

Lake Nipissing Fishery: Strategic Collaboration on a Shared Resource

This is the story of Lake Nipissing, in central Ontario – a lake fished for sustenance and commercial purposes since time immemorial by the Anishinabe people who live at Nipissing First Nation (NFN). Forty years of increased demand for walleye has led to ongoing tension about the type and extent of harvest among all user groups. By 2012, the walleye population had plummeted to near collapse with the almost total absence of reproducing adult fish. Although Ontario made various recreational fishing regulation changes, the walleye continued to decline. Aboriginal commercial walleye harvest was increasing and typical government tools (i.e. licences) were not supported as they are seen to subjugate the First Nation to Ontario and federal law. There was no clear solution to this complex challenge and decades of discussion had led to estranged relationships.

Meanwhile, Ontario's understanding of First Nations' Constitutional rights was evolving. Important legal cases, like *Commanda*, confirmed NFN's right to fish commercially. Supreme Court decisions implored governments to focus on negotiation rather than litigation. First Nations were asserting their ancestors' understanding of treaties, including self-government, and the intention that lands and natural resources were *to be shared*.

This submission outlined the development and implementation of a Memorandum of Understanding (MOU) between NFN and the Ministry of Natural Resources and Forestry (MNR) to address the sustainability of the walleye population in a manner that recognizes the rights, interests and decision-making processes of both governments. In 2013, the parties began a three-year dialogue led by NFN's Chief and the Regional Operations' Division Assistant Deputy Minister (ADM), together with the community's Chief Executive Officer (CEO) and MNR's local District Manager (DM). Beginning tentatively, wide-ranging discussions on historical grievances, social-economic conditions, fishing practices, science, Indigenous commercial fisher and angler behaviour, traditional values, compliance and enforcement, led to the mutual understanding of the need for an agreement.

Inspirational Leadership involves vision, courage, integrity, determination and engagement. NFN is rare in that in 2004 it enacted a *Chi-Naaknigewin* (Constitution or Great Law) and documented its Fisheries Law. But NFN's goal of governing members exercising their communal fishing rights was compromised by compliance difficulties with some fishers. Understanding the need to preserve the fishery for future generations meant the Chief or NFN staff meeting with fishers, community members and Council. In 2015, the new Chief closed the commercial fishery within 7 weeks of his election. For some fishers who remembered negative encounters with MNR Conservation Officers (COs), the concept of NFN working with MNR was abhorrent.

Before the MOU, a significant institutional barrier existed whereby MNRF's approach of setting commercial fishing requirements through licences has not been supported by First Nations with treaty rights. This greatly limited Ontario's ability to support NFN in managing the fishery, contributed to the decline of the walleye population and created decades of tension.

In reaching a MOU, Ontario adopted NFN's law as its own. Within MNRF, the concept of incorporating a First Nation's law into Ontario's regulatory regime had never been considered. Many internal discussions were required as well as with other ministries to explain the proposed approach, rationale, implications and the potential benefits to the broader relationship with First Nations regarding resources management. The MOU was signed by the Chief of Nipissing First Nation and the Minister of Natural Resources and Forestry in March 2016. Now MNRF's COs can work with their NFN counterparts to uphold the First Nation's expectations of its commercial fishers. The MOU also recognizes NFN's justice circles to determine non-compliance remedies and if members choose not to respect community authority, NFN may refer these matters to MNRF for enforcement response and, potentially, to Ontario's courts.

Strategic Collaboration – Although fishing had been a source of friction, both parties shared the goal of a sustainable fishery. NFN through its resource management department had invested heavily in its own understanding of fishery science. Over the years, NFN's and MNRF's biologists worked on fisheries assessment activities and produced a scientific model that enables them to quantify sustainable harvest. This foundation contributed to the MOU as well as formalizing a new governance model involving the Chief, ADM, CEO and DM. The newest level of collaboration, critical to the MOU's success, occurs between NFN and MNRF COs.

The agreement was premised on a foundation of dialogue, relationship building and collaboration that enabled the parties to formulate a common understanding of the challenges each faced, and to understand historic and social/economic dimensions contributing to non-compliant behaviour. Finally, NFN's proactive efforts to govern its members' commercial fishing activity through its Fisheries Law, enabled MNRF to shift to supporting NFN's efforts rather than insisting on a provincially-led model.

Impactful Results – Nearing the end of the MOU's second year:

- *Fisheries Management*
 - Over 30 days of commercial fishery assessments and monitoring surveys conducted,
 - New fisheries regulations communicated to over 900 recreational anglers,
 - NFN fishers contacted over 90 times to discuss NFN's Fisheries Law,
 - NFN introduced a temporary moratorium on spear fishing, a cultural practice; and

- In 2016 and 2017, NFN closed the commercial fishery mid-season after reaching harvest targets
- Compliance and Enforcement:
 - NFN/MNRF conducted 61 joint patrols,
 - NFN's enforcement officer graduated from the Ontario Police College,
 - MNRF educated commercial fish buyers about purchasing only from registered fishers,
 - NFN referred some non-compliance incidents to MNRF for follow-up.
- Relationship
 - The parties held 16 governance and/or compliance meetings,
 - Conducted a cross-cultural learning session to help MNRF's COs understand NFN's culture/traditions related to commercial fishing and the negative effects of previously imposing Ontario law,
 - Jointly developed communication materials for NFN members and the public about the MOU's results.
- Sustainability of Walleye in Lake Nipissing
 - From 2017 fisheries assessment data, we can report:
 - i. More spawning male and female walleye
 - ii. The abundance of adult walleye has doubled
 - iii. Reduction in overall harvest of walleye
 - iv. Improvement in fish health

In conclusion, while no two discussions between First Nations and governments will be identical, similar approaches could be considered and applied to fisheries, and other resource management, challenges across Canada.