

Joint Fact Finding for Public Involvement in Wind-Permitting Decisions: Beyond NEPA

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Joint fact finding, a process in which diverse stakeholders with an interest in a project work with scientists to develop the scope of research and interpret study results, has great potential as an alternative to the traditional public involvement model of NEPA. With appropriate agency buy-in, joint fact finding can improve efficiency, communication, public satisfaction, and agency credibility. This paper compares stakeholder participation in traditional NEPA processes with the joint fact-finding process as applied to permitting for wind farm projects such as that of the current Cape and Islands Offshore Wind Farm. It explores the role, including benefits and challenges, that joint fact finding could play in each stage of the permitting process.

Public Involvement and NEPA

NEPA requires all federal agencies to assess the environmental impacts of major projects or decisions, the expenditure of federal money, or other actions that affect federal lands; to consider environmental impacts in making decisions; and disclose to these impacts to the public. Environmental assessments (EAs) and environmental impact statements (EISs), both triggered by NEPA on development projects, must include information not only from scientific studies and forecasts, but also from interaction with the public and state, local, and tribal governments.

The Council on Environmental Quality (CEQ) has regulatory oversight of all federal agencies for NEPA and has interpreted minimum guidelines. CEQ regulations state that agencies must “make diligent efforts to involve the public in preparing and implementing their NEPA procedures” (Federal Register 1978). Agencies are required to comply with CEQ regulations and to consult with CEQ in developing their own NEPA procedures “to ensure that environmental information is available to the public and the agency decision makers before decisions are made and actions taken” (Federal Register 1978). The public may be invited for scoping sessions to determine the issues associated with a project or decision and may comment on the draft and final EIS. Some agencies also take public comments on the Record of Decision (ROD), and some will open an appeals process after the ROD is issued.

Criticisms of Current Public Involvement Processes

While NEPA has allowed the public to give input on thousands of projects such as energy exploration, some have criticized the effectiveness of the NEPA process to produce public policy with a high degree of public satisfaction. Although public input is solicited at various points, it has been observed that the public is not involved in a meaningful way in research, decision making, or implementation processes. Public participation as defined by CEQ and individual agency guidances makes a distinct separation between the scientific study and public participation. This division has prevented agencies from realizing the full potential of NEPA as a tool to craft effective and stable environmental policy.

The CEQ report, *The National Environmental Policy Act: A Study of Its Effectiveness After Twenty-five Years* (CEQ 1997) found a public perception that federal agencies today are more accountable for and better understand the consequences of their actions than before NEPA. Interviewees said that agencies are more likely today to consider the views of the public. However, the study further determined that NEPA processes are costly and lengthy; that agencies make decisions before hearing from the public; and that agency officials, particularly senior leadership, lack adequate training in public participation. Furthermore, documents are too long and technical for many people to use; the highly technical nature of NEPA documents and the lack of public resources to “translate” materials into information useful to the interested public have contributed to an “atrocious” level of citizens’ understanding of EIS material (Sullivan et al., 1996). According to federal agency NEPA liaisons, the EIS process is still viewed by many as a compliance requirement rather than as a tool to effect better decision making.

Because of poor implementation of public involvement processes, agencies have lost public credibility. Agencies have also expressed frustration at the method of public involvement used most often in EIS processes. A NEPA Task Force (2003) received feedback that agencies may also misinterpret or misrepresent environmental effects information and do not conduct quality analyses. Agencies expressed frustration that other agencies and the public are insensitive to agency goals and responsibilities. Public participation through NEPA often occurs too late in the EIS process and tends to emphasize short-term impacts rather than long-term goals. Both public and agency interviewees noted a need for additional efforts to strengthen trust and credibility.

In its review of public involvement in NEPA, The US Institute for Environmental Conflict Resolution (US Institute 2001) identified additional problems including a lack of agency guidance and interagency coordination, inefficient and duplicative processes, confusion about participants’ roles, overemphasis on NEPA documentation and litigation protection, and infrequent use of NEPA processes as part of strategic planning and decision making. All of these reflect the lack of meaningful public participation.

