

**SANDSPIT
SMALL CRAFT HARBOUR
MEDIATION PROCESS**

A REVIEW AND EVALUATION

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ABSTRACT

A fourteen-month mediation process was used to resolve environmental and socio-economic issues surrounding a proposed small craft harbour for Sandspit, British Columbia. Mediation was conducted as part of an initial assessment under the Federal Environmental Assessment and Review Process (EARP) and represents the first full-scale use of mediation within the federal environmental assessment process. The *Canadian Environmental Assessment Act* (the Act), which replaced the EARP in January 1995, provides for mediation as an alternative or an adjunct to a public review by an environmental assessment panel.

Following completion of the mediation process, participants were interviewed using a series of open-ended questions designed to evaluate the process. The results of these interviews are presented in this report. The application of experience gained during the Sandspit process to the development of a mediation process under the Act is discussed.

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1 INTRODUCTION

The Canada-British Columbia South Moresby Agreement provides for construction of a small craft harbour in the vicinity of Sandspit. The harbour is planned primarily to serve recreational boaters and is intended to create new economic opportunities. The proposal is subject to the Environmental Assessment and Review Process (EARP) since it is an undertaking of the federal government. In 1991, an Initial Environmental Evaluation (IEE) of the harbour site preferred by the Sandspit community (primary site) identified potentially significant environmental effects related to over-wintering Brant geese and fish habitat. The various parties involved in the project development and assessment agreed to use mediation as a tool to resolve these and other related issues. They concurred that the mediation process should address such issues as the risk to Brant geese, impacts on fish habitat and socio-economic considerations of the project.

The mediation process was initiated in April 1992 with the appointment of Glenn Sigurdson, a Vancouver-based mediator, and was successfully completed in June 1993 with the submission of the final report to ministers. A consensus was achieved and is reflected in the final report signed by all participants. The report recommends that an 80 berth capacity harbour located at Haans Creek, approximately 3.5km from the Village Centre, would be environmentally acceptable and provide socio-economic benefits for Sandspit. A brief summary of the mediation process follows. For a more complete description of the process the reader should refer to the final report.

Prior to the appointment of the mediator, initial terms of reference for the process were developed by FEARO in consultation with participants. These terms of reference became the starting point for the development by the participants of "ground rules" (Appendix A) which guided the process. Development of the "ground rules" was facilitated by discussion, at the mediation table, of a series of questions suggested for consideration by the mediator (Appendix B).

The objective of the mediation process as defined in the "ground rules" was "to define a commonly acceptable way to provide the community of Sandspit, British Columbia with a small craft harbour pursuant to the provisions of Part II of the Canada-British Columbia South Moresby Agreement and consistent with the principles of sustainable development and the Federal Environmental Assessment (and) Review Process."

The parties in the mediation process included the several departments from the Government of Canada, two ministries from the Government of British Columbia and some interests on Haida Gwaii/Queen Charlotte Islands (Islands) (Appendix C). FEARO was asked to administer the mediation process and contributed support and other services. The Office participated in all mediation activities and provided process advice as appropriate.

The mediation process involved 15 major meetings of the full mediation team; meetings of working groups established by the team held primarily by conference call; and, discussions between and among the participants and the mediator. An extensive

public consultation process occurred throughout the mediation process involving public meetings, open houses and workshops; meetings between Islands participants, their constituents and the community; and question-and-answer format articles published in the local newspaper, the Observer, and other announcements.

Given the environmental concerns identified in the Initial Environmental Evaluation regarding the "primary site", the mediation team widened the scope of the review to include seven additional alternatives. Following an examination of environmental, engineering and socio-economic information, including technical advice from external experts engaged by the team, the team decided to concentrate on four sites. Subsequently, the team agreed to focus its efforts on two sites, the Wharf and Haans Creek site. As part of the evaluation process additional engineering and environmental studies were conducted on these two sites. In addition, the team held an open house to better understand the views of Sandspit residents with regards to these two sites. Following careful consideration of all factors the team agreed to focus its efforts on the Haans Creek site. Before finalizing the final report, the team provided an opportunity for the public to comment on the draft report at a series of open houses held on the Islands.

The Sandspit mediation process represents the first formal use of mediation as part of the EARP. In this case, mediation was conducted within the initial assessment phase of the EARP. The *Canadian Environmental Assessment Act*, which replaced the *Guidelines Order*, provides for the use of mediation as an alternative or as an adjunct to a panel review. For projects requiring a public review under the Act, the Minister of the Environment will decide whether the project will proceed to a panel review, mediation or a combination of the two options.

The Canadian Environmental Assessment Agency (Agency/CEAA) is currently developing guidelines for conducting mediation under the Act. The Sandspit mediation process represents an excellent opportunity to learn from first-hand experience. An evaluation of the Sandspit process will provide guidance to the Agency and others on issues to consider when embarking on mediation. The results of this evaluation will assist the Agency in preparing guidelines and procedures for mediation under the Act.

2 EVALUATION PROCESS

The approach taken in evaluating the Sandspit process was to interview participants using questions specifically developed for this exercise. Following completion of the mediation process, FEARO prepared a draft interview guide with 13 open-ended questions on various aspects of the process. The content of these questions was directed, in part, by the need to provide advice to those developing and implementing mediation under the Act. The draft interview guide was circulated to all participants for their review and their comments were incorporated in the final guide (Appendix D).

Thirteen participants, including the mediator, were interviewed in November and December 1993. The interviews were conducted on the basis that any specific comments would not be attributed to the interviewee. Each interview lasted, on average, 90 minutes. In addition to the interviews, two participants submitted written responses to the questions. Notes taken during the interviews were reviewed to identify common themes, specific concerns and recommendations for improving the process. The responses are summarized, question by question, in Section 3 of this report. A draft of the report was provided to all participants for review and their comments are reflected in this version.

The results of the interviews represent a subjective evaluation of the process by participants. They are of value in that they identify a number of issues that need to be considered in future mediation processes. However, there are a number of limitations to the results. First, they represent a self-evaluation of the process and do not consider views of those outside the process. Second, this evaluation considered only one case and therefore was influenced by specific factors related to this issue. Since some of these factors are unique to Sandspit, including the fact that this was the first formal involvement of FEARO in mediation, extrapolation of the results to other mediation exercises must be done with caution. Finally, the views of participants were likely influenced by their position with respect to proposed harbour. Due to the small sample size, no attempt has been made to analyze the responses by either the respondent's position on this issue or by their role in the community or government.

This exercise raises the broader question of how one should evaluate a mediation process. Should the evaluation focus on the process or the outcome, for example, is reaching a consensus a valid measure of success? Are objective evaluation criteria required or is a subjective evaluation adequate? Can the evaluation be conducted at the end of the process or should it also occur during the process? Should the evaluation consider views of those outside the process as well as participants in the process?

In order to learn from experience, some form of evaluation of mediation processes is necessary. This will be particularly important during the initial efforts to implement the CEEA's responsibilities for mediation under the Act. Experience will assist the Agency in developing and updating guides and procedures for the mediation process. One important observation from this

review is that the CEEA needs to develop an evaluation process for mediation including a set of standards or criteria against which the process can be judged.

One starting point in this regard is the recent publication by the Canadian Round Tables entitled "Building Consensus for a Sustainable Future - Guiding Principles". The document presents ten guiding principles of consensus processes which were developed by the National, Provincial and Territorial Round Tables in Canada and by the Canadian Council of Ministers of the Environment. The principles are listed in Table 1. The document notes that while no single approach will work for all situations, there are certain principles that are fundamental to consensus. These guiding principles represent a set of criteria that could be considered when evaluating consensus processes. They have been used to structure the discussion of the Sandspit process in Section 4 of this report.

3 RESPONSES TO SPECIFIC QUESTIONS

This section summarizes the results of interviews on a question-by-question basis. Notes taken during each interview were summarized to identify the main points raised by each interviewee. Where responses were similar, they were combined for presentation.

It should be noted that this section of the report simply reports the results of the interviews. In some cases, the responses to a question varied considerably among respondents and this summary reflects the range of views. Given the small sample size, no attempt has been made to analyze the responses numerically. Where appropriate, responses have been classified as representing the majority, the minority or an individual view. Finally, the views expressed in this section reflect the responses to the questions and are not necessarily those of the author, the mediator or all parties in the review.

