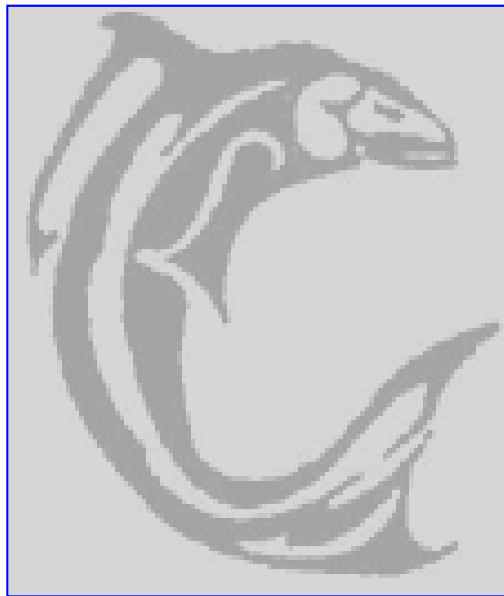


Public Participation and the Water Framework Directive:

Overview, Interpretation, Recommendations



Mark Boyden
StreamScapes Project Director
Coomhola Salmon Trust, ltd.
Bantry, County Cork
Ireland

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Summary

Part 1, **“Introduction and Legislative Context”**, of this paper examines:

- The trend in emerging European and international environmental law to specify a high degree of “Public Participation” content in the development and implementation of environmental legislation.
- Citations of examples of this trend from Water Framework Directive and Aarhus instruments.
- Efforts by officially-sanctioned “guideline” documents to define and elaborate upon the meaning and potential of “Public Participation”.

Part 2 of the paper, **“Public Participation Objectives and Recommended Actions”**;

- Urges a wide interpretation of the phrase “Public Participation”, and,
- Indicates a range of actions which will assist in achieving full, effective, and meaningful “Public Participation”, in support of attaining the objectives of the Water Framework Directive in Ireland.

Why is Public Participation in support of WFD so important? Unlike most other areas of legislative interest and implementation which may affect a limited number of interested stakeholders, when it comes to water governance and management we are all affected and must all be considered “stakeholders”. The basis of advocating *universal* Public Participation in relation to WFD implementation therefore, is simple:

“If you use a tap and a toilet you are engaging in water management. You are dependent upon extracting high quality water for personal usage and, ideally, consciously managing that water to achieve minimum impacts upon discharge.” - from “Theory of Public Participation and Aquatic Awareness Education”, Coomhola Salmon Trust, 2006

Access to Information, Consultation, and Active Involvement ensures that stakeholders share ownership of solutions. We begin to see that, without developing ways to get everyone on board and in pursuit of the high aims of achieving “good” water quality by 2015, the bottom line is that the River Basin Management Plans will fail.

Regarding Environmental Education initiatives: *“Awareness leads to appreciation; appreciation leads to action; action leads to achievement (of aquatic restoration objectives)”* – StreamScapes manual, 1997

1. Introduction and Legislative Context

“Public Participation”, though widely and increasingly acknowledged as an essential element in the development and implementation of statute and practice, remains a somewhat ambiguous term with its definition undergoing dynamic current evolution based on experiences throughout Europe (involving all forms of governance issues including WFD implementation), and indeed internationally. Ideally, the rationale behind efforts to promote the inclusion (and evolution) of Public Participation techniques and exercises in the development and implementation of environmental law engenders scenarios which will provide for;

- The engagement and accessing of a wide range of stakeholder concerns in the course of the drafting of legislation, ***this process yielding not alone a better-informed final piece of legislation but furthermore increasing the chances of stakeholder (both sectoral and individual citizen) "co-ownership" of objectives*** (see Figure 1), and;

- Instance and example of how stakeholders may proactively (and practically) ***participate*** in the subsequent implementation and achievement of the objectives of the legislation.

