

Written Statement

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I would like to thank the U.S. Commission on Ocean Policy for this opportunity to present testimony on this very important topic. I would also like to applaud the Commission for this series of regional, public meetings. It is critical that deliberative bodies of this kind expend the time and resources necessary to get out of Washington and interact directly with the people and issues of importance to their work. I am particularly pleased that the members of the Commission have taken the time to conduct site visits here in the Pacific northwest – visits designed to bring you into direct contact with the creative and innovative people who are grappling day-to-day with the issues being addressed by the Commission and by this panel in particular.

I know that a short biography has been sent along to the Commission, but I thought it would be helpful to briefly summarize my experience and perspective. I have been serving as a neutral third party facilitator and mediator for just over twenty years. My work has been primarily in the realm of environmental and natural resources – focusing on both policy level and site-specific applications of innovative processes

designed to resolve difficult, multi-party disputes and issues. I have worked in situations involving a wide range of natural resource and environmental concerns including endangered species, watershed management, hazardous waste management, air policy, agriculture, food safety and industrial operations among others. This experience has provided me the opportunity to be directly involved in scores of situations involving diverse parties who care deeply about their “cause” -- be it cleaning up a local stream, rebuilding a salmon run, carrying out their responsibilities as a government employee, conducting high quality scientific research, or achieving the mission of their company. It has also afforded me the opportunity to see first hand the complexities and challenges associated with the role of government in these environmental and natural resource based issues. I have great admiration for government employees at all levels of scale and responsibility who are charged by all of us to “manage” our natural resources in a responsive and responsible manner – while at the same time receiving “direction and feedback” from those passionate individuals that I just described.

The goal of my work over the years has been to assist in designing and implementing collaborative decision making processes that can assist people to express their interests – what it is they care about – in an open, honest, and direct manner that can contribute to finding outcomes that are not limited to “zero-sum” outcomes, but rather result in the satisfaction of a wide range of interests – and, to quote one of my mentors and one of your fellow Commissioners, Bill Ruckelshaus, be “efficient, effective and fair”.

These processes have been described using many different words, including; dispute resolution, consensus building, roundtables, and negotiated agreements. My

current favorite is “collaborative problem-solving” approaches – I like this term because it communicates that the essence of what is being done is that people collaborate -- work together to solve problems – the focus is on working together and on problem-solving – not on the “process” itself.

What do these “collaborative processes” look like? How are they different from the traditional ways in which policy and management decisions are derived and implemented? In short, I would say the primary way in which collaborative approaches differ from traditional decision making approaches is the fact that collaborative approaches directly involve affected parties in the design of the outcome – rather than relying on others to assess the situation and develop approaches which are then only subject to public comment, but not true involvement by those who will most likely be most directly affected by the decisions being made.

To elaborate a bit further -- my experience has led me to think about several critical elements that I refer to as the six “I’s” that can both help describe what is meant by a collaborative approach and which appear to be key to the successful design and implementation of these types of collaborative processes:

- Issue
- Involvement
- Interests
- Incentives
- Information
- Implementation

I would like say a few words about each of these and then provide to the Commission some specific suggestions regarding how the Federal, and perhaps other levels of government, can assist in creating a fertile environment for these processes to be established and successful in achieving their objectives.

Issue: For any decision making process to be able to function effectively, it is important that the issue being addressed be clearly understood and boundable in some reasonable fashion. This is particularly true in the realm of natural resource and environmental issues which can quickly appear to become unwieldy because, as an introductory ecology student of mine once said, “everything is connected to everything”. One of the interesting aspects of collaborative processes is that the parties themselves can have a role in defining what the issues are, rather than having that decision made by others and presented to the “outside” parties as a given. This not only is important in establishing a sense of ownership over the eventual decisions (a non-trivial point), but it also often leads to a more finely crafted understanding of what the issues actually are. The very framing of the issue can benefit significantly from the direct involvement of those who are closest to the problems.

Involvement: A key element of collaborative approaches is that they directly involve the parties who care about the issue at hand – not their surrogates. This is a critically important factor in the capacity of this mode of decision making to address these complex and controversial natural resource issues that affect and by definition involve so many diverse parties.

