

WHITEPAPER ON POLICY ADVOCACY FOR JOINT VENTURES

Prepared for

NORTH AMERICAN WATERFOWL MANAGMENT
PLAN COMMITTEE

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DISCLAIMER

The information contained in this white paper is intended for discussion purposes. It is not legal or tax advice nor should it be relied upon as legal or tax advice. Members of Joint Ventures should consult with their legal counsel when crafting policies regarding appropriate advocacy.

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1.0 INTRODUCTION

Factors recognized as drivers of environmental change, including agriculture, development, energy, climate change, forestry, transportation, noxious invasive species and water supply, significantly influence landscapes upon which wildlife depend¹. In response to these drivers, effective public and private sector policy can reduce habitat loss and increase habitat protection, restoration and enhancement locally, regionally and continentally. The North American Waterfowl Management Plan (NAWMP) has for example directly conserved and restored 6.3 million ha of waterfowl habitat continentally². Conservation programs and policy changes outside of the NAWMP have not only benefited waterfowl³ but have more broadly impacted wetland ecosystem services⁴.

The NAWMP Continental Progress Assessment (CPA) recognized the importance of policy operating individually and synergistically to achieve its waterfowl population and habitat conservation objectives⁵. Furthermore, the CPA recommended NAWMP Joint Ventures in partnership with others assume a more active policy advocacy role as an additional means to achieve NAWMP goals.

Science expertise is increasingly recognized and sought to inform and improve the often complex decision-making in the legislative and policy process^{6, 7}. Sound science and knowledge is the foundation for planning, implementing and evaluating NAWMP and North American Bird Conservation Initiative (NABCI) programs^{8, 9}. NAWMP and NABCI partnerships are thus uniquely positioned to significantly and positively contribute to the development and implementation of environmentally supportive public legislation and public and private sector policy.

There are however challenges. A NAWMP Committee survey of Joint Ventures¹⁰ revealed that most were involved in policy related initiatives but in an *ad hoc* manner relying upon individual

¹ G. Mace, H. Masundire, and J. Baille. 2005. Chapter 4. Biodiversity. *In* Millennium Ecosystem Assessment. 2005. Volume 1. Current State and Trends. Edited by R. Hassan, R. Scholes, and N. Ash. Island Press, Washington.

² North American Waterfowl Management Plan 2012: People conserving waterfowl and wetlands. <http://www.nawmprevision.org/> accessed 17 August 2012.

³ J.B. Haufler, editor. 2000. Fish and wildlife responses to Farm Bill conservation practices. The Wildlife Society Technical Review 07-1.

⁴ M.M. Brinson and S.D. Eckles. 2011. U.S. Department of Agriculture conservation program and practice effects on wetland ecosystem services: a synthesis. *Ecological Applications* 21(3) Supplement:S116-S127.

⁵ North American Waterfowl Management Plan. 2007. Continental Progress Assessment Final Report. <http://www.fws.gov/birdhabitat/NAWMP/files/FinalAssessmentReport.pdf> accessed 20 September 2011.

⁶ D.E. Blockstein. 2002. How to lose your political virginity while keeping your scientific credibility. *BioScience* 52: 91-96.

⁷ J.M. Scott, J.L. Rachlow, and R.T. Lackey. 2008. The science-policy interface: what is an appropriate role for professional societies? *BioScience* 58: 865 – 869.

⁸ NAWMP 2012. *supra* n.2.

⁹ U.S. NABCI Committee. 2000. The North American Bird Conservation Initiative in the United States: A vision of American Bird Conservation. <http://www.nabci-us.org/aboutnabci/NABCIfoundn.pdf> accessed 17 August 2012.

¹⁰ North American Waterfowl Management Plan Committee. 2008. Summary of North American Waterfowl Management Plan (NAWMP) Joint Venture (JV) policy survey responses. (Unpublished)

partner efforts rather than a coordinated program. Lacking a structured approach, respondents reported their policy related initiatives seldom followed any analyses of economic, social and ecological impacts of the policy issue, seldom followed analyses for cumulative and synergistic impacts with other policies and seldom followed analyses for induced impacts (i.e. where one policy stimulates the development of others). Furthermore, only a small number of joint ventures have fully embraced adaptive management to evaluate programmatic or policy actions.