An additional finding by the US Institute (2001) and a growing number of NEPA evaluators [CITATION] is that current practice reflects too little focus on NEPA’s Section 101 “productive harmony” clause, which describes a holistic view of environmental review. Whereas agencies generally see Section 102 as their procedural requirements, Section 101 outlines the underlying intent of NEPA: Cooperation between federal, state, and local governments and public and private organizations “to create and maintain conditions under which man and nature can exist in productive harmony, and fulfill the social, economic, and other requirements of present and future generations of Americans” (Preister and Kent 2001). In focusing solely on Section 102, agencies are emphasizing procedure at the expense of NEPA’s call for meaningful public involvement.

Yet another frustration with NEPA is that it often leads to litigation, taking the decision-making authority out of the hands of all involved parties. Of the approximately 35 NEPA court decisions issued since October 2001, the federal agencies lost 19, over 54 percent (Swartz 2003).

While NEPA was a landmark first step toward recognizing the importance of the environment and the public’s input, many years of experience and evaluation illustrate that federal decision making needs a more comprehensive participation tool than current minimum requirements.

Ultimately, CEQ should consider new regulations based on the learning of three decades' of experience in NEPA processes. In the absence of an updated policy with a more comprehensive public involvement framework, federal agencies have the option to consider modifying their own guidance to encourage and support an expansion of public involvement in their environmental decision-making processes.

Public Involvement in Wind Permitting

EIS processes, particularly for wind energy permit applications, are one area that could benefit from more meaningful public involvement. Due to the location of fossil fuels and other energy sources in federal lands and waters, the energy sector has often been subject to NEPA regulations. Examples of energy projects which have required an EIS through NEPA include natural gas and oil pipelines, power facilities, mining activities, offshore oil exploration, and land-based wind farms. Recently, an offshore wind farm proposal has also launched the NEPA process.

The Cape and Islands Offshore Wind project, a proposed wind farm of 130 turbines in the federal waters of Nantucket Sound, is currently going through an EIS review. If approved, the project would be the first offshore wind farm in the United States. Compared to European citizens who are becoming increasingly familiar with offshore wind farms, the American public is only beginning to explore such projects. We find ourselves in an interesting and difficult position. Though the benefits of clean renewable energy are obvious, questions remain about the potential effects of offshore wind turbines on animal life and the aesthetics of an ocean view.

Lacking accepted baseline data about the ocean floor, marine and avian life, or economic impacts, interested parties are in an environmental conundrum. While the public would like to capture the benefits of renewable energy, some worry about the costs of installing wind turbines in an environment with many unknowns. In this way, the absence of data considered credible by all parties is handicapping the current EIS and permitting process and therefore, the wind industry.

The National Wind Coordinating Committee (NWCC) recognizes “early, significant, and meaningful public involvement” as a principle common to successful wind energy permitting processes (2002). They found that projects lacking early and meaningful public involvement have a much greater likelihood not only of public opposition but also of costly and lengthy administrative reviews and judicial appeals. Past methods of public involvement have included

- Developer solicitation of input from interested parties before submitting their permit application;
- Permitting agencies notification of potentially affected community members at the time the permit is received;
- Developers and agencies holding public information meetings or community workshops;
- Permitting agencies sending copies of analyses or pre-decision documents to interested parties and requesting comment; and
- Permitting agencies holding formal public hearings on a project.

As the Cape Wind project is the first offshore permit application, the developer, Cape Wind Associates, LLC, and the permitting agency, the Army Corps of Engineers, have taken most of

the above steps. However, with so much at stake for the wind power industry and environment, more can be done to involve the public in a way that addresses their questions and concerns. In this precedent-setting federal decision, the combination of NEPA's process problems and the many data gaps in existing knowledge about Nantucket Sound creates a challenge and an opportunity for federal agencies to enhance the effectiveness of environmental investigations and decision making for offshore wind projects. Joint fact finding, as a component of a consensus-building process, is a unique opportunity to restructure public participation and scientific input in NEPA processes.

Potential of Joint Fact Finding

Joint fact finding brings together diverse stakeholders and scientists to frame research questions with the goal of gathering information that is credible to all parties. Joint fact finding involves stakeholders in helping planners frame the research questions, choose objective and credible experts, monitor the research, interpret the results, decide on a course of action, and revisit the plan after implementation to consider whether modifications are needed.