1. **What would you say were the advantages and disadvantages of the mediation process compared to other processes that you may be aware of (for example, panel review)?**

The results of the interviews identified considerably more advantages of the mediation process than disadvantages. With one exception, respondents felt that mediation was the most appropriate technique for addressing this issue and, among those familiar with the panel process, the majority stated that mediation was more appropriate **in this case**. The principal advantages and disadvantages cited by respondents are summarized below.

Advantages

- A number of respondents felt that a key advantage of mediation is that the parties have greater control over the process and the outcome as compared to panel reviews or other consultative processes. In mediation, those directly affected by the issue devise the solution as opposed to the panel process where the solution may be imposed on them. Further, the parties in mediation define the problem and ensure that issues important to them are addressed in the resolution of the dispute.
- Another advantage cited was that the mediation process may be less divisive than a panel since the parties work together to develop a solution. Time is spent building trust among the parties. The panel process tends to be adversarial in that parties present their views and there is little opportunity to reach consensus on the issue. Unlike a panel, in mediation there are no winners or losers.
- Some noted that in the panel process there is usually only one opportunity to present a position whereas in mediation positions are developed over time and take into account the views of others. The mediation process allows the community and government representatives to work together and provides the public with direct access to decision makers.

- Another advantage noted was that mediation allows the parties to reach a common understanding of the issues and agree on a common set of facts. This is important in reaching a consensus on the issue.
- A majority of participants noted that mediation results in a buy-in to the solution. In addition, they noted that the relationships developed during the mediation process will assist during the implementation phase of the project.

Disadvantages

- Some participants commented that since the process is less structured than a panel it may be more prone to failure. If a key party walks away from the table, the mediation process may collapse. The lack of structure can result in unproductive excursions into side issues according to some.
 - One participant noted that for those with only a specific interest in the issue, a panel may be advantageous in that they could present their position to the panel and not participate in the balance of the process. However, it was also noted that some groups, for example the Haida Nation and Transport Canada, chose to participate in only part of the process.
 - A possible disadvantage identified by some is that it may be difficult to identify all interests at the start of the process and get them to buy-in to the process. Those that commented were concerned that the mediation process may be viewed as closed with a limit to the number of interests at the table. Special efforts are required to ensure that communication of information to those outside the team is both predictable and reliable.
 - A number of respondents stated that the process puts considerable pressure on the individual representing an agency or an interest. It requires that the individual develop mechanisms for getting input and approval from their constituency for positions taken. If not, an unskilled person may be pressured into making a poor decision from his/her group's perspective.
2. **The mediation process took approximately 14 months to complete. Do you feel that pace of the process was too slow, too fast, or about right? If you feel that the process was either too slow or too fast, do you have any suggestions as to how the process might be altered?**
- A majority of the participants would have preferred a faster process, but most acknowledged that time was necessary to achieve a successful result. The balance felt the pace of the process was about right.
 - Among those who would have preferred a faster process, many cited factors outside the control of the process for delays. These issues were primarily related to the South

Moresby Agreement including the lack of a clearly defined proponent, uncertainty over the funding for the harbour and, at times, for the process itself.

- Among those that stated the pace was about right, time required to build trust, understand the issues, consult with the public and get buy-in of the parties were cited.
 - Many participants noted that the time required to gather information had a significant influence on the duration of the process. It was noted that because of the seasonal nature of biological life cycles, time is necessary to gather such data. There were those who were critical of the information base available at the start of the process. Previous studies had focused largely on one site, therefore, additional time was required to gather data on alternative sites. It was also suggested that an identification of all information requirements at the start of the mediation process could have speeded up the data gathering process.
 - Another reason for the length of the process was the time required for participants to become comfortable with the process. Several respondents suggested that a training session on mediation at the start of the process would have helped in this regard. It was also noted that since this was the first formal application of mediation within the EARP, more time was required to develop and implement the process.
 - The need to add parties to the table during the process may have also resulted in some delays while the new parties caught up with others. According to some, a more concerted effort to identify parties at the start of the process may have been helpful (see Question #5).
- 3. The process required a considerable time commitment by all participants. In the case of some non-government participants compensation in the form of an honorarium was provided for time spent on the process. Do you have any views on the concept of compensating non-government representatives? Are demands on the time of participants in the mediation process such as to preclude the involvement of certain individuals both inside and outside government? If so, can you suggest any solutions to this constraint?**
- All participants agreed that compensation for the time spent by non-government participants should be offered. Several commented that compensation is necessary to create a sense of balance between government officials who are receiving a salary and non-government representatives.
 - Some noted that a negative aspect of providing an honorarium is that those outside the process may perceive that community representatives are participating in the process for financial gain and that they may lack an incentive to complete the process because of the compensation being received. To offset this concern, several suggested that the level of the honorarium should be set so that it is not too attractive. Further, the possibility of establishing time or budget limits on the process could manage this issue.

Two other funding models were proposed. One, for those in the wage economy, the honorarium could be based on actual losses with a flat rate paid to those outside the wage economy. Two, for greater accountability, funds could be provided to a specific interest group who would enter into a contract with their representative.

- With regards to time commitments, some respondents felt that the amount of time required would preclude some non-government participants. One option suggested would be to hold mediation sessions on weekends although this may create unnecessary hardships on participants over the long term. For government participants, all felt that if the agency is committed to the process, it must make the time available for the participant. It was noted that the pace of the process made it possible for some non-government participants to participate in the process. If meetings had been held more frequently, this may not have been so.
- 4. The cost of the mediation process was approximately \$250,000 which is in the same range as some panel reviews of small projects. Do you have any views on the costs of the process or any suggestions on how costs might be reduced? Are there any additional items or activities that should have been funded by the process?**
- A number of respondents did not have any specific views on the overall cost of the process. Some commented that they thought that costs were reasonable for a process such as this. Others noted that costs for the Sandspit process were probably higher than might ultimately be expected, since this was the first full-scale attempt at mediation under the federal environmental assessment process. One respondent expressed concern that the process was funded by the Regional Economic Development Initiative and that this expenditure did not benefit the community, since a harbour has not been constructed.
 - Comments on how to reduce the cost of the process were primarily related to the time that the process took, i.e. costs could be reduced if the process took less time. As noted in responses to Question #2, there were a number of factors outside the control of the process that extended the time required.
 - No additional items or activities that should be funded were identified.
 - Some participants noted that \$250,000 does not represent the full cost of the mediation process, since it does not include the studies undertaken in support of mediation process or travel costs for departmental representatives. The items included in the mediation cost estimate were those managed by FEAR0 and are generally consistent with the costs paid by FEAR0 in panel reviews. (Costs attributed to the mediation process including the services of Public Works and consultant support were estimated by Public Works to be approximately \$400,000.)

5. Do you have any comments on the representativeness of the mediation team? Was representation on the team balanced or was it weighted in some areas? Were interests on the Islands adequately represented? Was the representation from governments adequate?

Responses to the question of Islands' representation varied depending on whether the issue was **viewed** in a narrow or broad perspective. A number of participants commented that initially Islands' interests were not fully represented, since only harbour proponents were on the team. The addition of representatives from the Sandspit Mediation Environmental Group (SMEG) and Queen Charlotte City/Skidegate Landing Advisory Planning Commission (QCCSLAPC) created balance in the view of most participants, although some questioned the need for QCCSLAPC representation. Others felt that even greater representation from the Islands would have been appropriate. Several participants noted that interests on the Islands were not as fully represented as they thought desirable and mentioned the Council of the Haida Nation, the Agnes Creek Enhancement Society and Transport Canada in this regard.

The lack of gender equity on the mediation team was raised. Initially there were no women on the mediation team and ultimately there was only one permanent woman member of the team. Two alternate members were women as were several of the consultants hired by the team.

An initial distinction within the mediation team between representatives who were "principle participants" and "observers" was not maintained during the process. This created no significant problems from anyone's perspective.

Several participants commented that more time spent initially in identification of interests on the Islands would have been helpful and may have saved time in the long run.

6. Do you have any comments on the roles played by the various parties in the mediation process and their effectiveness? Parties in the mediation team included the mediator, Islands' representatives, federal government, provincial government and technical experts.

