**Making Peace and
Decisions in the
Salmon Fishery**

Module 2:

Participant Driven Collaboration:
Basic Concepts and Context

Contents:

INTRODUCTION: THE NATURE OF OUR SHARED CHALLENGE

Managing our resources, whether it is in the sea or on the land, is all too often challenged by conflict. Familiar players campaign for greater access or greater protection of the resource, and governments respond with decisions based on technical analysis, policy prescriptions or political logic. Everybody knows the place where everybody is pointing fingers at everyone else. Disputes cycle forward from one year to the next, diminishing our ability to respond and adapt at the same time as uncertainties in the natural world are growing, and increasing the depth of the social and economic disruption that comes with these realities. Many of the decisions we face, especially around land, resources, and the environment, demand that we find ways to listen to opposing points of view, and find ways to accommodate deeply held and differing values.

The terms sustainability and sustainable development embrace the concept that environmental, economic and social needs are complex and require integrated decision-making. More than ever, we understand how decisions made today affect the quality of life for future generations. People are demanding more meaningful input to decisions that directly affect them or the place where they live. Conventional decision making mechanisms tend to exclude rather than include diverse interests and do not cope well with the complexity that issues of sustainability present.

Increasingly, the response has been to search for ways to more meaningfully involve those with a stake in these challenges in decision making around them through collaborative processes driven by the participants themselves.

Conventional wisdom is rooted in an authority driven view of the world which builds from the given of final ministerial (or delegated) authority. It's constitutional, it's not negotiable. A Minister, typically through a delegated authority, drives out the mandate on what he or she is obligated to deliver, and in doing so often engages in a series of extensions beyond the departmental structure into different communities of interest through formal consultation and advisory processes. (The point has been made that no other department of the Government of Canada is as extensively involved with its constituencies as DFO.) Another overriding and fundamental consideration stems from the constitutionally protected right of First Nations interests in the fishery. The architecture of decision-making must be built in a fashion that is alive and attentive to these realities.

In the face of these realities, can participant driven processes based on collaboration coexist with authority driven structures? Are institutional changes necessary to make co-existence possible, or can we work within the existing legal framework? Do we need new structures? Or do we simply need to fine tune what is already in place? Or can we do both at once? What confidence can participants in collaborative efforts have that the Minister will recognize their efforts and adopt any outcomes they reach? How do the bilateral obligations with respect to First Nations work in an effective, smooth way, with multi-lateral environments in which aboriginal rights and interests exist with all other communities of interest around common issues? All have a reciprocal interest in finding good and effective ways of

working with each other. These are the questions collaborative initiatives in many different settings and jurisdictions have faced. Their experience informs and enriches our ability to address these questions

The forces that are starting to reshape the face of decision making is one where, not only are non-governmental participants demanding a greater role and responsibility, governments themselves are recognizing that:

> We can't do the job alone" – we need to work with those people who have a "stake" in one way or another, who bring history, rights, mandates, economic, cultural, social or environmental perspectives , all underpinned by an interest, however diverse it may be, in the resource. And we need to find a way to engage them, as participants together, in attempting to work through how we're going to do business together. This is better than talking to each of them separately, because if people hear each other directly, they may be able to reach better and more informed judgments.

When used in appropriate situations, there is a broad body of experience across North America and elsewhere in the world that collaborative processes can reward expenditures in time and effort by generating creative and lasting solutions to complex problems.

In considering the potential for collaboration initiatives and authority structures to co-exist it is essential to understand the distinction between what might be described, for present purposes, as an "ultimate recommendation" and a "final decision". Only the Minister can make a "final decision" within the constitutional architecture of Canada. However, an "ultimate recommendation" becomes in practical terms the "effective decision" for, as a practical matter, it would be highly unlikely for the Minister not to embrace any outcome/decision agreed upon by all the various players and interests and the responsible public managers. Whether the ultimate recommendation has the persuasive strength to carry into the effective decision really depends on whether it is backed by the power of a consensus, or remains simply a collection of individual voices.

But for such expectations to be fulfilled clear expectations are required as to the role of the manager, for introducing collaboration in one form or another into conventional decision making processes transforms the public manager's role into that of a "partner" whose goal is to build agreement around an outcome, as opposed to dictating it, subject always to constitutional realities. And any such realignment has implications not only with respect to the manager, but also much more broadly to the way in which the authority structure operates both below and above him or her.

The Fisheries Context

People and issues, and the decisions they make, are always set within a context – in fisheries key elements in this context include

- SUSTAINTABILITY
- RELATIONSHIPS AND CONFLICT
- VALUES AND POWER

Sustainability

The sustainability of salmon, and of the people whose quality of and way of life depend on salmon and of the larger ecological system salmon support, challenges us to:

1. Make decisions that have the flexibility and resiliency to deal with uncertainty

2. Think in different ways about how we make decisions, and who should be involved

3. Work together collaboratively

4. Engage others with little or no interest in salmon but whose actions can adversely impact salmon

5. Understand and respect our differences in ways that enable us to work together

6. Think in different ways which:

   - Expands the scope;
   - Extends timelines;
   - Integrates across boundaries;

   In the challenges we confront and the processes we use.

7. Create new approaches capable of making decisions across conventional boundaries and hierarchical lines, outside but alongside traditional authority structures, and between and among diverse values.

8. Build new and restructure existing processes internally and externally to fit the challenge, not "force fit" the challenge to suit existing processes.

9. Create the "platforms" on which to make decisions and the skills and knowledge to necessary within the organization and beyond it to interact effectively among multiple players and perspectives, and diverse interests and values.

10. See relationships as an asset - to be established, managed, repaired, and employed to build the "relationship account".

Perspectives on Conflict

Conflict is an essential element in a dynamic society. It is through conflict that issues are raised, constituencies emerge and equity and justice are achieved. A society without a tolerance for conflict is like a cloth without elasticity. The stresses and strains of differing and changing values and priorities lead to a tearing of the social fabric and a bursting of social controls.

A conflict occurs when two or more individuals or interests perceive that they have mutually incompatible values, priorities or goals. Frequently, a particular dispute will include all three areas of difference. As the quotation by Frederick Douglass so eloquently states, the willingness to strive for what one believes by confronting and challenging established values and practices not only brings conflict but provides the essence of freedom and liberty.

However, conflict without some mechanism for addressing the issues can be sterile and destructive. **Process is product**. The process chosen to deal with conflict determines the outcome and the nature of relationships. Conflict can be an invaluable opportunity to build new relationships and produce innovative solutions to what are often seen as intractable problems. The enormous energy conflict generates can be engaged destructively or constructively. The process used primarily determines how the energy in conflict will be utilized.

In addition to an acceptance and tolerance of conflict as a legitimate means of social interaction a society, organization or family must also have procedures and systems for settling disputes? Those involved in disputes need both access to and the skill to use dispute settlement procedures.