The ultimate purpose of the Water Framework Directive mechanism is to develop "River Basin Management Plans", supported by "Programmes of Measures" (the means), which will assist in the attainment of high standards of water quality throughout the European Community (the objective). The widest possible interpretation of “Public Participation” in achieving both the means and the end is perceived as being crucial to the success of the initiative.

For the purposes of elaborating upon the concept of Public Participation within the context of the implementation of the Water Framework Directive, and to understand its legal and practical basis, this paper refers to the precedent established by four documents:

- A) References from WFD Preamble, Articles, and Annexes ⁽¹⁾,
- B) The indicative efforts of the European community-produced “Guidance on Public Participation in Relation to the Water Framework Directive” ⁽²⁾;
- C) The EU-commissioned independent study, “Harmonising Collaborative Planning (HarmoniCOP); Learning Together to Manage Together/Improving Participation in Water Management” ⁽³⁾, and;
- D) The Aarhus Convention ⁽⁴⁾.

Following is a brief citation of relevant passages from each of these documents, together with notes.

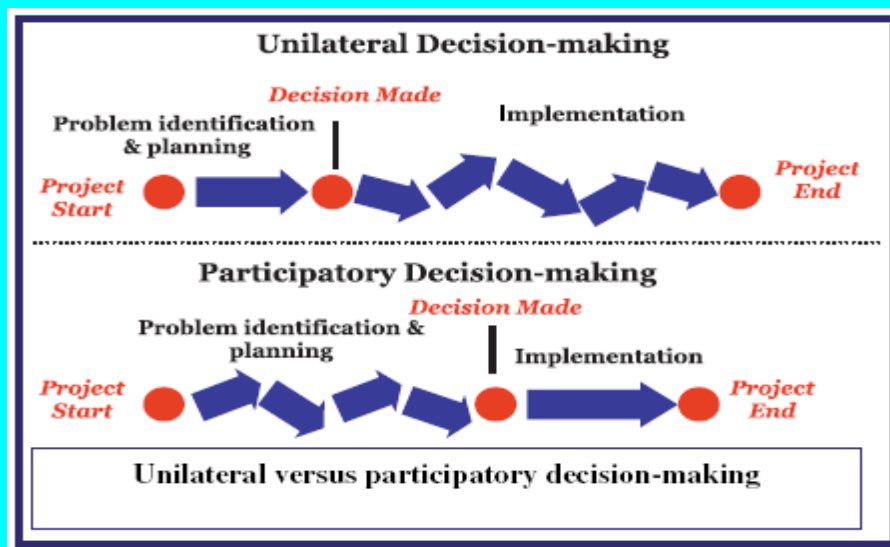


Fig. 1 Image from *HarmoniCOP Handbook*, 1.2.3; “Participatory decision-making processes usually takes much more time than unilateral decision-making by water managers. However, as illustrated in this figure, this is usually more than offset by time gains (and, by implication, effectiveness) in the implementation phase.”

⁽¹⁾ Directive 2000/60/EC (the “Water Framework Directive”)

⁽²⁾ “Guidance on Public Participation in Relation to the Water Framework Directive (Active Involvement, Consultation, and Public Access to Information)”, EU Public Participation Working Group (& endorsed by departmental Water Directors from EU member states, accession States, Switzerland, and Norway); 2002

⁽³⁾ Ridder, Mostert, Wolters, “Harmonising Collaborative Planning (HarmoniCOP); Learning Together to Manage Together/Improving Participation in Water Management”; 2005

⁽⁴⁾ The Aarhus Convention, UN/ECE

A) Directive 2000/60/EC (the “Water Framework Directive”)

Firstly, though it should be noted that the term “Public Participation” is not used in the Water Framework Directive, the concept is underpinned by Preamble, Articles, and Annexes which are relevant to the issue:

“The success of this Directive relies on close cooperation and coherent action at Community, Member State and local level as well as on information, consultation and involvement of the public, including users.” - Preamble 14