Joint fact finding has been used for many environmental issues, including coastal zone management, watershed management, negotiated rule making, and facility siting. It is especially useful in technical or science-intensive policy decisions when conflicts involve a dearth of information, or when parties make public claims that data are inaccurate (Ehrmann and Stinson 1999) as has been the case in the Cape Wind permitting process.

The steps in a wind permitting process include

- Pre-application,
- Application review,
- Decision making,
- Administrative and judicial review, and
- Permit compliance.

Joint fact finding could be appropriately applied to each of these steps.

Pre-application

The pre-application phase of a wind facility permitting process occurs before a developer officially files an application with the permitting agency. This phase allows a developer to fully understand the requirements for the application process and allows the agency an opportunity to become acquainted with the developer and the proposed project site. In NEPA, the pre-application phase has no requirement for public involvement. As in the case of the Cape Wind, the public was first notified only when this phase was complete and the application was submitted to the Army Corps.

However, if joint fact finding were initiated, the developer and agency could use the pre-application phase as an opportunity to initiate the consensus-building process. Early involvement was identified as an important component of permitting and a characteristic often lacking in NEPA processes. In joint fact finding, the pre-application phase would be used to conduct an assessment of stakeholders with an interest in the project. An important early step is to identify and invite parties with the political or economic power to block resolution of a public dispute, or in this case, with the power to block the project (Ozawa and Susskind 1985). The agency and

developer would enlist the services of a neutral third party mediator at this stage to carry out the assessment and to recommend which stakeholders to contact. As noted by the NWCC (2002), successful permitting projects also identify the other federal, state, and local agencies with whom the process must be coordinated. These agencies, too, should be involved in joint fact finding in order to share information and integrate planning responsibilities.

Both policy and science representatives should be involved in bringing together agencies. Permitting decisions may be on a strict timetable dictated by investments, legal mandates, or other pressures. Scientific studies generally operate on a much longer timeframe. For science to be completed in time to inform the permitting decision, researchers must understand any policy time constraints at the beginning of the process. At the outset of the permitting and joint fact-finding process, the permitting agency should be explicit about the time by which the participants, working with scientists, should produce a recommendation.

Expanding the scale of involvement in the pre-application stage could present challenges to the permitting agency. Hiring a neutral third party will require resources beyond those typically needed at this stage. Furthermore, involving additional agencies could be viewed as a threat to the lead agency's authority. However, identifying stakeholders and coordinating among agencies early in the process can save resources later in the process. For example, without a thorough assessment stage, a stakeholder group could come forward late in the process and present an environmental concern or even data that could halt the process and require additional research to be conducted before a decision is made. Also, other agencies with relevant expertise, though they may not have clear decision-making authority, could have concerns about the project and use their influence to delay the permit until their interests are met. Other agencies also may be important in the compliance stage. Establishing a relationship early on would benefit the permitting agency. The involvement of other agencies adds expertise to the permitting decision and can lend greater credibility to the process in a potentially changing political or regulatory environment.

One possible concern for a developer could be that early disclosure of information will put the company at a disadvantage in licensing a preferred site. However, early notification gives the agency and developers additional time to address public concerns and to correct any misperceptions some may hold. It is also preferable to involve the public early to avoid the "decide-announce-defend" perception, which causes an immediate polarization that can result when stakeholders sense that key decisions have already been made in the permitting process (Ducsik 1986).

There are also potential concerns at this stage from the stakeholder with an interest in the permitting process. While joint fact finding offers an opportunity for more in-depth involvement than traditional NEPA public participation, there is a limit to the number of stakeholders who can sit at the table as official participants. Joint fact finding requires that interest groups to trust a representative faithfully advocate their views. Like-minded community members will need to caucus to determine their interests and choose one or two people to represent them in discussions.

Because of this limitation, a federal agency permitting process using joint fact finding would also require public comment periods. Federal rules require that all citizens must be given the opportunity to comment on the permit for the agency's consideration.

