

Mid-Term Report
**Alternative Dispute Resolution: Can it advance the stated policies of Integrated
Management in Canadian Fisheries and Oceans?**

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Introduction

Integrated Coastal Zone Management (ICZM) is a policy objective the Canadian government agreed to support and participate in, when it ratified the 1992 Rio Declaration at the UN conference on Environment and Development (UNCED) and the Oceans Act (Government of Canada, 1996, Chapter 31). ICZM is intended to be a voluntary collaborative process whereby stakeholders who share an interest in a resource, negotiate public policies based on multi-criteria in participatory decision making process affecting a given coastal or marine ecological unit (Bastien-Daigle et.al, 2008). Charles et.al. (2010, p.1) state that conflicting¹ uses is one component that requires “integration” in ICZM. Nonetheless, conflict resolution and integration have proven to be illusive and thus a difficult barrier to ICZM. This paper reports on one such conflict situation. Three factors have led to conflicts between governing authorities² and clam harvesters of Clam Harvesting Area Two (CHA2) – pollution, the leasing of beaches and new regulations. These conflicts illustrate both a macro or structural level of conflict that relates to governance and a micro level of conflict that is more interpersonal. Previous research suggests that alternative dispute resolution (ADR) is an acceptable method for analyzing and resolving disputes in environmental conflict situations (Boscow & Wheeler, 1984; Swanson, 1995a; Pirie, 2000). I suggest that transformative approaches to conflict resolution (Dukes, 1993; Bush & Folger, 1994; Laderack, 1995) have the potential to advance the stated policies of ICZM in the

¹ Conflict is define as “a struggle over values and claims to scarce status, power and resources in which the aims of the opponents are to neutralize, injure or eliminate their rivals” (Coser, 1969, p.8)

² Regulatory agencies include: Environment Canada tests water quality and classifies shellfish growing areas; the Department of Fisheries and Oceans controls harvesting, transportation and cleaning of shellfish and the opening and closing of shellfish growing areas. The Canadian Food Inspection Agency (CFIA) regulates handling, processing, marketing, import and export of shellfish. The Canadian Shellfish Sanitation Program (CSSP) is jointly administered by EC, DFO and CFIA. The provincial departments of Natural Resources, and of Fisheries and Aquaculture (NSDFA) as well as Municipal authorities also have regulatory powers (Charles et.al.,2010, p.16).

Canadian context. This will require that all stakeholders become familiar with the principles and methods of transformative conflict resolution.³

Background of the Problem

Approximately fifty years ago, the Annapolis Basin produced 60% of the soft shelled clam harvest in Nova Scotia. Soft shell and quahog clams have been important for both aboriginal and non-aboriginal coastal communities. Clam harvesting as a family business has a long history in the Digby/Annapolis area. Furthermore, it continues to provide a livelihood for those who have been forced out of other fisheries (Personal communication with clam harvesters, Feb 3 and 24, 2010). Historically, local clam diggers worked as independent harvesters entitled to an unrestricted catch limit (Sullivan, 2007). Recently however, the communities and harvesters surrounding CHA2 have found the resource much more difficult to access (Wiber & Bull, 2009, p.3) as a result of three significant circumstances.

The first factor is pollution, which has both a spatial and temporal aspect—seasonal fluctuations in naturally occurring contaminants, increasing levels of human pollution sources and wider distribution of environmental contaminants have all played a role. Thus, since the early 1980's, the clam harvesters of CHA2 have requested that the government address issues such as beach pollution, habitat destruction and stock declines. (Wiber & Bull, 2009, p.5). Despite local efforts to collectively manage the clam fishery, Wiber & Bull (2009) report that efforts to “meet with municipal authorities on issues such as sewage disposal, and coordinate with national and provincial administrators... have received little support from either the provinces or federal government” (p.6). Land –based pollution and seasonal water quality

³ The original research being presented in this paper is the preliminary findings for the Master's thesis I am currently undertaking. The research is also a component of the collaborative work being conducted by the Coastal CURA, a community-university-research-alliance. Funding for my research has been provided by the Social Sciences and Humanities Research Council (Community University Research grant) and I would like to take this opportunity to thank them for their support.

problems have led to occasional problems with high concentrations of toxins in shellfish hampering harvesting activities in the region (Wiber & Bull, 2009).

