior Committee since 1987.

The Lake Superior Fishery Committee adopted a plan for restoring lake trout populations in 1985. The plan had been developed with full involvement by tribal fisheries biologists. Lake trout populations were in poor condition since the 1950s as a result of sea lamprey predation and poorly regulated commercial fishing. By the mid-1980s, population

numbers provided for a fishery, but most fish were of hatchery origin. The goal of the plan was to restore natural reproduction and sustainability.
Harvest of lake trout by tribal fishermen under tribal regulations increased in number and geographic scope throughout the 1970s and 1980s. By the end of this period, tribal governments were fully engaged in regulating their fisheries and in cooperative management with state, federal, and provincial governments in planning and assessment of lake trout population status.

Responsible management paid off by 1996, when lake trout populations had recovered to the point that Secretary of the Interior, Bruce Babbitt, led a "celebration" of achieving lake trout restoration. Hatchery stocking of lake trout was discontinued in most portions of Lake Superior. Tribal involvement had been a positive contributor to responsible and accountable management of lake trout for the benefit of all users.

WHITE-TAILED DEER (WAAWAAKESHIWAG) MANAGEMENT

Deer hunting is a strong tradition for Indian and non-Indian alike in the upper mid-west. Deer have been managed by states for many years and rarely did this management include input from Ojibwe tribes.

There were deep seeded beliefs held by both state hunters and deer biologists that made sharing of deer management responsibilities difficult. State-licensed hunters had been taught that deer should be harvested in November and that does should not be harvested in order to protect the deer herd. One buck per person per season with the occasional ability to shoot a doe was the norm. State deer managers generally held the view that management of deer was the states' prerogative not to be shared with others.

Ojibwe hunters had different views. For them deer was a food resource so the limitation of one deer per person per year was antithetical to their cultural way of deer hunting. Tribal communities had people who took it upon themselves to harvest deer for the larger community. Limitations on individual hunters would prevent these hunters from provisioning a large local community. State hunters feared that tribes would over-harvest deer from the northern forests.

In a similar way state deer biologists were hesitant to allow tribal biologists access to their deliberations and decision making meetings. They too feared that the tribes would take what they learned in these meetings and use it against them. They were worried that their vulnerabilities would show through.

The courts provided the necessary impetus for the states to include the tribes in co-management type sharing of management responsibilities. As in other instances co-management was born in the shadow of the court. The federal courts approved the tribes regulatory system with the presence of tribal rules and regulations, tribal conservation law enforcement, and tribal courts, as well as the appropriate biological capabilities. The courts required that tribes be granted access and participation on the various teams or

committees that advised the states on management actions (including harvest recommendations).

In many ways the biological technical issues were set aside early on in the process. The parties recognized that they were jointly harvesting deer from one population and had to share information in order to manage this herd in unison. The systems the states had adopted to manage deer with deer management units or permit areas used as the basis for population estimation and harvest monitoring were agreed to by the tribes. They did this because these systems largely did not interfere with the tribes' desire or ability to harvest deer.

Once the technical issues had been largely resolved, what was left were the process issues. What were the details of jointly managing a single resource by several parties? How were the interactions to work? In Minnesota a series of court orders and state/tribal protocols were enacted to determine these processes. Protocol number 2 in this court case established the 1837 ceded territory wildlife and plant resources committee. This committee was empowered to review all survey data collected by the parties, to discuss coordination of surveys or research, make recommendations on harvest levels, and to discuss proposed changes to any rule or regulation. This committee fulfills one of the requirements of successful co-management - the sharing of knowledge and information. This is a critical first step.

Protocol number 2 goes on to include that if there are disputes over any of the provisions contained in the mission of the committee, there is a mechanism to bring these disputes back to the parties through dispute resolution clauses. First, disputes are brought to policy level representatives of the state and the bands. If not resolved at this level the dispute is brought to a jointly chosen mediator. If consensus still is not reached the court can act as the ultimate arbiter under its continuing jurisdiction.

One of the elements of successful implementation of co-management is long-term legal agreements that are put in place. It is this detailed agreement in protocol number 2 and the role of the wildlife committee that has facilitated co-management success.

One of the successes of this element of co-management is the move in Minnesota away from an annual deer harvest quota and harvest declaration process to the notion of a harvest threshold level. Early on in the exercise of deer hunting rights people were unsure of the level of tribal harvest. Technical experts from both the state and tribes learned from these early experiences and jointly realized that management of tribal harvest by establishment of harvest quotas was unnecessary, given the level of current tribal harvest. They established a harvest system whereby tribal harvest was left largely unlimited but with the caveat that if tribal harvest exceeded a predetermined level (called the threshold harvest level) a quota system would be implemented in the subsequent year.

Again all of the elements desired in the successful implementation of co-management are present in the system in Minnesota. There was a real or imagined crisis, as in the tribes will shoot all of the deer. Resource use was tied to the culture as described above.

Agreements were legal and long term and provided sufficient oversight and control. Information was shared among technical experts and users. Agreements started small and were expanded over time, building on success.

LESSONS LEARNED

The lessons that have been learned during this time of treaty rights implementation are many and on-going. The management systems that have been put into place in response to the assertion of treaty rights have resulted in improved management of the natural resources of the region. There has been an increase in the roles and responsibilities of the tribes in natural resources management. Tribal culture is again tied to the harvest of resources. Agreements among the sovereigns are legal and long-term. All parties recognize that everyone has a stake in the outcomes.

These shared characteristics of processes put into place are similar to those described by Pinkerton (1986) as elements of successful co-management. This word, however, has at times acted like a lightning rod and attracted much negative attention. Another lesson learned is that people should not get stuck on semantics. Don't let the word get in the way of the action. Many systems have been put into place that have led to success. This is the important message. Disagreement over the use of the word co-management should not prevent us from recognizing that the natural resources of the ceded territories are better off now with the inclusion of tribal perspectives and desires than they were prior to such involvement.

OUTLOOK FOR THE NEXT QUARTER-CENTURY – THE FUTURE OF CO-MANAGEMENT

Thus far we have discussed the role of co-management in sustaining harvests of various species (e.g. walleye, lake trout, white-tailed deer). The conclusion from this discussion was that these resources are better managed now than they were prior to the affirmation of treaty-reserved rights. But, where do we go into the future?

We all recognize that our natural resources, including those that are harvested, require habitat and a clean environment in which to live. If the habitats of the ceded territory become reduced or degraded then the species which live there will suffer. If the walleye, lake trout, or deer are reduced in abundance, or if they become contaminated such that they are unhealthy to eat, then this diminishes the Tribes' rights just as surely as a regulation would. It is incumbent upon the tribes and the agencies that assist them to remain vigilant in maintaining the health and abundance of ceded territory is natural resources. If they do, through the mechanisms and provisions described in this chapter, then in the next 25 years environmental protection will be enhanced and treaty rights will continue to improve the way natural resources are managed in the ceded territories.