Relationship and Conflict

"Those who profess to favor freedom and yet deprecate agitation are men who want crops without plowing up the ground. They want rain without thunder and lightning. They want the ocean without the roar of its many waters. The struggle may be a moral one; or it may be a physical one; or it may be both moral and physical; but it must be a struggle."

Frederick Douglass, 1863

Relationships and conflict are inextricably intertwined.

A good relationship has the capacity to process and withstand a good deal of conflict.

We see conflict in every relationship that we are a part of. It occurs in families and the organizations where we work. It occurs in where we play and where we worship. Our political processes are based on the assumption of continuing stress and challenge between the administrative, legislative and judicial branches of government.

But, somehow, when conflict affects us personally, especially if someone else is challenging what we believe, what we control or how we do things, conflict doesn't seem quite so desirable.

The Wisdom of Huck Finn

Did you want to kill him, Buck?"

"Well, I bet I did."

"What did he do to you?"

"Him? He never done nothing to me."

"Well, then, what did you want to kill him for?"

"Why nothing - only it's on account of the feud."

"What's a feud?"

"Why, where was you raised? Don't you know what a feud is?"

"Never heard of it before - tell me about it."

"Well," says Buck, "a feud is this way: A man has a quarrel with another man, and kills him; then that other man's brother kills him; then the other brothers, on both sides, goes for one another; then the cousins chip in - and by and by everybody's killed off, and there ain't nor more feud. Buts it's kind of slow, and takes a long time."

"Has this one been going on long, Buck?"

"Well, I should reckon! It started thirty years ago, or som'ers along there. There was trouble 'bout something, and then a law suit to settle it; and the suit went agin one of the men, and so he up and shot the man that won the suit - which he would naturally do, of course. Anybody would."

"What was the trouble about, Buck? - land?"

"I reckon maybe - I don't know."

"Well, who done the shooting? Was it a Grangeford or a Shepherdson?"

"Laws, how do I know? It was so long ago."

"Don't anybody know?"

"Oh yes, pa knows, I reckon, and some of the other old people; but they don't know now what the row was about in the first place"

 - Mark Twain, The Adventures of Huckleberry Finn

Turning Differences into Assets

Sources of Conflict :

Our assumptions regarding what causes conflict in general or in a particular dispute have a lot to do with not only how we view conflict but with how we try to settle it. There tend to be three general views of what covers conflict.

Problems of Communication: Some tend to view all conflicts as a communications problem. Simply stated, this seems to be based on the assumption that if only we could express ourselves clearly and openly we would discover that the conflict really doesn't exist.

Problems of Information and Understanding: Others view conflict as essentially a problem in understanding, particularly where technical matters are involved. *"If only people understood what I am trying to do and why it is good for them, they wouldn't be opposed."* From this perspective what is needed to settle conflict is a combination teacher and sales person—the only problem is to get them to listen.

Problems of Trade-Offs: The third general perspective is that everything is a matter of trade-offs. The real question is who gets what—and in its purest form, there is always a limited pie. Some labor negotiations are typical of the approach to dispute settlement that is likely to be followed by those who have this perspective.

Disputes may well have several causes-each of these perspectives is right—and wrong. Every dispute is likely to have problems of communication, information and understanding, and equity or trade-offs. Unfortunately, to focus on one problem exclusively is as likely to make things worse as it is better. Bad communications are likely to be in someone's best interest if they are convinced that they are likely to get the short end of any trade-offs. No one is going to accept more technical information from a source that they suspect is going to do something that hurts them in their backyard.

To further complicate matters, most disputes involve

individuals who have different perceptions of what is causing the conflict. This can lead to a new set of disputes over the appropriate means of seeking to address the differences that divide them.

The challenge is to approach disputes in a manner that makes it possible to address all of these issues simultaneously. A Collaborative approach designed and driven by the participants is one such approach. To have integrity as a mutual and jointly owned process, all participants must be and see themselves as being equal partners within the process seeking to find a solution—no one will impose their will on anyone else so long as the process continues. Because it entails face-to-face exchanges, it is possible to deal directly with the various elements that are hindering effective communication. And, as the participants begin to reach agreement on the nature of the problem which they are addressing and to develop some assurances of the parameters of any agreement, it becomes "safe" to exchange and accept technical information and "facts."

The Way we engage and the Relationship we build
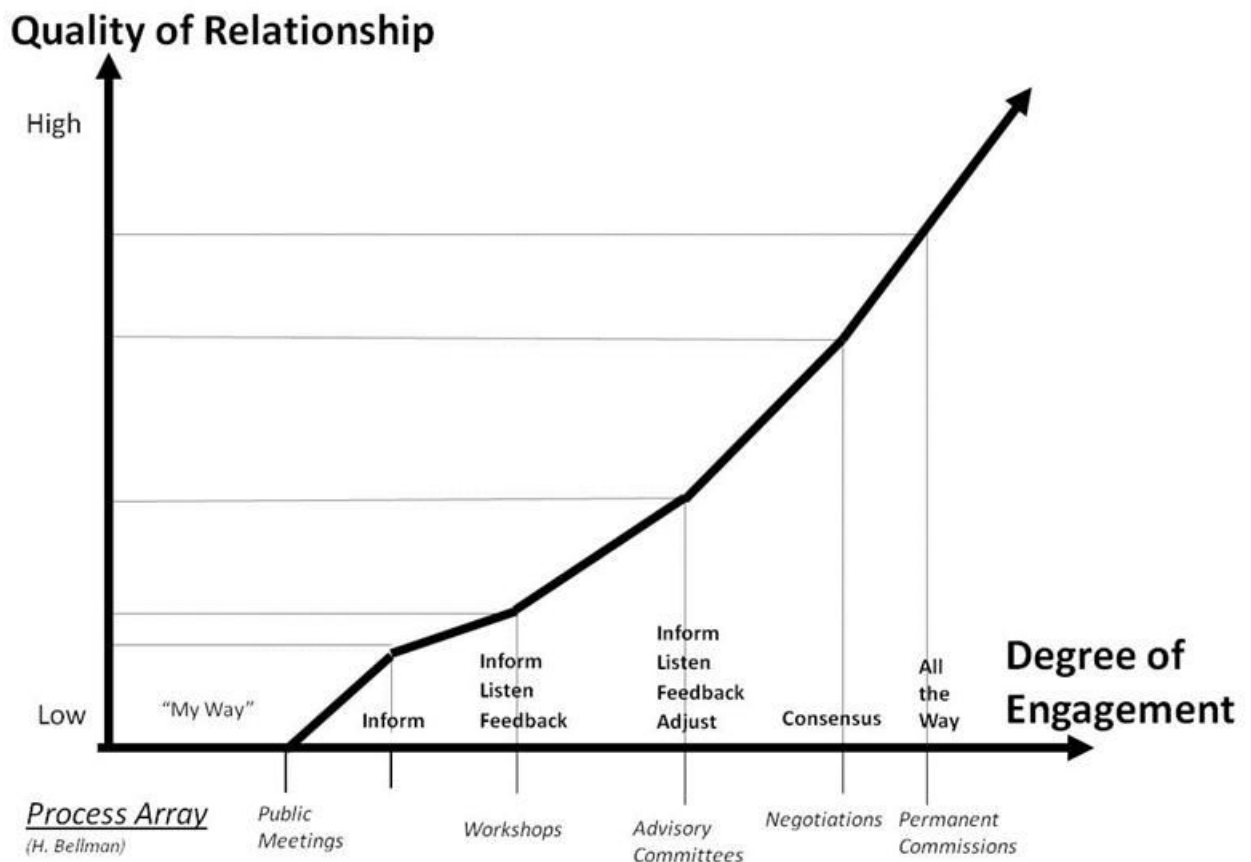
Values and Power

Value defines who we are; power is about what we can do. The clashes of values and the sounds of power are always present in meeting the challenges of sustainability. Values and power define how we see and shape our interests, the positions we take in relation to the issues, and our alternatives to any possible course of action.