The second factor is the leasing of crown land beaches to a private company: As a result of the signing of a Memorandum of Understanding (MOU) between Nova Scotia and the federal government, the province has the authority to manage aquaculture (Wappel, 2003, n.p.). In 1997 the Nova Scotia Department of Fisheries and Aquaculture (NSDFA) issued private aquaculture leases on an annual basis to a private company, Innovative Fisheries Products (IFP) for 1682 hectares of crown land beaches in St. Mary's Bay. In 2006, harvesters learned that the annual leases were going to be renewed for a ten –year period (Wiber & Bull, 2009, p.6). Initially no public consultation process was planned prior to the ten year lease renewal. Clam harvester concerns with operation of the lease holder, led the clam harvesters to approach the Bay of Fundy Marine Resource Center (MRC) and the Annapolis Watershed Resource Committee (AWRC) to request help with obtaining a public assessment of the lease. Accordingly, the MRC and Bear River First Nations arranged meetings with the municipality, provincial and federal regulators to discuss the matter. Additionally, the MRC organized public meetings for community members, the municipality and relevant provincial and federal regulators (Wiber & Bull, 2009, p.5). Despite local opposition, the leases were renewed for the ten year period (Wiber & Bull, 2007; 2009).

The third factor is the newly implemented Canadian Shellfish Sanitation Program-- Conditional Management Plan. The new regulations are the result of a United States Food and Drug Administration Audit (USFDA)⁴ conducted in the area in 2004 (DFO interview, April 7, 2010). It was determined that there were some deficiencies in classification of areas located

⁴ Note: The audit by the USFDA is a normal operating practice. Canada has an agreement with the US dating back to the Bilateral Shellfish Agreement signed in 1948. For more information on the CSSP Conditional Management Plan visit: <http://www.inspection.gc.ca/english/fssa/fispoi/man/cssppccsm/shemolalle.pdf>

around wastewater treatment plants (DFO interview, April 7, 2010). Consequently, reclassifications of the Basin have occurred affecting access for harvest of both ‘open’ and ‘closed’⁵ area beaches. These three conditions connect one sequence of events to another (Corbin & Strauss, 2008). It is through the analysis of these three circumstances it has become apparent that conflict between governing agencies and clam harvesters has escalated.

The Problem and Area of Concern

Conflicting uses is only one element which requires “integration” in ICZM. Other components include: political and legal jurisdictions, ecosystem parameters, social, cultural and economic needs, different knowledge systems, and controls on anthropogenic impacts (Charles et.al.,2010, p.1). Although there is no generally accepted framework for ICZM, for the purpose of this paper, it will be defined as “a continuous and dynamic process that unites government and the community, science and management, sectoral and public interests in preparing and implementing an integrated plan for the protection and development of coastal ecosystems and resources” (GESAMP,1996 in Bastien-Daigle et.al, 2008). In order to accomplish this ICZM objective, various sources suggest that attention to deep democracy, participatory governance, shared decision making and the empowerment of all stakeholders must be honoured throughout the process (Ali, 2003; Jentoft, 2005; FAO, 2007; Kearney, 2007; McFadden, 2008).

While the recent *Oceans Act* (1996) clearly identifies ICZM as a policy objective, this clam harvesting case study found that the actions of governing agencies and of the clam harvesters in CHA2, as well as other stakeholders were not consistent with the stated policies and

⁵ ‘Open’ areas are areas deemed clean enough (under the shellfish sanitation program) for harvesting without requiring depuration. Closed areas are classified as contaminated, but harvesting is possible as long as a depuration process is available. Closed areas were leased to Innovative Fisheries Products (IFP), and this has been justified by some because IFP invested in a depuration plant. This is why there is a link between closed beaches and privatization (Wiber & Bull, 2009, p.10).

Note: The names of interview participants are not being revealed in order to protect their confidentiality and identities

objectives of ICZM. I suggest that this is the reason that both micro and macro levels of environmental conflict have emerged between the governing agencies and clam harvesters of CHA2. These conflicts continue to impede relations and progress towards managing the resource collectively and sustainably.

The following two sections are preliminary findings drawn from research I conducted in the winter of 2009-10. In total, eight individual interviews were conducted with individuals who work in the governing agencies of CHA2 and two focus groups were held involving five to six open area clam harvesters from CHA2. Data generated from the interviews and focus groups were compared to the literature on ADR in order to assess the types and level of conflict involved and the engagement process employed, in order to develop recommendations with respect to the future role of ADR in ICZM.