Respondents were generally very positive about the effectiveness of the various parties in the mediation process except for the performance of Public Works. The dedication of the parties was undoubtedly an important factor in the success of the process.

The services of Public Works were commented on by a number of presenters. A majority felt that they were not very effective in obtaining or presenting some of the information required by the team. In a number of cases, they played the role of an intermediary with the actual data being provided by consultants. Some participants suggested that it would have been more **efficient** to deal directly with the engineering consultants rather than through Public Works.

- The lack of a clearly identified proponent was noted by many as an issue that created considerable difficulty for the process. The roles played by Public Works, Small Craft Harbours and Western Economic Diversification were not clear and changed during the process.
 - Several participants suggested that, at times, the mediator could have taken a stronger role in directing the process. The nature of the mediation process was such that the degree of control over participants was less direct than in other forums causing some participants to express the view some of the discussions were either repetitive or reached the point where they were no longer productive.
 - The value of using outside technical experts was mentioned by a number of participants.
 - The value of having a technical support person (Norman Dale) for the Islands' representatives was cited by several participants as being useful.
 - Some felt that the provincial government could have had a greater presence at the mediation table given that they were a signatory to the South Moresby Agreement.
- 7. Thinking about the group or agency that you represented, did you find it straightforward or a challenge to keep your "constituency" informed of developments in the mediation process? Do you have any recommendations on how to facilitate this activity in future mediation processes?**
- Responses to this question varied considerably. Within government some found it easy to keep their organization informed whereas others found it a challenge. **To** some extent this depended on the position of the individual within the organization, geographic proximity to superiors and role that the organization had in the mediation process. In at least one department, the participant found it necessary to brief both managers and working level staff.
 - Islands' representatives stated that generally they did not find it difficult to inform their constituency, although others on the team perceived that information flow to Islanders could have been improved.
 - One observation was that reporting of the results of constituency briefings, particularly when they involved the public, was not consistent.
- 8. An important principle in a mediation process is that all parties have access to relevant information. In the Sandspit process was good quality information made available in a timely fashion? Was information provided in a form that all parties could readily understand?**
- **Most participants concluded that good** quality information was made available, however, a number felt that it was not provided in a timely fashion. Information from technical experts and that developed by working groups was judged

to be good whereas some of the information produced by Public Works was judged to be poor. Again the lack of a proponent was cited as a problem.

Some participants felt that information was gathered and presented in a disjointed fashion. They proposed more effort at the start of the process to identify information requirements then a concerted effort to obtain this information and present it in a coordinated fashion. One example cited was that information requirements related to an Ocean Dumping permit were not identified until relatively late in the process.

9. **The mediation team conducted a number of public information and consultation activities during the mediation process. These activities included a series of articles in the Observer, public meetings held by Islands' representatives and public open houses held by the mediation team. Do you have any views on the adequacy, effectiveness and the necessity of this activity? Can you identify any ways in which the public information and consultation process could be improved?**

Overall, participants felt that articles in the Observer, the Islands' weekly newspaper, and the open houses were both essential and effective. Many commented on the necessity of such activities to both provide information to the public and obtain their input at critical stages of the process.

Several people felt that the approach to public information tended to be somewhat reactive. Consideration of relations with the public and media could have received more prominence according to some. Suggestions in this regard included issuing news releases following each meeting and appointment of a spokesperson to deal with the media on a regular basis.

10. **The mediation process included 14 major meetings of the team, meetings of working groups generally by conference call, and discussions between and among the participants and the mediator. Do you have any comments on how the process was conducted -what worked, what didn't work, what improvements would you suggest?**

Overall, participants felt that the process was effective. The use of working groups to address specific issues was judged by all participants to be very effective. One participant suggested that instead of two-day meetings of the entire team, the team could have broken into working groups for part of the time with the groups reporting back to the full team at the end of the second day. Conference call meetings were judged to be a practical means to deal with specific issues and tended to maintain momentum in the process. They were a cost-effective means of getting geographically isolated participants together.

- The use of independent technical experts to provide advice on specific issues was felt to be essential. The use of experts from other government departments or universities was a cost-effective means of obtaining this input.
 - Several participants suggested that more flexibility in scheduling may have helped the process. They commented that perhaps the group should have met more frequently or for a longer time at the start of the process to define information requirements, had fewer and shorter meetings during an information gathering phase, then met for longer periods when the agreement was being drafted. Other participants commented that it is not possible to define all information needs at the start of the process and that these need to be identified as the work develops.
 - The value of meeting on a neutral site, of having meeting rooms that are comfortable, and provision of refreshments were cited by some participants.
11. **The mediation team was successful in reaching consensus on environmental and related socio-economic issues. Other issues such as maintenance of the Queen Charlotte city harbour, responsibility for operation and maintenance of the Sandspit harbour and determination of "reasonable cost" were deemed to be beyond the scope of the mediation process. Was the scope of the mediation process adequate or was it too narrow or too broad?**
- Responses to this question varied depending on the interests of the participants. Some felt that the scope was too narrow in that the process did not address all the issues necessary to get the harbour built (for example, funding). Those respondents did acknowledge that the composition of the team was such that it would have been impossible to address such issues. Others commented that the process tended at times to be too broad and, in their opinion, should have considered only engineering and environmental issues related to siting the harbour. Overall, most felt that the scope was correct and that the group was effective in determining which issues it could deal with and which it could not. In fact, the group did consider the issues of maintenance of the Queen Charlotte city harbour, responsibility for operation and maintenance of the Sandspit harbour and determination of "reasonable cost", but concluded that these were issues that were beyond the team's ability to resolve.
12. **Do you feel that the next steps for implementing the results of the Sandspit mediation process are clear? Have you any suggestions on what actions might be taken in future mediation processes to enhance the likelihood of timely implementation of the results?**
- Most participants felt that the next steps for implementing the results of the mediation process were unclear. The team reached consensus on site, size and function of the harbour and clearly identified the need for resolution of

funding issues surrounding the harbour. Nevertheless, there remains considerable uncertainty about how these funding issues will be addressed.

- Several participants suggested that perhaps the team or the mediator should have made a presentation to the ministers or senior officials on the results of the process. Some felt that perhaps the team should have been more explicit on what needed to be done and proposed a time frame for decisions. Others were of the view that the report clearly spelled out what actions were required and it was up to government to determine what actions they will take.

13. Do you have any other comments about the mediation process or other related issues?

- Overall, participants were very positive about the process and expressed a sense of pride that it was successful. Several commented that the success of the process was that it defined a harbour that is acceptable from an engineering, environmental and community perspective. This provides a tangible project amenable to a decision on whether it is an appropriate expenditure of funds.
- In their summary comments, a number of respondents rephrased their comments in the form of recommendations for improving the process. These suggestions have been captured in the following section.

4 DISCUSSION

The ten guiding principles of consensus processes (Table 1) developed by the Canadian Round Tables have been used to structure the discussion of the Sandspit process. They represent a set of goals that mediation processes should strive to achieve. The following discussion considers how effective the Sandspit process was in achieving these ideals,

Principle #1- Purpose Driven

The Round Tables' first principle is that "people need a reason to participate in the process". In fact, more than six months prior to initiation of mediation, the Sandspit community indicated to federal ministers their view that mediation be used to resolve issues surrounding the Sandspit small craft harbour proposal. Since the IEE identified potentially significant environmental effects, the EARP Guidelines Order provides for two courses of action: refer the proposal to the Minister of the Environment for public review by a panel (Section 12[e]), or modify and reassess the proposal or abandon it (Section 12[f]). The Islanders supported the view that neither option was desirable. In the case of a panel, they saw that they would lose control over the outcome of the process. On the other hand, they were unwilling to abandon or modify the proposal, since it was part of a compensation package provided for in the South Moresby Agreement.

In the interviews conducted, all but one participant concluded that the mediation process was the most appropriate technique for this issue. The process, in fact, resulted in the team developing two alternative designs that were acceptable from an environmental perspective. It is unlikely that a panel review would have achieved the same result. The panel review would have likely focused on the one site preferred by the residents, but unacceptable to the resource management agencies. A panel would have been faced with the choice of either recommending that government accept or reject this proposal and would not have had the ability to seriously examine alternatives.