We speak of values often in relation to a people and their culture. But values have a broader and more elastic application—we speak of values in contexts as diverse as resources, profession, and scientific, local, national, etcetera. **Values inform and shape our "views"**—they are both the lenses through which we see others, and the image we project through which they see us. Values:

- **manifest** through qualities, attitudes, preferences, standards and traits;

- **in relation to an individual or group** defines, distinguishes, regulates their conduct, actions, behaviour, and in so doing;

- **Provides the basis on which they see themselves in relation to others and how others see them**, i.e., identify; measure; evaluate; distinguish.

Achieving agreement of all parties to a decision is unlikely where more powerful interests dominate the discussion at the expense of weaker parties.   In Participant Driven collaboration, power imbalances are not eliminated or neutralized but "suspended". Power is "parked" while the process is ongoing. While value differences are always present, power circles around the outside of the room.

Participant Driven Collaboration temporarily levels the playing field, suspending power imbalances for as long as the process continues. However, power is neither eliminated nor neutralized, it simply gets "parked" outside – both sides in a dispute may feel negotiations will mean compromise of certain advantages, interests, and even fundamental values. For example, project proponents with deep pockets and strong legal precedents may feel they will lose their advantage by sitting down with local opponents. Conversely, a local group opposed to a proposed development may fear that negotiations will lose them popular support and any high moral plane they may have achieved. In the midst of these fears, freedom to walk away from the process is crucial. Nothing but an evening can be lost by talking about whether to go on talking.

Participants in PDC are usually well aware that more conventional if adversarial options are open to them by custom or even legal right. The voluntary nature of participation prevents the possible perception among stakeholders that such rights are being violated. **It must be made very clear to parties that should they decide not to participate or if consensus fails, they will not have lost or diminished their ability to pursue their interests through other more conventional means.**

How your actions are seen within the context of a relationship is the real barometer of value—all the more so when that relationship has been built between and among others with different perspectives,

interests and values. As the quality of the relationship goes up, so too do the dividends realized from the ways parties engage in resolving their concerns. **Being good is good but not good enough**. You need to be seen to do good. Being good counts, but that is not what gets counted. Saying you are good may make you feel good, but having others say it will create value. In the marketplace, perception drives value. Acting responsibly is one thing. To be seen to have done so is another.

Valuing Differences

Effective relationships are based on exploring and finding ways to work together effectively in spite of differences—not eliminating differences. While the potential to more effectively achieve individual and mutual interests jointly rather than individually creates the opportunity, it is

> *Reaching agreement in the face of value differences is about building bridges, not converting. The goal is not to eliminate differences but to understand and respect them, and explore how people can live and work together in spite of their differences—putting in place bridges across the river, not trying to pull the banks of the river together. Often it is the fact of the difference, and that people share different values, which makes it possible to reach an agreement because what is important to one side may not be as important to the other. Partnerships are not based on eliminating differences, but on accepting them*

finding ways to live with differences that represents the greatest challenge. Effective relationships must have the capacity to respond to changing circumstances, the evolving needs and goals of the parties, differences in values and perspectives, and, inevitably, disagreements. That capacity will exist where each of the partners considers that its own self-interests are best served by understanding and addressing the interests of the other party and when the relationship is seen and valued as an asset that requires ongoing and explicit attention and investment. Success is measured in terms of how well the essential needs of the parties are met, and continue to be met.

Respect and understanding begin by accepting that differences are real. A common and beguiling notion is that differences are illusory, that basically everyone really wants, needs, and values the same thing—and often that thing is money. Successful salespeople, no less than managers operating in world markets, know that appreciating and respecting personal and cultural differences can make or break a deal.

Parties can differ in several important ways. First and most fundamentally, they differ in their values and interests. In sustainability disputes, developers may place high value on what they define as "progress," a measurable economic improvement. An environmental group may see the integrity of natural ecosystems as the most fundamental value. Clarifying these differing values and interests can make all parties more tolerant of their differences.

Parties may also hold differing beliefs—their own set of explanations and predictions—about the facts and issues. Indeed, parties frequently disagree on what the main facts and issues are – *"you have your*

facts, I've got mine!" In complex situations, these differences may not be obvious, but with time, the parties can look at the information together and agree the truth probably lies somewhere in the middle. But this cooperation will only be possible when each party understands the other's perspective and the basis for it.

Parties can differ in the circumstances shaping their perspectives and abilities. They have different constituents to represent, different reporting requirements, different resources to call upon, and different skills to employ. All differences must be appreciated, respected, and accommodated to ensure agreements encompass all interests fairly.

In many disputes, the parties also differ culturally. Parties from differing cultural backgrounds introduce more than the usual differences in values, interests, beliefs and circumstances. Even the most ordinary issue can ignite cultural conflict based on painful historical events. A gesture of friendship in one cultural context may be seen as an insult in another. What is important for one party may be trivial to someone else. Cross-cultural misunderstandings heighten tensions and reduce the possibility of agreement.

An awareness of how significantly parties can differ in values, interests, beliefs, circumstances and culture contributes enormously to creating good working relationships. Such awareness, combined with tolerance of and respect for differences, makes building consensus possible.

BUILDING APPROACHES TO ADDRESS CONTEXTUAL CHALLENGES

Reaching Agreements and Making Decisions: Authority vs. Participant Driven Approaches

The conventional means by which decisions are made involving governmental or regulatory bodies in Canada has been authority based. While many different mechanisms may be used, the underlying model is that one final authority - a cabinet minister, an independent review board or panel, a judge, or a host of individual administrators - is empowered to listen to what competing stakeholders have to say, impartially review and weigh their claims and relevant technical information, and then decide.

The characteristics of Authority Based Approaches

- Those affected or concerned about the issues make their representations to a decision maker;

- There is little or no need or opportunity for those affected to communicate with one another;

- The decision maker is guided by a set of procedures, regulations, and precedents and by advice from various advisers in making the decision;

- The decision is made and announced to those affected, usually with explanations of the reasons for the decision; and

- The competing interests [especially those interests not served by the decision] have little commitment to the decision that has been made;

- There is little dependence upon good relationships among the parties in reaching decisions;

- The authority making the decision frequently delegates to others not involved in making the decision, responsibility to implement the decision.

