

1 The Challenge of Public Consultation

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Introduction ([Index](#))

Public involvement in environmental management is undergoing a fundamental change. In many cases, the old notion of seeking public approval at the end of a planning process has been replaced by a struggle to capture broader views earlier on. Affected citizens are also pushing to establish their role as contributors throughout an entire planning process, from shaping the options to reviewing operational details.

This chapter surveys different forms of public involvement, proposes a practical definition of public consultation, weighs the long-term benefits of public consultation against immediate costs, and concludes with an optimistic look forward: Moving beyond consultation to effective collaboration.

The Many Faces of Public Involvement ([Index](#))

Any group of people develops some ground rules for getting along and getting through their days with some level of comfort and dignity. As the group grows larger, formal systems of governance take shape to coordinate the day-to-day interactions of people among each other and with their environment. The resulting laws, regulations, policies, and guidelines influence the myriad practical decisions that have to be made every day by somebody, somewhere, and that affect us all in direct and indirect ways (e.g. food additives, traffic regulations, transit systems, hospital budgets, high school curricula, research priorities, building codes)

Each strand in this web of governance would ideally be based on informed, unanimous consent by all those affected. This ideal is obviously unattainable for any group of independent individuals, but meaningful public involvement in the development of laws and regulations should help us move towards a sort-of approximation of this lofty goal.

This e-book is intended for participants in a planning process where a government agency is making efforts in good faith (the legal sense) to include the broader community. In this first chapter, we discuss materials from *Environment Canada*, *Health Canada*, and *Fisheries and Oceans Canada*, and use examples of planning processes involving those agencies. The remaining chapters cover concepts that are broadly applicable, such as risk and uncertainty, and make use of diverse examples.

Please note that we focus on the part of environmental management where a group of people has already come together to tackle a particular challenge. This e-book does not address the more tumultuous aspects of environmental issues (e.g. conflict resolution, media relations, protests, lobbying, litigation). However, we briefly touch on that side of things while discussing the costs and benefits of public involvement [below](#). The case studies listed in [Appendix 1](#) are a good starting point for more information.

There are many different forms of public involvement, and no single structure or process is necessarily a good fit for a particular situation. The five questions in [Table 1](#) can be used to distinguish public processes based on their structure and intent. [Box 1](#) applies this checklist to a few illustrative examples.

Table 1: Checklist to distinguish public processes

<i>How are participants selected?</i>	<ul style="list-style-type: none">- randomly sampled- self-selected (e.g. a meeting open to all interested individuals)- invited (e.g. based on their expertise and local knowledge)- nominated (e.g. within an interest group)- elected (e.g. harvester association)
<i>How does information flow between the lead agency and participants?</i>	<ul style="list-style-type: none">- public release of lead agency's data and operational plans- information exchange between lead agency and participants- recommendations by participants are clearly documented and circulated- participants' preferences are formally elicited- formal voting on alternatives or acceptance/rejection of proposals
<i>How much opportunity for deliberation is available to participants?</i>	<ul style="list-style-type: none">- immediate response- debate in a workshop setting- opportunity to confer with others and reconvene- open ended (e.g. deliberation continues until consensus or compromise)
<i>At what stage in the planning process does public involvement occur?</i>	<ul style="list-style-type: none">- early: concepts and initial planning- middle: draft options have been developed, but are open to revisions- late: during implementation of a final plan
<i>What is the focus of the process?</i>	<ul style="list-style-type: none">- operational details (e.g. timing and gear restrictions in a commercial fishery)- means (e.g. guidelines for adjusting harvest levels as estimates of salmon abundance change during a fishing season)- goals (e.g. policy for conserving wild salmon)

Box 1: Some Forms of Public Involvement

Public review

An agency might post a draft policy online and invite written public feedback over a period of several months. In this case, participants are self-selected from the general public and information flows mainly from the agency to the public. Participants have extensive, but unsupported, opportunity to consider their response. The public is involved in the final stage of a long process, and feedback focuses on big-picture goals.

