

## Defining and Empowering Affected Stakeholders in Environmental Commons Management: An Inquiry

Session Facilitated by: Lisa Uffman-Kirsch, PhD Candidate, University of Tasmania-Faculty of Law and Centre for Marine Socioecology

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### Session Report

Participants included:

- Master's Students from Canada and the United States
- A Postdoctoral researcher from the United States
- PhD candidates from Canada
- An Associate Professor from Canada
- A Field Technician (state government) from the United States
- A Terrestrial Ecologist (private industry) from Canada
- A Management Biologist (provincial government) from Canada

The facilitator shared relevant background on her research focusing on stakeholder participation in government decision-making for marine projects.

Participants then shared their initial views on the definition of a “stakeholder of environmental commons”. Environmental Commons are public natural resource areas. Participants shared the following definitions:

- *Individual or community that may be affected by any particular use of the environment*
- *Indigenous peoples and governments are not stakeholders—they are in a higher order*
- *User or one who governs common pool resource*
- *Any groups with vested interests in resources (economic, social, well-being, including mental)*
- *Someone impacted by resource through dependence, cultural heritage, or interest-- weighted by directness of impact*
- *Individuals invested or impacted from perspective of two categories—state actors (government) and non-state actors*
- *Individual, group or organization having a viewpoint or say in a specific situation or issue that might affect them*
- *People, organization or community affected or with invested interests; but depends on goals of government*

To frame the subsequent inquiry, the facilitator shared information on her research premise:

- The public holds environmental commons in a public trust administered by trustee governments.

- Governments have fiduciary duties under a long-standing principle of natural and common law called the Public Trust Doctrine.
- These duties can guide government decision-making processes for the environmental commons.
- Citizen stakeholders are public beneficiaries of common environmental assets.
- They have a right to assert their interests in decision-making processes about their common space.

Participants received two questions for discussion:

**Question 1:** What factors should determine the sectors of people who are environmental commons stakeholders with substantive participation rights? **How** do we decide who the stakeholders are?

**Question 2:** To what degree should these stakeholders have official/legally-binding decision-making authority—collaboration or fully empowered?

- **Collaborative decision-making authority** is defined as: Partnering in each aspect of decision-making regarding commons projects, including co-identification or development of alternatives and preferred solutions
- **Fully empowered decision-making authority** is defined as: Authority to make final decisions about projects in the environmental commons

Participant discussion yielded the following suggestions:

**Question 1: How do we decide who stakeholders are?**

- People presently living in a community (town)
- Must be defined “geographically”
- Independent experts, scientists/researchers (as advisors only?)
- Broad spectrum balanced between anthropocentric to ecocentric viewpoints based on their vested interests—spanning boundaries—should be a balance of representation, including potential users
- Project proponents-perhaps should have to develop social license with community first before they are considered an official stakeholder
- Those with baseline of knowledge about specifics of matter—with right to have a say comes the responsibility to be knowledgeable about the matter
- Must be open-minded and able to receive the knowledge
- Must be trustworthy and able to engage in authentic dialogue
- People who use the resource
- People with passion/interest/about the resource
- Those with most to gain or lose—invested financial interest or ties to resource
- Those with legal rights *and* asserted rights in the jurisdiction
- Local government/municipal views
- Those indirectly or directly affected/impacted, including future generations
- Elected or chosen leaders can represent broadly felt impacts from particular issue. Should liaise and report back to their communities, ask for input and be held accountable for those they represent
- Community can vote in a liaison/facilitator—may not be elected government representative
- A fundamental right for everyone to be a stakeholder of environmental commons
- Stakeholders can self-identify
- Those whose well-being is affected
- Seats at table must be proportional to their interest
- Sectors should pre-convene before coming to collaborative table and work out uniform voice and position communicated by one representative (e.g. not every govt. dept. gets a seat)
- Criteria should include monetary, cultural wellness and stability, financial stability

- Have a municipal referendum on the issue itself with a ranked ballot system that provides different choices for representatives (reps for the issue that may be different than elected govt. reps)
- Activities in some environmental commons will have a more locally defined sphere of impact, some will be broader—this helps define stakeholder pool

**Question 2: How much official decision-making authority should these stakeholders have?**

- Legal rights to resource (like land claim agreements) should come with higher decision-making authority
- Risk based—those highly-impacted (most to gain (?) or lose) should have higher decision-making authority
- Those already active by meaningful engagement/social acceptance should have more decision-making authority
- Those with a traditional or historical use of resource should have higher decision-making authority
- Give less power to those that have higher capacity (what is required to make decisions; i.e. access to information; education; organizational structure; money; authority)
- Weighted votes with an adjusted/fluid process
- Perhaps should be consensus-based
- Participants must be actively providing meaningful participation
- Perhaps project proponents should not have a vote, but just be there for discussion and to listen—“Who are they to tell us how to use our land (resources)?”
- The more boxes they tick, the more decision-making authority they have—from collaboration to consent

**Other Comments/Suggestions/Observations:**

- Power imbalances need to be considered in legal framework when deciding on decision-making authority (in re collaborative governance)—so process set up is most important aspect
- Must be clear from beginning of collaborative process what each participant’s power right and limitations are and how decision reached will be used or influence it will have on official decisions
- Facilitator should be hired by stakeholder (all agree) or hired by one stakeholder (govt.) but can be fired by anyone OR all stakeholder groups pitch in for facilitator of decision-making sessions. Maybe three choices from RFP list given to group from which to choose.
- Facilitator should not have an interest in decision, or disclose conflicts and how to handle should be decided by group
- Question raised on how informal institutions fit into this discussion
- There is a limit to amount of individuals/stakeholders at the table—could representation assist with this? Must report back to individuals/constituents represented
- Defining stakeholders is a very ethical question—concern over who should define this (legitimacy issues)
- Processes of collaborative governance—how will these lead to outcomes and transfer of knowledge and dialogue
- If chosen representative does not speak for everyone’s views, must have guidelines on a removal process
- Should have guidelines on handling conflicts of interest
- Cumulative effects of decisions should be considered—must have some mechanism to know bigger picture of what is happening outside of current decision on table to take a systems view

- Accountability for use of decisions/recommendations made is critically important. What happens with them and specifically why or why not—including discussion on those official decisions with stakeholder decision-making body—second or third rounds of deliberation.
- Should not be so hard to get government documents, especially about our common assets/interests—the government must freely provide stakeholder participants/citizens the basis for its decisions.
- Law now provides a barrier to more effective decision-making by non-lawyers. Law needs to come forward—be a more mainstream part of the research and proactive, collaborative, preventative environmental decision-making process.
- Who is involved and the decision-making process affects the legitimacy of commons governance and governments.

**Report prepared by Lisa Uffman-Kirsch, Session Facilitator**

**Other session participants:**

- **Jacqueline Chapman, Carleton University**
- **Jennifer Dunn, Michigan Technological University**
- **Laramie Ferguson, Simon Fraser University**
- **Amanda Jeanson, Carleton University**
- **Rava Lee, Savanta, Inc.**
- **Katie Leung, New York City Parks, WCS AIP**
- **Zoe Milligan, University of Waterloo**
- **Kyle Ritchie, Nunavut Wildlife Management Board**
- **Professor Stephan Schott, Carleton University**

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