



# Collaborative Approaches to Environmental Decision-Making

**A State Agency's Guide to Effective Dialogue and  
Stakeholder Engagement**

**TWELVE CASE STUDIES**  
*from New England*

**A Report from the MIT-Harvard Public Disputes Program**

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## About This Guide

*This guide is intended for state agencies that are trying to use more collaborative approaches to have more effective conversations, make better decisions, and enjoy broader support for those decisions.* There are many names and forms for these collaborative approaches, to which this guide provides an orientation. It then focuses on twelve case studies that illustrate some of the goals that environmental agencies in New England have achieved through facilitated collaborative processes. Finally, it provides points of guidance in structuring collaborations, drawing on lessons from the case studies. The hope is that where agency officials and staff in New England find parallels in these cases to their own needs, they will be better able to envision and design collaborative processes that could help advance their goals.

The cases reviewed here all relied on professional “neutrals” – mediators and facilitators – for at least part of the process. Feedback from participants in these cases and many like them suggest that the particular skill and experience that facilitators and mediators bring can make a critical difference in designing and carrying out a collaborative process that proves rewarding and effective. When resources allow for it, using professional neutrals – especially those well versed in the needs of state agencies and their stakeholders – helps a process avoid pitfalls and find success. However, these case studies should also add insight to help structure collaborative processes even when an outside professional either cannot be funded or is not desired.

## About The Program on Negotiation (PON) at Harvard Law School and The MIT-Harvard Public Disputes Program

**The Program on Negotiation (PON) at Harvard Law School** is a consortium of faculty and students from Harvard University, MIT, and Tufts University. Since its founding in 1983, faculty research has been instrumental in forming negotiation as a field of interdisciplinary academic inquiry and real world application. Innovative contributions to negotiation scholarship also inform negotiation as a subfield within the many traditional disciplines of PON faculty home departments. These disciplines and departments include law, business, psychology, public policy and planning, and international relations. Publications from these projects have influenced both academic study and popular understanding of negotiation. New and continuing projects approach negotiation from a wide range of disciplinary approaches in basic, applied, legal, and action research.

<http://www.pon.harvard.edu>

**The MIT-Harvard Public Disputes Program**, a center for action research committed to thinking about and resolving disputes in the public sector, is one of several research programs and projects of the Program on Negotiation at Harvard Law School. The Public Disputes Program is led by Director and MIT Professor Lawrence Susskind, and Associate Directors David Fairman and Patrick Field. The Public Disputes Program has ongoing research activities dealing with international environmental treaty negotiations, consensus building in the public sector, and ensuring that science is given its due in resource management decisions. In addition, the Program is focusing on the social responsibilities of multinational corporations, how mediation can be used to resolve values-based and identity-based disputes, and how recent findings in the communications field might enhance negotiation practice.

<http://web.mit.edu/publicdisputes>

# Why Collaborative Process – and the Right Collaborative Process – Matters for Environmental Decisions

Environmental agencies often need to take action under circumstances in which one or more of the following factors make the case particularly challenging:

- Technical complexity
- Scientific uncertainty
- Multiple stakeholders
- Multiple jurisdictions
- Interrelated administrative processes
- Several levels of government
- Public stakeholders that are increasingly informed and involved
- Environmental justice issues, disproportionate burdens, and power dynamics that impact who has a voice in decision-making

Any of these factors can confound regulatory decisions, policy development, and agency responses to new conditions (such as directives from new leadership; changes in environmental conditions; updates in technology; new scientific studies). Failing to engage stakeholders under these circumstances can quickly raise questions about practicality, effectiveness, and legitimacy. However, even when agencies do engage with outside entities in these decisions, their actions often still raise these questions.

Do any of these sound familiar: a public comment period that resulted in stakeholders feeling their input was disregarded and agency staff feeling that they learned nothing new or different? A public meeting that further polarized stakeholders in an already contentious situation? A stakeholder work group or advisory committee that wrapped up – or fizzled out – with participants feeling like the mission of the group was never fully clear? And perhaps most frustrating of all, a long-term collaboration that appeared to move along swimmingly, only to be foiled in the eleventh hour by parties whose perspectives and voices had not been included?

Fortunately, there are also many instances when state agencies have engaged in collaborative processes that have, by and large, succeeded. Understanding some of the dynamics and decisions that contributed to these successes should help those undertaking collaborative processes to move past some of the above common pitfalls. While there are many more successes than the case studies featured in this guide, those featured here will demonstrate collaborations that served to:

## **Shape and justify ongoing action**

- Forest Futures Visioning Process, Massachusetts
- Stormwater Management Policy Development, Vermont

## **Break through longstanding conflict and deadlock**

- Wastewater Management, Old Saybrook, Connecticut

### **Distill technical complexities and scientific uncertainty into manageable options and solutions that could be adapted over time**

- Green House Gas Process, Rhode Island
- Regional Green House Gas Initiative, Northeast states

### **Increase legitimacy of the process and support for the outcome**

- FERC relicensing, Upper Penobscot River, Maine
- Stakeholder Engagement in Ocean Planning, Massachusetts
- Renewable Energy Standard, Rhode Island

### **Mobilize effective, coordinated action when time was of the essence**

- Zebra Mussel Task Force, Massachusetts

### **Integrate action across levels of government or multiple jurisdictions**

- State Vegetation Management Task Force, Connecticut
- Invasive Aquatic Species Management, New Hampshire

### **Engage stakeholder groups that were historically hard to reach**

- Lake Champlain Phosphorus TMDL, Vermont

There are never perfect controls when evaluating why something went well (or poorly). However, we have highlighted cases where we believe good process design, effective facilitation, and strategic project management were at least in part responsible for the successes achieved.

## **Types of and Uses for Collaborative Processes**

First, a word about nomenclature. It can be easier to recognize the array of tools and research related to collaboration if aware of the many terms often used to describe it. These terms include: deliberative democracy; democratic governance; consensus building; multi-stakeholder dialogue; joint problem solving; stakeholder engagement; mediation; dispute resolution; conflict resolution; and even negotiation. The many names speak to a flexibility of ways to engage in collaboration, spanning the spectrum from small focus groups intended help an agency better understand the needs of its constituents to multi-year undertakings seeking consensus among competing interests on technically complex issues involving multiple jurisdictions. Understanding this flexibility can help design a collaborative process that best fits the present goals and needs of an agency.

### **For Which Agency Functions?**

Collaborative processes are gaining momentum in an increasing range of government functions. The Policy Consensus Initiative (PCI), a national nonprofit organization dedicated to promoting effective collaborative systems of governance, has laid out an overview of these functions in a 2002 publication titled *Governing Tools for the 21st Century: How State Leaders Are Using Collaborative Problem Solving and Dispute Resolution*<sup>1</sup>. The report offers examples of collaborative processes that have improved outcomes as part of the following state agency functions:

- Contracts and partnerships
- Regulation and enforcement
- Licensing and permitting
- Policymaking
- Intergovernmental relations
- Human resource management

### **How and to What End?**

How is one to know when a collaborative process is appropriate and what form of collaboration would best meet the agency's needs at hand? The matrix below was developed by a group of professional mediators experienced in environmental conflict resolution and consensus building in public decisions. It summarizes a great deal of nuance in how collaborative processes in the public sphere can be structured, and to what ends. Its underlying premise is that agencies and their stakeholders or participants must be clear about the intent of the effort, whatever the details of a particular case and process are. We suggest it here as a tool for:

- 1) identifying where and whether a collaborative process would fit into an agency's present need,
- 2) focusing the goals for a given collaboration,
- 3) matching the structure of the collaboration to the desired outcome, and
- 4) setting appropriate expectations for any collaborative process selected.

The matrix should also be useful for analyzing the case studies in this guide, which liberally mix, match, and combine the collaborative structures in the matrix – even within a given process – to meet multiple simultaneous goals and to adapt a process as it matures over time. While the processes shown in the matrix can all be used to help prevent conflict from developing (aka “upstream” of a conflict), as the case studies will show, they also provide some of the most timely and effective means of resolving conflicts that are already occurring or that have occurred among the parties in the past (aka “downstream” of a conflict).

<sup>1</sup>This guide and other useful publications can be found at PCI's website: <http://www.policyconsensus.org/index.html>.