Survey

An agency might host focus groups or conduct opinion polls to gauge public support for a proposed project. In this case participants are selected as a representative sample of a larger population (e.g. city neighbourhoods, northern coastal communities), and preferences expressed by participants feed back into the planning process. However, feedback is generally based on immediate reaction to a standardized information package rather than careful consideration and debate. The public is involved in the middle of the process, after a detailed proposal has been developed, but before actual implementation or construction has begun.

Planning Workshops

An agency might host a series of workshops to review technical analyses and develop a management plan. In this case, participants are selected based on their knowledge and affiliations. Information flows from the agency to participants in the form of preliminary analyses and a draft management plan, but information also flows back from participants to the host agency through suggestions for additional analyses and policy recommendations. The agency is seeking feedback on both the goals (e.g. target abundance of fish in a watershed) and the means (e.g. options for habitat improvement). Interaction between the agency and participants may be on-going (e.g. Early scoping, draft alternatives, several rounds of revisions, and during implementation) and involve several established advisory bodies.

Referendum

This typically happens at the end of a lengthy policy debate, if the other forums of public participation were unable to resolve fundamental disagreements about long-term goals. Complex issues have to be reduced to a few options or a single Yes/No question. Information flows from proponents of each option to the general public via extensive information campaigns. There is ample opportunity for deliberation, but responses are limited to a single checkmark on a ballot box. While referenda have the broadest public involvement short of an election, they also carry the largest amount of sunk costs (See [Box 3](#)). Within a referendum there is a no room for compromise, and it splits the public into two adversarial groups.

Public Consultation - What is it? ([Index](#))

Public involvement frequently occurs under the general umbrella of "consultation", but organizations differ greatly in their interpretation of the term. For example, *Environment Canada* defines consultation broadly as "providing opportunities to influence decisions before they are made", but *Health Canada* explicitly states that consultation covers a range of activities from simply surveying public views to engaging the public in planning and implementation. Given this range of viewpoints, all or none of the processes described in [Box 1](#) qualify as consultation. The [Online Resources](#) at the end of this chapter link to consultation policies and supporting materials from several Canadian government agencies.

The legal context for public consultation in Canada is both clear and vague.

There is a clear requirement for public consultation on environmental and health issues, and a far-reaching obligation for consultation with Canada's First Nations regarding any potential infringement on aboriginal rights. For more detail, see the general [Guidelines for Effective Regulatory Consultation](#) and the recent [Federal Guidelines for Aboriginal Consultation](#) in Canada.

However, the legal standard for consultation processes is vague, and we are not aware of any definitive criteria that have been established in terms of participant selection, information flow, opportunity for deliberation, stage of involvement, and focus. In controversial cases it becomes a matter for the courts to evaluate after the fact whether or not a particular planning process involved adequate consultation with affected groups and individuals. Generally, the burden of proof falls on the lead agency to document how public views were elicited and how they were incorporated in the final decisions. For example, fishery closures implemented by *Fisheries and Oceans Canada* have been challenged in court by harvesters and the case can hinge on the exact chronology of who was involved in which discussion, and how the concerns of different groups were balanced against each other in the face of uncertain information.

Every one of these legal precedents shapes the implementation of subsequent planning processes, and influences tactical decisions by the lead agency as well as participants.

Canada is still working towards an explicit legal benchmark to define what adequate consultation **is**, but over time we have gained a better sense of what consultation **isn't**. Public consultation does not have to continue until all affected individuals, or a majority of them, agree with a proposed action. Consultation can be adequate if it involves representative organizations and does not have to include all affected individuals. Finally, consultation is not binding, and the lead agency is not obligated to implement every recommendation put forward by participants during a consultation process.

In summary:

Consultation ≠ Consensus

Consultation ≠ Majority Vote

Consultation ≠ Referendum

Consultation ≠ Arbitration

Consultation ≠ Negotiation

Canadian government agencies and active stakeholders continue to explore ways to collaborate in this changing legal setting, pushed ahead by the complexity of environmental management. Along the

way, they are setting up consultative processes that fall somewhere between the two extremes of public involvement: transparency and co-management.