One of the strengths of the mediation process was that a solution was developed by the directly affected parties rather than being imposed by a third party. In this regard, mediation differs from panel reviews or other forms of consultation processes. In the panel situation, the panel hears from many groups then makes a recommendation that government either accepts or rejects. While the results of mediation are also a recommendation to government, the parties themselves have made the trade-offs and reached a decision rather than leaving it to the panel or government. The panel process tends to produce winners and losers whereas mediation results in parties with significant interests agreeing to the outcome. In this case, a panel hearing would likely have divided the community further, since by its very nature it would have forced participants to take strong positions with the hope of persuading the panel that their view was "right". On the other hand, the mediation process brought parties together and

resulted in dialogue between those on opposite sides of the issue. This may be a benefit that will extend beyond the mediation process.

In summary, the Sandspit process met the Round Tables' first principle that "people need a reason to participate in the process". In discussing this principle the Round Tables go on to state that, if the parties conclude that consensus is a better option than other alternatives, then there is a greater commitment to the process. In the Sandspit, case this is exactly the logic that the participants followed in opting for mediation.

Principle #2- Inclusive not Exclusive

Principle #3 -Voluntary Participation

The Round Tables' second principle is that "all parties with a significant interest in the issues should be involved in the consensus process". Closely related is the third principle that "the parties who are affected or interested participate voluntarily". Prior to the start of negotiations, an assessment phase where the interests and representatives that can speak to those interests are identified is recommended by the Round Tables.

The assessment phase in the Sandspit mediation process was limited, particularly with regards to selection of participants from the Islands, and did not involve the mediator. When the mediator was appointed the representatives had been identified and the team commenced work immediately. At that time there were two representatives from the Islands both drawn from the Residents Planning Advisory Committee (RPAC). This committee was established under the South Moresby Agreement to provide public input to an economic development strategy for the Islands and was also used to obtain input on the design of the harbour. Although RPAC draws representation from all Islands communities, it decided to name two Sandspit residents as its sole representation.

At the outset of the process, the parties acknowledged that other stakeholders from the Islands' communities may wish to participate. During the initial meetings of the team the desirability of broadening Islands' representation was identified since the RPAC members were perceived by some to be proponents of the harbour. Subsequently, the Sandspit Mediation Environmental Group (SMEG), a coalition of environmental interests on the Islands, was established with representation at the table. Shortly thereafter a request from the Queen Charlotte City/Skidegate Landing Advisory Planning Committee (QCCSLAPC) to participate in the process was accepted. The mediation team issued an invitation to other similar bodies on the Islands but this did not result in additional parties. The Council of the Haida Nation (CHN) was invited to participate and was kept informed on the progress of the process. Representatives of Old Massett and the CHN attended one meeting of the mediation team.

The decision to add members to the team consumed a considerable amount of time and energy. Further, since these additional parties did not join the team until the third (SMEG) and fifth (QCCSLAPC) meetings, some time was lost in reviewing issues considered prior to their joining the process. Despite adding members to the team, some interviewees commented that not all significant interests were represented. In this regard the interests of Transport Canada and the Agnes Creek enhancement program were specifically mentioned.

It was not until later in the process that the interests of Transport Canada, their staff and families in Sandspit were identified. The interests of Transport Canada were related to the effects of one potential harbour site on their property. Since this site was identified during the mediation process, it would have been difficult to recognize their interests initially. Once Transport Canada's interests were identified, they participated in several meetings of the mediation team and when the site that affected their property was dropped, they chose not to actively participate in the process further. This issue points out the need to be flexible in membership of the team.

The second interest that some felt may not have been represented were those involved in the Agnes Creek enhancement program. This group considers that the harbour site selected would adversely affect fish produced in Agnes Creek. It is their view that this position was not adequately represented at the mediation table by Fisheries and Oceans or by RPAC representatives. Although this interest was not on the team, they were given an opportunity to present their views at an open house held by the mediation team. In this way all members of the team were fully aware of their views. Further, the team was briefed by Fisheries and Oceans on correspondence from the Agnes Creek representatives and issues raised were considered by the team. It would have been difficult to have foreseen the interest of the Agnes Creek enhancement program at the start of the process since their interest was not expressed until the team started to seriously consider the Haans Creek site.

Two other issues with respect to representation deserve mention. First, is the issue of gender balance. Several participants observed that women were significantly under represented in the process. The question of gender balance and, depending on the community, representation of minorities needs to be considered when establishing a mediation team. However, in practical terms there may be little that those facilitating or mediating the process can do apart from encouraging balance, since it is the role of the parties to identify who will represent their interests.

The second issue involves attempts by the Sandspit process to differentiate between "principal participants" and "interested parties" on the mediation team. Principal participants were defined as "key stakeholders who are participating directly in the mediation efforts" and interested parties were "other stakeholders who hold some responsibility for the results of the mediation and must be regularly informed of progress". It turned out that this distinction was artificial in that some interested parties were more active participants than the principals. At the end of the

process all parties signed the agreement. While this distinction did not create any real difficulties for the process, it served no obvious benefit.

Principle #4 - Self Design

Principle #5 - Flexibility

The Round Tables' fourth principle is that of self design, i.e. "the parties design the consensus process". In Sandspit this was achieved by developing "ground rules" for the process at the initial meetings of the team. Discussion on this topic was initiated by the mediator circulating a series of questions that needed to be addressed with regards to the process (Appendix B). The group's responses to these questions formed the basis of the "ground rules". Matters included in the ground rules were: objective, parties, decision making, working groups, mandates, preparation of agreement and mediation report, timetable and duration, mediator, expert assistance, relations with the media, use of information and discussions, and cost of the process. Although these "ground rules" did establish basic procedures, there was considerable flexibility built into the process. In this regard the process was consistent with the Round Tables' fifth principle that "flexibility should be designed into the process".

The objective of the process as defined in the "ground rules" was "to define a commonly acceptable way to provide the community of Sandspit, British Columbia with a small craft harbour...." In responding to interview Question #11 some felt that, at times, the scope was too narrow whereas others felt that it was too broad. Overall, the respondents concluded that the team was effective in defining the issues that they could deal with and those that they could not. With regards to how the Sandspit process was conducted, several participants suggested that meetings of the team should have been more frequent at the start of the process in order to define information requirements, less frequent while information was being gathered, then more frequent or longer at the end of the process when the agreement was being developed. This arrangement would more closely parallel the panel model where information requirements are identified in scoping sessions at the start of the process and, once the information is gathered, hearings and report writing are conducted. This approach may not be appropriate for mediation, since it would have reduced the amount of time that people had to discuss and understand the issues. In mediation a key component is communication among the parties rather than a strict factual analysis of the issues.

Based on the results of the interviews it appears that some participants would have preferred a greater degree of structure. The question is how this need could be met while still maintaining the principle of flexibility. One option would be the use of a small working group to set an agenda for the process. This could be done once the process is established and would give partici-

pants a greater sense of process direction. Notwithstanding, the process must be flexible enough to deal with issues as they arise during the course of the mediation.

Principle #6 - Equal Opportunity

The Round Tables' sixth principle states that "all parties have equal access to relevant information and the opportunity to participate effectively throughout the process". To promote equal opportunity the Round Tables propose that the following be provided:

- training on consensus processes and negotiating skills;
- adequate and fair access to all relevant information and expertise; and
- resources for all participants to participate meaningfully.

Skills and Process Training

The use of mediation will be new to most if not all participants. In the Sandspit process there was some initial confusion about the process among both government and non-government participants. Prior to development of the ground rules, some had the impression that participants would vote on the proposed solution with the resulting concern that there should be enough people to represent a particular view. Another misconception was that the mediator represented a "one-person panel" with the ability to either recommend or impose a solution.

Several participants commented that training on mediation and consensus processes would have been helpful and may have improved the pace of the process. This training could take the form of a one or two day workshop on what mediation entails and on developing the skills necessary to participate effectively in the process. A training session would also provide an informal opportunity for the parties to start to get to know each other. With panel reviews orientation/training is provided to panel members at the start of the review. In a similar vein, it would be appropriate to provide training to participants on the mediation process and alternative dispute resolution techniques. This training could be provided by the mediator, the Agency or both.