“To ensure the participation of the general public including users of water in the establishment and updating of river basin management plans, it is necessary to provide proper information of planned measures and to report on progress with their implementation with a view to the involvement of the general public before final decisions on the necessary measures are adopted.” - Preamble 46

“Member States shall encourage the active involvement of all interested parties in the implementation of the Directive, in particular in the production, review and updating of the river basin management plans...On request, access shall be given to background documents and information used for the development of the draft river basin management plan.” - Article 14.1

In the context of Article 14.1/.2/.3, the Directive continues to specify consultation obligations (and timetables) in relation to the development of River Basin Management Plans.

“Educational projects” are cited as being a further example of Public Participation, mentioned in the context of Annex VI, “Lists of Measures to be Included Within the Programmes of Measures”, Part B (“...a non-exclusive list of supplementary measures which Member States within each river basin district may choose to adopt as part of the programme of measures required under Article 11.4), number (xv).”

Finally, there is a specification for freedom of information requirements in support of the WFD:

“...a summary of the public information and consultation measures taken, their results and the changes to the plan made as a consequence.”

And; *“the contact points and procedures for obtaining the background documentation and information referred to in Article 14(1), and in particular details of the control measures adopted in accordance with Article 11(3)(g) and 11(3)(i) and of the actual monitoring data gathered in accordance with Article 8 and Annex V.”* Annex VII (River Basin Management Plans), Section A (“River basin management plans shall cover the following elements”) Paragraph 8

B) “Guidance on Public Participation in Relation to the Water Framework Directive”

The Guidance document, drawn up with the widest collaboration amongst all EU partners, contributes the following interpretations to establish the implications of “Public Participation”:

“This guidance document aims at assisting competent authorities in the Member States and Accession Countries with the implementation of Article 14 of the Water Framework Directive about Public Participation...” (Exec.Summary, pg. 3)

“This guidance starts with creating a common understanding regarding the meaning of public participation in the context of the WFD. Public participation can generally be defined as allowing people to influence the outcome of plans and working processes. It is a means of improving decision-making, to create awareness of environmental issues (my underline) and to help increase acceptance and commitment towards intended plans. Public participation for the implementation of the Directive is recommended at any stage in the planning process, from the Article 5 requirements to the Programme of Measures and the design of the River Basin Management Plan.” (Executive Summary, pgs. 3-4)

“Although the phrase “public participation” does not appear in the Directive, three forms of public participation with an increasing level of involvement are mentioned: information supply, consultation, and active involvement. According to the Directive, the first two are to be ensured, the latter should be encouraged. Although the Directive does not require active involvement, this guidance shows how active involvement can be very useful for reaching the objectives of the Directive. These three forms can be interpreted as being “public participation”, although public participation usually covers a wider range of activities than prescribed by the Directive.” (Executive Summary, pg. 4)

Moreover,

“A clear signal should be given that no blue-print exists for public participation and that the public participation process should be organised and adapted to national, regional and local circumstances.” (Executive Summary, pg. 4)

And finally,

“...the Directive gives no clear boundaries when it comes to the extent of these forms of public participation...(the) guidance elaborates the range of possibilities between minimum requirements and best practices...it is up to the competent authority, which will - as a representative of the Member State - commission the public participation process, to decide which possibilities will be used in the...process.” (Section 2.6, pg. 25)

C) “Harmonising Collaborative Planning (HarmoniCOP); Learning Together to Manage Together/Improving Participation in Water Management” (commissioned by the EU)

The HarmoniCOP Handbook represents a recent example of the on-going development of the Theory and Practice of Public Participation. The Foreword commences with the acknowledgement that;

“Despite comprehensive recommendations set out in the EU Guidance on Public Participation in Relation to the Water Framework Directive which represent an authoritative interpretation of Article 14 of the WFD, practicalities for encouraging public active involvement are not described in detail.” - Philippe Quevauviller, European Commission DG Environment

It then proceeds to formulate and examine opportunities for facilitating Public Participation, emphasising the core concept of “Social Learning” as being a fundamental element in the advancement of Public Participation within the context of implementation of the Water Framework Directive:

“Social learning means ‘learning together to manage together’. It emphasises collaboration between the different stakeholders, starting at the earliest possible moment (in the process). It helps to build up trust, develop a common view on the issues at stake, resolve conflicts and arrive at joint solutions that are technically sound and actually implemented in practice. It helps all stakeholders to achieve better results than they could achieve otherwise.”