Interests: I define interests as the needs and concerns that people care about. Interests are the underlying reasons why something is important – this is to be contrasted

with positions – which are the words people use to manifest their interests. For example; – I care about restoring a salmon run because I love the fact that the salmon are there and I fish for them and enjoy that – those are my interests. However, in a decision making forum I might very well express those interests as a position: “I do not want this development project to go forward”. The problem with that positional statement is that it does not provide any useful information from which a remedy can be formulated – interests when carefully articulated and understood can do that; positions usually cannot.

Incentives: My experience is that people do not engage in the hard work associated with really trying to solve problems without having sufficient incentives to do so. Consensus does not “arise”, it has to be worked on – people working together. These incentives may come from a person thinking carefully about what their alternatives really are – not compared to perfection, but as compared to what is likely to happen should no agreement be reached. Faced with a less desirable choice, a potential path forward may look better. In other cases, incentives can be effective because they offer a greater degree of certainty, control or resources to the parties.

Information: Perhaps one of the most common characteristics of natural resource and environmental issues is that they almost always involve at least some element of scientific uncertainty. Therefore, it is critical that decision making processes designed to address these types of issues have the capacity to bring accurate, timely and enlightening information to bear on the problem-solving process. Collaborative approaches are particularly well suited to addressing this need. A group can work together to carefully define what the questions are that need to be addressed. They also can find people to provide expertise whose background and experience are acceptable to all parties or if a

range of experts are needed, that list can be developed by the group – either approach can help to avoid or at least temper the traditional “dueling experts” dynamic that so often takes place.

Implementation: No agreement on a collaborative outcome is worth anything much if it cannot be effectively implemented. As noted above, one of the strengths of collaborative approaches is that the parties themselves, not their surrogates, are usually the people who reach the agreement and they are also the individuals who are responsible for their implementation. This provides an opportunity for creative and innovative approaches to ensuring ongoing monitoring and implementation.

So, what can the Federal government do to help establish and contribute to the success of these approaches? I would like to note that a number of the suggestions that I am about to share are drawn directly from the results of the National Watershed Forum which was held in June, 2001 – convened by the Environmental Protection Agency in collaboration with 14 other Federal agencies. My organization, Meridian Institute, served as the organizer and facilitator of the event. Over 450 individuals drawn from citizen based watershed initiatives, all levels of government, NGOs, the private sector and academia participated in the Forum. The goal was to share experiences regarding what has worked (and not worked) and to formulate specific action recommendations directed at a range of sectors, but most importantly at the Federal government regarding what can be done to strengthen and broaden the use of collaborative approaches in the watershed context. To quote from the Executive Summary of the Forum Report:

Despite billions of dollars invested over the last several decades in reducing pollutants from point sources, many problems remain such as siltation, nutrients, pathogens, and metals, as well as critical habitat loss. Local citizens are increasingly forging partnerships to help address the complex problems affecting their water

resources. The U.S. EPA estimates there are more than 3000 local watershed groups nationwide. The proliferation of these groups is changing the nature of environmental protection. These watershed partnerships provide those people, who depend on aquatic resources for their health, livelihood or quality of life, with a voice in decision making processes and a responsibility for the management of these resources.

Reflecting on the six “I’s” which I briefly described above I would like to suggest to the Commission for your consideration a number of potential recommendations and actions that could be taken by the Federal establishment. I will refer to recommendations that were made by the participants in the National Watershed Forum as being from the Forum:

Issue: The Federal Government, in collaboration with its partners in the states and tribes, can be extremely helpful in assisting in establishing rational boundaries and definitions of an issue or problem which is a very important first step in the establishment of a collaborative process. One very important way that the Federal government can assist in establishing a clear definition of the issue is to bring the parties at interest together to discuss their views regarding the most appropriate framing of the issues. Even if this is the only “collaborative” step that is taken, it can contribute in important ways to helping those affected understand the decision making process as it unfolds. Another very important action that should be taken by the Federal government is to establish effective means of coordinating between the various governmental entities that very often have overlapping or at least coincidental jurisdictions. Far too often, the definition of the “problem” is dominated by “turf” issues, rather than by the substance of the issue at hand. As we all know, ecosystems do not respect these governmental boundaries and therefore government needs to continue to improve its ability to create

coordination mechanisms that are more responsive to “natural” boundaries. In this spirit, Forum participants recommended that:

- Federal natural resource agencies and tribes work collaboratively to develop a process to achieve coordination through inter-regional and interagency teams to address ecosystem problems that extend beyond governmental boundaries and agency jurisdictions.