Micro-Levels of Conflict

Micro-levels of conflict arise from discretionary decision making or perception and may be restricted to one person, a small group of people or an entire interest group therefore resulting in interpersonal or intergroup conflict⁶. Two types of micro-level conflicts which have been identified in the dispute between governing agencies and clam harvesters in CHA2 are data and relationship conflicts. Due to space limitation, only one example of each type of conflict will be presented and examined. Furthermore, the solutions to conflict situations proposed throughout this paper are drawn from ADR literature and could be tried in specific cases to further ICZM.

Moore (in Pirie, 2000) explains that data refers to facts, information and knowledge and therefore data conflicts are caused by “lack of data or incomplete data; misinformation or inaccurate information; different views on what is relevant or different assessments”.

Furthermore, it can be argued that because stakeholders to a dispute often change (i.e. regulators

⁶ See Fisher’s Chapter 8 (in Deutsch & Morton, 2000, p.166) for more information on Intergroup Conflict.

are moved to another location or are replaced after retirement—clam associations elect new representatives) the flow of communication and information is altered producing negative implications. From the statements displayed below, it is evident that the Canadian Food Inspection Agency (CFIA) regulator and the clam harvesters agree that there have been problems with respect to transparency and the free flow of information, while Environment Canada (EC)⁷ believes that there is no issue with a lack of data or incomplete data.

<p>A little bit from the meat counts...All three meetings they promised me...They still haven't given us any water samples, I mean just little bits of meat counts but I mean if there is something in the water that would say even if it is one part per 50 million parts, at least it would give you an idea of where they are coming from.</p> <p>■ Exchange between Clam Harvesters, Feb 3, 2010</p>	<p>But I also did sense frustration that they maybe weren't able to get water results they were requesting from Environment Canada (EC)...I don't want to be unfair and speak for EC, but I do want to reiterate that that was an overall concern. And we were faced with this: why can't you give us the water samples?</p> <p>■ CFIA, April 8, 2010</p>	<p>CHA2 has been given information, we have spoken with a harvester and other representatives of CHA2 and there is no problem with access to information.</p> <p>■ EC, March 1, 2010</p>
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Box 1 Comparing Statements on the Sharing of Data

This suggests that a data conflict exists because while EC believes that they have adequately shared information with the clam harvesters, while the clam harvesters and CFIA contest that claim. Possible solutions for this type of intergroup conflict include: “reaching an agreement on what data is important; agreeing on a process to collect data; developing common criteria to assess data; using third-party experts to break a deadlock over data; presenting data in a different manner; deciding on how data will be used and considering alternative options for resolving data disputes (Moore in Pirie, 2000, p.65). It is important to consider which of these methods could be useful in clam fishery to resolve disputes over the exchange of information. Just as there are suggested resolutions for data conflict, there are also suggested methods to solve conflicts arising from relationships.

⁷ The quote by EC has been paraphrased to protect names and identities.

Relationships are described as involving “continuing or past social interactions that vary in duration, physical proximity, purpose and emotional involvement” (Moore in Pirie, 2000, p.67). It is suggested that a lack of trust is inextricably linked to the deterioration of relationships, leading to conflict (Lewicki & Wiethoff in Deutsch & Coleman, 2000). Trust is defined as “an individual’s belief in, and willingness to act on the basis of, the words, actions and decisions of another” (Lewicki & Wiethoff in Deutsch & Coleman, 2000, p. 87). Therefore, a lack of trust can arise as a result of “competitive negative behaviour; poor communication or miscommunication; misperceptions or stereotypes or assumptions about behaviour” (Moore in Pirie, 2000, p.67). As exemplified in Box 2, it is evident that trust appears to be an issue between the governing agencies and clam harvesters in CHA2:

<p>There is also the distrust of DFO you know. They do not trust that we are telling them everything we knew, they do not trust that we are allowing as much harvest as we can...</p> <p>■ DFO (i), Feb 22, 2010</p>	<p>There is no trust with government and us anymore. It’s gone. I don’t trust government. How can you trust them? Because they are going to give it to you with this hand and slap you with this hand...</p> <p>■ Clam Harvester, Feb 3, 2010</p>	<p>With... the harvesters around the advisory process, there is a distrust with government, given that we’ve proceeded with management measures that they weren’t in favour of...</p> <p>■ CFIA, March 4, 2010</p>
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Box 2 Comparing Statements of Trust