One possibility would be to incorporate a training/orientation session in the pre-mediation assessment phase. Once potential participants in the mediation process have been identified, they could be brought together in an orientation session. This would help the parties determine whether they wish to participate in the mediation process and, if they do, to better understand how the process will be conducted.

Access to Information and Expertise

The matter of whether all parties had access to relevant information and expertise was specifically addressed in interview Question #8. In general, the participants concluded that this requirement was met. The use of external technical experts was felt to be very effective by participants as was the use of working groups to develop background information on specific topics.

A unique issue in the Sandspit process was the lack of a clearly identified proponent who could provide information required by the team. When the team identified information needs it was not always clear who would obtain the information and how it would be paid for. In most other cases there would be a clearly identified proponent and following the "proponent pays principle" the responsibility of providing the information would fall to it.

During Sandspit mediation process the team engaged specialists to advise participants on particular issues. For example, specialists on eel grass, coastal sedimentation and Brant geese were engaged to provide information and opinion. While the process also used government specialists, there is value in engaging outside expertise as they are seen as having no connection to the project and therefore viewed as neutral. The use of these specialists is analogous to their use in panel reviews. In the Sandspit case the specialists were paid by the initiating department; however, under the Act these costs could be borne either by the proponent or the Agency. A policy on the use and funding of technical specialists by mediation teams needs to be developed by the Agency.

Another issue is the need for secretariat support for the mediation process. In panel reviews, the secretariat supplied by FEARO often does a significant amount of background research for the panel. In the Sandspit case, FEARO did not have the resources or the mandate to provide a significant amount of technical support. Guidelines on the support role that Agency staff will provide during mediation would be helpful. The guidelines should ensure that any duties performed by the Agency do not jeopardize its neutral role in the process.

Equal Access to Resources

In the Sandspit process, non-government participants were compensated for their out of pocket expenses associated with travel and accommodation and were provided with an honorarium for their time. The honorarium consisted of \$200/day for each day of meeting plus one-half day of preparation time and one-half day of travel time. In addition, \$100 was paid for each conference call meeting in which they participated. One of the four non-government participants chose not to accept the honorarium. Among those that claimed an honorarium, they were compensated for an average of 68 days during the mediation process.

The question of honorariums was addressed in question #3 of this evaluation. All participants felt that it was appropriate to offer compensation for the time spent by non-government participants. Most felt that it was essential to create a sense of balance between government and non-government participants. In the case of Sandspit, the payment of honorariums was essential to participation of some parties. The system of compensating participants on a per meeting basis rather than for actual time spent was effective in managing and controlling costs.

In considering compensation for mediation, the members of the mediation team should be thought of more as panel members than as participants in a panel review. In mediation, it is the team that prepares the recommendation and therefore their role is

much more than that of being consulted. In fact, recommendations from a mediation team have as much or more weight than a panel, since they represent a consensus of all parties.

In addition to financial compensation, resources for all participants to participate effectively can include technical support to non-government participants. In this case, Norman Dale provided the Islands' participants, in general, and RPAC in particular with both process and technical advice. Several participants commented on the value of having this support available to the community. Such support gives the community the ability to participate on an equal basis with government and industry who have access to various forms of research, technical and logistical support. In cases where the community is remote, this person can assist the mediator in providing advice on local issues and by networking and transferring information within the community. Participant funding programs could be used to provide such support to well organized interest groups. Some interests, however, may not recognize the need for such support and it may be necessary when structuring the process to include the resources and mechanism to provide this.

Principle #7 - Respect for Diverse interests

This principle states that "acceptance of the diverse values, interests, and knowledge of the parties involved in the consensus process is essential". This principle was not specifically addressed in the interview questions; however, it is clear that respect for the interests of others developed during the Sandspit process. For example, relationships between the Canadian Wildlife Service and the community improved considerably during the process as each party came to understand each others views and positions. In fact, much of the process revolved around developing an understanding and acceptance of the views of other parties in the process.

Principle #8 - Accountability

The eighth principle set forth by the Round Tables is that "the participants are accountable both to their constituencies and to the process that they have agreed to establish." In addition to reporting to constituencies, the Round Tables note the importance of keeping the public informed on the development and outcome of the process. These two subjects were addressed in evaluation Questions #7 and #9.

Constituencies

As noted in the responses to Question #7, the complexity of this task varied with individual situations. It is difficult for anyone outside the particular constituency (or agency) to judge how effective this activity was. In the Sandspit process there was no formal mechanism for reporting back to the group the results of such briefings. In particular, where the constituency represents a segment of the public such reporting back would be useful.

Several people noted the pressure that the mediation process puts on the individual at the table. In the case of government, it is imperative that the representative develops the appropriate

reporting mechanisms within their agency to ensure they receive support for the positions that they take. Moreover, it is important for agencies to recognize the need to support their representative when entering into a mediation process. In addition to vetting of positions, this support must also be in the form of time and budget to allow effective participation by the representative.

Public

The need for a public information process associated with mediation is necessitated by the nature of the process. Although the public was not specifically excluded, all meetings of the Sandspit mediation team were, in fact, held in private. Without a public information program, this may lead to a public perception that the mediation process is a way to make a "back room deal" and somehow preclude public input.

The Sandspit process used a series of newspaper articles, public meetings hosted by Islands' representatives and public open houses to inform and be informed by the public. Overall, this program was judged by participants to be effective. Suggestions for improvement included issuing news releases following each meeting; assigning one person as a media spokesperson; developing a communications strategy at the start of the process; and inviting the public to attend some or portions of the meetings. Clearly a public information program is an essential part of the mediation process especially when the process stretches over a considerable time.

Principle #9 - Time Limits

The Round Tables' ninth principle states that "realistic deadlines are necessary throughout the process." Although not stated by the Round Tables, the issue of budget is closely related to the time that the process takes.

At the start of the Sandspit process, a check point was established at three months to review progress achieved and, if agreement had not already been reached, to determine whether the mediation process should continue. At this three month period the parties agreed to extend the process for an additional three months. At six months the progress was again reviewed and additional tasks required to complete the mediation process were agreed to. In total, the process took about 14 months to compete.

There were a number of factors that contributed to the length of time, and, therefore, the cost of the Sandspit process. One factor is that this was the first formal attempt at mediation under the federal environmental assessment process. As experience with the mediation process is gained the process will become more efficient. As noted earlier, the lack of a proponent for the harbour confounded the process at a number of turns. Moreover, funding for studies and the for process itself was delayed at one point while responsibility for the project was transferred from one department to another. In addition, the relative geo-

graphic isolation of the Islands made it difficult to schedule meetings any more frequently than once per month and added significantly to travel costs.

It is difficult to see how the Sandspit process could have been completed in much less than one year. Some time might have been saved in the first few months, if pre-negotiations to prepare for mediation had been conducted prior to the commencement of the process. This would have saved the time lost in adding and orienting new participants, but time would still have been required to get the team familiar with the issues and to build confidence in the process. At the end of the process, a public information program prior to submission of the final report added about two months to the process.

A related issue is that process costs are difficult to estimate and manage. As noted above the process was initially scheduled for three months but ultimately took 14 months. In addition, the mediator is seen to be working for the parties involved and takes direction from them. If the parties decide that they want the mediator to undertake a particular activity (for example, participate in a public meeting that one of the parties may have organized), it would be difficult for the manager of the process not to fund this activity. If funding was not provided this may be seen as interference with the process. Sandspit is unique in that FEARO did not fund the process. In the future it would be desirable to have the parties agree to a budget for the process then they could determine whether a particular activity fits within their budget. Notwithstanding, mediation is less structured than a panel review, and it will be difficult to estimate costs accurately. A summary of costs of the Sandspit process are presented in Table 2.

Principle #10- Implementation

Question #12 of the evaluation asked participants whether the next steps for implementing the results of the Sandspit process are clear. Most felt that the steps were unclear since there are additional issues, related primarily to funding, to be resolved before the agreement could be implemented. As a consequence, the Round Tables' tenth principle namely "commitment to implementation and effective monitoring are essential parts of any agreement" has not been met. This is more a result of the complex nature of the South Moresby Agreement than a specific shortcoming of the mediation process.