Involvement: There are several ways in which the Federal government can assist in encouraging and defining appropriate involvement in collaborative approaches. First they can work to clarify and define their own roles and responsibilities with respect to the creation and support of local watershed partnerships and collaborative processes. For example, the Forum recommended that:

- Federal agencies should establish a lead person in every local office (e.g. Extensions – land grant and sea grant, Resource Conservation and Development Councils (RC&Ds), conservation districts, etc.) responsible for working with watershed groups.

Second, in many cases there may be opportunities for the Federal government to provide financial support to assist diverse involvement in local watershed partnerships. This would include support for groups or individuals who might otherwise have difficulty covering the basic costs associated with their participation in local watershed efforts. In some cases the support need not be financial; in-kind services such as providing meeting room space, facilitation assistance, or technical resources can be of enormous value.

With respect to increasing the resources base for local watershed efforts, Forum participants recommended the following kinds of actions be taken:

- Simplify; make more accessible, timely, flexible and transferable; and expand existing federal grant programs. Assess the effectiveness of similar existing programs (e.g., Community Development Block Grants) to determine what has worked well and how those approaches might be adapted for this purpose. Strategies recommended included:

- Lower funding matches to a minimum of 20% across the board.
- Encourage pre-proposal concept papers for requests for proposals.
- Establish micro-grants.
- Allow 15-20% overhead in grants.
- Make Transportation Equity Act (TEA) 21 funds more accessible and easier to obtain by watershed groups.
- Encourage more states to allow a portion of Section 319 Clean Water Act (CWA) funds to cover administrative costs.
- Address problems associated with local watershed groups obtaining Corps of Engineers funds.
- Find ways watershed initiatives can use Federal Emergency Management Agency funding, which is available during emergencies.
- Utilize monies obtained through fines and penalties in support of watershed activities.
- Explore opportunities for use of funds like those provided by the Conservation and Reinvestment Act in coastal areas.
- Allocate monies in the Abandoned Mine Land Reclamation Fund back to the states so that it can be used in support of watershed activities.
- Establish a Watershed Restoration Trust Fund similar to Superfund.
- Allow local jurisdictions more room to maneuver in fulfilling drinking water source area protection priorities by building flexibility into programs like Community Development Block Grants, Appalachian Regional Commission's Revolving Loan Fund, Conservation Reserve Program, Economic Development Administration (EDA), Department of Transportation (DOT) programs, etc.
- Provide watershed groups with financial support when they are asked to perform services, such as commenting on regulations or providing guidance or participation in projects, for units of government.

Interests: Gaining an understanding of interests rather than commonly stated positions is not necessarily a straightforward process. Parties are often uncomfortable sharing this type of information when there is little or no trust between them. The Federal government can either assist in establishing trusting relationships or, as has too often been the case, it can unintentionally exacerbate existing tensions and mistrust. I have often worked with groups where someone will say, "how come they do not trust us?" My response is that "you do not gain interest on your trust fund, unless you make a deposit". Trust is not something that you can force to happen – it is built on the

foundation of people taking risks together. While I know it is challenging given the legal constraints faced by Federal agencies, I would strongly encourage those in the Federal sector to be willing to take some risks – nothing builds trust at the community level faster than a representative of the Federal government being willing to say – “I will work with you on this – I am not sure of the all of the legal details, but I will work to move this approach forward if all of you support it.” Specifically, the Forum recommended the Federal government:

- Empower agency representatives who work with watershed groups to make decisions and commitments and to clarify what decisions they can and cannot make.