# Spectrum of Processes for Collaboration and Consensus-Building in Public Decisions<sup>1</sup>

	EXPLORE/INFORM	CONSULT	ADVISE	DECIDE	IMPLEMENT
Outcomes <sup>2</sup>	<ul style="list-style-type: none"> <li>Improved understanding of issues, process, etc.</li> <li>Lists of concerns</li> <li>Information needs identified</li> <li>Explore differing perspectives</li> <li>Build relationships</li> </ul>	<ul style="list-style-type: none"> <li>Comments on draft policies</li> <li>Suggestions for approaches</li> <li>Priority concerns/issues</li> <li>Discussion of options</li> <li>Call for action</li> </ul>	<ul style="list-style-type: none"> <li>Consensus or majority recommendations, on options, proposals or actions, often directed to public entities</li> </ul>	<ul style="list-style-type: none"> <li>Consensus-based agreements among agencies and constituent groups on policies, lawsuits or rules</li> </ul>	<ul style="list-style-type: none"> <li>Multi-party agreements to implement collaborative action and strategic plans</li> </ul>
Sample Processes	<ul style="list-style-type: none"> <li>Focus Groups</li> <li>Conferences</li> <li>Open houses</li> <li>Dialogues</li> <li>Roundtable Discussions</li> <li>Forums</li> <li>Summits</li> </ul>	<ul style="list-style-type: none"> <li>Public meetings</li> <li>Workshops</li> <li>Charettes</li> <li>Town Hall Meetings (w &amp; w/o deliberative polls)</li> <li>Community Visioning</li> <li>Scoping meetings</li> <li>Public Hearings</li> <li>Dialogues</li> </ul>	<ul style="list-style-type: none"> <li>Advisory Committees</li> <li>Task Forces</li> <li>Citizen Advisory Boards</li> <li>Work Groups</li> <li>Policy Dialogues</li> <li>Visioning Processes</li> </ul>	<ul style="list-style-type: none"> <li>Regulatory Negotiation</li> <li>Negotiated settlement of lawsuits, permits, cleanup plans, etc.</li> <li>Consensus meetings</li> <li>Mediated negotiations</li> </ul>	<ul style="list-style-type: none"> <li>Collaborative Planning processes</li> <li>Partnerships for Action</li> <li>Strategic Planning Committees</li> <li>Implementation Committees</li> </ul>
Use When	<ul style="list-style-type: none"> <li>Early in projects when issues are under development</li> <li>When broad public education and support are needed</li> <li>When stakeholders see need to connect, but are wary</li> </ul>	<ul style="list-style-type: none"> <li>Want to test proposals and solicit public and stakeholder ideas</li> <li>Want to explore possibility of joint action before committing to it</li> </ul>	<ul style="list-style-type: none"> <li>Want to develop agreement among various constituencies on recommendations, e.g. to public officials</li> </ul>	<ul style="list-style-type: none"> <li>Want certainty of implementation for a specific public decision</li> <li>Conditions are there for successful negotiation</li> </ul>	<ul style="list-style-type: none"> <li>Want to develop meaningful on-going partnership to solve a problem of mutual concern</li> <li>To implement joint strategic action</li> </ul>
Conditions for Success	<ul style="list-style-type: none"> <li>Participants will attend</li> </ul>	<ul style="list-style-type: none"> <li>There are questions or proposals for comment</li> <li>Affected groups and/or the public are willing to participate</li> </ul>	<ul style="list-style-type: none"> <li>Can represent broad spectrum of affected groups</li> <li>Players agree to devote time</li> </ul>	<ul style="list-style-type: none"> <li>Can represent all affected interests and potential “blockers”</li> <li>All agree upfront to implement results, incl. “sponsor”</li> <li>Time, information, incentives and resources are available for negotiation</li> </ul>	<ul style="list-style-type: none"> <li>Participants agree to support the goal for the effort</li> <li>Participants agree to invest time and resources</li> <li>Conditions exist for successful negotiations</li> </ul>

<sup>1</sup>Developed by Suzanne Orenstein, Lucy Moore, and Susan Sherry, members of the Ad Hoc Working Group on the Future of Collaboration and Consensus on Public Issues, in consideration of and inspiration from the spectra developed by International Association for Public Involvement ([http://www.iap2.org/associations/4748/files/IAP2%20Spectrum\\_vertical.pdf](http://www.iap2.org/associations/4748/files/IAP2%20Spectrum_vertical.pdf)) and the National Coalition for Dialogue and Deliberation (<http://www.thataway.org/exchange/files/docs/ddStreams1-08.pdf>).

<sup>2</sup>While all types of processes have intrinsic value on their own, those on the right side of the spectrum tend to include early phases akin to those on the left side and those on the left side often support participants in moving to next steps akin to those on the right side.



## Case Studies

The twelve case studies that follow are organized by challenges that are likely to sound familiar to those in state government. They illustrate some of the factors that made a facilitated collaborative process useful. The cases were not all successful in every aspect. It would be misleading and overly simplistic to place all the credit for the successes that were achieved on the factors highlighted here. Nonetheless, our hope is that these cases encourage New England state agencies to be in touch and cross-fertilize in the face of these and other challenges, using each other's experiences with collaborative processes to build on successes and improve based on lessons learned.

The cases were selected to represent each of New England's six states, as well as interstate collaboration. They showcase processes and sub-processes intended to explore the extent of interests and issues at stake, provide advisory recommendations to decision-makers, reach consensus on binding actions, and implement multi-party agreements, spanning the "Spectrum of Processes" matrix above. They demonstrate upstream and downstream interventions. They range from multi-year large-scale collaborations to short strategic facilitated conversations. They cover substantive issues including energy, water, ecosystem management, land use, invasive species, agriculture, and infrastructure. And they involve governance tasks including permitting, negotiated rulemaking, crisis response, policy development, environmental enforcement, and long-term resource planning. Finally, they make use of a variety of funding resources that helped stretch limited state dollars.

## CHALLENGE:

### Shape and Justify Action Moving Forward

Political pressures; parallel and conflicting mandates; disagreement about priorities; inadequate information – these things can and often do create uncertainty for state agencies at important junctures of action. The following two cases illustrate collaborative approaches that helped states move beyond these circumstances into coordinated, publicly supported forward movement.

## CASE #1 Massachusetts Forest Futures Visioning Process



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### Background

In 2008, certain forest harvesting practices on state-owned land in Massachusetts galvanized a group of environmental stakeholders to organize a public and media campaign to raise awareness and force action on state forestry management practices. The Massachusetts Department of Conservation and Recreation (DCR), the state agency that controlled the forestlands under scrutiny, responded with a 90-day moratorium on timber harvesting on DCR land in order to review forestry practices, which provoked timber producers to express concern that the state was not doing enough to promote harvesting and support local wood products in Massachusetts. DCR quickly became a high-profile target, criticized simultaneously from many directions.

In response, DCR decided to undertake a long-range forest visioning process, engaging forestry experts, stakeholders on all sides of the issues, and the general public. The agency's hope was to establish a framework and principles that would provide clear guidance and consistency for forest management decisions across the more than 300,000 acres owned and managed by DCR.

### Involvement of a Neutral Facilitator

DCR contracted with the Massachusetts Office of Public Collaboration (MOPC) at the University of Massachusetts Boston to design and manage the visioning and public engagement process. The facilitation team conducted background interviews to establish the key issues, better understand the visions and values in play, and identify the key stakeholder groups. Based on their findings, the facilitators and DCR formed two groups - the Technical Steering Committee (TSC) to develop recommendations for DCR based on scientific and technical expertise, and the Advisory Group of Stakeholders (AGS) with representation from the five key organized stakeholder categories to help inform the work of the TSC and provide feedback to them on their draft recommendations. Members of the AGS were self-selected by the stakeholder groups, and members for the TSC were selected by a small group of representatives from each major stakeholder category, with input from a nationally recognized forestry expert. During the visioning process, the TSC was also supported in their work by a technical consultant engaged by DCR.

In addition to the two committees, the facilitation team, in close coordination with DCR, designed and managed a process to engage the wider public. As part of the initial process design phase, this engagement included a walking tour for the public of several DCR forest properties and a follow-up forum to gather values. Then later in the process the draft recommendations developed by the Technical Steering Committee were presented to the public in five public forums across state. These sessions provided time for citizens to share opinions and ideas in small facilitated dialogue groups, where they could listen to people with differing perspectives. At one session a traditional comment session was also conducted for individuals to provide formal feedback in front of the large group. In addition, an online survey was conducted and over 500 comments were received via mail and email. These many forums for feedback helped shape the final near-consensus set of recommendations for a 100-year vision for managing Massachusetts forest land, which the state subsequently adopted and committed to implementing.

Throughout the process, the facilitation team managed the many interrelated components, facilitated the formal meetings and planning sessions, mediated smaller conflicts that arose among stakeholders during the project, helped the group reach consensus on a wide range of both technical and value-based decisions, and helped draft the final report of recommendations.

### **Impact**

The Forest Futures Visioning Process resulted in a wide set of near-consensus recommendations, which were subsequently adopted in their entirety by the Secretary of Energy and Environmental Affairs and made it possible for DCR to take decisive action on issues that had previously polarized stakeholders. The facilitation team appeared to play a key role in identifying the diverse interests, building trust through a fair and transparent process for selecting stakeholder representatives, and building DCR's understanding of an effective public process. The process itself helped improve relationships and reduce controversy for the agency, and the resulting set of recommendations led to change within DCR management structure and provided a clearer and more transparent set of management guidelines moving forward. The implementation of the recommendations has begun, and DCR has continued using neutral facilitation for some of these subsequent processes.