Transparency = Information is publicly available, but there are no processes in place to assist the public with interpreting the raw data. Technical reports and on-line databases fall into this category. The [Online Resources](#) at the end of this chapter include many examples.

Co-management = A defined group has the legal mandate to make and implement decisions, with specific roles for each participant, shared authority, and specific nomination procedures. Note that some authors use the term co-management to describe only community-based structures such as harvester cooperatives, which are but one example captured under the more general definition used here (see examples in [Box 2](#)).

Consultation is typically understood to include more than simple information sharing, and falls short of the shared authority that is the central element of co-management. A general definition is:

Public Consultation = A structured and well-documented planning process that includes opportunities for public review at major project milestones and incorporates public feedback before arriving at a final decision.

Public consultation can be open to the general public, focus on distinct interest groups (e.g. a group of harvesters), or involve multi-sectoral advisory bodies. This definition of consultation is necessarily broad to reflect the range of unique participatory processes that have evolved in Canada, but also specifies clear requirements: structure, documentation, and opportunity for influence.

In practice, consultation becomes a very complex network of processes, spanning many different forms of public involvement. For an example, look through the diversity of topics and processes listed by the [Pacific Region Consultation Secretariat](#) of *Fisheries and Oceans Canada*.

Box 2: A sampler of co-management processes related to Canadian Pacific fisheries

Well established examples on an international scale include:

- [Pacific Salmon Commission \(PSC\)](#)
- [North Pacific Anadromous Fish Commission \(NPAFC\)](#)

Species- or sector-specific processes include:

- [Salmon Integrated Harvest Planning Committee \(IHPC\)](#)
- [Forum on Conservation and Harvest Planning for Fraser Salmon](#)
- [Commercial Salmon Advisory Board](#)
- [Sport Fishing Advisory Board](#)
- [Halibut Advisory Board](#)

Within Canada many co-management groups of varying persistence and mandates have evolved to deal with local and regional concerns such as land use or marine ecosystems. Active examples include:

- [West Coast Vancouver Island Aquatic Management Board](#)
- [Mackenzie Valley Land and Water Board](#)

The Costs and Benefits of Public Consultation ([Index](#))

The costs of opening up a planning process to public involvement are certain, immediate and tangible, but the benefits tend to be uncertain, lie in the future, and are often intangible.

For a government agency like *Fisheries and Oceans Canada* the immediate costs of enabling public involvement are substantial, in terms of both money and time. Financial costs for running a participatory process add up quickly (e.g. travel and accommodation, meeting rooms, printing), but the more significant cost element is the time and effort needed to organize the meetings, prepare the information materials, and send staff to attend. There is a very real opportunity cost associated with shifting resources towards public processes and communication. For example, every day that a fisheries scientist spends on preparing presentations or attending public meetings leaves one less day for the research that provides the foundation for future decisions, with or without public involvement.

Government agencies face more abstract costs as well, particularly in terms of giving up control. At the lowest end of the spectrum, transparency, public involvement means relinquishing control over information. By making a planning process transparent and sharing information an agency opens itself up to increased scrutiny, more focused criticism, and on-going performance monitoring. At the highest end of the spectrum, co-management, the agency relinquishes control over the outcomes of a planning process. By devolving authority to a participatory process, the agency shifts more into a decision-support role, providing technical expertise and operational insight.

Participants also pay a substantial and immediate price for their involvement, just as agency staff. They face the same daunting time and travel commitments, and may have to overcome a substantial learning curve (e.g. technical jargon, procedural etiquette in an established process). Some groups are well-organized and can commit significant staff resources to a planning process (e.g. analysts to review agency proposals), but individuals from loosely-organized or community-based groups may be unpaid volunteers. Regardless of which organization they are from, the main job function for most participants in a planning process is not to attend consultative meetings, and they all pay the opportunity cost of diverting time and energy from their actual work and interests, be it fishing or writing computer programs.