Application Review

The application review phase of a permitting process generally begins when the developer files the application with the agency. This phase can vary in length and requirements depending on the agency. Agencies scope the project's issues, often with public input, and developers hire contractors to conduct research to investigate these issues. Permitting considerations for wind projects may include impacts or benefits associated with land use, noise, birds and other biological resources, visual resources, soil erosion, water quality, public health and safety, cultural and paleontological resources, solid and hazardous wastes, and air quality and climate (NWCC 1999).

The Cape Wind project is currently in the research stage of its application review. Scoping is open, though studies are already underway and include many of the areas as related to the marine environment, as well as other water-specific issues such as navigation and potential economic impacts. At the conclusion of research, the applicant will produce a draft EIS for review by the permitting agency and the public. This document will identify project alternatives, including a range of project locations or sizes and a "no action" alternative. For each alternative, the draft EIS will address the environmental effects questions put forth in the scoping process.

Joint fact finding could play a key role in the application review at the scoping and research stage. Given the relatively new and continuously developing technology of wind turbines, contentious data is a major concern. This is especially true for the Cape Wind project. While the public was invited by the Army Corps of Engineers to comment on the scope of the EIS studies, subsequent study designs were developed without the public. Further, the developer, rather than a group of stakeholders, chose the contractors to conduct these studies. As a result, following their input through meetings and written comments, the public will not see any of the research until it is completed and made available by the developer or agency. In this way, the science is being conducted in a "black box," compromising its credibility and leaving any study conclusions vulnerable to attack by members of the public who may not trust the outcomes.

Because of this mistrust, many different organizations have commissioned or conducted their own scientific or economic analyses. This has resulted in conflicting information being distributed or discussed about electrical needs, potential economic impacts, and the condition of the current marine environment in Nantucket Sound. Contradictory science only further confuses the public and retards the decision-making process.

While black box science often encourages those opposed to the project to conduct their own studies to refute the EIS research, joint fact finding allows stakeholders to convene and make consensus-based decisions. The NWCC highlighted a successful permitting process as one that is issue-oriented and establishes clear decision criteria. These principles could be established through joint fact finding in the application review stage.

Agencies, developers, and stakeholders should be clear on important issues early in the process. Joint fact finding involves dialogue and consensus building around what issues are of major concern to the public. While most EIS studies focus on scientific questions, joint fact finding also allows the introduction of other issues, such as economics or aesthetics. Encouraged to make their concerns explicit, parties are less likely to conflate scientific questions with value-based concerns. A neutral can help joint fact-finding participants to agree on key research questions, acceptable study methods, and credible scientists and analysts.

Besides a neutral facilitator, joint fact finding requires technical experts to interact with stakeholders. Having scientists and analysts at the table can improve stakeholders' understanding of technical issues, recognize scientific uncertainties, and answer questions about what issues can and cannot be addressed through research. Technical experts can also help stakeholders understand baseline information, determine data gaps, and frame researchable questions based on identified issues of concern. In traditional EIS processes, scientists are confined to the lab or the field, and the interested public does not have the benefit of their expertise.

Beyond determining data needs and which studies to conduct, joint fact-finding participants would also determine criteria for use in the decision-making phase. Criteria should include factors to be considered in a decision, and how these factors will be balanced against each other. Criteria should address environmental, economic, and social factors, as well as mitigation measures that are feasible and potentially acceptable to stakeholders and the developer. Criteria must also consider applicable federal, state, or local laws to which the proposed project would be subject. Examples of criteria could include minimum performance requirements, such as electrical output, or maximum levels of acceptable avian loss.

Following research, stakeholders, developer, agencies, and the scientists would evaluate the results. Together, these participants would discuss what the scientific results mean, including the assumptions and uncertainty levels built into the results. Given this information, joint fact-finding participants would determine how these results could be used most appropriately to inform upcoming permitting decision.

A potential concern for stakeholders, agencies, developers, and scientists is that joint fact finding, as a consensus-based approach to scoping and research for EIS, makes the NEPA process much lengthier than current methods. Expanding the number of people who are allowed to influence the process in a meaningful way will necessarily require more time, especially when the larger circle of influence includes parties whose interests seem to conflict at the outset.