### ***Massachusetts Office of Public Collaboration (MOPC) Project Team:***

Project Management Lead: Loraine M. Della Porta, MOPC Deputy Director

Lead Facilitator: Bill Logue, The Logue Group, MOPC Senior Affiliate

Assistant Facilitators: John Goodrich, MOPC Affiliate; Mette Kreutzmann, MOPC Program-Business Manager; Courtney Breese, MOPC Program Manager

Process Evaluator: Madhawa Palihapitiya, MOPC Associate Director

## CASE #2 Stormwater Management Policy Development for Vermont



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### Background

In December of 2000, the Vermont Agency of Natural Resources issued a stormwater discharge permit for a large commercial complex in South Burlington. The Conservation Law Foundation responded with a lawsuit in front of the Vermont Water Resources Board, arguing that the permit violated state and federal clean water laws. A series of proceedings and appeals on the matter, which eventually worked their way to the Vermont Supreme Court, drew substantial attention to stormwater as an emerging area of focus in addressing water quality impairment, galvanizing both the development and environmental communities. The number of scientific and technical questions that repeatedly emerged through this process led the Water Resources Board in September of 2003 to open a docket, on its own motion, to convene a dialogue with a wide range of stakeholders to investigate these questions and propose recommendations for managing stormwater impaired water bodies in Vermont. Nineteen groups, including local, state and federal agencies, businesses groups, environmental advocates, engineers, academics and agricultural groups requested to participate in the Docket. The Board reached out to the Environmental Protection Agency (EPA) for facilitation services.

### Facilitation and Consensus Building, in Three Phases

#### *Phase 1 – Scientific Underpinnings for a Stormwater Management Framework*

Ellie Tonkin and Doug Thompson, of the EPA Regional Alternative Dispute Resolution (ADR) Program, facilitated a technical workgroup comprised of scientific experts and representatives of the participating groups. The Docket process was designed expressly to be technical and non-agreement-seeking in nature, attempting to separate the conversation from the background litigation. It was aimed at identifying the areas of agreement and disagreement and clarifying everyone's understanding of the remaining issues, as a basis for more collaborative stormwater management in the future. At the start of the process, cross-interest subgroups were created to tackle important items of low controversy, which built momentum for an intensive five-month dialogue that resulted in the group choosing to seek agreement, where possible. At the end of the five-month period, the group submitted two reports; the first represented general consensus on the specific elements that should be included in stormwater management plans, and the second provided near-consensus answers to a set of technically thorny questions that had remained contentious throughout the court proceedings up to that point. Together, these documents laid the scientific foundation for a regulatory program for stormwater-impaired waters in Vermont. However, the documents did not – and were not intended to – address many of the legal and policy choices that would be needed to implement such a regulatory program.

#### *Phase 2 – Advisory Group to the Legislature on Stormwater Offsets and Mitigation*

In the spring of 2004, at the conclusion of the Docket process, EPA helped the Docket participants identify and fund the services of Cindy Cook, of Adamant Accord, to continue the collaborative process with the goal of developing recommendations for legislation, regulations, and policy to build on the foundation that emerged from the Docket process. At that time, the Vermont Legislature was just taking up a bill to address stormwater mitigation credits in impaired watersheds. Cindy facilitat-

ed a 10-20 member advisory group that grew out of the Docket workgroup and participated actively with legislators on the details of the legislation. Cindy met with the group several times a week to help the members refine and articulate areas of agreement and lay out options and explain the considerations, when there were differences of opinion. Members of the group presented their respective recommendations and options to the legislature on a nearly daily basis over a two-month period, and legislation was adopted in May, reflecting in large measure the input received by the advisory group members.

### ***Phase 3 – More Comprehensive Stormwater Management Recommendations***

Subsequent to adoption of the stormwater mitigation legislation and with additional funding from EPA, Adamant Accord facilitated an expanded collaborative group to address many of the remaining policy and legal questions surrounding implementation of a stormwater regulatory program. This body was named the Stormwater Advisory Group (SWAG) and consisted of 75 – 100 members who met 6-8 times between July and November of 2004. The facilitated dialogue resulted in a set of final recommendations with documented areas of broad consensus and other areas documenting several different perspectives, for consideration. The recommendations have led to expanded legislation, regulatory programs, and planning and outreach tools for stormwater management.

### **Impact**

By opening a Docket on its own motion and making use of professional facilitation services, the Water Resources Board was able to shift the primary locus of interaction among the stakeholders from a court setting to an interest-based collaborative dialogue. Taking on the scientific and technical questions first – in a non-agreement-seeking process – freed up the parties to share their perspectives with less posturing and more of an eye towards understanding the range of views, which in fact led to a greater interest among the parties in reaching agreement. The docket process provided an opportunity for the agencies, environmental groups, and the development community to improve their working relationships, experience consensus agreements on many points, and become exposed to ways of managing areas of disagreement that still allowed progress toward the wider goals. This experience then helped the small legislative advisory group, with the ongoing help of professional facilitation, present coherent recommendations to the legislature that articulated points of agreement and disagreement in informative and useful ways. In the third phase of the collaboration, the stakeholders were able to take on many of the more contentious policy and legal questions, building on the relationships, collaboration skills, and momentum of the earlier two phases.

### ***Facilitators:***

Ellie Tonkin, EPA New England Regional ADR Program

Doug Thompson, EPA New England Regional ADR Program (currently with the Consensus Building Institute)

Cindy Cook, Adamant Accord

## CHALLENGE:

### Break Through Longstanding Conflict

Taking action can sometimes be so fraught with contention that constructive dialogue (let alone agreement) seems unlikely. Under these circumstances, agencies can feel the need to either put their head down, make a decision in the absence of dialogue, and try and survive the controversy or simply avoid action as long as possible. However, effective collaborative processes can help break through long-standing impasses. The following case illustrates breakthrough after a longstanding deadlock, using an intensive facilitated process between the parties.

### CASE #3 Old Saybrook, CT Wastewater Management Mediation



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#### Background

Old Saybrook, CT, at the mouth of the Connecticut River on Long Island Sound, has a beach community area characterized by dense development with many former summer cottages that have been converted to year-round homes. Many of these homes long ago outgrew the capacity of their original cottage-scale septic systems, but shallow depth to groundwater, small lots and setbacks, financial barriers, and lack of regulatory requirement for upgrade constrained upgrades to more modern septic systems. In the 1980's, water quality concerns led the CT Department of Energy and Environmental Protection (DEEP) to pressure Old Saybrook to pursue a centralized wastewater treatment plant. However, the town strongly resisted, expressing concerns that the financial implications of such a large-scale solution would result in an influx of "big box" development and a change in the character of the town. Instead, the town preferred a decentralized wastewater treatment approach, but this involved jurisdictional complications, lack of precedent, and technical and legal unknowns. In 1991, after years of stalemate, the state filed an enforcement action against the town, which led to a 15-year protracted court process. Eventually, the parties entered formal mediation in 2005.

Eventually, the parties entered formal mediation in 2005.

#### Mediation

The EPA New England Regional Alternative Dispute Resolution (ADR) Program, which had an interest in seeing the water quality concerns at stake addressed, helped the parties on the path to mediation, including mediator selection. Cindy Cook, of Adamant Accord, was hired to mediate the case with funding from the town and DEEP. Cindy met privately with the town and DEEP, who were direct parties in the mediation, as well as with the Department of Public Health (DPH), which had an active interest in the issues but was not a direct party in the mediation. During the assessment, Cindy identified critical differences in perspective between agency staff and leadership, as well as within the town, and convened separate meetings of each group to clarify their goals and interests before bringing the parties

together. She then designed a mediation process between DEEP and Old Saybrook and structured communication channels to keep DPH apprised of the progress and enable them to advise, as needed.

During a ten-month period of intensive mediation sessions, Cindy worked with the parties to arrive at an agreement in principle and then to address the substantial technical, administrative, and financial questions associated with implementation. The agreement provided for a precedent-setting decentralized municipal wastewater district involving upgrading individual lots, many of which would require innovative on-site treatment technologies. As such an approach lacked precedent (and on the flip side was precedent-setting), the parties had to establish performance standards for the innovative technologies as well as identify out-of-the box financing options for this coordinated, but decentralized, approach.

### **Impact**

The mediation process resulted in an agreement on the structure, implementation details, and financing options for a ground-breaking model for decentralized municipal wastewater management. After an intense public awareness campaign subsequent to the mediation, the \$42 million project was approved by town vote in August, 2009. The pre-mediation meetings with the town and state agencies appeared to play a critical role in helping each clarify and articulate their interests internally, as a base from which to build the elements of the final agreement. Additionally, the process design helped establish an effective communication channel for DEEP and DPH to coordinate their interests in the case. The facilitator's use of graphics and visual aids helped the parties digest and make sense of the extensive technical complexities in the case. Finally, the mediation process as a whole appeared to help the parties move from entrenched, conflicting positions into a joint problem-solving mode, bringing to resolution a decades-long stalemate and setting a precedent for other towns in similar situations in Connecticut.