The benefits of effective public involvement are simply the opposite of the costs, just over the longer term. Ideally, the lead agency benefits from increased scrutiny and broadened considerations by arriving at better decisions and more stable implementation, which should actually free up staff time for substantive work in the future. Individual participants benefit from learning about other points of view and establishing lines of communication across organizational or cultural boundaries. [Box 3](#) vividly illustrates the kind of situation a government can find itself in without adequate public involvement at the beginning of a large planning process.

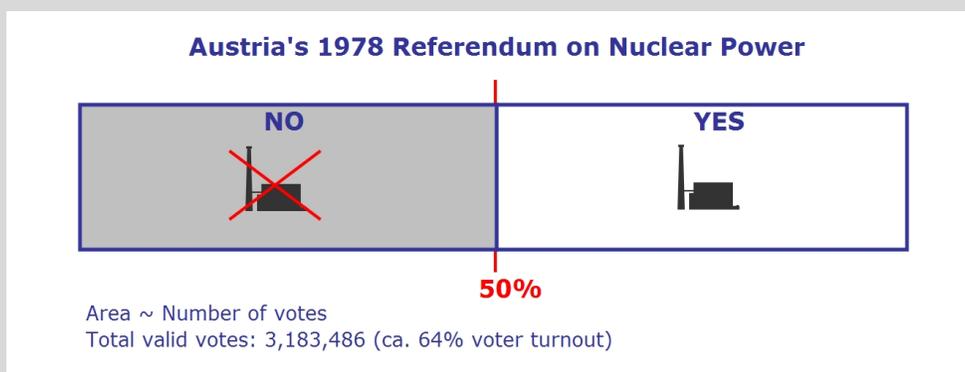
Box 3: Zwentendorf, the nuclear power plant that wasn't.

Like the rest of Europe, Austria embarked on a program to develop nuclear energy during the 1960s. Six nuclear power plants were planned, and the first one was built from 1972 to 1977 at Zwentendorf, 40km west of Vienna.

Like the rest of Europe, there was a deep division among the electorate, and construction was accompanied by increasing protests. The situation escalated to the point where a group of mothers went on hunger strike to prevent the first trial run of the completed plant in 1977.

Unlike the rest of Europe, the Austrian government decided to settle the debate through a referendum. The referendum had a high voter turnout, but manifested strongly polarized views. With a slight majority of 50.5% against nuclear energy, this fully functional power plant was never switched on. Proponents pushed for a second referendum, and the plant was on stand-by for 7 years until decommissioning started in 1985. The facility is now used for training, movies, and spare parts. Construction, maintenance, and decommissioning added up to direct costs on the order of one billion Euros (roughly a per-capita equivalent of 5.5 billion dollars in Canada and 50 billion dollars in the US).

Note that the referendum only decided the specific question of whether to start up the Zwentendorf nuclear plant, but it did not deal with the broader debate about alternative strategies for energy supply (e.g. purchasing electricity from neighbouring countries that rely on nuclear energy, comparative environmental impacts of coal-fired plants or hydropower).



Sources: [Wikipedia Article](#), [Facility Website](#)

Moving from Consultation to Collaboration ([Index](#))

The first step on the path towards collaborative planning is a conceptual change regarding public involvement, pushed along by the expanding scope of environmental management in combination with shrinking budgets. This creates a powerful institutional incentive to move from public consultation, with its associated short-term costs, towards a management system with shared burdens and shared responsibilities (e.g. data collection, evaluating alternatives, implementation, communication).

Decisions in environmental management have to be based on a combination of factual information and value judgements. These decisions are usually made by a small group of individuals, but affect a large number of people in different ways and to a different degree. Initial disagreement about the technical details of alternative options (i.e. means) often turns out to be a disagreement about fundamental values (i.e. goals), misdirecting much effort on all sides of the debate.

Proper public consultation expands the group of people that carefully consider a particular issue. It forces all participants to first formulate their fundamental assumptions and values, then urges people to reconsider their views during a structured debate, supported by information exchange. If consultative processes are allowed to mature, they tend to move closer towards true collaboration or co-management.