The survey additionally identified legal, administrative, and operational constraints believed to be hindering joint venture engagement in policy initiatives. Important considerations include legal ramifications of advocating change or support for government legislation/policy and risk to funding for core joint venture functions; operational approaches to identify the critical issue, define the target audience, deliver the message, and effectively evaluate and monitor the effectiveness of the initiative; and administratively working with a diverse partnership that may include competing interests on any issue

2.0 PURPOSE OF THIS DOCUMENT

The NAWMP Committee organized a workshop in Winnipeg, Manitoba on January 25th & 26th, 2011 which brought together Joint Venture members, academics, and government officials to explore these considerations. The participants examined approaches to improve Joint Venture effectiveness in identifying, developing, promoting, and evaluating policy issues; and examples of how JVs and other broad partnerships have approached policy issues relevant to their conservation planning and delivery efforts. The outcome for the meeting was to develop this white paper¹¹ on the importance of policy to meet Joint Venture goals by focusing on the following objectives:

- Outline how strategic policy development and management can be an effective tool to implement NAWMP and NABCI conservation efforts.
- Distinguish between policy advocacy and lobbying.
- Identify approaches to effective strategic policy development, implementation and evaluation in a strategic management framework.
- Use illustrative examples to review current JV involvement in policy initiatives – organizational structure, relevant issues addressed, evaluation, and lessons learned.
- Provide information and guidance to JV Management Boards on the importance of policy to achieving strategic goals, and approaches to increase policy efforts within an adaptive management framework.

¹¹ In the British based parliamentary system, White Papers are issued by the government and lay out policy, or proposed action, on a topic of current concern. White Papers published by the European Commission are documents containing proposals for European Union action in a specific area. Outside of government, a White Paper is a statement on how to address a topic of interest

This White Paper is a first step towards better coordination of policy work within and across the Joint Ventures, and to improving the sharing of pertinent information in the policy field by increasing policy efforts within an adaptive management framework. The intent is strengthened and improved communications among JVs to deliver a more unified and collaborative continental approach to influencing policy issues including increased resource sharing. This paper will hopefully serve as a catalyst to further discussions among JVs in Canada, the United States and Mexico. Although this whitepaper has a focus on public policy, the background and approaches also apply to the private sector.

3.0 POLICY AND ITS DEVELOPMENT – A SYNOPSIS

Policy, in its simplest terms, is a “principle or rule to guide decisions”. It serves as an organization’s “statement of intent or commitment” to some course of action or to some position. Policy statements clearly lay out how an organization responds to situations and guide decisions on resource allocation.

Government and private sector policies are an integral and important component of resource management and will continue to be an important tool to meet conservation objectives within the NAWMP and NABCI. The CPA reinforced the need to focus on policy, and this has been recognized by a number of NAWMP Joint Ventures and NABCI partnerships. In taking a more active role in policy, Joint Venture Management boards and their respective partner organizations must have an understanding of the increasingly more complex, uncertain, and unpredictable environment in which policies are formulated. Legislators, administrators, and others involved in policy development are looking to create policies that deliver outcomes that matter rather than simply reacting to short term pressures.

Habitat conservation policy differs between Canada and the United States and most often the tactics and legislative mechanisms required to successfully shape policy change are different within the two countries. In contrast, the process to develop a strategic policy approach has many similarities. Conservation groups can therefore benefit from developing an improved understanding of the policy development process and how they can match their strategies to stages of the process in order to influence policy¹² in both Canada and the U.S. Understanding and influencing the policy process is the subject of significant debate and the reader will benefit by reviewing the different research programs into frameworks, theories, and models of policy analysis¹³.

Effective policy consists of six key characteristics¹⁴. Policy should be **strategic** in nature, thus forward looking and contributing to long term desires or goals of society. Creation of new

¹² D. Ryder. 1996. The analysis of policy: understanding the process of policy development. *Addiction* 91: 1265-1270.

¹³ For example see C. M. Weible, T. Heikkila, P. deLeon, and P.A. Sabatier. 2012. Understanding and influencing the policy process. *Policy Science* 45: 1-21.