### ***Mediation:***

Cindy Cook, Adamant Accord

## CHALLENGE:

### Distill Technical Complexities and Scientific Uncertainty into Manageable Options and Adaptive Solutions

Environmental problems are often the product of multiple and complex factors, which play out on different timeframes and spatial scales. Additionally, scientific consensus is often lacking in areas in which agencies need to make decisions. The following two cases highlight successful collaboration under circumstances of substantial political, financial, and scientific complexity.

## CASE #4 Rhode Island Greenhouse Gas Process



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### Background

As a small coastal state, Rhode Island faces particular vulnerabilities in the face of global climate change, including coastal flooding, extreme storm events, saltwater contamination of drinking water sources, and crop damage. In early 2001, against a backdrop of both international and regional negotiations on limiting greenhouse gas emissions, Governor Almond, through the initiative of the Rhode Island Department of Environmental Management and the Rhode Island Energy Office, decided to convene key energy and climate change stakeholders to develop a plan to reduce

greenhouse gas emissions in the state.

### Process Design and Facilitation

Given the complexity of the issues, including changing and uncertain science, high economic stakes, uncharted legal and political waters, and a wide variety of stakeholders, the convening agencies recognized the need for thoughtful and transparent public engagement and a skillful design and management of the process. Dr. Jonathan Raab, of Raab Associates, Ltd. was contracted by the state to play a lead role in designing and managing what became a five-year stakeholder engagement process.

Over the spring and summer of 2001, Jonathan worked with the state conveners to design a process for productive engagement, finalize participants for a Stakeholder Committee, and identify funding from the U.S. EPA and the Environmental Institute for Conflict Resolution to supplement state dollars in support of the process. In August of 2001, just as the Rhode Island Stakeholder Committee was getting underway, a large regional negotiation on climate change among New England state governors and eastern Canadian provincial premiers reached conclusion with the issuance of a Climate Change Action Plan calling for a reduction in annual greenhouse gas emissions to 1990 levels by 2010, 10% below 1990 levels by 2020, and 85% below 1990 levels over the long term.

This regional agreement provided the Rhode Island Stakeholder Committee with concrete targets. Over the following year, Jonathan worked with the Committee and helped coordinate three smaller subgroups to tackle more focused technical questions and to identify potential mitigation strate-



gies. Raab Associates subcontracted with the Tellus Institute to support the stakeholders' decision process through scenario modeling and other technical analyses, directly in response to issues and questions, as they arose. The scenario results proved to be very motivating for the group, as they served to distill and track the group's progress toward the numeric targets. By the summer of 2002, the Committee was able to issue a Rhode Island Greenhouse Gas Action Plan articulating 52 specific recommendations to meet the emissions targets of the regional plan, of which 49 received full consensus support from the Committee. A remarkable outcome of the analysis and modeling was the discovery that achieving the 2020 emissions targets through the Committee's plan could save the state approximately \$1 billion.

The win-win scenario of environmental and economic benefits of the Action Plan motivated the Committee members to continue to collaborate to implement the plan. With Jonathan's ongoing process management and facilitation assistance, the group continued working over the next four years to formulate recommendations for Executive Orders and legislation to meet the plan's targets. By the end of four years, the Committee had implemented 70% of the Action Plan, including major new legislation for a renewable energy portfolio standard, gas energy efficiency, and adopting California's clean vehicle standards. The state was not able to continue funding the stakeholder process, which disbanded but retained the distinction of being the longest-lasting comprehensive greenhouse gas stakeholder process in the country.

### **Impact**

With the assistance of a neutral process manager and facilitator, the state agencies and stakeholders were able to organize an enormous amount of technical information, grapple with high degrees of uncertainty, and reach consensus on a wide variety of highly specific recommendations for action. Persistent state leadership in the two agencies, along with the facilitator's work to keep the group on track and focused on the emission targets, coordinate a team of technical consultants to flexibly respond to the group's questions as they arose, manage a project website to organize the information being generated, and mediate among the parties to improve their communication and understanding and reach agreement, were all contributing factors to the success of the collaboration, which was recognized by EPA in 2005 with its Outstanding Climate Protection Award.

### **Facilitation:**

Dr. Jonathan Raab, Raab Associates, Ltd.

## CASE #5 Regional Greenhouse Gas Initiative



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### Background

By 2003, the international community was coalescing around the need to collectively address the climate threat associated with the world's increasing greenhouse gas emissions. 190 countries had become parties to the Kyoto Protocol to the United Nations Framework Convention on Climate Change, a treaty set to impose legally binding limitations in greenhouse gas emissions on certain signatory countries beginning in 2005.

However, the United States federal government had declined to ratify the Protocol and had withdrawn support for restrictions on emissions through regulatory mechanisms.

In sharp departure from the federal government's position, many states and local governments across the United States independently and cooperatively began making their own commitments to limit greenhouse gas emissions. In this spirit, Governor George Pataki of New York reached out to governors of the six New England states and New Jersey, Delaware, Pennsylvania, and Maryland to join New York in an effort to develop an agreement by which the northeast would blend regulatory and market-driven approaches to carbon dioxide (CO<sub>2</sub>) reduction from the more than 600 electric power plants in the northeast through a regional cap and trade program. All invited governors accepted the invitation, although Pennsylvania and Maryland participated as observers. Representatives from both energy and environmental agencies in each state formed the Regional Greenhouse Gas Initiative (RGGI) working group. The group contracted with Dr. Jonathan Raab of Raab Associates, Ltd. to help design and facilitate a regional stakeholder engagement process to support the development of the initiative.

### Process Design and Facilitation

The initiative involved a complex orchestration of moving parts, including extensive technical modeling and negotiations between and within states. Jonathan helped the group design a Regional Stakeholder Advisory Committee (SAC) to allow a wide range of stakeholder groups to help guide the design for a regional cap and trade scheme for the electric generating sector. Working to balance broad geographic representation and scheduling needs, Jonathan helped the states identify and select approximately 30 stakeholder representatives for the SAC and facilitated the group in regular meetings throughout 2004 and 2005. To assist the SAC in its work to support the states, RGGI convened a Resource Panel of non-stakeholder technical advisors, such as the region's three electricity grid operators, and a Modeling Work Group to be a liaison with consultants running modeling scenarios using iterative feedback from the SAC on scenario assumptions. Jonathan created agendas, facilitated the conversations, and summarized the meetings for the SAC.

By August 2005, the states were able reach an agreement on a proposed emissions reduction framework designed to stabilize emissions from the electric generating sector by 2015 and then reduce emissions by 10% between 2015 and 2020. The agreement apportioned the emissions among the states, specified terms of enforcement, addressed mechanisms for implementation flexibility, established a process for tracking and ongoing review, and stipulated minimum requirements for raising

revenue for energy efficiency and investments in renewable energy from auctioning emissions allowances. The states, for their parts, developed mechanisms to adhere to their commitments under the regional agreement and designed how they would auction and otherwise allocate their allotted emissions to their respective power plants.

Since August 2005, the composition of participating states has shifted under various state administrations, but at the time of this writing, all original signatories except New Jersey are current RGGI members, and the state of Maryland has also become a signatory. A 2012 report showed that the RGGI initiative had resulted in over \$1 billion of net economic benefit to participating states – primarily as a result of increased energy efficiency – and in February 2013 the states agreed to initiate rulemaking to further reduce the emission targets by over 40% relative to the original agreement.

### **Impact**

From the outset, the challenges facing the RGGI initiative were many. Interstate cap and trade agreements were at that point unprecedented in the U.S. For the conversation to be effective, significant quantities of scientific and economic data needed to be integrated in modeling scenarios and reflected back as distinct management choices. Each participating state needed to adapt the regional requirements to its own regulatory and political landscape, and mechanisms for continued collaboration and adaptation were needed, given all the uncertainties moving forward. Working with a facilitator, who was also integrally involved in process design, helped keep the many moving parts of this collaboration working in concert. A key element of the orchestration was making use of a regional stakeholder advisory committee that served as a sounding board for the states as they grappled with a myriad of technical, policy, and implementation decisions. The result was a program that served as the nation's first model of a regional cap-and-trade program for reducing greenhouse gas emissions.

### **Facilitation:**

Dr. Jonathan Raab, Raab Associates, Ltd.

## CHALLENGE:

### Increase Legitimacy of a Process and Support for the Outcome

Most state agencies will be familiar with making decisions that met with challenges on the basis of substance, process, or both – even when efforts were made to include the relevant diverse perspectives, balance interests, and act fairly in process and decision making. The following three cases highlight collaborative processes on controversial matters that used principles of transparency and effective engagement to achieve substantial stakeholder support for the final products.