Lengthening the timeline for decision making will often require additional staff members or a longer commitment of staff time to the issue. Additional money may have to be spent on data collection, because stakeholders could ask for expanded studies. Collaborative projects may also require funding for travel and other meeting needs of participants. However, if agencies are willing to invest money for joint fact finding during the pre-application and application review stage, the remaining permitting phases will likely be less time consuming and therefore less costly. The early and continued involvement of stakeholders should increase their buy-in and address their concerns at a stage where they can very possibly be resolved, rather than later in the judicial review stage when they may choose to litigate the agency's decision.

Another possible stakeholder concern is that using joint fact finding for offshore wind permit applications would set a higher standard for this category of projects than current NEPA processes require for other federal actions, especially with the precedent-setting nature of the Cape Wind project. The more in-depth involvement of representatives from stakeholder groups in joint fact finding could be viewed as raising the bar for the approval of wind projects.

While joint fact finding would be a good match with wind permitting processes, it could also be applied to other application processes that are currently subject to NEPA guidelines. While joint fact finding would provide greater opportunities for stakeholders to be involved in the process by having a greater voice in research topics and methods, it would not necessarily increase the burden of proof for the project applicant. Joint fact finding could appear as a more rigorous process or a higher standard. However, current methods have failed in many ways to meet the needs of agencies and stakeholders. Offshore wind permits are only one application that could benefit from joint fact finding; the experiment could result in a higher standard for public involvement across the board in environmental decision making.

Decision Making

In the decision-making phase, the permitting agency determines whether to grant a permit as well as whether any permit contingencies, such as mitigation measures, will be required for operation. The decision-making agency varies depending on the location of the proposed project, and could include a city council, county or township board of supervisors, or a planning commission. For offshore projects located in federal waters on the Outer Continental Shelf (OCS) such as the proposed Cape Cod Wind Farm, the Rivers and Harbors Act and the Outer Continental Shelf Lands Act grant the Army Corps authority to regulate structures and work in navigable waters of the United States, including the OCS.

Requirements for this stage also vary by project and agency. Often, the permitting agency will direct the applicant to hold public hearings, particularly in the surrounding community. Through NEPA, the permitting agency must give the public a minimum of 45 days to comment on the draft EIS before creating a final EIS. The final EIS will name the agency's preferred alternative.

Joint fact finding would involve a stakeholder group with diverse expertise and interests rather than a few decision makers at a single federal agency. The federal government has recognized the benefits of convening a stakeholder group to inform decision-making processes, which it institutionalized with the Federal Advisory Committee Act (FACA). These advantages include

- rules that are more sensitive to the needs and limitations of both the parties and the agency;
- rules that are more pragmatic and more easily implemented at an earlier date;
- a reduction in the number and a more moderate tenor of public comments;
- a reduction in the number of substantive changes required before the rule is made final; and
- greater creativity in rule making (Pritzker and Dalton 1985).

Under FACA, a federal agency convenes a stakeholder committee representing the public, interest groups, and state and local governments to advise the agency on a specific subject. For example, in a negotiated rule making, an agency convenes a committee to discuss and decide on the details of a proposed regulation. If the group reaches consensus, the federal agency can use

their agreement as a basis for its proposed rule, which will then be subject to public comment. If consensus is not reached, the agency proceeds with its normal rule-making activities. This same idea could be carried out using a representative stakeholder group in a consensus-based process that includes joint fact finding. The major difference would be that, in a rule making, stakeholders begin their work at the decision-making stage. As described above, joint fact finding would begin earlier and focus much of the group's effort on determining the details of the research plan and then interpreting the data.

Early involvement is important and useful preparation for the decision-making stage. An important step would be to establish comprehensive criteria during the application review stage. Currently, while an EIS may be required to evaluate project alternatives, NEPA does not require that environmental impacts trump other factors, such as socioeconomic or other national priorities identified by an agency or political administration. NEPA does not identify strict criteria nor require agencies to set forth criteria for their final decisions. Here, joint fact finding could play an important role by increasing clarity and transparency in permitting decisions.

Joint fact finding does not eliminate the difficulty of balancing risks and interests when making decisions about complex environmental systems. However, it facilitates the establishment of decision-making criteria that consider key stakeholder interests, a transparent process that gives the public a much more comprehensive understanding of how decisions are reached, and has the potential to produce a final decision that is much more satisfying to the public than if the agency had acted alone.