¹⁴ Cabinet Office. 1999. Professional Policy Making for the Twenty-First Century. Report by Strategic Policy Making Team Cabinet Office. (<http://www.civilservant.org.uk/profpolicymaking.pdf> accessed 15 October 2012).

policy needs to be **outcome focused** to deliver change in the real world and **joined up** to work across internal boundaries to deliver an organization's (e.g. Government) strategic objectives. For example, a key finding of the US Government Accountability Office into issues for consideration by legislators in the reauthorization of the Farm Bill is conservation and farm programs under the Bill may be working at cross purposes^{15, 16} and thus presumably should be minimized. Society expects that all policy development should be fair and **inclusive** to take into account the interest of all citizens. Today's policies need to be **flexible** and **innovative** to tackle root causes of issues rather than simply cover up the symptoms. Lastly, policy should be **robust** to stand the test of time and be effective from the beginning of its implementation.

Although policy affecting program delivery can sometimes occur quickly (e.g. as the result of legislative or committee hearings), its development is seldom simple or quick. Policy development is rather more often complex, non-linear, and requires lengthy consultations with a wide array of constituencies¹⁷.

While the number of activities ascribed to the traditional policy process may vary, it encompasses a sequence of closely inter-related and interdependent activities: understanding the problem or issue(s), developing potential solutions, putting the solutions into effect (policy/program implementation) and evaluating the success to make certain the real world impact is achieved (internal circle Figure 1). This process is effective regardless of the type of policy issue. Policy makers, however, not only need to have knowledge of the relevant law and practice, understanding of key stakeholder views, ability to design implementation systems, etc., but they must understand the context within which both they and policy have to work^{18, 19}. Figure 1 is illustrative of the complexity of questions in the policy process which need to be explored in three contextual areas — organizational, political, and the wider public arena.

Effective policy development and implementation requires that the desired outcome be clearly identified through setting of targets and identification of recipients (e.g. farmers versus all land managers). Governments must take the potential recipient's ability to adjust to a policy change into account and ensure that any obstacles be removed that might get in the way of the recipient's own adjustment efforts. For example, considerations might include regulations affecting land use, transfer or sale of property rights, tax provisions, the availability of credit, or any other legal or institutional impediment to the adjustment process in order to encourage farmers to adopt a conservation ethic while maintaining agricultural production on the land. This has typically been the approach adopted in Canada. In contrast, the U.S government has often taken approaches which involve much more direct investment in wildlife conservation policies and land acquisition.

¹⁵ United States Government Accountability Office. 2012. Farm Bill. Issues to consider for reauthorization. GAO-12-338SP.

¹⁶ United States Government Accountability Office. 2007. Agricultural Conservation. Farm program payments are an important factor in landowners' decisions to convert grassland to cropland. GAO-07-1054.

¹⁷ Scott et. al. 2008. . *supra* n.7.

¹⁸ D. Ryder. 1996. *supra* n.12.

¹⁹ Cabinet Office. 1999. *supra* n.14.