5 CONCLUSIONS

The **Sandspit** mediation process can be judged to be successful from several perspectives. First, and most important, the team was able to reach consensus on an environmentally acceptable design for the harbour. Second, based on the interviews conducted, an overwhelming majority of the participants felt that the mediation process was the most appropriate vehicle for resolving this issue. Finally, the process was generally consistent with the ten guiding principles of consensus processes established by the Canadian Round Tables.

The experience gained during the **Sandspit** Mediation Process will assist The Canadian Environmental Assessment Agency (**Agency/CEAA**) in developing guidelines and procedures for the application of mediation under the *Canadian Environmental Assessment Act* (the Act). Following are some of the issues that need to be considered:

- **Assessment Phase** - An important step in developing a consensus process is to assess whether mediation is appropriate for the specific issue and whether the major interests and representatives can be identified. Prior to the start of the **Sandspit** mediation process, a limited amount of effort was spent to identify interests on the Islands. As a consequence, it became necessary to add parties during the early stages of the process resulting in additional time requirements.

When a project is referred to the Minister of the Environment for a public review under the Act, the CEAA will need to conduct an assessment of whether mediation, a review panel or a combination of the two is appropriate. The potential roles of the CEAA, responsible authority and mediator in this phase need to be considered. It may be useful for the CEAA to develop guidelines or criteria that identify the characteristics of issues amenable to mediation. In particular, the CEAA will need to carefully assess whether mediation will be able to address the fundamental issues surrounding the project. In addition, a procedure will be required to identify interested parties and to determine their willingness to participate in the mediation.

- **Orientation/Training Requirements** - In this evaluation, a number of participants felt that it would be useful to provide parties with an orientation or training session on the mediation process and techniques. This training would ensure that all parties understand the basis of the mediation process at the start and are better equipped to participate in the process. The timing, nature and content of this training need to be identified as do the roles of the mediator and the Agency in this regard.
- **Scope of the Assessment** - The Act sets out factors that every mediation shall consider. Further, the Act states that the scope of the factors to be considered shall be established by the Minister after consulting with the responsible authority. The question of how to set the scope of mediation under the Act will need to be addressed by the CEAA. If the scope is too narrowly defined it may not meet the interests

of the parties and limit options for creative solutions. On the other hand, if the scope is too broad the team may end up making recommendations on issues beyond the mandate of the government to implement. The issue of defining scope will be of even greater importance where mediation is used in conjunction with a panel review.

- **Participant Funding** - The **Sandspit** process has clearly demonstrated the importance of compensating participants for both their time and expenses. The **CEAA** will need to determine whether a similar approach will be taken for mediation under the Act. This issue has implications for the Participant Funding Program, the objective of which is to help the public participate in the review of projects subject to environmental assessment review **by a panel**. The Act states that the Minister may establish a participant funding program to facilitate the participation of the public in mediations and assessments by review panels [S.58(1)(i)]. Since mediation under the Act will be used in conjunction with or as an alternative to a panel review presumably the participant funding program will cover this activity. However, this is not entirely clear and this question will need to be addressed by the CEAA. A second issue, is that the current Participant Funding Program guide states that "funds may not be used to cover lost income . . . of a recipient." This stipulation seems at odds with the concept of an honorarium which it is designed to offset losses for those participating in the process. Another issue is that Participant Funding applications are considered and approved in advance of the review. This works well for panels where the review process is more structured but would be much more difficult to manage in mediation where the process and time frames are uncertain.
- **Time and Budget** - Experience with the **Sandspit** mediation shows that it may be difficult to accurately estimate time and budget requirements for mediation. Nevertheless, the CEAA will be responsible for establishing and managing the budget for mediation processes. Procedures that involve the participants in the budgeting process need to be considered. The CEAA will need to consider whether, following consultation with the parties, time and budget limits should be established.
- **Secretariat Role** - The level of support that the CEAA will provide to mediation teams needs to be defined. During the actual negotiation process the CEAA could support the process in a number of ways including logistical arrangements, training/orientation, process advice, technical experts, technical analysis, public information programs and report writing. Many of these activities would be similar to the role currently performed by executive secretaries for panel reviews.

- **Public Information Requirements** -An important component of mediation, especially where the activity is spread over months, is to provide the public with information on status of the process. Further, it may be necessary to obtain public input to options being considered by the team. CEAA staff have considerable experience in developing and conducting public information programs in relation to panels. A similar service could be provided to mediation teams.
- **Evaluation** - For the Agency to benefit from experience gained in mediation, an evaluation at the end of each mediation would be necessary. An evaluation of the performance of mediators could be used to develop a roster of mediators. The Agency will need to develop procedures and criteria for evaluating mediation. To do so, the issues surrounding evaluation identified in Section 2 of this report will need to be addressed. The ten guiding principles of consensus processes developed by the Canadian Round Tables may provide a starting point in developing a suitable evaluation framework.

6 REFERENCES CITED

Canadian Round Tables. 1993. Building Consensus for a Sustainable Future: Guiding Principles: an Initiative Undertaken by the Canadian Round Tables, August 1993. 22p.

Sandspit Mediation Team. 1993. Final Report: Sandspit Small Craft Harbour Mediation Process. 25p.

TABLE 1
GUIDING PRINCIPLES OF CONSENSUS PROCESSES

Principle #1 - Purpose Driven

- **People** need a reason to participate in the **process**.

Principle #2 - Inclusive not exclusive

- All parties with a significant interest in the issue should be involved in the consensus process.

Principle #3 -Voluntary Participation

- The parties who are affected or interested participate voluntarily.

Principle #4 - Self Design

- The parties design the consensus process.

Principle #5 - Flexibility

- Flexibility should be designed into the process.

Principle #6 - Equal Opportunity

- All parties must have equal access to relevant information and the opportunity to participate effectively throughout the process.

Principle #7 - Respect for Diverse Interests

- Acceptance of the diverse values, interests, and knowledge of the parties involved in the consensus process is essential.

Principle #8 -Accountability

- The parties are accountable both to their constituencies, and to the process that they have agreed to establish.

Principle #9 - Time Limits

- Realistic deadlines are necessary throughout the process.

Principle #10 - Implementation

- Commitment to implementation and effective monitoring are essential parts of any agreement.

TABLE 2
SANDSPIT SMALL CRAFT HARBOUR

SUMMARY OF MEDIATION PROCESS EXPENDITURES ¹
(April, 1992 - June, 1993)

| | |
|----------------------------------|-------------------------------|
| Contract CSE Group | \$147,000 ² |
| Honorariums | \$ 41,000 |
| Travel for Islands' Participants | \$ 40,000 |
| Disbursements | <u>\$ 20,000</u> ³ |
| TOTAL | <u>\$ 248,000</u> |

Notes

¹ Does not include costs of public consultation or engineering and environmental studies.

² Includes fees (\$128,000), direct expenses (\$11,000) and travel (\$8,000).

³ Includes room rentals, hospitality, advertising and professional services.

APPENDIX A

**SANDSPIT SMALL CRAFT HARBOUR MEDIATION PROCESS
TERMS OF REFERENCE AND "GROUND RULES"**

The proposed Sandspit Small Craft Harbour (the "Project") is subject to the Federal Environmental Assessment Review Process ("EARP"). As part of the EARP initial assessment of the Project the participants have agreed to use a mediation process to seek resolution of environmental issues surrounding the Project. The mediation process shall deal with such issues as the risk to Brant geese, impacts on fish habitat, and the socio-economic benefits to be derived from the project.

1. Objective

To define a commonly acceptable way to provide the community of Sandspit B.C. with a small craft harbour facilities pursuant to the provisions of Part II of the Canada/B.C. South Moresby Agreement and consistent with the principles of sustainable development and the Federal Environmental Assessment Review Process.

The parties agree that there are no limitations to the options that may be considered during mediation. Options that may be considered include but are not limited to mitigation and/or compensation for fish and bird habitat, possible relocation of the harbour to alternative sites, and consideration of optional harbour designs.