In effect, “Social Learning” refers to the “shared” experience and particular expertise of all parties: legislators, (civil service) administrators, scientific/academic community, stakeholders, and the wider public collaborating through informational flows to both identify issues and to mutually evolve and determine corrective actions including, within the context of WFD, the Programme of Measures.

In addition, though acknowledging the importance of both “Consultation” and “Active Involvement” in planning processes, it goes on to establish the crucial distinction between these two terms:

“‘Consultation’ means that the public can react to government proposals...it is legally required to publish drafts and allow the public some time to make comments in writing. Other forms of consultation include oral consultation and surveys.”

“‘Active involvement’ implies a more involved role for the public. The public may:

- *Have discussions with the authorities*
- *Help to determine the policy agenda*
- *Help to develop solutions*
- *Be involved in taking decisions*
- *Participate in implementation*
- *Become fully responsible (for part of) river basin management*

D) The Aarhus Convention

Aarhus is meta-EU, UN-inspired legislation which, in the course of linking human rights with environmental rights, informs all 21st century environmental legislation by going to the heart of the relationship between people and their government. Though substantially an environmental agreement, it is furthermore a code for government accountability, transparency, and responsiveness in the context of Public Participation in general governance. Including most EU countries as signatories, it specifies three “pillars” which establish the basis for effective Public Participation, which are viewed as inalienable rights and enshrined in Articles 4 – 9, as follows:

1. Access to Information: effective public participation in decision-making depends on full, accurate, up-to-date information. The Access to Information pillar is split in two. The first part concerns the right of the public to seek and receive information from public authorities and the obligation of public authorities to provide information in response to a request (passive). The second part of the information pillar concerns the obligation upon authorities to collect and publicly disseminate information of public interest without the need for a specific request (active).
2. Public Participation in Decision-making; this pillar is divided into three parts. The first part concerns participation by the public that may be affected by or is otherwise interested in decision-making on a specific activity. The second is concerned with the participation of the public in the development of plans, programmes, and policies relating to the environment. The third part covers participation of the public in the preparation of laws, rules, and legally binding norms.
3. Access to Justice: this third pillar of the Convention enforces both the information and the participation pillars in domestic legal systems, and strengthens enforcement of domestic environmental law. The justice pillar furthermore provides a mechanism for the public to enforce environmental law directly.

Finally, this definitive and over-riding Convention specifies that Parties shall promote environmental education and environmental awareness (Article 3, paragraph 3), hence placing these activities firmly in the realm of “Public Participation”.

2) Public Participation Objectives and Recommended Actions

Consistent with the objectives of the authoritative documents cited in Part 1, a dynamic interpretation and development of Public Participation instruments, across the entire spectrum of its meaning (from “passive” to “active”), is advocated in the context of Water Framework Directive implementation in Ireland.