In analyzing these statements it would appear that the parties perceive different reasons for mistrust. The DFO informant believes that there is a lack of trust as a result of poor communication or miscommunication; the clam harvester is attributing a lack of trust to negative behaviour; while the CFIA informant is making an assumption about behaviour and interests. Regardless, lack of trust is identified by all three informants as a significant issue inhibiting healthy relationships. Moore (in Pirie, 2000) suggests that possible interventions might include: “improving the quality and quantity of communication; blocking negative repetitive behaviour; developing solutions that address both past and future behaviour; separating relationship conflicts from other sources of conflict where possible; and identifying the relationship needs

that are part of the dispute” (p.67). Some or all of these approaches might be useful in the clam harvesting case.

While possible solutions for these conflicts appear to be straightforward, they should not be dismissed as simple or insignificant. In order for any dialogue to take place regarding these areas of conflict, macro-level or structural issues must be attended to first. Trust, communication, the sharing of information, consensus building, reaching agreements and positive behaviour are all dependent on a balance of power, genuine governance and shared decision making (Susskind, McKearnan & Thomas-Larmer, 1999; Ali, 2003; Jentoft, 2005; FAO, 2007; Kearney, 2007; McFadden, 2008). Macro-level disputes are distinct from micro-level conflicts because they are inherent in and arising from structural conditions.

Macro/Structural Levels of Conflict

Moore (in Pirie, 2000) refers to structures as “institutions, organizations, systems and practices or other physical or psychological forms of ordering human affairs (p.69)”. He suggests that structural conflicts arise as a result of “unequal control, ownership, or distribution of resources; unequal power or authority; limited resources; inequalities arising from various political social and economic orders (p.69). Based on Moore’s description, there are three types of structural conditions leading to conflict: incompatible interests, differing values and avoidance of conflict. I would argue that all three are present in the clam harvesting case analyzed here.

Fishery, Ury & Patton (1991, p.48) state that “the most powerful interests are basic human needs” and they include “security, economic well-being, a sense of belonging, recognition, and control over one’s life”. If interests are disturbed either by action or inactions by others, the result is often conflict (Love in Menkel-Meadow, Love & Schneider, p.228).

Competing or incompatible interests between governing agencies and clam harvesters of CHA2 are evident from the statements in Box 3.

<p>Well because there is issues such as compensation, there is issues as far as classification and those are things that [pause], it's based on the information that is available at that particular time and that's [pause], the compensation is beyond the people that were at the meetings.</p> <p>■ DFO, April 7, 2010</p>	<p>...they were looking at a bigger picture and scope that was out of what we were discussing because they were talking about jobs, they were talking about money, they were talking about financing and funding and so on, and we were talking about a classification because of a wastewater discharge problem.</p> <p>■ CFIA, March 4, 2010</p>	<p>They are not being responsible....If you are going to do something and it is supposed to be a health interest, then look after the people that you displace... Give them something that is in their area, that they have an idea of what they are supposed to be doing, [and] feeling like they have a little bit more self worth.</p> <p>■ Clam Harvester, Feb 24, 2010</p>
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Box 3 Comparing Statements of Interest

Where interests of the government are focused on regulatory needs such as the implementation of new classification, harvesters are concerned about the implications that regulations will have on their economic and social wellbeing. Thus, the priorities of the stakeholders are aimed at different objectives which is the first issue leading to conflict. The second issue is the actual interference in having the interests of both parties satisfied. Although the new classifications are policy, they can be circumvented (Copes, 1986; Wiber & Kearney, 1996) and sometimes even ignored (especially if the risk of enforcement and punishment is low) Boyd (2003). Government however, often assumes that the implementation of policy will be relatively unproblematic which has the potential to generate conflict. Not only do government not recognize the interest conflicts they generate, but if they do recognize them they assume they will be swept away by ‘policy implementation’. Therefore the interests and concerns expressed by the clam harvesters are not being addressed because the specific regulators believe those interests and concerns are *beyond their mandate*. Therefore this conflict has arisen as a result of structural conditions, including both unequal power and authority and the various social and political positions being held by the stakeholders. Moore (in Pirie,2000) suggests that possible methods for resolution include “focusing on the interests that need to be met; developing creative solutions that meet the needs of all parties; searching for ways to expand options to satisfy more interests; assessing the legitimacy of the interests; and considering whether the interests can be

changed” (p.66). While it is important to deal with interests in conflict situations, it is also important to deal with deep value differences (Forester in Susskind, Mckearnan & Thomas-Larmer, 1999).