The characteristics of Participant Driven Collaborative Approaches

A participant driven approach is open to all participants with a stake in the outcome, including governmental authorities. All participants work together to reach mutually acceptable outcomes.   The participants begin by exploring the possibility of working together, and how they might do so in the most effective way with clear expectations about the purpose, roles, responsibilities, and procedures.

Sometimes the intended outcome may be simply to begin talking to get to know each other better, other times it is to share information, but typically it is to try to reach explicit agreements that will constitute the ultimate decision. For those with authority-based mandates, this approach provides an opportunity to explore how best to discharge their responsibilities in ways that will garner support from those affected by the outcome.

 The formal authority as a participant can ensure their mandates, policies, regulations, and their other concerns are addressed within the decisions. Participation in PDC does not fetter their authority or abrogate their responsibilities. They can accept the outcome only if they like all other parties are satisfied their interests are met and that they can recommend the decision for implementation..

These approaches have characteristics including:

- Those directly affected by the decision address their concerns to one another in face-to-face discussions;

- All participants share their interests in the context of the relevant laws, policies, and precedents;

- Decisions are reached by the participants and the reasons for the consensus are clear;

- All participants share responsibility for designing the process, for the success of the process and for the outcome; and

- Higher level of commitment to ensure success of implementing a decision they collectively made.

PDC and Consultation

Within authority based processes, participation by those affected often occurs through some form of consultation/ advisory process. Hearings, workshops, public meetings, and a variety of formats create

opportunities for consultation within authority-based processes. As the comparison in the accompanying box illustrates, there may be similarities between consultation and PDC, but they are defined by their fundamental difference. Consultation is designed to inform decision makers who will ultimately make the decision. PDC involves the participants as decision makers.

This creates a very different agenda for stakeholders involved in a consultation process than would be the case in PDC. In consultation the parties overriding goal must be to persuade the relevant authority to make a decision favourable to their own interests. In such a setting, it is not a good strategy to search for the common ground. The more rational strategy is to make the very best case for ones own interests and to cast doubts and aspersions on the arguments and positions of others.

In PDC, the participants must address and persuade one another and find solutions acceptable to all. Too often, government is not clear and often overlooks this distinction between these processes. When PDC is advocated, the response from authorities may often be:

"**We're already doing that. We consult with the public all the time.**"

The Challenge Usually Presents with these Attributes:

Background cumbersome, complicated and inter-connected
- *Multiple parties with direct and indirect interests*
- *Difficult issues*
- *Overlaps, linkages, and spillovers*

Dealing with uncertainties
- *"Who" has an interest*
- *"If only we had more facts, then …"*
- *"Everything involves risks, … so …"*

Accepting perceptions as realities
- *Perception cannot be puffed away by Fiat of a Judge or the Order of a Director*

Acknowledging clashes in values
- *Values harden, not succumb, to change by direction*

Recognizing roots dug deeply into history
- *History cannot be rewritten with a stroke of a pen*

Understanding the organization behind the "faces"
- *Governments*
- *First Nations*
- *Corporations*
- *Interest Groups*

While the words may sound similar, the differences are real as demonstrated in the following chart:

Consultation		PARTICIPANT DRIVEN COLLABORATION	
Statement of Purpose		**Statement of Purpose**	
"To build consensus as a basis for a decision"		"To build consensus as a basis for a decision"	
"To inform and become informed"		"To inform and become informed"	
"To achieve stakeholder input and buy-in"		"To achieve stakeholder input and buy-in"	
"To meaningfully involve interested parties"		"To meaningfully involve interested parties"	
The Similarity Ends Here			
Participants:	Advocates	**Participants:**	Decision makers
Objectives:	Hear the voices of many interests	**Objectives:**	Search for a single voice that speaks for all interests
Activity:	Make representations	**Activity:**	Find trade-offs, innovative solutions
Approach:	Positional	**Approach:**	Interest based
Process:	Predetermined by decision maker	**Process:**	Participant designed
Interaction:	Contact among parties from none to a lot	**Interaction:**	Relationship builds among the parties through the process
Negotiation:	Implicit – if at all, in the "back room" and consensus is not required	**Negotiation:**	Explicit – "above board" and includes consultation leading to agreement
Outcomes:	Many inputs to ultimate decision maker	**Outcomes:**	"One output" – either the actual decision or consensus to ultimate decision maker
Timelines:	Prescribed	**Timelines:**	Participant driven, sometimes within parameters

Both processes should and will continue to be used in Canada.

There are many contexts in which a legal requirement or a strong public expectation exists for consultation through hearings and public meetings. The conditions that make possible the use of PDC do not always exist. Moreover, in PDC when an agreement is achieved it may be desirable to hold public meetings or hearings to ensure that the agreement is broadly acceptable and that no interests or constituencies were ignored.

 A useful, but evolving, schematic representing the co-existence of participant and authority driven approaches in the salmon fishery might be the following:
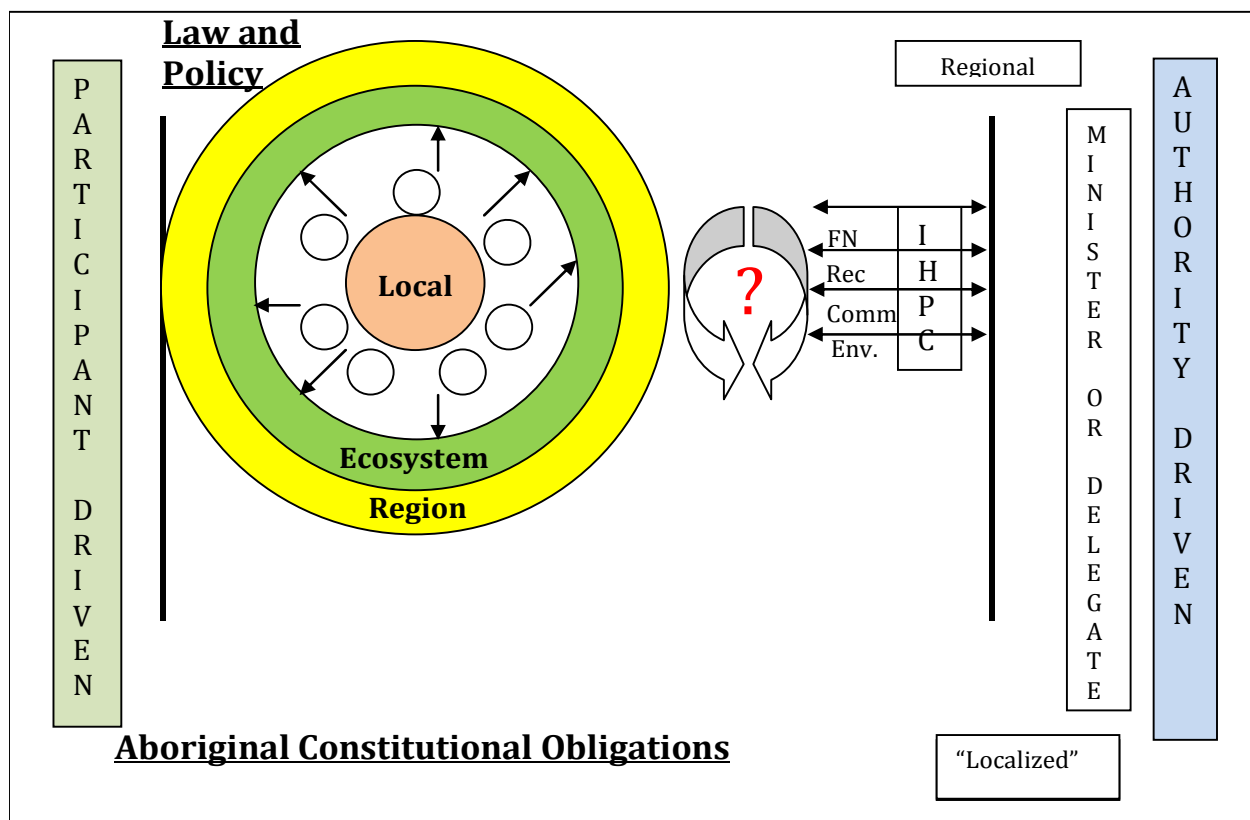
Key Questions
- **How should traditional and emerging processes work together? At different 'scales'?**
- **What is required for an emerging collaborative process to become 'recognized' (process benchmarks)? What activity should happen at what 'scale'?**
- **If a 'recognized' process does exist, what implications does this have for bilateral relationships?**