The effective development and rollout of Public Participation measures will firstly differentiate between various sectors and identify their capacity to engage in the process. For instance, many sectors (such as Agriculture/Forestry, Construction, and Environmental NGO’s) and some individuals may as a matter of course be interested in contributing to the development of River Basin Management Plans, whereas wider means must be found to enable universal “participation” in the achievement of WFD objectives. Therefore, the measures to ensure participation must be varied and manifold. The following list of measures are indicative of actions which are relevant to achieving optimum Public Participation in support of the Water Framework Directive, tying in with the three main arenas of public participation established above:

A) Access to and provision of user-friendly information: *allow all stakeholders (and the general public) to have easy access to all relevant data yielded by WFD implementation, aquatic environmental materials and resources, and easily-understood “best-practice” guidelines with regard to personal and professional usage of aquatic resource*

- a) Develop User-Friendly Interactive Web- (and CD Rom-) based Geographical Information Systems, together with relevant data supports, to enable the widest possible dissemination of the hard data yielded by the WFD process.
- b) Redouble efforts to produce and widely distribute sectoral (agriculture, forestry, construction, and etc.) as well as domestic-management “best-practice” guidelines.
- c) Develop a universal Public Awareness Campaign on Water, Biodiversity, and Habitat issues, which would include high-impact media awareness initiatives as well as introducing basic resource “best-practices” into Primary and Secondary curricula.

- d) Development of a high-profile WFD Public Participation Unit with good cross-sectional representation (it was noted that the WFD Public Participation Unit in Ireland did not have either a member of the public nor an environmental ngo representative on board); charge this Unit with devising strategy to produce wider public participation (and resource awareness) using Stakeholder/NGO's as hubs and their members as local partners.
- e) Preparation / Commissioning of imaginative and refined WFD information and communications strategy (including web-based interactive tools).
- f) Provision of dedicated River Basin District Informational Centres that would serve general information needs and cater to the environmental educational requirements of RBD schools and citizens as well as eco-tourists.

B) Consultation: *explore every opportunity to establish ways and means to promote communication and interaction with and between stakeholders across all sectors*

- a) Establish a more binding and 2-way flow of information between RBD Advisory Councils and their respective Management Groups.
- b) Stimulate more meaningful and facilitated interactions between sectors at RBD Advisory Council level (i.e., constructive “head-to-heads” which will bring issues and differences on to the table in the interests of promoting understanding and resolution).
- c) Develop in advance an efficient template to enable meaningful stakeholder input into River Basin Management Plans.
- d) Forge international partnerships with other Member States’ River Basin Districts (as is done with the “twinning” of towns and etc.) to access others’ interpretation of RBD method and best practice across the EU.

C) Active Involvement: *identify the ways and means to empower and equip all stakeholders and the wider general public to participate in the realisation of the high aims of the Water Framework Directive*

- a) Build an active awareness and pride in resource through education.
- b) Cultivate a sense of awareness and proactive resource stewardship using local community groupings (Angling Clubs, Tidy Towns organisations, IFA, ICA, and etc.).
- c) Utilise models proven elsewhere (notably in the USA and Canada) in which volunteers are trained to augment resource-constrained water and environmental data monitoring capacity.
- d) Echoing 2B above, change the present structure of RBD Advisory Council meetings (as well as more general “Stakeholder Consultations” and “Information Meetings”) from “top-down” presentations to a more meaningful and interactive exchange between all sectors (including lead authorities and their advisors) which, availing of “Social Learning” principles, will enable a fuller examination of issues leading to stakeholder ownership of resolutions and a better chance of achieving consensus on final River Basin District Management Plans.

Criteria for Excellence in Public Participation

- 1) The public participation process seeks out and facilitates the involvement of those potentially affected.
- 2) The public is involved in designing how they will participate.
- 3) There are multiple methods for participation.
- 4) The venue(s) for public participation are accessible to the diverse public.
- 5) The public participation process provides participants with the information they need to participate in a meaningful way.
- 6) Methods for participation are user-friendly and perceived as fair, just, and respectful.
- 7) Public’s role in decision-making is clear.
- 8) The public’s contribution has the potential to meaningfully influence the decision or outcomes.
- 9) The public participation process communicates to participants how their input affected the decision or outcomes.
- 10) The public has the opportunity to be involved and/or monitor the implementation of the decision or outcome.

From “Public Involvement Needs Assessment”, Appendix H,
Centre for Collaborative Study, 2005