

**Public Participation in Environmental Decision-Making and the
Federal Advisory Committee Act**

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I appreciate the opportunity to provide this testimony, and I congratulate the committee for examining a topic of great importance. The views provided in both my oral and written testimony, as well as those expressed in the materials submitted for the record, are not views of Resources for the Future (RFF). RFF is a research organization that does not take positions on public policy issues. The views expressed, therefore, are mine or those of the paper authors.

From our perspective, the Federal Advisory Committee Act (FACA) should be considered in the context of public participation in the United States. The advisory committees which it governs are important tools for participation but obviously not the only ones. My testimony will address the general topic of public participation—mainly in the context of environmental decision-making—and the more specific topic of FACA’s impacts on participation.

While virtually all federal environmental statutes allow for some form of public participation, a number of recent high-profile analyses have noted that the mechanisms available for involving the public are inadequate. The National Research Council’s 1996 report, *Understanding Risk*, and the Presidential/Congressional Commission on Risk Assessment and Risk Management’s 1997 report, *Framework for Environmental Health Risk Management*, both recommend that agencies make a greater effort to increase public involvement throughout the policy development process. Yet the participatory methods institutionalized in environmental law—such as formal comments, public hearings, and citizen suits—have proved inadequate to effectively meet the challenge of constructively involving the public.

Recent efforts at a number of federal agencies show a commitment to moving beyond current approaches to public involvement. For example, the Environmental Protection Agency, Department of Energy, and Department of Defense have initiated over 200 citizen advisory groups at contaminated sites around the country. The challenges these and other efforts face, however, are high. Downward trends in what political scientists term “social capital” have been acutely felt in the area of environmental management. Trust in government has been deteriorating over the last

thirty years. Conflict between stakeholder groups and government agencies—particularly at the site-specific level—is endemic. And, as a recent “National Report Card” on citizens’ knowledge about environmental problems has pointed out, education about environmental problems and the public’s role in them is sorely lacking.

Research Program

The related trends of declining social capital and what appears to be a renewed commitment to public participation in government at all levels has led Resources for the Future to launch a substantial research effort on public participation in environmental decision-making. The research seeks to evaluate the success of participatory efforts to date and recommend how these efforts can be improved. Our research agenda has four broad components: 1) a comprehensive evaluation of existing public participation case studies; 2) an analysis of “innovative” approaches to participation; 3) an examination of the relationship between participation and trust—as both a precondition for participation and an outcome of it; and 4) an evaluation of the impact of information technology, particularly the Internet, on participation.

To date, we have produced two papers on public participation. The first outlines a framework for evaluating public participation programs. The second is an analysis of the Federal Advisory Committee Act and its effect on public participation in federal environmental decision-making. These papers have not been published in final form, but drafts are available for inclusion in this hearing’s record.

Evaluating Public Participation

Despite the waxing and waning of interest in public participation over the last thirty years, no consistent method has emerged for evaluating the success of individual participatory processes or the desirability of the many participatory methods. One reason is a lack of consensus on what public participation is supposed to accomplish. Are participatory programs intended to empower disenfranchised groups or to make it easier for government agencies to implement their programs? Is a program successful if it

simply involves more of the public, or should it have to result in demonstrably better decisions?

A second, and perhaps more intractable, barrier to consistent evaluation arises from fundamental differences of opinion on the nature of democracy. Most people would not dispute that, in a democracy, citizens have a right to participate in the decisions which affect them. However, there are wide-ranging views on what form that participation should take. Should the public participate directly (through referenda, for example)? Does the involvement of interest groups in decision-making adequately reflect public concerns? Or, are surveys and focus groups sufficient for allowing government managers to make decisions that are responsive to public opinion? Different perspectives on the nature of democracy and the purpose of participation have led to widely divergent approaches to evaluating participatory programs most of which tend to favor *a priori* certain mechanisms for participation.

We have elected to evaluate participatory programs using six “social goals” which can be applied to many different types of participatory mechanisms. Social goals are those goals which public participation ought to be expected to achieve but which transcend the immediate interests of parties involved in a decision. The benefits of achieving these goals spill over from the participants themselves to the regulatory system as a whole. How well they are achieved often depends as much on how participants feel about the decision-making process as by the substantive decisions made during it. The six goals that form the basis of our evaluative framework are:

- Educating and informing the public,
- Incorporating public values into decision-making,
- Improving the substantive quality of decisions,
- Increasing trust in institutions,
- Reducing conflict, and
- Achieving cost-effectiveness.

The goal of an *educated and informed public* is derived from the normative argument that, in a democracy, citizens have a right to be involved in the decisions which affect them. To be effectively involved, the public should know enough about the relevant issues to be able to formulate alternatives and discuss outcomes with government

representatives and experts. At a minimum, the public should have enough information to make intelligent choices if called on to do so, through, for example, a referendum.

The goal of *allowing the incorporation of public values and knowledge* into decision making is derived from the insights of the risk perception and communication literature that outline dramatic differences between lay and expert perceptions of risk. These findings support an argument that differences over values, assumptions, and preferences should be deliberated in a process that assigns value to public perceptions of risk. A related goal, *increasing the substantive quality of decisions*, recognizes the public as a legitimate source of knowledge for improving the technical rigor of decisions and increasing political support for them..

The goal of *fostering trust in institutions* is based on the dramatic decline in public trust of government and other major institutions over the last thirty years. It recognizes that such loss of trust is a legitimate reaction to scandals and mismanagement, but that its restoration is crucial to cooperation between the government and public in managing the environment. In addition to rebuilding trust, public involvement ought to *reduce conflict among competing interests*. This goal is based on the argument that collaborative decision-making is more likely to result in lasting decisions which increase aggregate benefits for the parties involved.