2. Parties

The Parties to the mediation process shall include:

- (a) The "Principal Participants" - the key stakeholders who are participating directly in the mediation efforts including, initially:
- (i) Fisheries and Oceans Canada,
Habitat Management,
Small Craft Harbours;
 - (ii) Environment Canada,
Conservation and Protection Service, Canada Wildlife Service;
 - (iii) B.C. Environment, Lands and Parks;
 - (iv) "Islands' Representation";
 - (v) Planning and Coordination Committee (PACC) Co-Chairs.
- (b) The "Interested Parties" - other stakeholders who hold some responsibility for the results of the mediation and must be regularly informed of progress including, initially:
- (i) Western Economic Diversification Canada;

- (ii) B.C. Economic Development, Small Business and Trade;
- (iii) ISTC, Tourism Canada;
- (iv) Environment Canada, Canadian Parks Service;
- (v) Tourism B.C..

The participation of any additional Parties will require the review and approval of the Principal Participants. In making this review the Principal Participants shall consult with the Mediator.

The Principal Participants will name Representatives who will make every effort to attend all meetings during the mediation process. An Alternate may attend if the Representative is unavoidably absent. In that case it shall be the Representative's responsibility to ensure that the Alternate is fully briefed on the status of the process and previous discussions.

3. Decision Making

The Parties agree to operate by consensus which shall mean the agreement of all the Principal Participants.

The Principal Participants are committed to developing a resolution that is acceptable to all Parties. It is **recognized** that individual elements of any such a resolution might not be acceptable if there were not agreement on a total package. Therefore, any "agreements" on any individual items are tentative until such time as a total package resolving all matters in issue has been agreed upon unless the Principal Participants explicitly agree otherwise on any particular item.

4. Working Groups

Working Groups will be established to address procedural and substantive issues and tasks. Their establishment, membership and mandate shall be by consensus. Upon the completion of their mandated task, they shall be disbanded. The Working Groups will be expected to report back to the Principal Participants on the basis of a consensus that the report will be helpful to the process even though agreement may not be achieved on all of the substantive matters within any such report.

1 Although Residents Planning Advisory Committee (RPAC) has provided initial representation from the Island, the Parties acknowledge that other stakeholders from these communities may wish to participate.

Members of the Working Groups may include persons other than Representatives of the Parties.

The following Working Groups were established at the initial meeting:

- (a) Ground Rules Working Committee;
- (b) Issues Identification Working Committee;
- (c) "Information Inventory" Working Committee.

5. Mandates

All of the individuals who are participating in the mediation process recognize that they are participating in a Representative capacity and accept the responsibility to keep the Party(ies) whom they represent and to whom they report informed of the progress of the discussions and to seek advice and authority as may be appropriate.

The Parties are proceeding on the basis that what is said or done by the Representative of the Principal Participants during the mediation process is reasonably believed by the Representative to reflect, or is likely to reflect, the concerns, interests and wishes of the Party whose interests they represent, and where there is uncertainty as to whether that is the case, to make that known.

6. Preparation of Agreement and Mediation Report

The Parties agree that it will be desirable for the Mediator to prepare the text of any Agreement that they may conclude, subject to their guidance and input. Upon being satisfied that the text reflects the consensus reached, the Representatives shall indicate jointly their respective concurrence by signing a document to that effect to be prepared by the Mediator.

Should the Principal Participants reach a consensus that resolves most, but not all, of the issues they may agree upon a Statement describing the areas of disagreement and any lack of information or data that prevents such agreement and where possible a process for achieving agreement on such issues.

The Mediator shall prepare a report at the conclusion of his assignment which shall be the Agreement if full agreement is achieved, or the Statement, if partial agreement is achieved, and, if no agreement is achieved the report shall be subject to the approval of the Parties.

The Mediator shall deliver copies of the Report to interested Ministers, including, in particular; the Federal Ministers of Environment; Fisheries; and Western Economic Diversification; and the Provincial Ministers of Environment; and Economic Development, Small Business and Trade.

7. Timetable and Duration

Consistent with the very high priority attached to the resolution of these issues, the intent of the Parties is that agreement be reached within three months of the appointment of a Mediator. To this end, at the first formal meeting in the mediation process on April 24, 1992, an initial schedule of meetings has been established to provide a timeline and framework in which to move forward. It is recognized by the Parties that:

- (a) The Mediator will be engaged in meetings and discussions with all Parties.
- (b) Other meetings and discussions will occur between all or some of the Parties outside of this explicit schedule of meetings.
- (c) Further meetings of the Parties may be fixed.
- (d) The progress achieved in the mediation process will be reviewed on July 21st and 22nd, and if agreement has not already been reached, an assessment will be made to determine whether there is consensus on the mediation process continuing subsequent to that meeting.

8. Mediator

The Mediator who has been appointed, Glenn Sigurdson, has been mutually agreed to by the Parties. The Federal Environmental Assessment Review Office (FEARO) will administer the mediation process, facilitate the process and act as an observer at mediation meetings.

The Mediator will assist the Parties to negotiate an acceptable agreement on how the project might proceed.

9. Expert Assistance

Any Party, at its expense, may use such expert assistance as it may consider appropriate and any direct involvement of such expertise in any mediation meeting shall be after prior notification of the other Principal Parties and the Mediator. If expert assistance in a particular field, or in respect to a particular subject matter, is seen as a matter of mutual interest to the Principal Participants, and potentially helpful to the mediation process, and consensus can be reached as to the expert whose advice is to be relied upon or with whom consultations would be helpful, then such expertise shall become a Cost of the Process.

10. Relations with the Media

The parties wish their efforts to proceed forward on a basis that will permit the fullest possible exploration of all approaches and possibilities to the resolution of the issues and within that spirit the parties commit to carrying out their efforts to seek such resolution in the context of the mediation process.

The participants agree to focus on the process and to avoid characterizing the positions or participation of other parties to the mediation process in any of their communications with the media.

The Parties agree to discuss at the conclusion of each meeting the characterization of the discussion and outcome of the meeting for guidance in any communication they may have in that respect with the media, and further, to keep each other and the Mediator generally informed as to involvement and contact with the media.

The Mediator shall, in this respect, play such role as the Parties may from time to time regard as appropriate and may instruct.

11. Use of Information and Discussions

The Parties understand that the broadest possible exploration of information and alternatives is necessary in order to ensure that the best solutions are found.

Meetings of the Principal Participants and the Working Groups, and any other meetings within the contemplation of the mediation process, will not be recorded nor will formal minutes of the proceedings be kept.

The outcome of each meeting will be prepared by, or under the direction of the Mediator, highlighting the areas of discussion, Working Group assignments and tasks to be undertaken.

All Parties agree that they will supply whatever information and data that it reasonably considers will be helpful in resolving the issues and to make it available on a timely basis, and, specifically to provide any information which is referred to or relied on in the mediation process.

It is common ground between the Parties that their efforts are proceeding forward in good faith, and in that spirit, it is understood that any specific offers or statements made during the proceedings are not to be used by any other participant to attempt to bind any other party or person in any other forum including pending or future administrative procedures or litigation.

The Parties **recognize** the special nature of the Mediator's role and undertake not to seek or compel the testimony of the Mediator or the FEAR0 staff in respect of anything said or done by them in the course of the mediation process or the production of their personal notes or work papers in connection with any administrative or legal process, except as may be jointly agreed by the Parties and the Mediator.

12. Cost of the Process

The following costs, subject to approval by the Planning and Coordination Committee (P&CC), and Costs of the Process will be covered by funds allocated for the planning process under the Regional Economic Development Initiative:

- all costs of the mediator, support staff and any agreed upon expertise;
- all costs associated with provision of meeting facilities and such consultations as may be appropriate; and
- any other approved costs necessary to mediate the dispute.

The following costs will not be covered by the Regional Economic Development Initiative:

- staff time for federal or provincial **officials**; and
- any travel, research or incidental expenses of government officials, except those consistent with the principles established in the mediation process and approved in advance by the P&CC.

APPENDIX B "GROUND RULES"

"Ground Rules" may be helpful to the Parties to a negotiation (and the Mediator, if one is engaged) specifying the expectations and responsibilities of the Parties and the Mediator with a view to providing a framework or guide for the resolution of the dispute.

Some of the questions that might be considered include:

1. The Parties

Who has expressed a desire to be at the table? Are there other Parties who may have an interest in the outcome or whose concurrence may be necessary to the effectiveness or enforceability of any agreement reached? Should they also be at the

table? If not at the table, who, if anyone, should be kept "informed" of the progress of negotiations? If so, who is to do the "informing"?

