



CANADIAN ENVIRONMENTAL LAW ASSOCIATION
L'ASSOCIATION CANADIENNE DU DROIT DE L'ENVIRONNEMENT

24 July 1997

Elizabeth Brubaker
Environment Probe
225 Brunswick Ave.
Toronto, Ontario
M5S 2M6

Dear Elizabeth,

Thank you for sending Environment Probe's two reports on the fisheries of the Great Lakes. For your information, Mary Vise has retired as librarian; Lisa McShane has been hired to replace her.

Certainly the Great Lakes Fisheries need to be looked at more closely. However, your prescription for what ails them — increasing the private ownership of commercial fishermen over the resource — causes the Canadian Environmental Law Association more than a little concern. For example, the author of your report, "The Allocation of Fishing Rights within the Great Lakes" quotes a commercial fisherman as saying, "I report my catch the way [OMNR officials] want to hear it," implying that he has no qualms about misreporting." It's a bit of a stretch to then suggest that he would exercise more restraint if he were to have more ownership of the resource (ie, if the MNR were to exercise less control).

The problem of individual transferable quotas (ITQs) is not, as "The Allocation of Fishing Rights within the Great Lakes" suggests, that they don't confer on commercial fishermen enough property rights. The problem is how the MNR tries to "manage" the immense ecosystems that are the Great Lakes. For example, the MNR has not done the pre-requisite science to determine the true status of fish populations in the Great Lakes. In Lake Huron and Georgian Bay, at least, it allocated stocks based on the past harvests of licence holders — a practice rightly called into question by scientists who have examined the management of the coastal fisheries by the Department of Oceans and Fisheries. According to a study of MNR management in Lake Huron and Georgian Bay prepared for the Chippewas of Nawash by Dr. Stephen Crawford, the OMNR is violating its own management principles with its management practices. (You can contact Dr. Crawford at the University of Guelph's Axelrod Institute of Ichthyology, phone 519-824-4120).

To compound its management problems, the MNR is allowing the massive stocking of non-indigenous fish, principally pacific coast salmon, by Lake Huron and Georgian Bay sportsmen's clubs. Most biologists have a great deal of trouble with this practice (for example, Dr. Mart Gross at the University of Toronto, a leading Canadian expert on the behaviour of salmon and the effects of stocking this species. He can be reached at 416-978-3838.) I can assure you that these same sportsmen have a very strong notion of proprietorship when it comes to "their" fishery. That doesn't seem to be any guarantee that they act in the best interests of the resource.

The author of your other paper, "Vandalism Masquerading as Progress" correctly points out that over harvests in the Great Lakes have led to the decimation of some species and the extinction of others. Sturgeon in Lake Huron, for example, were driven to near extinction by the 1890s by the aggressive non-Native commercial fishery. And the huge lake trout populations, once the top of the food chain in Lake Huron and Georgian Bay, crashed in the 1950s — again the result of unregulated commercial fishing. I think the evidence in your own reports points to the folly of leaving fisheries to the vagaries of private interests.

Your reports correctly point to a few of the problems with how the MNR is managing (some say, "mismanaging") the fisheries of the Great Lakes. So it is a little surprising, judging from the number of MNR reports cited as references, that the author of "The Allocation of Fishing Rights within the Great Lakes" has relied so heavily on the MNR view of fisheries management. There is, I believe, enough in the biological literature to suspect the MNR is no better at managing the Great Lakes than the DFO is at managing the ocean fisheries, as a number of eminent scientists have recently pointed out.

Given these suspicions, it is more than a little surprising that the author places so much faith in what the MNR says about the Native fishery. His statement, "However, the greatest source of conflict stems from the fact that Aboriginal fishing, whether subsistence or commercial, is highly unregulated" cites, as its source, personal correspondence from MNR staff on Lake Superior.