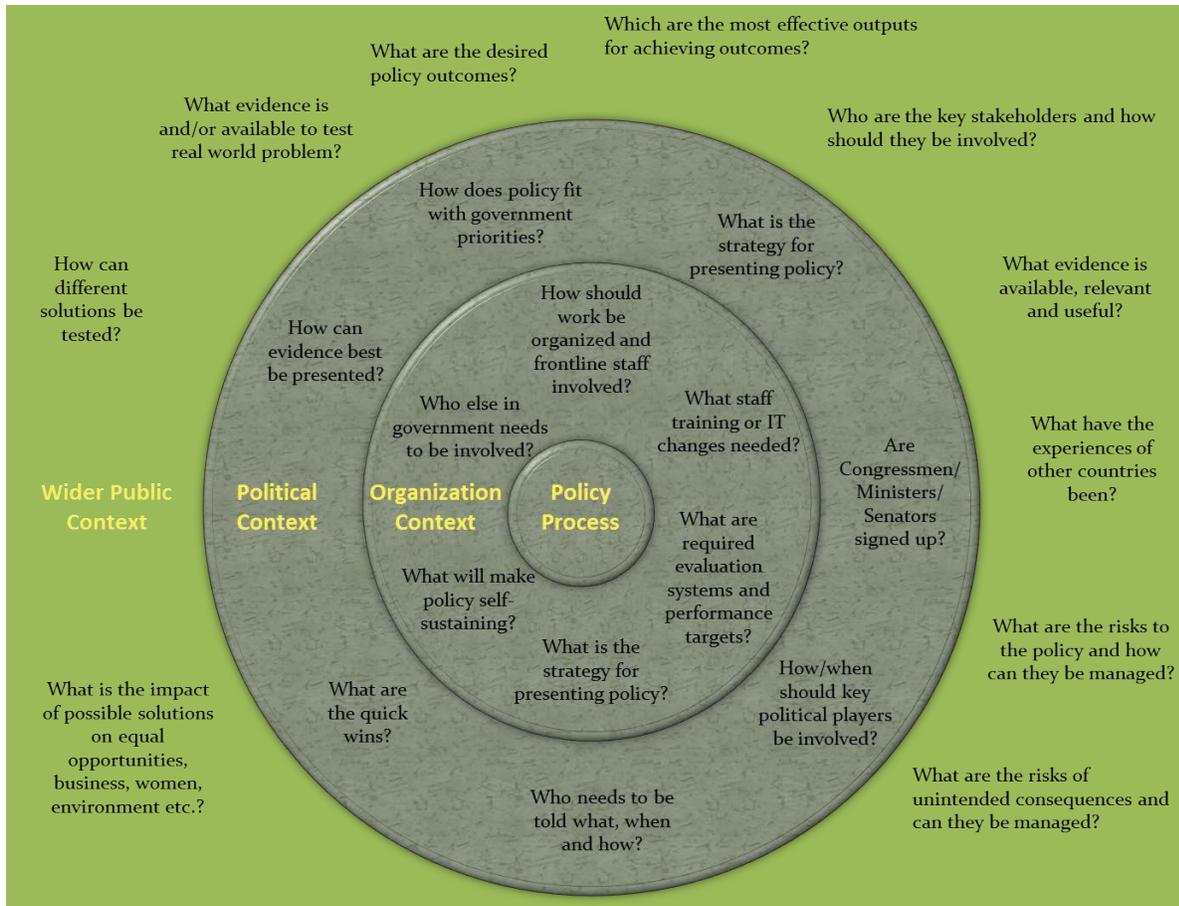


Figure 1. Policy Process in Context, adapted from Cabinet Office (1999)²⁰.

4.0 ADVOCACY AND LOBBYING IN PUBLIC AND PRIVATE SECTOR POLICY

Advocacy is a broad term that encompasses a spectrum of activities, including education (targeting the general public or decision makers); lobbying (direct and grassroots); and political campaign efforts. Although tempting to consider advocacy and lobbying as two distinct categories, it might prove helpful to instead consider lobbying as a *subset* of advocacy. Accordingly, other subsets of advocacy emerge as well, including educational activities and materials for the general public, educational activities and materials for decision-makers, and political campaign activities.

Advocacy is an action or actions designed to influence public and private sector policy initiatives with, for example, the goal of diminishing the loss of habitat and ecosystem services, while supporting restoration of habitat through government legislation, public and private sector

²⁰ Cabinet Office 1999, *supra* n.14.

regulation at all scales including best management practices²¹. This is an intentionally broad definition designed to encompass a number of different activities that joint ventures might engage in to promote their conservation functions. The four subsets of advocacy represent varying degrees of activity. Advocacy activities range from indirect efforts to decidedly more direct efforts, each with the ultimate goal of influencing public and private sector policy (Figure 2).

<u>ADVOCACY</u>			
Education		Lobbying	Political Support
Public	Decision-Makers		
<ul style="list-style-type: none"> •Develop educational products •Disseminate research to general public, especially land owners •Public education leads to influenced public and private sector policy 	<ul style="list-style-type: none"> •Provide educational products to legislators, regulators, Chief Executive Officers, and Boards of Directors •Informed decision-makers can initiate and support national, state, and local public and private sector policies supporting JVs •Education does not support any one position on any particular bill or regulation 	<ul style="list-style-type: none"> •Activities designed to influence legislation , regulation and public and private sector policy through recommending or expressing a position on particular bills, regulations or policies •Direct contact with legislators, regulators, Chief Executive Officers, and Boards of Directors •Grassroots efforts to encourage the public to contact their legislators, or head management of private sector companies and organizations. 	<ul style="list-style-type: none"> •Fundraising, education, and campaign contributions designed to get a particular candidate elected or not elected.

Figure 2. The advocacy continuum.