Values are said to run deeper than interests because they are “connected to identity, they appear to be inherently personal, subjective, developed as a matter of tradition and socialization, and not amenable to change by persuasion, rational argument, or even bargaining” (Forester in Susskind, Mckearnan & Thomas-Larmer, 1999, p.465). Moore (1996) explains that value disputes focus on issues such as “guilt and innocence, what norms should prevail in a social relationship, what facts should be considered valid, what beliefs are correct, who merits what, and what principles should guide decision makers” (p.234). The value conflict which has arisen between governing agencies and clam harvesters in CHA2 is over the leasing of crown land beaches to a private company. Box 4 demonstrates the basis of the conflict:

<p>They thought that they were monopolizing the industry and it's like I've said, anytime somebody wants to come and make an investment in deputation, throw 1 million dollars on the table and say we are in for, [then] we want to establish a deputation we would issue beaches.</p> <p>■ DFO (i), Feb 22, 2010</p>	<p>...people will say [or] believe that it is common [property], when it is in reality owned on behalf of the people and it is managed by the crown and the crown has the ability through legislation that is in place to lease it for economic gain of individuals and corporations.</p> <p>■ NSDFA, April 2, 2010</p>	<p>....privatizing instead of leasing, it's almost the same bloody thing because it gives them the right to all the fish that is in that area.</p> <p>■ Clam Harvester, Feb 24, 2010</p>
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Box 4 Comparing Statements on the Privatization of Crown Land

The reason that this conflict has been characterized as a macro or structural level of conflict is because both federal and provincial agencies express support for the idea of privatizing crown land beaches, which changes the structural rules for access to and withdrawal of resource stocks (Schlager and Olstram, 1992). Although not explicitly articulated by the clam harvester, it can be inferred from the tone of the statement that they do not agree with changing the structural rules of access. This conflict is not solely based on a disagreement over whether or

not leases should be issued to a private company. It is also enhanced by structural problems of process -- fact that clam harvesters have outwardly protested privatization, yet leases have been issued regardless indicates that there is few effective attempts were made to implement conflict processes to address such situations (Wiber & Bull, 2007; Wiber & Bull, 2009). Therefore, the conflict has escalated over “claims that one value should dominate; claims or other actions that suggest a certain value is superior or inferior; claims that a value should be applied generally even by those holding different values and competing ideologies and different ways of life” (Moore in Pirie, 2000, p.68). Possible interventions for value conflicts include “probing; learning; trying to resist taking anything literally; search for what is really at stake, for the facts that matter... try to explore the interests and values that underlie parties’ expressed positions and work to explore hypothetical trades, packages of options and resolutions”(Forester in Susskind, McKearnan & Thomas-Larmer, 1999, p.474). This can be done through the sharing of stories, skills-based training, role play and developing collaborative action projects and can result in the building of consensus for related issues through “facilitation of dialogue to explore common ground, building of trust, and developing respect” (Susskind, McKearnan & Thomas-Larmer, 1999, p.464).

Some have argued that for any conflict to be addressed and dealt with it must first be recognized as a wrong, so that blame can be attributed to an identifiable entity and claimed when that entity takes responsibility (Felstiner, Abel & Sarat, 1980). However, stakeholders who are asked to take responsibility may choose to ignore the blame in an effort to avoid conflict. When avoiding conflict, an individual does not immediately pursue either their own concerns or those of the other person, nor do they address the conflict. Avoidance might take the form of diplomatically sidestepping an issue, postponing an issue until a better time, withdrawing from a

threatening situation (Thomas & Killman, 2000, n.p.) by absenting oneself from conflict (Menkel-Meadow, in Menkel-Meadow, Love & Schneider, 2006, p.6) or denying any conflict exists (Sandy, Boardman & Deutch in Deutsch & Coleman, 2000, p.308). Avoiding conflict can have constructive consequences such as allowing for the reduction of tensions to a productive level where perspective and composure can be regained, or allowing time to gather information that outweighs the advantages of an immediate decision. However, overall the consequences of avoiding conflict are understood to be negative (Thomas & Killman, 2001, n.p.). As exemplified in Box 5, overt conflict is not being addressed between government regulators and clam harvesters in CHA2:

<p>Because really the ideal is the least amount of intervention by the federal government I would think you know?... When I was talking about a minimal role in intervention, that was conflict between fisher groups.</p> <p>■ DFO (ii) Feb 22, 2010</p>	<p>...it's an emotional time so we can expect them to be mad and we need to be trained on how to deal with that. At the worst, walk away. That's what we're told to do if it's going to lead to something worse...</p> <p>■ CFIA, March 4, 2010</p>	<p>It hasn't... It hasn't and it won't ever be... The only way they deal with conflict is they let it, they starve us to death. They let it go on until finally eventually after a while finally there isn't enough of us to make a difference.</p> <p>■ Exchange between Clam Harvesters, Feb 24, 2010</p>
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Box 5 Comparing Statements about Conflict Avoidance

At one level, a governing agency does not believe it is within their mandate to interfere in disputes between conflicting user groups, and at another level, if the governing agency is personally involved in a conflict; their approach is to withdraw from the situation. What is interesting is that these governing agencies are aware of their tendencies and that the approach is transparent to the clam harvesters; the consequence being the further escalation⁸ of conflict. Therefore, avoidance is the result of unequal control, power and authority which are inherent in and arising from the structural conditions of the institution. One possible intervention might be to consider conflict as a constructive opportunity to clarify interests, concerns, consequences of unresolved issues, for moral growth and transformation (Bush & Folger, 1994, p.81) rather than

⁸ For information on escalating conflict see: Brockner & Rubbin, 1985; Kim & Smith, 1993; Bartos & Wehr, 2002

as disruptive, dissociating and something to fear.⁹ Otherwise potential solutions for structural conflicts include “recognizing structural conflicts are difficult to resolve by consensus; identifying forums suited to structural change; separating structural conflicts from other sources of conflicts when possible; attempting to modify or change structures responsible for conflict and utilizing interest based bargaining” (Moore in Pirie, 2000, p.69).

A transformation Approach to Conflict

Without addressing these issues of conflict, particularly those characterized by power differentials and inequalities due to economic, political or social orders, it would be difficult to have meaningful consultation and for all stakeholders to participate equally in the decision making process; therefore hindering the objectives of ICZM. As Moore suggested, an interest based method is one approach to resolving disputes. It is typically the practice used in North America and it involves identifying the needs and interests underlying the disputing parties’ positions. Solutions are then developed by the stakeholders with the help of a facilitator or mediator which address and accommodate as many needs and interests as possible. It is a process that is integrative in nature, win-win, problem solving, value creating and a gain all approach; this is in contrast to a power based approach which is authoritarian, competitive and rights based or entitlement based (as in the adversarial court system) (Morris, 2002, n.p.). While this method is effective in identifying common, overlapping and mutual interests between stakeholders in an effort to resolve conflict, it has its limitations which have been noted by various practitioners and theorists. For example Dukes (1993) suggests that the focus of the interest based approach is on saving money, reducing court loads, eliminating delays, and reducing demands on government. As a result, “the questions about the kinds of problems being tackled, the scope of representation in conflict resolution forums, the impact upon different communities of the agreements emerging

⁹ For information on this polemic debate see Coser, 1969.

from the forums, are ignored or addressed instrumentally in terms of how they affect the task of reaching an agreement” (pp.46). He suggests that if the public does not discuss the ramifications of ADR as being used predominantly as management tool and not as a vehicle for social justice and transformation, there will be detrimental consequences to the practice. Nader on the other hand argues that mediators have the ability to influence conflict as it unfolds and they often tell participants what is important in the resolution process and what is not and therefore there can be deeply rooted injustices in the process (in Bush & Folger, 1994, p.70). Because the problem is not with individual mediators but with the approach as a whole (p.75), Bush and Folger propose that what is required is a fundamentally different approach to mediation which they suggest can be found in the transformative framework.