I should tell you that I have worked with the Chippewas of Nawash on fisheries related issues for several years, and I know that statement to be false. Why did your author not talk to First Nations' fisheries staff? Why on earth would he rely on the "personal correspondence" of agents of a management regime that has been found, by an Ontario court, to have discriminated against the Chippewas of Nawash and the Chippewas of Saugeen with its licensing system? Judge Fairgrieve also took the MNR to task for the "high handed manner" with which it dealt (and is still dealing) with the First Nations. And Judge Fairgrieve is not the only Ontario judge to berate the MNR for the way it deals with Native people.

The Chippewas of Nawash have put a lot of very limited resources into devising a management regime for their fishermen that employs both science and traditional Native values. Among other things, they insist their fishermen take their catch to an on-reserve assessment plant before it goes to market. Dr. Crawford is leading a team in assessment studies that the MNR says it has neither the funds nor the staff to do. In spite of a number of offers to share information with MNR biologists, the MNR has refused to seriously discuss information sharing.

Neither the MNR nor your authors have studied the US experience in sharing management responsibilities with First Nations. If they would, they would discover that the partnership works to the benefit of the resource. (They can get in touch with the Great Lakes Indian Fish and Wildlife Commission by phoning 715-682-4427 and the Chippewa-Ottawa Treaty Fishery Management Authority by calling 906-632-0043).

Given the poor research shown by the author of "The Allocation of Fishing Rights within the Great Lakes" on Native fishing issues, it is not surprising he has made some basic errors of fact. For example:

- ▶ The Aboriginal Communal Fishing Regulations became regulations under the Game and Fish Act in 1993, *not* 1996. Before that they were regulations under the federal Fisheries Act.
- ▶ Despite the fact the Constitution Act of 1982 (with its section 35 recognition of aboriginal and treaty rights) is 15 years old, legislation in Ontario under the jurisdiction of the OMNR has not been changed to reflect the constitutional reality of Native rights or the priority nature of those rights. How, I wonder, does your notion that fisheries should be private property stand up under the scrutiny of the Constitution?

- ▶ ACFLRs have *not* "been implemented" in Lake Huron. The First Nations there consider these licences to be an imposition on their rights, and an examination of the terms of the licences would indicate they might be right. Neither the Chippewas of Nawash nor the Chippewas of Saugeen have accepted the licences and the Nawash Band continues to regulate its fishermen under its own by-laws.
- ▶ The OMNR has *not* "bought out 50 percent of the commercially allowable Bruce Peninsula harvest from non-aboriginal fishers". The MNR is only leasing their harvest (at a rate of about \$2 million a year). It's hard to imagine how quotas could be any less "private property" when the government that says it owns the resource is found to be leasing it back from individuals who, for all intents and purposes, own the quotas.

Neither of your reports look for very long at the recreational harvest. There is no total allowable catch for anglers. Each angler is limited in the number of fish of certain species he can catch, but there is no limit to the *number* of anglers. A 1990 survey of sports fishing conducted by the federal and provincial governments estimates the annual sports harvest in the Great Lakes to be in excess of 55.4 million fish a year. Any report that looks at the Great Lakes fisheries (especially to recommend a particular management scheme) and does take the sport harvest into account must be found wanting.

Finally, no reference is made to another study of fisheries management published by another friend of private property, the CD Howe Institute. I recommend your authors obtain a copy of *Market Solutions to Native Poverty* and look at the last paper, "The Case for an Expanded Indian Salmon Fishery" by Simon Fraser economist Richard Schwindt. There they will find a persuasive argument against the further privatization of fisheries and a thorough analysis of the problem of a commonly held resource being used by too many private individuals. You will also find persuasive economic and conservation arguments for expanding First Nations fisheries even at the expense of non-Native licence holders. And that expansion includes an expanded management role.

We will put your two reports on the Great Lakes Fisheries in our library, but this letter will be appended with them. I invite you or your authors to discuss these very important issues further and I would be happy to put them in touch with Native fisheries managers.

Regards,

David McLaren
Communications Coordinator
PH: 416-960-2284 FX: 416-960-9392

cc. Michelle Swenarchuk