Transparency and higher forms of public involvement can help us with making the most out of information we already have. However, public involvement can also shape the kind of information we will have available in the future to make better decisions, by broadening the scope of monitoring programs and identifying research priorities.

Finally a note of caution: Due diligence by the responsible agencies is a required foundation underneath all forms of public involvement. If necessary information is not collected, there can be not even transparency. However, it has been our experience that all planning processes share a persistent and highly vocal disagreement about the sufficient level of information required to make a decision. This is particularly pronounced for long-term or large-scale monitoring programs, and how they fit into the overall budget of an agency such as *Fisheries and Oceans Canada*. As with all other aspects of environmental management, it remains a dynamic process to find a pragmatic compromise somewhere between the wilful ignorance of not collecting crucial information and the utopia of certainty through perfect knowledge.

[Chapter 2](#) covers pitfalls to watch out for in all planning processes. Chapter 3 argues that collaboration is the best way to avoid them and introduces some useful conceptual models to describe the interactions of groups and individuals in a planning process.

The planning context for environmental management continuously evolves as the legal case law builds up and political alliances shift. The only way to get real work done in this setting is a sustained effort by individuals who forge long-term working relationships across organizational boundaries, and look beyond the short-term pressures created by newspaper headlines, blog posts, or election campaigns.

Get Involved! ([Index](#))

In Canada, there are many consultative processes taking place at any given time (see links below). As an organization or individual, you need to choose carefully which processes to expend your time and energy on. Before committing to join a process, ask yourself:

- What are the characteristics of the process? (e.g. use the 5 criteria in [Table 1](#) above)
- Does the process have a clear task (e.g. review a draft regulation) or a clear mandate (e.g. advise on annual fishing plans)?
- Does the process leave a clear record, such as proceedings posted on a website?

With these questions answered, you can then participate constructively in the consultation process, and let the other participants know:

- Whether you consider the process appropriate for the stated task or mandate, and
- What information is needed to enable constructive feedback

Online Resources ([Index](#))

- The **Privy Council Office** (PCO), described as a non-partisan advisory body to the Prime Minister and Cabinet, released the *Government of Canada Regulatory Policy* in 1999. The policy specifies process requirements for consultation and clearly states that regulatory agencies need to ensure that “Canadians are consulted, and that they have an opportunity to participate in developing or modifying regulations and regulatory programs”. [Guidelines for Effective Regulatory Consultation](#) are available through the Treasury Board. A diverse but incomplete list of current consultations is available at www.consultingcanadians.gc.ca.
- **Health Canada** (HC) has compiled a comprehensive [toolkit for public involvement](#). The toolkit includes a thorough discussion of different forms of public involvement, guidelines for the design of participatory processes, and detailed case studies. A [Primer on Public Involvement](#) was published by the *Health Council of Canada* in 2006. Current health-related consultations are listed [here](#).
- **Environment Canada** (EC) clearly defines public consultation as an interactive process that “provides opportunities to influence decisions before they are made”. EC consultations deal with:
 - [Canadian Environmental Protection Act](#)
 - [National Pollutant Release Inventory](#)
 - [Pollution Prevention Planning](#)
 - [Species at Risk Public Registry](#)
- **Fisheries and Oceans Canada** (DFO) released *A New Direction for Canada’s Pacific Salmon Fisheries* in 1998, which served as the launching point for comprehensive policy development and public consultation, including an independent review of participatory processes. The resulting policies and a summary of the independent process review are available at the [Pacific Salmon Policies Page](#). Current consultations in Pacific fisheries can be accessed through DFO’s [Pacific Region Consultation Secretariat](#). Integrated Fisheries Management Plans (IFMP) are developed annually in close collaboration with an extensive network of advisory bodies. Final versions of all Pacific Region IFMPS are released [here](#), and drafts for salmon IFMPs are available [here](#). The [Canadian Science Advisory Secretariat \(CSAS\)](#) coordinates the peer review and distribution of scientific work done by DFO, including research documents, workshop proceedings, and science advisory reports. An overview of advisory processes for Pacific salmon is included in Chapter 4 of the [Pink and Chum Salmon Management Summary](#).