PDC: GUIDING PRINCIPLES

Every Participant Driven Process is Unique - Every situation, every organization, every area have differences in approaches, reporting relationships, information management and decision-making procedures. As a result, every such process will be different and needs to be custom-designed to meet the unique factors and particular characteristics present in each area.

PDC approaches to decision making are participant determined and driven - that is their very essence. No single approach will work for each situation - because of the issues involved, the respective interests and the surrounding circumstances. Experience points to certain characteristics, which are fundamental to PDC - these are referred to as the "**Guiding Principles**".

While each PDC is unique, experience points to a number of underlying guiding principles fundamental to the design and use of PDC and clear stages in building and using PDC. While these have evolved over time and have been articulated in different ways in different documents, a major national collaborative initiative (under the leadership of a National Task Force of which we were participating members as facilitators and trainers) involving the thirteen multi-stakeholder Canadian Round Tables and the Canadian Council of the Ministers of Environment developed what is widely regarded as perhaps the most concise, comprehensive, and authoritative statement of these principles. The document "*Building Consensus for a Sustainable Future: Guiding Principles*" (1993) describes the initial concepts that have evolved into the foundation of Participant Driven Collaboration

> *Irish dissent*
>
> *SIR - In order to have a commitment to a peace plan ("Talking to the IRA", December 4th) all parties must be involved in its construction. The model of organization behaviour applies here. If you formulate a plan for me, it is your plan. If we have a plan, it is our plan and you can count on my efforts to make it succeed. It is painful to acknowledge the terrorists on both sides, but if they are not part of the solution, they will remain part of the problem.*
>
> *WILLIAM CUSHWA* Youngstown, Ohio
>
> *- From <u>The Economist</u>, January 15, 1994*

While others have evolved similar principles and articulated them in different ways, what distinguish this work is the manner in which it was created, and the range and depth of perspective that was reflected from across the country in the consensus achieved. The challenges of sustainability will always present unique factors, and particular characteristics. Any process designed to respond to them will need to be specially shaped to meet the particular circumstances and players, the Guiding Principles set forth below in summary form offer guidance as to the characteristics necessary for any process designed to achieve consensus. The primary features of PDC are derived from these Guiding Principles.

Principle #1 - Purpose Driven

People need a reason to participate in the process.

The parties should have a common concern and believe that a consensus process offers the best opportunity for addressing it. This belief requires an informed understanding of consensus processes and a realistic view of available alternatives. If the parties conclude consensus offers a better option to pursue their interest, then a greater commitment to the process and its outcomes will be generated.

Business, government, non-governmental organizations, and other groups can apply consensus processes to a wide range of situations including planning and policy development, and regulation, licensing, and site specific development.

Principle #2 - Inclusive not exclusive

All parties with a significant interest in the issues should be involved in the consensus process.

Care needs to be taken to identify and involve all parties with a significant interest in the outcome. This includes those parties affected by any agreement that may be reached, those needed to successfully implement it, or who could undermine it if not included in the process.

It is sometimes appropriate for those representing similar interests to form a caucus or coalition.

When decisions require government action, the appropriate authorities should participate.

The integrity of a consensus process may be compromised if the parties are not given the opportunity to determine their representatives through their own processes and mechanisms, particularly in circumstances where the direct interests of the parties will be affected by the outcome.

Principle #3 - Voluntary Participation

The parties who are affected or interested participate voluntarily.

The strength of a consensus process flows from its voluntary nature. All parties must be supportive of the process and willing to invest the time necessary to make it work. The possible departure of any key participant presses all parties to ensure that the process fairly incorporates all interests.

Principle #4 - Self Design

The parties design the consensus process.

All parties must have an equal opportunity to participate in designing the process. There is no "single" consensus process. Each process is designed to meet the circumstances and needs of the specific situation.

An impartial person, acceptable to all parties, can be an important catalyst to suggest options for designing the process, but the ultimate control over the mandate, agenda, and issues should come from the participants themselves.

Designing a consensus process enables the participants to become better acquainted before they deal with difficult substantive issues.

It is important to take time at the beginning to:

- *define the issues clearly;*
- *assess the suitability of a consensus process for each issue - as opposed to other decision making processes;*
- *clarify roles and responsibilities for everyone involved;*

- *establish the ground rules for operating.*

Communications can be helped by establishing ground rules up front, and allocating time for the participants to appreciate each other's values and interests.

Principle #5 - Flexibility

Flexibility should be designed into the process.

It is impossible to anticipate everything in a consensus process. By designing flexibility into the process, participants can anticipate and better handle change when it faces them.

A consensus process involves learning from the perspectives of all participants. Feedback must, therefore, be continually incorporated into the process.

Flexibility is important. The initial design may evolve as the parties become more familiar with the issues, the process, and each other.

Principle #6 - Equal Opportunity

All parties have equal access to relevant information and the opportunity to participate effectively throughout the process.

All parties must be able to participate effectively in the consensus process. Unless the process is open, fair and equitable, agreement may not be reached and, if reached, may not last.

Not everyone starts from the same point - particularly in terms of experience, knowledge and resources.

For example:

- *the process involves time and expenses - resources that not all participants may readily afford*
- *the process revolves around the sharing of information on issues and impacts - something to which not all participants have ready access*

To promote equal opportunity, consideration needs to be given to providing:

- *training on consensus processes and negotiating skills*
- *adequate and fair access to all relevant information and expertise*
- *resources for all participants to participate meaningfully*

Principle #7 - Respect for Diverse Interests

Acceptance of the diverse values, interests, and knowledge of the parties involved in the consensus process is essential.