### CASE #6 Great Lake Hydro America FERC Relicensing, Maine



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#### Background

In the forests of northwestern Maine, Great Lakes Hydro America (GLHA) operates nine dams across the North, South, and West Branches of the Penobscot River, as storage for downstream hydroelectric facilities. Operation of these dams is licensed by the Federal Energy Regulatory Commission (FERC), and as part of the relicensing process for these dams, the company took part in a settlement conference with the key stakeholders who had interests in the company's operation of the dams and their impact on wildlife and flows in the Penobscot headwaters. These stakeholders included representatives from three state agencies, four federal agencies, the Penobscot Indian Nation and the Passamaquoddy Tribe, environmental watchdog groups, and whitewater recreation organizations. The FERC process allows for stakeholders to request that specific studies be conducted by the applicant, to evaluate anticipated environmental impacts of the dams, and to propose conditions for the renewed license to avoid, minimize, or mitigate the negative impacts of dam operations. Additionally, the license renewal was contingent, in this case, on sign-off by the Maine Department of Environmental Protection (DEP) in the form of a Clean Water Act (CWA) §401 water quality certification, which was the state's point of leverage to ensure that the FERC license renewal would comply with state laws and be protective of aquatic resources of state interest.

FERC settlement conferences provide an explicit and transparent process for interested parties to engage with the license applicant and are intended to allow parties to reach agreement on any points of contention, so FERC and the state can move forward with license and water quality certification conditions that are compatible with each other and legitimate in the eyes of all stakeholders. In the GLHA storage dams case, the parties faced questions around fluctuating impoundment levels as they affected wetlands, wetland dependant furbearers, especially during winter, shoreline nesting birds including waterfowl and loons, and fish stocks; timing and magnitude of downstream flow releases as they affected migrating fish populations and whitewater recreation; any potential impacts from the dams and impoundments on access to tribal grounds and recreation areas; and economic impacts of the operation plans discussed.

## **Mediation**

Due to the water quality implications of the instream flow conditions in the Penobscot River, the U.S. Environmental Protection Agency (EPA) had an interest in supporting an inclusive process that considered the full range of concerns and promoted dialogue between the applicant and other stakeholders. Accordingly, upon request from the parties, EPA's New England Regional ADR Program provided in-house mediation services to facilitate settlement discussions. Over a period of several years, Ellie Tonkin and Doug Thompson helped the company and stakeholders coordinate, conduct, and interpret a long series of environmental impact, economic impact, and hydrologic modeling studies and manage the scientific uncertainty that remained in the face of regulatory complexities. While the specific communications of the negotiations are confidential, settlement conferences such as this typically rely on a combination of all-group meetings, caucuses among various configurations of the parties both with and without facilitation, and cross-party workgroups to address technical issues.

In 2004, after more than two years, the group began honing in on terms of an agreement. This built momentum among the parties toward a collaborative dynamic. By the time they reached agreement on terms for dam operations, they had become sufficiently proficient at working together that the facilitators could substantially withdraw for the final phase of the process, in which the company and stakeholders worked together with FERC and DEP to finalize the conditions of the license renewal.

## **Impact**

In reaching out for neutral assistance at the outset of the process, the participants, including many seasoned negotiators and technical experts, collectively recognized that engaging skilled facilitators could enhance their chances of achieving their individual goals. The parties appeared to benefit from the neutral mediators to help breach any historical mistrust and work sufficiently well together to design and complete studies, evaluate options for dam operations, and develop a set of trade-offs that all parties could live with. As a result of reaching agreement, the stakeholders retained substantially more control over the final license conditions than they would have if FERC and DEP had to develop conditions in the absence of an agreement between the parties. Reciprocally, the final conditions enjoyed the support of the stakeholders as a result of their perceived legitimacy and the legitimacy of the process.

### ***Mediation Team:***

Ellie Tonkin, EPA New England Regional ADR Program

Doug Thompson, EPA New England Regional ADR Program (currently with the Consensus Building Institute)

## CASE #7 Stakeholder Engagement in Massachusetts Ocean Management Planning



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### Background

In 2004, an appointed public-private body called the Massachusetts Ocean Management Task Force issued two reports establishing principles and a technical basis for comprehensive ocean management in Massachusetts. The reports, along with momentum building at the national level for more comprehensive ecosystem-based approaches to ocean management, led the Massachusetts legislature to pass, and Governor Patrick to sign, the Oceans Act of 2008. This Act called for a first-in-the-nation statewide integrated ocean management plan to be developed for state waters (from 0.3 miles to three miles offshore, which is the boundary with federal waters). The legislation set forth tall orders for the plan of setting management goals; balancing competing uses; supporting opportunities for renewable energy; and promoting sustainability including ensuring consistency with existing resource protection laws from multiple jurisdictions. Significantly, the law also defined an ambitious timeline of a year-and-a-half to develop the plan and laid out the foundations of a substantial public engagement process.

The Massachusetts Ocean Partnership (MOP), a public-private group that was established to carry forward the priorities that emerged from the Task Force, obtained funding through a grant from the Gordon and Betty Moore Foundation to provide ongoing logistic, strategic, and technical support for Massachusetts' ocean planning efforts with emphasis on the stakeholder engagement process.

The MA Executive Office of Energy and Environmental Affairs (EEA), which directed the ocean planning effort, recognized that coordinating input from as large and disparate a group of stakeholders as the Ocean Plan required, on such a wide range of technically complex issues, was an undertaking that could substantially benefit from the support of MOP. In coordination with the Office of Coastal Zone Management (CZM), EEA's lead agency for developing the plan, MOP partnered with the Consensus Building Institute (CBI) to help design and facilitate the complex public engagement process.

### Process Design and Facilitation

MOP and CBI worked with the state project leads to design and facilitate an intensive, multi-stage stakeholder engagement. The initial phase was designed to reach out broadly to the public and stakeholder communities to better understand the range of interests and solicit input on the structure of the public engagement process. To this end, the state held eighteen public listening sessions and five public workshops around the state and conducted 66 interviews with stakeholder representatives, over the fall of 2008. The CBI facilitation team recorded and synthesized the feedback from the more than 400 participants of these sessions and interviews.

The Oceans Act legislation, itself, specified the structure for two committees that would be central to the planning effort: 1) an Ocean Advisory Commission (OAC) comprised of legislators, agency heads, regional planning agencies, and key stakeholder representatives; and 2) a Science Advisory Council (SAC) comprised of experts in marine science and data management. For the second phase of public engagement, CBI facilitated the deliberations of these bodies, along with six working sub-groups, incorporating input from the first outreach phase and structuring many of the meetings so that non-committee stakeholders could still participate in the deliberations. Through this process,

participants provided input and guidance for the establishment of goals and outcomes for the plan, the assembling of data and information, a baseline assessment of the planning area, and core indicators of environmental health and plan progress. During this phase, a host of tools including postings of meeting summaries, reference documents, and draft reports, webcasts of events, list serves for stakeholders and working groups, and a portal for electronic comment submission were all also used to enhance public engagement.

A draft Ocean Plan was released in June 2009, based on the totality of the efforts to that point. The final phase of public engagement involved the state agencies receiving and responding to feedback on the draft plan. The Final Massachusetts Ocean Management Plan was issued in December 2009.

### **Impact**

MOP (now called SeaPlan) conducted an assessment of the process after the completion of the plan including interviews with members of the OAC and SAC. Members of both groups expressed widespread satisfaction with the process and the impression that the final product was science-based and stakeholder-informed. Based on feedback during public meetings and a comment period held to review the 2009 Plan and consider updates, the wider stakeholders, for their part, expressed appreciation of the extensive avenues to participate in the process, adding substantial legitimacy to the final plan. The one-and-a-half year process was by all accounts intensive and there is no doubt that certain perspectives and substance were not fully captured due to the tight timeframe. However, the assessment provides evidence that the state's willingness to engage so thoroughly, the availability of the resources and talents of MOP, and CBI's process expertise, facilitation skills, and coordinating role helped achieve an impressive level of public understanding of the ocean management planning process and a broader inclusion of interests and perspectives in the plan than would have otherwise occurred.

At the time of this writing, draft revisions to the 2009 Plan are under development, with further stakeholder engagement planned. The revisions will incorporate updated ocean management priorities and feedback on the 2009 Plan obtained from SeaPlan's process assessment and a variety of stakeholder meetings and forums on the plan since its initial publication.

### **Facilitation Team:**

Stephanie Moura, Massachusetts Oceans Partnership (now SeaPlan)

Pat Field, Consensus Building Institute

Kate Harvey, Consensus Building Institute

Suzanne Orenstein, Consensus Building Institute

## CASE #8 Rhode Island Renewable Energy Standard



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### Background

The Rhode Island legislature passed a law in 2004 requiring Rhode Island electricity suppliers to incrementally increase their reliance on renewable energy sources from 2% to 16% by the year 2020. The law was a direct result of the recommendations of the Rhode Island Greenhouse Gas Action Plan (see case #4: “Rhode Island Greenhouse Gas Process”). The Rhode Island Public Utilities Commission (PUC) was charged under the legislation with developing and adopting the regulations to implement the law.

To promulgate the regulations, the PUC engaged in a formal negotiated rulemaking process. Using PUC funds from ratepayers, the PUC contracted with Dr. Jonathan Raab of Raab Associates, Ltd. to mediate the negotiations.