The first subset is ***educational activities and materials for the general public***. This category represents the most indirect form of advocacy activity in the spectrum. These educational activities include developing educational products and disseminating research to the general public without recommending a position on proposed government bill, resolution or policy. The goal of this form of education is to improve general awareness with the rationale that ultimately an informed public can have a strong influence on public and private sector policy, particularly at elections and public hearings. Therefore, public education certainly falls within

²¹ This definition is consistent with other definitions of advocacy. *E.g.*, Nayantara Mehta, *Nonprofits and Lobbying*, AMERICAN BAR ASSOCIATION BUSINESS LAW SECTION (March/April 2009), available at <http://www.abanet.org/buslaw/blt/2009-03-04/mehta.shtml>.

the “advocacy” conceit because it has the end goal of influencing public and private sector policy through general awareness. However, public education accomplishes this *indirectly* because it places the ultimate burden of influencing policy, legislation, and regulation on the general public, rather than the joint venture. For example, the Central Valley Joint Venture offers three different Habitat Fun Packs for students ranging from kindergarten through senior high school. These free, downloadable activity packets teach students about waterfowl’s sensitive habitats. Activities range from a simple “word find” of bird species to a mock Town Hall meeting activity (in the junior/senior high activity kit) where students represent the various stakeholders in a land use scenario. These kits are designed to be used by educators to introduce the topic of waterfowl ecology and raise awareness

The next subset in the advocacy continuum is ***educational activities and materials for decision-makers***. This too is an indirect form of advocacy, albeit less indirect than the former subset. Here, producing educational materials, disseminating research, and increasing awareness of conservation issues focuses on key decision-makers like legislators, regulators, Chief Executive Officers (CEO) and Boards of Directors (BOD). The policy-influencing burden shifts from the general public to the joint venture itself. For example, the Playa Lakes Joint Venture’s “Effects of the Conservation Reserve Program on Priority Mixed-Grass Prairie Birds” report to United States Department of Agriculture (‘USDA’) Natural Resource Conservation Service and Farm Service Agency is an educational document directed at decision-makers, as evidenced through its recipients (USDA divisions) and content. The report provides that “grassland wildlife habitat has become a priority conservation concern.”²² It also highlights the Conservation Reserve Program, stating that the program “has great potential to affect prairie wildlife” and is considered “a vehicle for reversing declining population trends of grassland birds.”²³ This language illustrates how such educational efforts can inform decision-makers about issues facing the joint venture while also stimulating interest in the joint venture programs.

If key decision-makers are aware of the issues associated with a particular joint venture, these key decision-makers can initiate and support national, state, and local policies that favor the joint venture’s objectives. It is important to remember, particularly as it relates to the public sector, that this is still an *indirect* form of advocacy because these educational activities and materials do not recommend a particular position to take on a proposed bill, resolution, or regulation.²⁴ Rather, the efforts merely provide general information to the decision-maker with the hope that they will ultimately take a position benefiting the joint venture.

²² Playa Lakes Joint Venture 2007. *Effects of the Conservation Reserve Program on Priority Mixed-Grass Prairie Birds*, p 3. accessed 25 November 2012: www.pljv.org/documents/science/PLJV_CEAP_mixed_grass_birds.pdf

²³ Playa Lakes Joint Venture 2007. *supra* n 22. pages 2 and 3.

²⁴ Publications and other ‘educational’ activities enter the realm of lobbying where a particular position on a piece of legislation or regulation is recommended. Thus, ensuring the neutrality of these educational efforts is essential if one wishes to avoid conduct that would constitute lobbying. See Letter from Robert P. Murphy, U.S. General Accountability Office, General Council, to The Honorable Susan Gaffney, Department of Housing and Urban Development, Inspector General (Aug. 17, 2000), *available at* <http://redbook.gao.gov/17/fl0084157.php> (explaining that a report criticizing HUD budget cuts released by HUD Secretary Andrew Cuomo did not violate federal anti-lobbying laws because the report did not explicitly appeal to the public to contact Congress and the objections raised were within Secretary Cuomo’s area of responsibility).

The next subset in the advocacy spectrum is **lobbying**. “Lobbying” in the joint venture context encompasses advocacy activities designed to influence legislation and regulation by recommending or expressing a certain position on a particular bill, resolution, administrative action, or similar item^{25, 26}. This is a direct form of advocacy because not only does the joint venture recommend a position as to particular pieces of legislation or regulations, but the activity involves *direct contact* with legislators and regulators through official letters and government relation specialists. Lobbying also includes *grassroots lobbying*, meaning the public is encouraged to take a particular position on legislation or regulations^{27, 28}. These types of advocacy activities can also be directed at the private sector to influence business activities.