A consensus process affords an opportunity for all participants to better understand one another's diverse values, interests, and knowledge. This increased understanding fosters trust and openness which invaluably assists the participants to move beyond bargaining over positions to explore their underlying interests and needs.

Recognizing and addressing all relevant stakeholders' values and interests provides a basis for crafting creative solutions that are more likely to last.

Sometimes parties may be deeply entrenched in an intense conflict prior to a consensus process. Reaching a consensus agreement involves exploring and developing common interests despite differences in values.

Principle #8 - Accountability

The participants are accountable both to their constituencies and to the process that they have agreed to establish.

It is important that the participants representing groups or organizations effectively speak for the interests they represent. Mechanisms and resources for timely feedback and reporting to constituencies are crucial and need to be established. This builds understanding and commitment among the constituencies and minimizes surprises.

Given significant public concern about environmental, social and economic issues, keeping the public informed on the development and outcome of any process is important.

Principle #9 - Time Limits

Realistic deadlines are necessary throughout the process.

Clear and reasonable time limits for working towards a conclusion and reporting on results should be established. Such milestones bring a focus to the process, marshal key resources, and mark progress towards consensus.

Sufficient flexibility, however, is necessary to embrace shifts or changes in timing.

Principle #10 - Implementation

Commitment to implementation and effective monitoring are essential parts of any agreement.

Parties must be satisfied that their agreements will be implemented. As a result, all parties should discuss the goals of the process and how results will be handled. Clarifying a commitment to implementing the outcome of the process is essential.

The support and commitment of any party responsible for follow-up is critical. When decisions require government action, the participation of government authorities from the outset is crucial.

A post-agreement mechanism should be established to monitor implementation and deal with problems that may arise.

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FUNDAMENTAL CONCEPTS

Voluntary Participation: The Strength of the Process

Engagement

> *"Consensus means having all parties say yes; but yes is not meaningful unless they could have said no. Ultimately it is the freedom to participate or not that gives a consensus process its integrity and its strength."*

Getting parties to agree to engage in a participant driven process process can be difficult and fragile. The challenge is to engage parties to explore whether their interests could be served through collaboration without threatening those interests.

To assess the potential advantages and disadvantages of participating in PARTICIPANT DRIVEN COLLABORATION, parties need a good understanding of what it would be like to work with rather than against other parties. However, they will be reluctant to begin preliminary discussions if they risk being locked into a high-risk process. What must be made clear at the outset is that parties have the right to leave at any time – the right to leave is what makes it safe to come in.

The most effective way to begin calls for a series of exploratory meetings with key participants to discover if there is common interest in building a way with others to talk about shared challenges and concerns. The outcome of these individual exploratory meetings discovers whether the parties will attend a collective exploratory meeting, a meeting without any obligation to participate in further sessions. These steps help overcome parties' understandable reluctance to sit down with long-time adversaries. Representatives can credibly explain to their constituencies that no risk is involved: "We'll talk to them about the pros and cons of further meetings but stay free to say 'thanks, but no thanks'."

The voluntary nature of PDC provides several important elements needed to reach agreement.

> **1. ADDRESSES FEAR OF LOSING ADVANTAGES OR SUPPORT FROM CONSTITUENTS**… In many conflicts both sides may feel collaboration will mean compromise of certain advantages, interests, and even fundamental values. For example, project proponents with deep pockets and strong legal precedents may feel they will lose their advantage by sitting down with local opponents. Conversely, a local group opposed to a proposed development may fear that collaboration will lose them popular support and any high moral plane they may have achieved. In the midst of these fears, freedom to walk away from the process is crucial. Nothing can be lost by talking about whether to go on talking.

> **2. RETAINS RIGHTS** …Potential participants must remain aware that more conventional adversarial options are open to them by custom or even legal right. The voluntary nature of participation prevents the possible perception among stakeholders that such rights are being violated. It must be made very clear to parties that should they decide not to participate or if they fail to reach agreement , they will not have lost or diminished their ability to pursue their interests through other more conventional means.

> **3. INCREASES ABILITY TO MAKE INFORMED CHOICES …Struggling with difficult issues where relationships have become strained is the "stuff of negotiation".** Throughout the difficult moments of collaboration, the freedom to leave prompts parties to evaluate the benefits of staying. They will continually ask themselves whether their interests would be better served by being elsewhere and their best options if negotiations fail – what is sometimes called the BATNA or "best alternative to a negotiated agreement". Knowing this alternative gives each representative a baseline against which options under consideration can be measured. It is only meaningful if parties are free to pursue alternatives if negotiations fail.

4. ENHANCES CAPACITY TO SUCCESSFULLY IMPLEMENT AGREEMENT…The relationships among parties can be critical to successful implementation. Reaching agreement is an overriding objective, but equally important is development of positive, durable, and ongoing relationship between the parties, for any agreement to survive over the long term will ultimately depend on the resilience of the relationship. Again, voluntariness is a key to good relationships, while conscription is at best a shaky foundation. Understandings among parties who are forced to work together tend to be superficial compared to those that develop when parties want to cooperate

The decisions we are most committed to are those in which we participate most fully and freely. This is as true for groups as it is for individuals. If participation is coerced, the decision is not really ours and we remain ready to distance ourselves rapidly from any difficulties that arise in implementation. Conversely, if we enter an agreement freely, we bear responsibility for its fate and implications and so strive to make it work.

The Process Should Fit the Dispute

Many dispute processes fail because they engage the wrong participants addressing the wrong issues in the wrong forum. There are a variety of adjudicative, consultative and negotiation forums that can be devised which can contribute to finding the common ground, but they must be carefully and explicitly crafted for the process to maximize interests, produce innovative agreements, build the relationships necessary to implement both the spirit and content of the agreement and generate widespread acceptance and legitimacy for the outcome. Many attempts to resolve conflicts fail not because of a lack of will to agree or a lack of skills but because the participants have failed to define and agree upon a process that clarifies and embraces mutual expectations, aligns all actions to shared purposes and targets intended outcomes.

Clear and written understandings – sometimes referred to as ground rules or a protocol- can not only ensure that the participants are acting from a clear set of expectations but give momentum to the substantive discussions based on having reached agreement on a common set of understandings.

A PDC must be designed and operated by the parties. Only the parties can appreciate what is particularly important to include in the design of a process that will maximize their ability to reach and successfully implement their agreement.