### Mediation

The PUC determined that over fifteen stakeholder organizations had standing to participate in the negotiations. Some of these organizations had participated in the development of the Rhode Island Greenhouse Gas Action Plan and had, therefore, a history of collaboration with some of the other parties. Jonathan met with the parties eight times over six months and mediated the terms of large set of proposed rules, which he then drafted into a 41-page report. The parties reached consensus on all but four items, for which the report discussed the alternatives proposed and who supported each. The PUC then met with the negotiating group in two technical sessions to ensure they understood the proposed rules and discuss the non-consensus issues. The PUC then made decisions on these items and issued the group’s proposed rules, virtually unchanged, as the official draft regulations. After a formal public comment period, the PUC issued its final regulations in December 2005.

### Impact

In a negotiated rulemaking process, a neutral mediator can help the parties adhere to the legal structure, track and organize the many technical components covered by the regulations, and work to identify compromises that all parties can live with. When successful, as in this case, this process not only results in a product that reflects each party’s critical interests, but allows each party to understand the reasoning behind the points of compromise and to recognize that the trade-offs reflected may well represent the best option that would be agreeable to all parties. Negotiated rulemaking also helps surface practical solutions to key challenges, increasing the likelihood of successful implementation. It has proven an effective way to reduce backlash and lawsuits against the final promulgation of regulations. In this case, the mediator was able to help the group develop a near-consensus set of regulations in six months.

### Mediator:

Dr. Jonathan Raab, Raab Associates, Ltd.



## CHALLENGE:

### Mobilize Effective, Coordinated Action When Time is of the Essence

Environmental agencies do not always have the luxury of time when taking action to address imminent threats or respond to crises. As a result, confusion and lack of coordinated action can occur, diminishing the effectiveness of the response. In the following case, a facilitated public engagement process was able to strike a balance between the dual priorities of quick action and inclusive, coordinated decision-making. Collaborative processes do not have to be extensive in time and resources to work.

### CASE #9 Zebra Mussel Task Force



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#### Background

Zebra mussels, a highly invasive exotic species, were first discovered in North America in Lake Erie and Lake St. Clair in the late 1980's. They rapidly spread across the central and eastern U.S., primarily due to boats inadvertently carrying the mussels from water body to water body. The mussels are highly destructive to water quality and infrastructure and can severely impact recreation. Once established in a water body, they are virtually impossible to eliminate. As a result, the only effective strategy to control zebra mussels is to prevent their spread. By the early 2000's, zebra mussels were well established all along eastern New York, parts of Vermont, and parts of western Connecticut, essentially surrounding western Massachusetts. Finally, in 2009, the mussels were identified in a single lake in the Massachusetts Berkshire Mountains, Laurel Lake, and downstream of the lake in the Housatonic River. After an immediate rapid assessment by the state's Lakes and Ponds Program, no other Massachusetts lakes were found to contain the mussels, but fourteen were found to be at medium or high risk for infestation, based on water chemistry, natural lake features, and likely exposure.

#### Rapid Response Public Engagement

The Massachusetts Executive Office of Energy and Environmental Affairs (EEA) recognized a balance between the need to move quickly to stop the spread of zebra mussels and the need to engage a variety of interest groups who faced high stakes with the various management options under discussion to control the mussels. To strike this balance, EEA engaged the Massachusetts Office of Public Collaboration (MOPC) at the University of Massachusetts Boston to help design and manage a Zebra Mussel Task Force. EEA was able to secure funding and MOPC was able to quickly hire the services of Bill Logue and Kurt Dettman, MOPC affiliates, who together with MOPC Deputy Director Loraine Della Porta, helped design a process and convene a task force of representatives identified by EEA from three state agencies, multiple lake associations and fishing and hunting organizations, the City of Pittsfield

(nearby to Laurel Lake), a natural resources watch group, and academic and state scientists.

Over the course of four meetings over four months, the facilitation team helped frame the issues, explore and evaluate options, and assist the Task Force members in reconciling their competing interests towards a common goal of preventing the mussels from spreading to other locations, protecting boating access for the general public, protecting the property interests of land owners on Laurel Lake and other at-risk lakes in the region, managing the impact of any actions on the local economy, which is heavily dependent on tourism, and supporting the needs of the fishing and recreational communities. The group learned about the ecology of the mussels and the mechanisms and risks of their spreading, investigated what other states were doing, evaluated the logistical and financial needs associated with a variety of options, and developed a series of recommendations.

Building on the emergency actions the state had taken upon the initial discovery, and using the crisis as a call-to-action for the wider public, the Task Force recommendations included a range of public education materials and signage, enhanced boat ramp monitoring, criteria for decontamination procedures, and enforcement procedures. The group also discussed future collaborations and ongoing monitoring, identified funding streams, recommended training procedures for environmental law enforcement agents, and recommended regulatory and legislative actions. Prior to finalizing its recommendations, the Task Force held a public forum to collect input on its draft recommendations.

Based on the Task Force's final recommendations, full-time monitoring and education at eight boat ramps have been newly established in Laurel Lake and lakes in the region at risk for zebra mussels, and boat wash facilities were installed at Laurel Lake and nearby Stockbridge Bowl. In April 2013, legislation based on the Zebra Mussel Task Force recommendations authorized the state Lakes and Ponds program to set up an aquatic nuisance control program and strengthened its enforcement mechanisms. The Task Force itself has been folded into an interagency work group on invasive aquatics.

### **Impact**

The neutrally facilitated process allowed high-stakes discussion among the state agencies, law enforcement, and the public to happen in an efficient and productive way. EEA Undersecretary Phil Griffiths, convener and chair of the Task Force, was skilled as a facilitator. However, serving as the group's facilitator under these circumstances could easily have made him a target for the concerns of an initially anxious group of stakeholders. Instead, the presence of outside neutral facilitators raised the standards for effective communication, helped difficult issues to be surfaced without it becoming personal, and enabled Mr. Griffiths to stay in role as an administrator, which allowed him to provide leadership to the state agencies on the Task Force and address problems in substantive ways. As a result, significant concrete recommendations were agreed upon, and enforcement and funding were addressed simultaneously, resulting in a response to the zebra mussel occurrence that was both timely and collaborative.

### ***Massachusetts Office of Public Collaboration (MOPC) Project Team:***

Project Management Lead: Loraine Della Porta, MOPC Deputy Director

Lead Facilitator: Bill Logue, The Logue Group, MOPC Senior Affiliate

Assistant Facilitators: Kurt Dettman, MOPC Affiliate; Mette Kreuzmann, MOPC Program-Business Manager (public forum)

## CHALLENGE:

### Integrate Action Across Levels of Government or Multiple Jurisdictions

Many environmental resources cross geographic and administrative boundaries. Their management and protection necessarily cut across political jurisdictions and regulatory programs. The means for working across these divisions is often uncharted, confused by competing mandates, and fraught with tension. In the following two cases, proactive collaborative conversations helped integrate actions across multiple jurisdictions to address cross-boundary environmental management needs.

### CASE #10 Connecticut State Vegetation Management Task Force



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#### Background

Following extensive power line destruction and power outages resulting from Hurricane Irene in August 2011 and an October nor'easter just two months later, Connecticut Governor Dan Malloy set up a Two Storm Panel to review the state's storm preparedness, response, and recovery efforts. Following a recommendation of this review, the Connecticut Department of Energy and Environmental Protection (DEEP) convened a State Vegetation Management Task Force to address roadside vegetation management along utility lines. Members included arborists from the telecommuni-

cation and power utilities; vegetation specialists from the state environmental and transportation agencies; municipal representatives including tree wardens, public works directors, and land use enforcement officers; environmental organizations; forestry scientists; and the public utility regulating authority. The Task Force members shared a wealth of technical expertise and a commitment to improving vegetation management.

At issue were questions about whether the various roles and responsibilities for vegetation management along utility lines were appropriate and matched the intent of the relevant statutes, concerns around funding and standards of quality for vegetation management, inconsistency and lack of coordination around clearance and setback standards, and strong feelings about community character, property values, and aesthetics, including the importance of recognizing and protecting legacy trees. In light of these issues, the Task Force's goals were to develop:

- standards for road side tree planting and care;
- standards for tree wardens;
- vegetation management practices and schedules for utility rights of way; and
- municipal tree inventories and pruning schedules.

### **Process Design and Facilitation**

DEEP was responsible for how the group's recommendations would be used but designated the Executive Director of one of the nonprofit members of the group, the Connecticut Forest and Park Association, to chair the Task Force. The Chair recommended the group engage a neutral facilitator to help design and manage the process and ensure effective communication. DEEP provided the funding through the Forest & Park Association for a facilitator, and Bill Logue, of The Logue Group was awarded the contract.

Bill met with DEEP and the Task Force chair to help plan an effective process. Then, as manager of the process over several months, he helped the group establish ground rules for a productive conversation and decision rules for weighing options in a fair and organized way, planned and facilitated meetings including organizing relevant information, helped structure smaller work group sessions, helped the group reach consensus on contentious issues, tracked meeting progress and delivered meeting summaries, facilitated public feedback sessions on draft recommendations, and helped edit the Task Force Final Report.