Administrative and Judicial Review

Following the final permit decision, organizations and individuals may file an appeal. Courts are often asked to review procedural errors, such as questions of whether NEPA requirements were met, as well as factual errors, such as whether scientific investigations were accurately conducted. Following EIS processes, appeals most often question the fairness of process and compliance with review requirements.

For the permitting agency and permit applicant, the extra time and effort incurred by inviting additional stakeholders to participate in a comprehensive public involvement process such as joint fact finding is an investment. Unfortunately, there can be no guarantee of a return on this investment. However, a successful joint fact-finding process will significantly shorten or even eliminate the administrative and judicial review stage of the permit review process. Given federal agencies' recent success rate of less than 50 percent in the courts, joint fact finding could provide some stability to the decision-making process.

Experience suggests "if the parties to a dispute make these decisions collectively and debate the possible alternatives before an analysis is completed, they are less likely to reject the scientific findings that emerge" (Ehrmann and Stinson 1999). Joint fact finding can help agency representatives manage the conflict inherent in public development projects by dealing with concerns on the front end of the decision rather than through the court system. Stakeholders can increase support for agency processes after the decision is made, because their involvement in the process leads to buy-in for the project.

Permit Compliance

Permit compliance continues throughout the lifetime of a project, from construction to closure or decommissioning. This phase traditionally involves the permit applicant, or future facility owner and operator, and any agency with oversight and regulatory authority. Permit compliance could also include contingency agreements such as inspection or monitoring to ensure that operation remains in compliance.

Joint fact finding could augment permit compliance through instituting adaptive management requirements. Adaptive management involves using science-based and flexible approaches to facility operation once a project has been approved in order to mitigate anticipated or unanticipated environmental effects caused by the project. Joint fact finding participants could reach consensus on monitoring and adaptive management requirements, so that if problems are detected through ongoing observations, the facility's operations can be modified to reduce or eliminate the environmental effects.

This is especially helpful following inconclusive scientific results in the application review stage, when stakeholders are willing to live with uncertainty in exchange for an active monitoring and adaptive management program with a commitment from the permit applicant to mitigate certain categories of effects. For example, if a stakeholder raised a concern about marine floor effects during the permitting process that was not sufficiently addressed through research in the application review phase, the permit could be granted on the contingency that the operating conduct monitoring and change procedures if negative effects are observed.

Conclusions

Joint fact finding, as part of a consensus-based decision-making effort, has promise to address concerns identified in past 30 years of NEPA EIS processes. Its benefits extend to stakeholders, the permitting agency, and the permit applicant. Joint fact finding will improve efficiency, communication, public satisfaction, and agency credibility.

Efficiency

Joint fact finding would improve efficiency in wind-permitting decisions. By identifying all relevant agencies and different levels of government at the beginning of the process, joint fact finding promotes interagency coordination and strategic planning, and therefore helps reduce duplicity. Furthermore, identifying all interested parties early in the permitting process allows more meaningful involvement of both scientists and concerned citizens and organizations. While running such a process requires time and funds, NEPA process can also be costly and lengthy, and more likely to provoke litigation following the permitting decision. Using a more inclusive involvement process refocuses energy currently spent on documentation and litigation protection towards planning and decision making.

Communication

One of the most important contributions of joint fact finding is to improve communications between all participants in a permitting process, including the applicant, government, scientists, and the public. The early involvement of all relevant parties allows for the communication of interests and goals and a common understanding of the issues. Early communication would help all participants understand their role throughout the process. Interactions between the permitting

agency and stakeholders would be more meaningful and informative, giving the public a chance to convey their concerns and giving the agency an opportunity to explain its responsibilities and any constraints placed on them. Interagency coordination could also be much improved through this early communication.

Scientific communication greatly benefits from joint fact finding. Unlike NEPA public hearings, in which members of the public are given highly technical documents or presentations with no explanation, joint fact finding gives participants an opportunity to understand the science. Scientists become partners in the permitting process, and their work is accountable to stakeholders because of the exchange that takes place at the table. This exchange promotes a better understanding not only of research and its use in the decision-making process, but also of the limitations of research. For example, scientists are responsible for explaining assumptions and uncertainty levels inherent in their results.