BUILDING THE PROCESS IN THE IMAGE OF THE PROBLEM
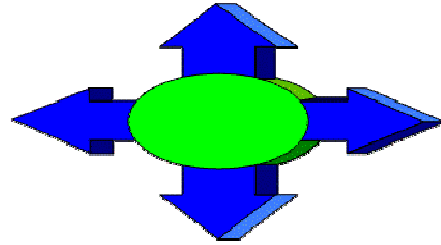
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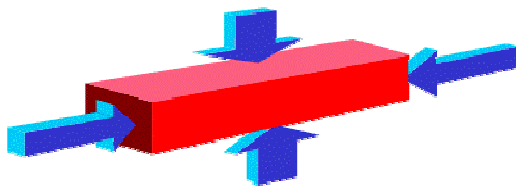
DEFINING THE PROBLEM IN THE IMAGE OF THE PROCESS

Collaboration Not Compromise

For many the term "compromise" conjures up visions of sacrificing good solutions for expediency and long-term solutions for "quick fixes".

No participant should agree to any outcome that does not enable he or she to discharge their obligations and responsibilities .In every situation there are likely to be interests that cannot and should not be "compromised" as the term is commonly used. These may involve questions of public responsibility and trust, legislation, or scientific and technical matters. **The participant's duty in the process if such circumstances are to say NO.** Inevitably, failing to do so will rebound for at some point the implementation of the outcome will be frustrated, the integrity of the process impugned, and the conflict re – ignited with even greater intensity.

It is necessary for the participants to be clear; both with themselves and others, on issues of principle or other matters, which are critical in determining whether or not, any agreement is acceptable. A focus on interests will help to define these areas. If the participants are able to agree on a definition of the problem, it is less likely they will find themselves in the position of compromising effective solutions.

In these important areas of public policy a sufficient measure of a success is not, "Everybody went away unhappy, so it must be a good agreement." The public, the participants and the issues deserve better and can achieve better through careful design of the process, a full consideration of all interests and a shared crafting of responsive solutions to all interests. Finally it is important to acknowledge what interests are accommodated.

Involvement Beyond Immediate Parties

Many conflict resolution training programs focus almost exclusively on "table manners" and reaching agreement between those "at-the-table". In reality this is often the least difficult area. Far more problematic is the ability of those involved 'at the table' to accurately reflect the interests and expectations of their principals and to shape those expectations in a manner that is conducive to reaching and supporting mutual agreements. Critical skills for all representatives 'at the table] include the ability to develop a team, and an internal support and communication mechanisms to ensure agreements reached externally are supported internally by the organization. Participants in the negotiation must maintain their relationships with their constituents or principals—those whose interests they are seeking to represent.

Focus on Interests of All Parties

Central to effective collaboration is building agreements between conflicting or competing interests—not to defeat or overpower. A critical participant skill is the ability to focus on the need to find areas of mutual interest and to remember that the real measure of' "success" is how well those interests are met. Indeed, it is often in the self-interest of each participant to help ensure that all participants achieve their essential interests if the agreements reached are to be stable. One of the basic concepts that underlie such a perspective is a focus on the "interests" or basic concerns and needs of the parties rather than the "positions" or the particular means of satisfying those needs that a party may independently devise. Careful discussion of the issues will often reveal that while interests may not be the same, they are not necessarily contradictory and that there may be means of achieving those interests that are less onerous or even **positive for other parties.**

Nevertheless, while the purpose is to find agreement, the participants need always be aware they neither must nor should reach agreements that do not meet their essential needs or responsibilities.
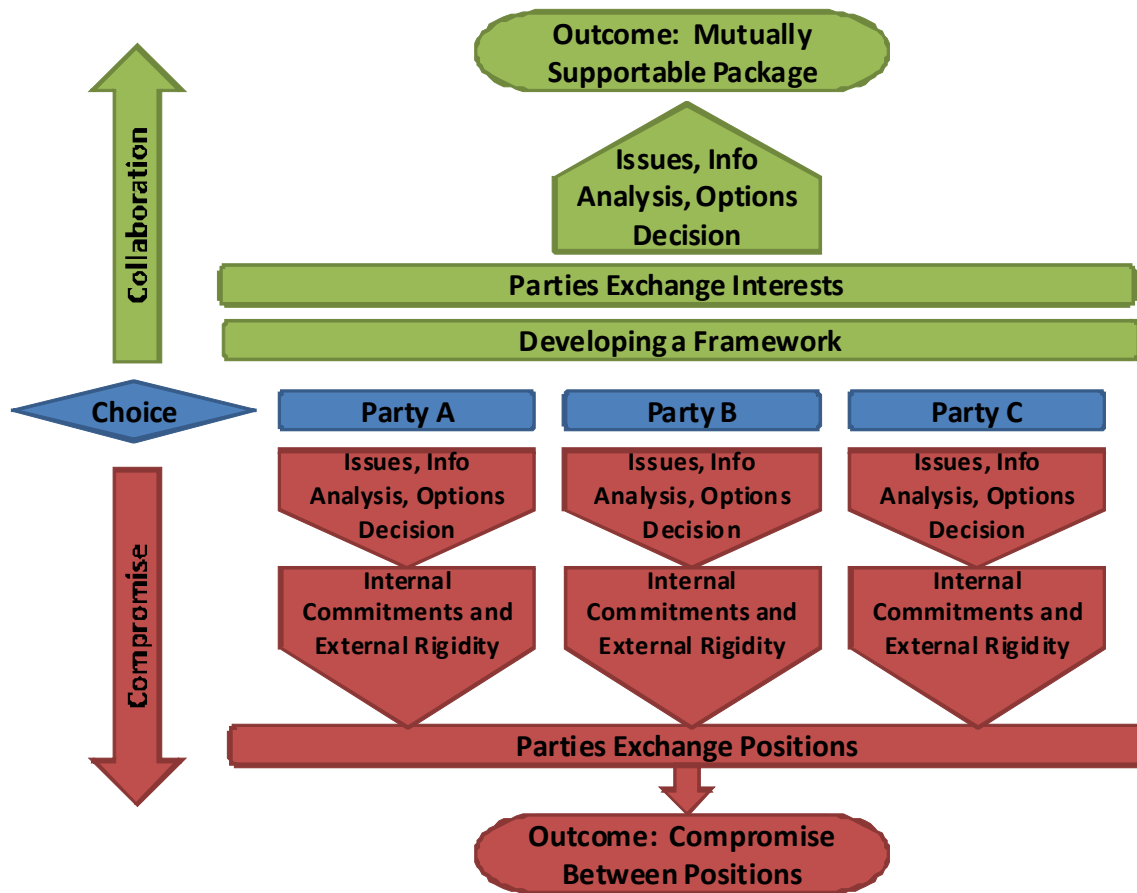
Resolution Without Voting

Voting, the usual alternative to breaking deadlocks has significant disadvantages on multi party collaborative processes. Where the participants know that voting is to be the process used, the inevitable pull is towards the

> *When we need to vote, democracy is finished*
>
> -Ancient Greek saying

organization of coalitions perceived to be "allied" to particular points of view, and inevitably "nose counting " between the coalitions as to when one can overpower the other through the force of " calling a vote". The goal becomes winning the vote- not solving the problem. This is especially likely to be the case in situations characterized by past conflict.