The final goal, *cost-effectiveness*, acts as the resource constraint on the achievement of the other goals. It argues that the selection and implementation of public participation methods ought to be the most appropriate given the issues and interests involved.

Evaluation based on these social goals reflects a more expansive view of the “outcomes” of a participatory process as more than just the decisions that were made. This broader view of outcomes includes some of the most important results of participatory processes—and indeed those which justify opening up decision processes to the public in the first place. We are currently evaluating a number of case studies on environmental planning in the Great Lakes region using this framework.

The Federal Advisory Committee Act and Participation

In addition to our work on evaluating public participation, we have undertaken an examination of FACA and its consequences for public participation in environmental decision-making. Since 1972, a discussion of public participation through federal advisory committees is inseparable from a discussion of the law which regulates them. FACA is “one of the four pillars of open-government laws,” along with the Government in the Sunshine Act, the Freedom of Information Act, and the Administrative Procedures Act. Although the law has become a powerful influence on how public participation occurs at the federal level, FACA was not designed to increase participation in government *per se*, but to manage the process in a way that limits the influence of special interests. Its requirements for a formal charter, balanced membership, and open meetings were born as much out of fear of too much influence from certain “publics” as too little responsiveness to the public at large. The law has therefore had profound implications for who participates, when they participate, how they participate, and what influence participation has on decision-making.

A number of recent criticisms have charged that FACA constrains public participation, particularly when government agencies have adopted more participatory environmental management approaches, such as ecosystem management and place-based decision-making. Our paper looks at three ways in which FACA may have a “chilling effect” on public participation. In the first, public groups who would otherwise contribute to environmental decision-making are confronted by FACA’s procedural requirements and find that they create a barrier too high to surmount. This effect prevents “bottom-up” participation by groups who would otherwise bring a public perspective to decision-making. In the second, ambiguity about the law’s scope and balance requirements—and litigation arising from (or taking advantage of) this ambiguity—has led to a hesitancy among agency personnel to engage in any type of public involvement with entities not chartered under FACA. Dubbed “FACA-phobia” this effect, either legitimately or as a convenient excuse, creates a disincentive for agencies to engage the public in decision-making. The third component of the “chilling effect” arises from efforts by the Clinton administration to limit the number and cost of

federal advisory committees. The ceiling on the number of discretionary advisory committees that agencies can charter potentially restricts committee formation to only those backed by the most political clout and receiving the most public attention.

The final component of the paper turns from FACA's "chilling effects" on participation to an evaluation, using the social goals framework discussed above, of advisory committees themselves. It examines advisory committees in a generalized way and suggests how agencies can do self-evaluations of committees using the framework.

The paper concludes that while advisory committees can be successful mechanisms for public participation, it is participation of a particular type. Specifically, advisory committees are likely to work best for engaging interest groups on high profile "inside the beltway" decision-making. Their format is likely to be conducive to educating participants and fostering discussions which can improve the substantive quality decisions as well as making decisions better reflect stakeholder values. These committees also provide opportunities for building trust and reducing conflict among those who participate. However, advisory committees are less effective at engaging a wider public and dealing with trust and conflict on this wider scale. Explicit attention to outreach and engagement beyond the confines of the committee is necessary to meet participation's social goals on this larger scale.

FACA is more problematic at the site- and region-specific level. It is in efforts to engage local communities and stakeholders that the law's chilling effects are most apparent. All three of the chilling effects we examined come into play. The law's procedural barriers can prevent local groups from forming FACA-chartered committees—a five year process in one case we examined. "FACA-phobia" prevents agencies from engaging public groups outside of FACA, particularly because issues of scope, committee balance, and conflict-of-interest are more ill-defined at the local level. At the same time, agencies are prevented from chartering new advisory committees due to the administrative ceiling on committee formation.

One lens through which we examined the effects of FACA on site- and region-specific committees was to look at how five agencies with environmental responsibilities (EPA, DOE, DOD, BLM, and the Forest Service) dealt with FACA in forming such committees. At all of these agencies, FACA has made public participation a much more

constraint-driven process. In the most benign cases, agencies simply became more creative about how they charter committees. For example, DOE chose to charter only one committee, but to have twelve subcommittees—one for each major clean-up site. In the more disturbing cases, agencies have chosen not to charter committees under FACA and have therefore intentionally limited their receptivity to the full potential of participation in order to avoid violating the law. DOD, for example, avoids seeking consensual advice from its Restoration Advisory Boards, which are not chartered under FACA. Similarly, the Forest Service has had to hold at arms length the various non-FACA efforts—such as the Quincy Library Group and the Applegate Partnership—which are trying to mediate extremely contentious disputes among stakeholders on natural resource issues. This comes after such groups were proclaimed as the future of forest management during President Clinton’s first term. In contrast, the Forest Service’s FACA-chartered committees have only been successful in dealing with quite narrow policy issues and have not been able to re-create this consensus-building atmosphere.

Conclusion

As a number of high profile research reports have noted, and many agencies appear to have realized, public participation in environmental decision-making can have a number of benefits which justify the added uncertainty and cost of opening up decision-making to the public. Our research has focused on some of these benefits—such as education, higher quality and more responsive decisions, trust, and conflict resolution. Our goal is to determine how well participatory efforts have achieved these goals and how such efforts can be improved. In some cases, improvements can be had by changing the laws which govern participation or the regulations which implement those laws. Reform of the Federal Advisory Committee Act (and/or its regulations) to extend the benefits of participation outside of the inner circle of advisory committee members and to give agencies more flexibility in engaging the public at the site and regional levels are two ways that participation at the federal level can be improved.

References

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