Comprehensiveness

By giving a diverse set of stakeholders a more significant role in the application review phase of permitting, joint fact-finding processes are more comprehensive than traditional NEPA methods of public involvement. The congressional intent for NEPA, as outlined in Section 101, was to balance environmental, economic, and social concerns. However, in reality, the permitting agency is not required to follow any specific criteria or to balance these interests when making decisions. Acting alone and without accountability to a permit applicant or other stakeholders, an agency's final decision can often appear unfair or even arbitrary to outside observers. Joint fact finding gives stakeholders an opportunity to prioritize their interests and establish criteria before a decision is made. It also brings in participants with more diverse expertise. This leads to a comprehensive approach to the permitting decision that is more likely to include environmental, economic, and social issues in a balance more appropriate to stakeholder needs.

Credibility

Based on the above changes, joint fact finding would make a significant contribution to improving a permitting agency's credibility with the public. Due to the heavy involvement of stakeholders early and throughout the permitting process, joint fact finding would also change the perception that agencies make decisions before hearing from the public. Furthermore, the constant interaction with scientists would offset the perception that agencies misinterpret or misrepresent environmental information or that they do not conduct quality analyses. At the end of the permitting process, all involved stakeholders will have contributed to the outcome. If conducted appropriately, joint fact finding can make agency and public representatives allies rather than adversaries.

Implementation Considerations

In order to run an effective joint fact-finding process, wind-permitting agencies will need to improve their organizational capacity for public involvement processes. Most likely, agency representatives will need some level of training. Even more importantly, agency officials must accept the premise that public participation early in the permitting process, including the research phase, will yield better, more comprehensive permitting decisions. Until agencies honor NEPA's intent for meaningful public involvement to address environmental, economic, and social needs, the problems with and criticisms of current NEPA processes will persist.

Permitting agencies have the option to make public involvement a greater priority by granting stakeholders a more meaningful role in their review processes. A joint fact-finding process would effectively deal not only with the vast continuum of public and private interests, but also with the challenging scientific questions that arise in environmental decision making, particularly when dealing with a relatively new technology or industry like offshore wind power.

Initiatives like the Department of the Interior's (DOI's) "4C's agenda" is one example of an effort to change agency culture and promote more meaningful public involvement. This approach calls for "consultation, communication, and cooperation, all in the service of conservation". The agenda recognizes that environmental challenges can best be solved through "effective partnerships between the Federal, state, and local government, citizens, and organizations" (DOI 2003). DOI's commitment to partnerships is an important first step.

This commitment to a concept should graduate to commitment to a strategy for building partnerships. The EIS process underway for the Cape and Islands offshore wind farm proposal may be meeting all NEPA requirements, but it still disconnects the public from the process. Stakeholders were welcome to submit comments on the scope of the research, but they will not play any role in the administrative review stage until the agency has already made its own assessment and draft decision. As a result, parties are generating their own studies, using science to cloud the decision rather than to clarify it. As stakeholders are not engaged in a meaningful way with the permitting agency, the debate among public representatives is now being waged among public relations firms.

NEPA can easily encompass comprehensive environmental decisions, but for now it remains a compliance document that gives agencies all the burden of public involvement with none of the benefit. NEPA guidelines do not go nearly far enough in outlining how to achieve the "productive harmony" advocated in Section 101. Productive and harmonious outcomes can only be achieved when environmental decisions balance the needs and interests of diverse stakeholders.

These needs and interests can be understood and incorporated into decisions through an inclusive, deliberate public involvement process such as joint fact finding. Policy makers and agency leaders must establish a baseline of process and principles that will raise the standard for public involvement in wind permitting and other environmental decisions.

By establishing new NEPA guidelines, and eventually, new public involvement regulations, the federal government has the opportunity to institutionalize productive harmony and meet the goals set forth by Congress over 30 years ago. As compared to traditional methods of public involvement, joint fact finding would satisfy NEPA requirements much more comprehensively and improve relationships between permitting agencies and the public. Most importantly, it will lead to decisions that balance environmental, economic, and social needs while allowing the wind industry to evolve and the public to capture the benefits of clean, renewable energy.

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