Unless there is unanimity, voting results in "winners" and "losers" and the rational approach to ensuring that one's own point of view will prevail is to gain adherents. This is too often done by polarizing the matter being considered into "right" and "wrong" and by attempting to discredit alternative positions. The issues that will be addressed in PDC are too important to be dealt with in this manner. In the

aftermath of a vote, as in all elections, outcomes are unstable as the losers are intent on finding ways to win the next vote

Conversely, where consensus is required participants are required to focus on how to address the concerns of those unable to support an emerging solution. The prevailing attitude becomes "If you have a problem, I have a problem." This brings a problem solving approach to finding solutions, building a working relationship and team approach rather than maintaining an "us vs. them" mentality.

Importance of a "Veto"

In developing a process for collaboration, unanimity or, conversely, granting a "veto" to each participant (and most often in the context of sustainability disputes like fisheries, the participants are groups and organizations with similar interest, not individuals) , has important benefits. The veto "levels the playing field." For a defined period of time on the issues that the participants have agreed to address, they participate as equals. The reality of an ability to exercise a veto can encourage a process whereby each of the participants has a concern for and self-interest in crafting a solution that meets the needs of the other interests, rather than merely seeking to gather adherents to their side of the issue. The number of adherents to a particular position, if short of unanimity, does not constitute agreement.

The need for a collaborative process often arises when a single group or key individual has failed to produce an acceptable solution or has effectively vetoed or blocked either indefinitely or for extended periods the resolution of an issue.

Experience indicates that where participants have the assurance of knowing that they cannot be over-ruled they tend to be more open to considering alternative points of view and exploring different solutions. It is, however, useful to craft an explicit means of addressing disagreements that remain by developing a safety net within the process to resolve disagreements in a timely fashion. For example one process used the following protocol;

"Should only one or a very few participants be in the position of preventing a consensus being reached, they shall have the responsibility to either show why they or their constituents are peculiarly impacted or why the situation is a matter of such principle or potential negative consequences that they must prevent a consensus."

This clear articulation of how to address outstanding issues inevitably led to crafting means to address them. Such discussion gave sufficient level of comfort that the individual(s) were able to accept a consensus.

A particular distinguishing feature of collaboration from winner takes all processes is the ongoing responsibility in a collaborative process to do whatever can be done to discover ways to accommodate outstanding issues both before a final agreement is reached and after agreement throughout implementation of the agreement. Thus the process does not leave in its wake the 'Losers' to make the best of what they have but constantly seeks ways to accommodate these interests.

Avoiding Lowest Common Denominator Outcomes

The concern is often raised that collaboration leads to "lowest common denominator decisions". In our experience, the opposite tends to be true. The joint problem solving that is encouraged by a consensus process tends to result in better decisions than would be feasible where one party attempts to devise and implement a solution, often in the face of potential challenge. Perhaps the best guarantee that "good" solutions will be found in building the collaborative membership to ensure that agreement is unlikely on solutions that have little value or are based purely on compromise and accommodation.

The Journey to Consensus

Consensus within PDC can be defined in a number of ways. Participants are free to define the term in any way they wish, provided that there is unanimous agreement to that decision. Many different methods have been developed in different settings to reach a practical and acceptable consensus.

1. ACCEPTING THE 'PACKAGE'

Multi party processes striving for sustainability on environmental, economic and social fronts involve a complex set of issues stemming from diverse interests and the difficult choices framed by past practices, current demands and future needs. Within these processes a consensus is reached when the participants reach agreement on a set or package of provisions that address the entire range of issues. The participants may be more or less supportive of any single element of an agreement but, as a package, are able to support the total. It is important to recognize this concept in how any PDC defines consensus for reaching agreement. For example below are some examples of definitions of the consensus needed to reach agreement used in different processes;

> *"All positions and agreements on specific issues or sets of issues are tentative and may be modified until there is consensus agreement on a total acceptable package addressing all issues."*

> *'Each interest caucus shall ratify or decline to ratify the final document as a whole at the end of the process."*

It is sometime said of negotiations "if everyone is unhappy, it must be a good compromise". While this may be sufficient in some situations, many solutions to complex disputes may require the active support of participants to ensure that the actual implementation process proceeds. Clearly, a veto exercised by a defined entity in consensus signals disagreement. However, because the participants are dealing with a number of issues it is likely that within the overall package, on an item-by-item basis, their support will range from enthusiastic to luke-warm to "willing to live with it" in the context of the overall package agreement. However, it is important that the level of support for the total package or agreement be sufficient to ensure its implementation.

2. Can there be less than "100% agreement"?

It may be appropriate to craft provisions to enable the participants to achieve consensus even in the absence of total agreement or closure on every issue. Indeed, in some cases, the participants may not be able to reach closure because of the need for additional information or other factors. It is important that the participants address several concerns in determining how best to incorporate the possibility of less than 100% agreement on all issues. These include avoiding falling into a "how many for and against" definition of lack of agreement, not making such provisions an "easy out" from difficult choices, not agreeing to all the easy issues and "punting" on the important ones, and how to record and provide for lack of agreement. Typical language used in other processes to recognize and address such concerns includes the following:

> *"In the Absence of consensus, we will describe areas of agreement and disagreement; agreeing on where we disagree as well as where we agree. Every effort will be made to clearly and fairly state all points of view".*

> *"There will be a single final report agreed to by the parties, encompassing both agreement and any disagreement, not majority and minority reports."*

> *"Should only one or a very few participants be in the position of preventing a consensus being reached, they shall have the responsibility to either show why they are differentially impacted by a situation or that the matter is one of such principle that they must prevent consensus. If they are unable to demonstrate one of these conditions, they will be expected to abstain from opposing or support a consensus".*

SUMMARY OF PDC CONCEPTS

PARTICIPANT DRIVEN COLLABORATION is qualitatively different from other processes, and a critical element in that difference is the ability of any single interest to prevent a mutually acceptable outcome. Each defined participant has an effective veto. This requirement that unanimity be achieved is often viewed as an impractical or unreasonable test. However, experience suggests that the use of consensus can be both necessary and practical in resolving public interest conflicts.

Participant Driven Collaboration temporarily levels the playing field, suspending power imbalances for as long as the process continues. However, power is neither eliminated nor neutralized, it simply gets "parked" outside

In summary, PDC provides a necessary set of guiding principles, and a four-step process containing procedures and standards that provide the essential foundation for the parties to design and operate a process for reaching a mutually supported agreements and the resolution of disputes. Adjudicatory or voting processes are antithetical to the very nature of PDC. Where there are votes, "winners" and "losers" are explicitly defined. This can lead to lessened support for implementation of solutions -- and

even to the "losers" preferring that implementation fail. As with any other processes, PDC can -- and, at times, should -- fail. However, when they fail, participants will have recourse to other alternatives for making decisions, including administrative, legal and political forums. These alternative forums provide the impetus for disputing parties to seek mutually agreeable solutions through collaboration. In many cases in the aftermath of these processes that fail to reach agreement the relationships and understandings developed in the process lay the foundation for finding ways to work through challenges in the future.