Once an atmosphere of trust is established it becomes much easier for parties to express what really matters to them – to talk about their interests. It is important that the representatives of the Federal government also express clearly what their interests are. Too often the agency representatives stand outside a process and do not put on the table what interests they need to satisfy – and that can lead to serious misunderstandings. Experience shows us that it is in this realm of eliciting expressions of interests that the use of certain group process techniques can be of assistance. To assist in establishing good practices in this arena, the Forum recommended that the Federal government:

- Assist in building sustainable, local capacity by funding leadership and facilitation training using the following strategies:
 - Use of trained agency conflict resolution specialists to support watershed initiatives.
 - Establish a toolbox that provides methods, techniques, materials, approaches, etc., for developing and delivering facilitation skills and training.
 - Create a web-based list of names and resources for facilitation.
 - Allow collaboration and facilitation training to be an expense in applications for federal grants.
 - Work with universities and colleges to establish collaborative education programs that address watershed issues.

Incentives: This is an area where the potential for creative and innovative actions by the Federal sector is particularly significant. In many cases, the Federal government is quite appropriately the final decision maker. However, this does not mean that the government has to make these decisions in a traditional “top-down” manner. There have been a number of cases where a Federal agency has said to stakeholders – “We need to meet these basic legal and scientific requirements – you all work together and develop an approach that you all support and that is the result we will take into the formal decision making process”. This strategy creates very powerful incentives for the parties to work toward an mutually agreeable outcome – they now have some control over what is going to happen – that means a great deal to people and has been shown to motivate them in significant ways. This approach can be very scary for Federal decision makers – they feel like they are giving up control – but they are not. They still will make the final decision – but by using this strategy they have a chance at making a decision that will actually be supported by people rather than challenged. With this type of approach in mind, the Forum recommended that:

- Concerted efforts should be undertaken to be proactive in species conservation by, for example: using the Coordinated Resource Management Plan (CRMP) process to focus on species conservation; training federal employees on the proactive parts of the ESA; modifying best practices to include proactive elements, and conducting and publicizing case studies that demonstrate effective proactive approaches.

Other ways in which the Federal sector can provide incentives include the provision of resources, research support, and training, which I have mentioned earlier. Another strategy that has shown its effectiveness is the streamlining of administrative processes. The Forum recommended consideration of:

- “One-stop-permit shopping” to remove regulatory disincentives to habitat protection and restoration projects, by developing a clearinghouse for permit processing while avoiding a one-size-fits all approach. This is not designed to result in fewer permits, but rather in a central coordination body where permits can be sent and reviewed efficiently. This has been done in several regions among federal agencies for certain projects, but this approach should be institutionalized.
- Establish interagency/inter-jurisdictional technical review teams to assist in early project design to streamline approval.

Information: The Federal government clearly has tremendous capacity to produce and analyze information that is critical to the management of our natural resources. Significant attention should be paid to how this capacity could be more effectively utilized to support local watershed collaborative efforts. If the Federal government can develop clear scientifically based goals which need to be achieved in a particular watershed – be they focused on fish populations, habitat restoration or whatever – that information can provide a vital “framing” component that can be critical to the success or failure of a collaborative effort. The establishment of these types of goals in combination with the willingness on the part of the Federal decision maker to take some risks can lead to a scenario where the local watershed group can be given an opportunity to figure out how they can work together to reach the desired goal without the Federal government defining that path. You have heard examples of how this approach is being tried in this region – I believe it is very exciting and offers a tremendous opportunity to remake the way in which government catalyzes action.

With respect to the role of the Federal government in this arena, the Forum recommended that the Federal government:

- Clearly define the purpose(s) of data collection and monitoring, and correlate them with decision making systems. Consider a spectrum of purposes from

awareness to support for legal actions with each point along the spectrum correlating with different data collection and monitoring approaches.

- Support the development of criteria, protocols and methodologies to create a consistent/compatible scientific approach to listing and de-listing water bodies among states. Develop consensus around criteria for prioritizing water bodies to include on national 303(d) lists.
- U.S. Fish and Wildlife Service (FWS) and National Marine Fisheries Service and other appropriate agencies should modify the existing process for developing Biological Assessments and developing and implementing Biological Opinions on national, regional, and local levels by:
 - Ensuring that Biological Assessments include information derived from local expertise and experience based on cultural and traditional knowledge in addition to scientific data, and include long-term and cumulative effects in so much as they can be reasonably determined both spatially and temporally.
 - Modifying the Biological Opinion process to include public input and an appeal process when agencies or the public feel the unsupported conclusions have been included in the Biological Opinion.
 - Including peer review of scientific data when there are differences in interpretation of scientific data used in decision making.
 - Instituting requirements that Biological Opinions include binding commitments for follow-up monitoring and subsequent adjustments and corrective actions.
 - Conducting comprehensive Biological Assessments leading to Biological Opinions independent of limiting political and economic influences.