2. Purpose

What purpose do the Parties seek to accomplish? In other words what are the issues in dispute? Can other matters be subsequently added by mutual agreement of the Parties?

3. Timetable and Duration

Is there an estimate as to the potential length of time the process will take? Should this be expressed in the Ground Rules? Should there be a cut-off date after which any Party may withdraw? Or, may any Party withdraw at any time? Should

initial time expectations be capable of revision by mutual agreement, and should the parties commit to a specific re-assessment of the target period at least _ days prior to it being reached?

4. Structure

May additional Parties be added at any time upon the concurrence of the existing parties? May the parties be represented through counsel, spokesman, technical experts, or any or all of them? May persons not explicitly designated to actively participate do so at the request of that Party and with the concurrence of the other Parties? May "Working Groups" be formed by concurrence of the parties to address specific tasks or issues? Should the composition, scope and operation of those Working Groups be established by the Parties? Can working groups include persons not part of the specific persons at the table?

5. Scheduling and Agendas

Should an explicit schedule of joint meetings for a specific period be established? Or should meetings be held when requested by either Party? Or should joint meetings be called at the sole discretion of the mediator? Are agendas to be prepared in advance of each session? Or should such topics as the parties want to raise be discussed at any meeting? Is a formal record to be kept of the meetings? Or should the parties or the mediator simply take such notes as they may consider advisable for their exclusive use to assist in recalling the history of their discussions?

6. Relationship to External Interests

Are sessions to be open, or closed to the media? Or to the public? Is communication with the media permitted, and if so, on what basis? A prepared press release jointly authorized by the Parties? Or at each individual's Party's discretion? Or solely by the Mediator?

7. Confidentiality

Are all discussions (including specific offers, positions, statements) in respect of, and all documents created for or in the course of, the process to be privileged and confidential? And further, is it agreed that such discussions or documents cannot be used for pending or future litigation, or any other potential proceedings?

Should the Parties be required to provide all relevant information? If for a particular reason a party is unwilling to produce a specific document must it nonetheless provide the substance of the information required in some form? What, if any, role should the Mediator play in respect of the communication of information?

8. Role of the Mediator

Why, and when would the Parties consider involving a mediator? Should the Mediator perform his functions for a fixed term or at the pleasure of the Parties? What assurances should the parties give to a mediator in terms of the confidentiality of his role, and his non-compellability in any subsequent proceedings? Is there to be any restriction whatsoever on the Mediator's right to meet

separately or jointly with the parties at such times as he may consider appropriate, or as the Parties, or any one of them, may request?

What is the retainer relationship between the Mediator and the Parties, and on what basis, and frequency are his accounts to be rendered and paid? Should the Mediator be empowered, if he considers at any time that it would be of assistance to him or the parties in resolving any issues or recording any agreements reached, to retain, instruct and make available to himself and the parties such expert or legal drafting assistance as he deems advisable?

9. Agreements

Is it in the interests of facilitating the broadest possible consideration of options and alternatives that all the suggestions and possibilities will be tentative until full agreement is reached? Is concurrence on any single item subject to reaching agreement on a total acceptable package addressing all matters relating to the topics under discussion? Should the Parties agree in advance that in the absence of agreement in all issues, any agreement reached should explicitly describe remaining areas of disagreement and the reasons for that disagreement? Should possible means of reconciling such differences also be identified? What, if any, use can be made of such an agreement, including the recitation of areas of disagreement, and any proceedings which may subsequently arise outside of the mediation process?

Are there certain issues that should be isolated and dealt with in priority to others? Will agreement on such issues, if any, or the lack thereof, be independent from, or subject to, agreement on all other issues?

Who should be responsible for controlling the drafting of the text of any agreement of the parties? The parties? Or the Mediator as he may be assisted, subject to drafting, review, and approval by the solicitors of the parties?

10. Compliance and Changes to the Ground Rules

How shall compliance with these Ground Rules be maintained? Shall each party be responsible for the adherence of its own representatives to these Ground Rules? What steps, if any, should be taken to ensure adherence?

11. Priorization

Should the parties undertake, each to the other to proceed with their efforts on the basis of mutual representations as to the priority assigned to the matter?

12. Other Proceedings

Provided the process is continuing, what should be the status of court or other proceedings, whether initiated or in contemplation?

APPENDIX C

PARTIES IN THE SANDSPIT MEDIATION PROCESS

Islands' Representation

- Area "E" - Duane Gould
- Queen Charlotte City/Skidegate Landing Advisory Planning Commission (QCCSLAPC) - Keith Moore
- Residents Planning Advisory Committee (RPAC) - Warren Foster, Norman Dale
- Sandspit Mediation Environmental Group (SMEG) - Margo Hearne

Provincial Government

- British Columbia Environment, Lands and Parks - Brian Fuhr, Lawrence Turney
- British Columbia Economic Development, Small Business and Trade - Frank Blasetti

Federal Government

- Environment Canada, Canadian Parks Service - Jim Christakos
- Environment Canada, Canadian Wildlife Service - Ian Goudie
- Fisheries and Oceans Canada, Habitat Management - Leslie Powell
- Fisheries and Oceans Canada, Small Craft Harbours - John McNally, Adrian Rowland
- Public Works Canada - Alex Fakidis, Collin Kingman
- Western Economic Diversification - Colin Heartwell

APPENDIX D

SANDSPIT SMALL CRAFT HARBOUR MEDIATION PROCESS -INTERVIEW GUIDE

1. What would you say were the advantages and disadvantages of the mediation process compared to other processes that you may be aware of (for example, panel review)?
2. The mediation process took approximately 14 months to complete. Do you feel that pace of the process was too slow, too fast, or about right? If you feel that the process was either too slow or too fast do you have any suggestions as to how the process might be altered?
3. The process required a considerable time commitment by all participants. In the case of some non-government participants compensation in the form of an honorarium was provided for time spent on the process. Do you have any views on the concept of compensating non-government representatives? Are demands on the time of participants in the mediation process such as to preclude the involvement of certain individuals both inside and outside government? If so, can you suggest any solutions to this constraint?
4. The cost of the mediation process was approximately \$250,000 which is in the same range as some panel reviews of small projects. Do you have any views on the costs of the process or any suggestions on how costs might be reduced? Are there any additional items or activities that should have been funded by the process?
5. Do you have any comments on the representativeness of the mediation team? Was representation on the team balanced or was it weighted in some areas? Were interests on the Islands adequately represented? Was the representation from governments adequate?

6. Do you have any comments on the roles played by the various parties in the mediation process and their effectiveness? Parties in the mediation team included the Mediator, Islands' representatives, federal government, provincial government, and technical experts.
7. Thinking about the group or agency that you represented, did you find it straightforward or a challenge to keep your "constituency" informed of developments in the mediation process? Do you have any recommendations on how to facilitate this activity in future mediation processes?
8. An important principle in a mediation process is that all parties have access to relevant information. In the Sandspit process was good quality information made available in a timely fashion? Was information provided in a form that all Parties could readily understand?
9. The mediation team conducted a number of public information and consultation activities during the mediation process. These activities included a series of articles in the Observer, public meetings held by Islands' representatives and public open houses held by the mediation team. Do you have any views on the adequacy, effectiveness and the necessity of this activity? Can you identify any ways in which the public information and consultation process could be improved?
10. The mediation process included 14 major meetings of the team, meetings of working groups generally by conference call, and discussions between and among the participants and the mediator. Do you have any comments on how the process was conducted - what worked, what didn't work, what improvements would you suggest?
11. The mediation team was successful in reaching consensus on environmental and related socio-economic issues. Other issues such as maintenance of the Queen Charlotte city harbour, responsibility for operation and maintenance of the Sandspit harbour and determination of "reasonable cost" were deemed to be beyond the scope of the mediation process. Was the scope of the mediation process adequate or was it too narrow or too broad?
12. Do you feel that the next steps for implementing the results of the Sandspit mediation process are clear? Have you any suggestions on what actions might be taken in future mediation processes to enhance the likelihood of timely implementation of the results?
13. Do you have any other comments about the mediation process or other related issues?