The transformational approach seeks to change individuals and the relationships among them at both the interpersonal and larger societal level. Dukes (1993) describes the transformative approach to ADR which is fundamentally different from the interest based approach because it is rooted in “the critical assessment of our society that recognizes the class of fundamental problems derived from the legacy of modernity” (pp.47). The problems derived from modernity comprise of, but are not limited to, cultural dissolution and the alienation from the institutions of governance which includes the inability to solve problems and resolve public conflict (p.47). The objective of the transformative practice therefore, would be to create sustainable relationships between and among individuals and communities. Sustainable relationships lead to relatedness which includes responsibility, obligation, loyalty, respect, understanding, recognition and empathy of others beliefs, values and needs (p.50) and results in more engaged communities, responsive governance and a capacity for problem solving and

conflict resolution (p.29). It may also lead to more adaptive and sustainable resource management.

Bush and Folger (1994) believe that the ideal response to conflict is not to solve ‘the problem’ but to help transform the individuals involved by “utilizing opportunities they present to change and transform parties as human beings, and encourage and help the parties to use the conflict to realize and actualize their inherent capacities both for strength of self and for relating to other” (pp.84) which they refer to as ‘empowerment and recognition’. Empowerment helps one to grow to become calmer, clearer, more confident, more organized and more decisive and thus empowerment with respect to options, goals, skills, resources and decision making. Recognition refers to a process of becoming more open, attentive, sympathetic and responsive to the situation of other parties. This contributes to the desire for recognizing; that is, to giving recognition in thought, giving recognition in words and giving recognition in action (p.85).

Lederach’s theory (1995) is that social conflict emerges and develops on the basis of meaning and interpretation that people attach to actions and events (pp.8). The potential for the transformative approach lies in its ability to understand how people from different cultures and backgrounds handle conflict. In order to understand conflict and develop appropriate models to deal with it, the process must be rooted in, drawn from and respect the knowledge of the disputants involved. Lederach draws from three major schools: 1. Popular education or the Freirean school of thought where the student and teacher learn together, 2. Appropriate technology, the belief that a practitioner must pursue, encourage and validate the knowledge of the disputants which emerges from the field of international development and 3. Ethnographic research where-- understanding comes from the meaning of participants (pp.25). Lederach makes it explicitly clear (pp.21) that “process matters more than outcome” and the logic is that in times

of conflict, not enough attention is paid to how issues are to be approached discussed and decided.

Conclusion

Conflict is inevitable due to the finite nature of natural resources and the number of stakeholders who share in the economic, environmental, political, cultural and social value (Bastien-Daigle et.al, 2006, p.25). I suggest that systematically applying the transformative approach to conflict in the Canadian fisheries and oceans would help to advance the stated policy and objectives of ICZM. At the root of the method are elements which can ensure that respect for democracy, genuine governance and participatory decision making can occur. It seeks to address and resolve structural issues such as unequal control, ownership, or distribution of resources; unequal power or authority; limited resources and inequalities arising from various political, social and economic orders (Moore in Pirie, 2000, p.69) predominantly through the transformation of relationships. Without sustainable relationships there is principally no trust and therefore no responsibility, obligation, loyalty, respect, understanding, recognition, empowerment or empathy of others' beliefs, values and/or needs (Dukes, 1993; Bush & Folger, 1994). Furthermore, without sustainable relationships, the questions arise: "if you don't have trust in anything, how are you going to get anywhere else?...How can you move forward?" (Clam Harvester, Feb 3, 2010). Therefore, it is argued that sustainable relationships and trust are integral to confronting disputes between stakeholders trying to participate in ICZM initiatives. Additionally, inherent within the approach is the discovery of common, overlapping and mutual interests (characteristics of an interest based approach). Therefore the approach creates an environment where constructive controversy¹⁰ can take place both immediately and in the future. Once

¹⁰ For more information on constructive controversy see: Johnson, Johnson & Tjosvold (in Deutsch & Morton 2000); Keen, Brown & Dyball (2005, p.15)

governance issues have been attended to so that communities have become more engaged, governance is more responsive and there is a capacity for problem solving and conflict resolution (Dukes, 1993, p.29). Micro conflicts then become easier to recognize and resolve and the objectives of ICZM can move forward. If the government is truly committed to supporting and participating in ICZM, conflicts must be identified and dealt with.

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