The Task Force issued a wide set of consensus recommendations including credentials for tree wardens, centralized vegetation management resources, education strategies for abutting property owners, short-term and long-term funding strategies, and supportive legislation. In the wake of the facilitated process, the group continued to meet to usher through the recommendations and proposed legislation. One bill was signed into law establishing mandatory qualifications standards for tree wardens, based on the Task Force's original recommendations. A second bill, addressing tree work along utility lines and rights and responsibilities of adjacent property owners, required a second round of facilitated negotiations among a sub-group of the original Task Force. These negotiations were more intensive than the original Task Force discussions, as the proposed legislation addressed issues in which perspectives among the stakeholders were in sharper contrast. The group was able to reach consensus, leading the legislature to pass this second bill, too.

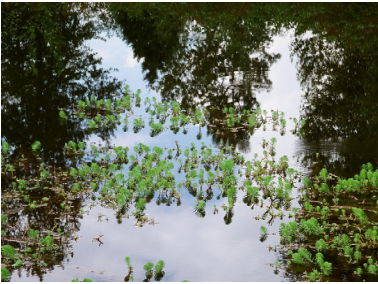
### **Impact**

The Task Force provided a forum for direct communication among vegetation management experts and stakeholders across multiple jurisdictions and benefited greatly from the high level of technical expertise among the participants. The facilitated process enhanced understanding across sectors, helped organize relevant information from disparate stakeholder groups, helped establish consensus, and developed a base for ongoing collaborative work among the many jurisdictions and stakeholders.

### **Facilitation:**

Bill Logue, The Logue Group

## CASE #11 New Hampshire Invasive Aquatic Species Management



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### Background

In New Hampshire, four separate state agencies have a jurisdictional interest in the control of invasive aquatic plant species. If unaddressed, these invasive plants can reach critical thresholds in water bodies and seriously impair both the ecological health of the water bodies and their use for recreational or commercial purposes. Despite a shared interest in controlling invasive aquatics, however, each agency has its own mandates, places somewhat different values on some of the conflicting interests, and needs to answer to its own group of concerned constituents. In addition, protocols for reviewing and issuing permits for pesticide application and other means of controlling invasive aquatics have been historically somewhat uncoordinated and even unclear within and between the agencies, creating tensions, conflicts, and confusion.

In 2010, after some increased conflicts over the issuance of permits for the application of pesticide to control invasive aquatics, the four agencies involved – the Department of Agriculture, Markets and Food (DAMF), the Department of Environmental Services (DES), the Department of Fish and Game (F&G), and the Department of Resources and Economic Development (DRED) – jointly agreed to address the tensions proactively. The agencies issued a joint statement committing to (1) obtaining a clear understanding of the relative roles, responsibilities and concerns that they each have with respect to the management of invasive aquatic plants, (2) developing a set of common principles for managing invasive aquatic plants, and (3) developing and implementing a process that will enable them to quickly address and resolve any disagreements they may have regarding the management of invasive aquatic plants. Furthermore, the agencies jointly decided to obtain a neutral facilitator to coordinate the discussion and help the agencies reach agreement on the critical issues at stake.

### Involvement of a Neutral Facilitator

The Commissioner of DES, Tom Burack, reached out to the U.S Environmental Protection Agency (EPA) Region 1 for assistance in obtaining a facilitator. Due to the water quality implication of invasive aquatics, EPA's New England Regional ADR Program was able to respond to the Commissioner's request by providing a two-person facilitation team consisting of one in-house and one external facilitator for the inter-agency discussion. Over a two-month period, Ellie Tonkin from EPA and Doug Thompson from the Keystone Center conducted interviews and worked with the agencies to compile relevant documents to help clarify the legal landscape, procedural and administrative structures, and key scientific and technical questions.

After the initial interviews and preparation, key managers and staff from the four agencies came together for an in-person discussion facilitated by Ellie and Doug. The group used the time to further clarify and explore each agency's applicable authorities and perceived roles, as well as the ways each agency thought the process could be improved. Additionally, the group worked to develop a joint set of guiding principles for their ongoing interactions and a concrete set of next steps, with designated leads for each task. Ellie and Doug followed up with a summary of these outcomes to help the agencies retain focus and momentum moving forward.

## **Impact**

The facilitated process helped the four agencies improve their understanding of one another's roles, constraints, and priorities in the management of invasive aquatic plants in New Hampshire. This enabled movement toward a set of joint guiding principles to improve inter- and intra-agency consistency in permitting decisions and other resource management actions as well as improved processes for inter-agency cooperation moving forward.

### ***Facilitation Team:***

Ellie Tonkin, EPA New England Regional ADR Program

Doug Thompson, the Keystone Center (currently with the Consensus Building Institute)

## CHALLENGE:

### Engage Stakeholder Groups that were Historically Difficult to Reach

In some situations, effective environmental action relies on participation of entities or stakeholder groups that have not historically been part of the state's planning or public engagement efforts. Identifying and addressing the barriers that might be at play in reaching these stakeholders is usually a necessary first step in actively engaging such groups. The following case illustrates a process that took this challenge on directly and successfully engaged a key stakeholder group in a process that greatly improved from its inclusion.

## CASE #12 Lake Champlain Phosphorus TMDL



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### Background

Nearly 500 square miles in size, Lake Champlain forms almost half of Vermont's western border with New York and is central to Vermont's tourism, recreation, transportation and natural resource sectors. During the 1980's and '90's, phosphorus was identified as a primary pollutant causing algae blooms in the lake and impairing recreation, tourism, property values, and – in certain instances – human health. Under the Clean Water Act, this impairment obligated Vermont and New York to develop Total Maximum Daily Loads (TMDL) – specific plans to reduce phosphorus loading to the lake. This included allocating pollution caps to the sectors contributing to the problem such that the total loading meets water quality standards. Wastewater discharges, stormwater runoff, and agriculture were identified as the leading sources of phosphorus loading.

New York and Vermont submitted a TMDL plan to EPA, which was approved in 2002. However, after a lawsuit by the Conservation Law Foundation and subsequent review of the decision, EPA revoked its approval of the Vermont portion of the plan in January 2011 and assumed the authority to revise this portion itself, in coordination with the state agencies. Among EPA's concerns was a lack of assurance in the original plan that the reductions assigned to the nonpoint sources of phosphorus (agriculture and stormwater, primarily) would be achieved. The state's agriculture and environmental agencies were assigned the co-lead role in figuring out how best to improve assurances that the necessary reductions in phosphorus could be achieved. Federal agencies, primarily the United States Department of Agriculture Natural Resources Conservation Service (NRCS), were interested in how existing conservation programs might support these water quality efforts and how creating new incentives or some form of certainty program might augment and integrate state and federal efforts.

### Process Design and Facilitation

Over the winter and spring of 2012, the Vermont Agency of Agriculture Food and Markets (VAAF), the Department of Environmental Conservation (DEC), and NRCS worked with the Environmental Mediation Center (EMC) and the Consensus Building Institute (CBI) to help design and facilitate

the stakeholder engagement process. During the process design, the state agencies and facilitation team decided to focus their outreach efforts on the agricultural sector, as there was wide recognition that key actions would be needed from this sector and engaging farmers would be essential. In the past, engaging with and reaching out to a wide range of farmers and farm types had been challenging. By June 2012, EMC and CBI had helped secure grants to fund the process, and intensive engagement with Vermont's diverse farming sector began.

To initiate the process, facilitator teams from EMC and CBI held over fifteen specialized focus group sessions throughout the Lake Champlain region, including sessions at the annual Vermont Farm Bureau meeting and at two larger agriculture sector meetings convened by the Secretary of VAAF and Commissioner of DEC. At each of these sessions, agency representatives participated actively to provide background information on the pollution problem in Lake Champlain, the TMDL process, and to explore issues and ideas. Participants in the groups – from small, medium and large farms, service companies, and others -- provided feedback on what pollution prevention practices were currently in place, which were working, which seemed less effective, what were strengths and weaknesses of federal and state incentives and other programs, what ideas they had for improvements, and what resources might be needed. In all, approximately 400 farmers and agricultural service providers participated in these sessions. After each session, comments and ideas were summarized by the facilitators without attribution and circulated back to participants for review. All comments were summarized in a final report that was made available to the state agencies, the U.S. EPA, and the public.

At the completion of the focus groups and workshops, the facilitation team compiled a summary list of ideas and recruited 24 members of the farming community to form a more intensive Agricultural Working Group (AWG) to refine the list and develop final recommendations for the TMDL and for considering how best to use incentives from state and federal programs. The AWG met six times to develop specific recommendations on near and longer-term steps that could be undertaken within the agricultural community to reduce phosphorus pollution from this sector. During the process, the facilitators also met with key stakeholders from the environmental advocacy community and brought feedback and input from this group to the sessions with the farmers. This format allowed the environmental community to weigh in on options and allowed the farm community participants their own forum to explore a diversity of views and ideas.