Forum participants were very supportive of the use of volunteer/citizen efforts focused on data collection and monitoring – which are, of course, critical components of an overall strategy for understanding the scientific basis of decision making and program implementation. Specifically they suggested that efforts be made to:

- Address the myriad of issues associated with volunteer/citizen data collection and monitoring, including acceptability and credibility of data by implementing the following suggestions:
 - Encourage the development and implementation of performance-based methods for data collection. Provide flexibility in the methods for regional variation. Establish standards for modeling.
 - Use circuit riders to train volunteers at the local level.
 - Agencies should contact local watershed groups when sampling in their area.
 - Agencies should identify a staff person to be an active “part of the team” at the regional or state level to provide support and guidance and to advocate for citizen stewardship.

- Develop state-specific handbooks and guidelines that address issues such as protocols, data elements (more than chemical monitoring), and the role of traditional ecological knowledge.
- Develop a technical support center to assist volunteer monitoring efforts in producing quality data that states can use.
- Increase resources available for volunteer data collection and monitoring.
- States need to create a system for evaluating data so that data collected by volunteers is not automatically discarded.
- Create an on-line clearinghouse that links together data from various sources and provides an opportunity to share data. Training must accompany the clearinghouse to help people access and share data.
- Diversify partnerships in collection to include agriculture and business. Provide incentives for schools, looking for support, to become involved in processes to improve citizen monitoring.

Implementation: While on the face of it, implementation would appear to be the most straightforward aspect of public policy, we all know that the reality is very much the opposite. Successful and sustained implementation of effective management approaches for watersheds poses significant challenges. Often even when agencies have managed to work effectively together on the formulation of policy or strategy, it is very difficult for them to maintain that coordination and collaboration in the face of budget realities, changing political leadership and classic turf struggles. It is very important that the Federal establishment explore and implement new ways of overcoming these obstacles because the failure to effectively implement can very quickly erode whatever trust has been established through a collaborative approach.

Federal agencies should explore creative ways to increase inter- and in some cases intra- agency coordination to assist in establishing effective, ongoing monitoring and implementation of policies and programs in the field. Interim milestones should be established so that both governmental decision makers and other stakeholders can measure progress and assess (hopefully collaboratively) progress and determine where appropriate course corrections need to be made. The Federal sector should also work to

establish effective public-private sector partnerships which can facilitate effective implementation.

With an eye towards increasing the effectiveness of program implementation, the Forum recommended that:

- Establish a “clearinghouse” to provide one-stop shopping that would enhance the flow of information about watershed protection and restoration, technical assistance and funding, and other relevant data. Delegates encouraged the development of a strategy to institutionalize the dissemination of information about effective watershed management strategies by establishing such a nationwide clearinghouse. EPA, National Oceanic and Atmospheric Administration (NOAA), and U.S. Geological Survey (USGS) should develop a Geographic Information Systems (GIS) website that watershed groups and local communities can access. Local, state and federal levels should then work together to fill in gaps. Training must accompany the clearinghouse to help people access and share data.

- EPA, U.S. Department of Interior (DOI), DOT, USGS, U.S. Bureau of Reclamation, U.S. Department of Housing and Urban Development, USDA, NOAA, Department of Energy (DOE), U.S. Department of Defense (DOD), the CEQ and all other federal agencies and organizations that oversee or use water should form an inter-governmental group or caucus to provide assistance to state, tribal, local government, and private watershed interests for protecting instream flows and related watershed issues, insuring that the federal government has abided by existing laws and regulations associated with instream flow protection.

Those of us who have had the opportunity to work with people who care deeply about the resources they live within, rely upon for their livelihoods, or are responsible for managing know that decision making processes which are robust enough to include them directly provide perhaps our best hope of effectively managing and stewarding our natural resources. I hope the ideas I have shared with all of you today have provided the Commission with specific actions that the Federal government can take to encourage and support this very exciting and effective strategy for dealing with these critically important natural resources.