### **Impact**

Over the course of the engagement process with the agricultural sector, the tone of the conversation among the farming community shifted from an emphasis on how much effort was already going into pollution prevention to a forward looking discussion about what more could be done and how to ensure those actions were effective and were allocated the resources necessary. Key themes that emerged call for: 1) more resources for both technical assistance and compliance enforcement in the agriculture sector; 2) higher standards for performance, but more flexibility in means to achieve them; and 3) a farm certification program that would more clearly define best practices, building on existing federal and state programs. The stakeholder engagement process with the farmers will enable the revised Lake Champlain TMDL to reflect substantially more informed views about the agricultural sector's role in, and potential solutions for, the phosphorous issues facing Lake Champlain.

### **Facilitation Leads:**

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## Points of Guidance

The cases in this guide were deliberately chosen to represent a variety of contexts, formats, levels of effort, and substantive focus for collaborative governance processes. However, considering the cases collectively, certain themes emerged. These themes are offered below to help agencies when considering if and how to engage in a collaborative process to address an identified agency need:

### > **Clarify your goals**

As the matrix on page 8 suggests, not all collaborative structures are suited for every goal. One of the most important determinants of success is designing a collaborative process based on specific and clear goals. Sometimes, the exercise of articulating the goals for a given process exposes that they need more clarification and may not even be consistent among those engaged in planning the process. As was demonstrated in several of the cases, beginning the process by working to articulate common goals for the process, within and among the agency and stakeholder groups, will make selecting and designing a collaborative structure that is appropriate to the goals much more likely.

### > **Allocate resources that reflect the level of complexity . . .**

As many of the cases highlight, technical complexities, multiple related processes, and several levels of stakeholder engagement can create the need for a complex and dynamic collaborative process. Under these circumstances, allocating resources for a skilled process manager to devote substantial time and effort to closely follow each component and coordinate them into a whole can be integral to success.

### > . . . **But on the other hand, consider small initial steps**

A large dynamic structure doesn't need to be the first step right out of the gate. If resources aren't available, or parties are hesitant to commit to a larger endeavor, consider beginning with one or more smaller steps, such as: interviews with the respective interests to test collaborative waters; a non-agreement-seeking dialogue to allow participants to increase their understanding of the various perspectives; or a series of information sessions designed to bring people up to speed on key technical factors affecting a case. Such steps may lay the groundwork for taking on a more ambitious collaborative process.

### > **Cultivate goodwill and trust early in the process**

In many of the cases highlighted in this guide, parties came into the process on the heels of conflict and mistrust. Generating early opportunities for parties to gain trust of one another, and of the process, can make the subsequent stages of collaboration more fruitful. One approach employed in several cases involved creating cross-interest work groups tasked with collaborating on less controversial (but still important) items to get things moving. This helped establish effective working relationships among the parties before tackling the more contentious issues.

### > **Be intentional, transparent, and accountable in convening participants for a collaborative process**

This can be thought of as a subset of the suggestion, above, to cultivate goodwill early in the process. Using an inclusive process for selecting stakeholder representatives, technical experts, and the facilitator can be an early opportunity to showcase transparency and accountability to both stakeholders and the observing public and allow agencies and other participants to build skills at collaborative

decision-making. Some of the cases highlighted here had already achieved somewhat decreased levels of mistrust and improved relationships among parties by the time heavy deliberations started, as a result of an inclusive process of selecting participants.

**> Be deliberate in balancing time investment with process and outcome goals**

It can take time and significant process to get stakeholders to engage effectively, understand the various perspectives, and finally, reach agreement. While shorter collaborative processes are virtually always preferred all things being equal, all things are rarely equal. These cases suggest several considerations when balancing the desire to get things done quickly against the need to achieve more stable, longer-lasting outcomes. Time saved by avoiding resolution of the most contentious issues or excluding some interests that are harder to reach or work with can be lost many times over if such decisions result in litigation or substantial stakeholder opposition to the outcome. Processes designed to simply gather stakeholder input (more toward the *Explore/Inform* side of the process chart on page 8) almost always take less time than processes seeking consensus among stakeholders. However, an agreement-seeking process substantially increases the likelihood that stakeholders will understand the reasoning behind points of compromise and will support a final product even if it represents less than their ideal outcome. Finally, increasing time investment in a collaborative process to achieve one agency purpose can sometimes help advance secondary agency goals, such as settling longstanding technical debates, improving and aligning related policies or regulations, and improving relationships. In these cases, time investment calculations should be defined broadly to account for any overall agency benefits achieved.

**> Follow through when momentum exists**

Many of the collaborative processes described took advantage of decision-making momentum and newly opened channels of communication to continue collaborative work after an initial formal process had concluded. Such moments of momentum can provide unique opportunities for participants to facilitate implementation of any decisions that came out of the process by remaining engaged with one another and in problem-solving mode. Alternatively, such momentum can be used to take on questions or challenges that were outside the initial scope of the process but became ripe for collaboration as a result of it.

**> Get feedback from participants at regular intervals**

Participants' perspectives on how a process is going can be as diverse as their perspectives on the substantive issues at hand. It can be tempting for agencies to gage the effectiveness of a collaborative process by their perceptions alone. However, soliciting explicit periodic feedback on the process from all participants can alert those managing the collaboration to the need to make important course corrections mid-stream.

**> Analyze failures**

While this point of guidance doesn't directly emerge from the case studies, we feel it is important to emphasize. As every agency knows, alongside the collaborative processes that prove successful, there are cases in which collaborative approaches fall short of the goals set out for them – sometimes far short. These cases, too, deserve conscientious evaluation. Clear-eyed retrospection in these situations advances the state of knowledge as effectively as analyzing success and makes it much more likely that future efforts will enjoy better outcomes.

## Conclusions

The cases highlighted in this guide demonstrate instances when state environmental agencies engaged in thoughtful, structured collaborative dialogue and decision-making. In each case, the process resulted in outcomes that helped the agencies involved more effectively achieve their goals and reduced the controversy and conflict they were likely to face moving forward. Most people would agree that clarifying information in the face of complexities, organizing and ordering decisions so they can build toward a larger solution, and improving people's effectiveness at hearing and understanding one another's perspectives – all of which occurred in the highlighted cases – can lead to better outcomes. How to achieve these things consistently is less obvious.

Fortunately, there are many agencies across New England that have forged this path, and every experience adds to the collective understanding of the factors that make these dynamics more likely. Additionally, there are many skilled facilitators, both external to agencies and within them, who can lend insight and experience with effective collaborations to those seeking to engage in them. This guide is intended to make it easier for state environmental and natural resource agencies to identify when and which type of a collaborative process might best advance their goals. It also should help them identify colleagues, sister agencies, and neighboring states that have traveled these roads before with at least some success to show for it, keeping in mind that the cases in this guide are only a small sample of New England environmental agencies' successes with collaborative action.

## Special Resources

### **EPA Regional Alternative Dispute Resolution Program**

As many of the cases reference, the New England Office of the U.S. Environmental Protection Agency (EPA Region 1) has an established Regional Alternative Dispute Resolution (ADR) Program. Charged with supporting the effective use of ADR in the environmental context, the program provides consultation, convening, process design, and assistance selecting neutrals. The program also provides direct neutral services under appropriate circumstances, at the consent of the parties, and as resources will permit. When it is unable to provide direct services, EPA's New England Regional ADR Program can often still help connect parties to other practitioners and resources for process design and facilitation or mediation. This is an excellent resource for New England State Environmental Agencies.

*For more information, visit:*

<http://www.epa.gov/region1/enforcement/adr/program.html>

### **Massachusetts Office of Public Collaboration**

As two out of the three Massachusetts cases highlighted, the Massachusetts Office of Public Collaboration (MOPC) is an excellent resource for Massachusetts public entities and those collaborating with them. Established more than 25 years ago, MOPC (formerly Massachusetts Office of Dispute Resolution) was one of the first state offices of dispute resolution in the country and is currently unique within New England. The office was formally established as a state agency in 1990 and, as a result, is able to assist public agencies to access resources for dispute resolution, consensus build-

ing, and public engagement through interdepartmental service agreements without the need to deploy a competitive procurement process. In response to requests from public entities regarding specific disputes or projects, MOPC establishes a team of staff and qualified affiliate practitioners who can conduct conflict assessments, help design constructive collaborative processes, and provide direct facilitation and mediation services. MOPC also provides training and resources for public entities to help expand their capacity more broadly to engage the public in inclusive, deliberative, and consensus-oriented approaches to planning, problem solving, and policy-making.

*For more information, visit:*

<http://www.umb.edu/mopc>

### **Web References for the Professional Mediation and Facilitation Organizations Highlighted in these Case Studies**

Adamant Accord: [www.adamantaccord.com](http://www.adamantaccord.com)

The Consensus Building Institute: [www.cbuilding.org](http://www.cbuilding.org)

The Environmental Mediation Center: [www.emcenter.org](http://www.emcenter.org)

The Keystone Center: [www.keystone.org](http://www.keystone.org)

The Logue Group: [www.LogueGroup.com](http://www.LogueGroup.com)

Raab Associates: [www.raabassociates.org](http://www.raabassociates.org)



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