The final and most direct advocacy subset applies only to the public sector as it would find the joint venture participating in **political campaign activities** on behalf of (or in opposition to) a candidate for elective public office. These activities involve fundraising, education, and other forms of political support designed to affect the election of a particular candidate²⁹. This is direct advocacy because the joint venture focuses its efforts on getting a certain candidate elected whom the joint venture believes will pass legislation or pursue an administrative agenda benefitting the joint venture. This will likely be a candidate who is sympathetic to the joint venture’s concerns and who intends on making the joint venture a priority. While the advocacy burden is on the joint venture here, an additional responsibility is placed on voters who must cast ballots for or against the candidate. If the candidate is elected, he or she then faces the task of following through and supporting the joint venture which helped get the candidate elected.

²⁵ Internal Revenue Service, *Lobbying* (June 11, 2010), <http://www.irs.gov/charities/article/0,,id=163392,00.html> (“An organization will be regarded as attempting to influence legislation if it contacts, or urges the public to contact, members or employees of a legislative body for the purpose of proposing, supporting, or opposing legislation, or if the organization advocates the adoption or rejection of legislation.”).

²⁶ Office of the Commissioner of Lobbying of Canada. accessed 4 March 2012 <http://ocl-cal.gc.ca/eic/site/012.nsf/eng/00403.html> (“Lobbying is communicating, with public office holders, for payment with regard to the making, developing or amending of federal legislative proposals, bills or resolutions, regulations, policies or programs; the awarding of federal grants, contributions or other financial benefits; and in the case of consultant lobbyists, the awarding of a federal government contract and arranging a meeting between their client and a public office holder.”)

²⁷ 26 U.S.C. 501(h)(1) (2010); 26 U.S.C. 4911(d)(1)(B); Mehta, *supra* n.21.

²⁸ Lobbying Act R.S.C., 1985, c. 44 (4th Supp.) Sections 5. (2)(j), and 7. (3)(k) accessed 4 March 2012 <http://laws-lois.justice.gc.ca> .

²⁹ Additionally, campaign activities might include efforts by joint venture members to get citizen referenda on the ballots and promote the referenda at election time. For example, in 2008, Minnesota citizens and members The Nature Conservancy, among others, successfully fought to get the Clean Water, Land, and Legacy Amendment on the ballot and passed. Voters approved the Amendment which will dedicate millions of new tax dollars to conservation in Minnesota. Erik Ness, *Yes We Can?*, NATURE CONSERVANCY MAGAZINE, Autumn 2009, available at http://www.nature.org/magazine/autumn2009/features/voteyes_1.html.

Prior to engaging in advocacy within the public sector, JVs should be aware of federal and state/provincial legislation that may affect how they formulate and implement a policy strategy on a particular issue.

4.1 Advocacy in the Public Sector - The United States

Within the United States, limitations on federal agency representatives regarding the continuum from education to lobbying to political support are outlined in the Criminal Lobbying Statute, the Appropriation Acts, and Agency codes of conduct. The Criminal Lobbying Statute makes it a criminal offense to use any moneys appropriated by Congress to fund any communications with governmental officials designed to affect the passage or content of any bill or policy.³⁰ However, the statute contains an exception for federal employees who make such communications to Congress “through the proper official channels” in relation to legislation or policies that “they deem necessary for the efficient conduct of the public business.”³¹

Individual appropriation acts also affect federal agency representatives’ ability to participate in joint venture lobbying activities.³² For example, the Department of Interior and Related Agencies Appropriations Act provides that appropriations cannot be used “for any activity or the publication or distribution of literature that in any way tends to promote public support or opposition to any legislative proposal on which congressional action is not complete.”³³ The Comptroller General of the United States provides that this broad restriction applies to both explicit and “implicit appeals to the public designed to promote public support for or opposition to pending legislation.”³⁴ Accordingly, organization members representing federal agencies must ensure that they do not participate in lobbying activities or aid in the production of such publications if it would require the use of federal appropriations.

Individual agency codes of conduct may also govern the individual member’s conduct. For example, the U.S. Fish and Wildlife Service requires that agency scientists:

- “Place reliability and objectivity of scientific activities, reporting, and application of scientific results ahead of personal gain or allegiance to individuals and organizations.”
- “Distinguish between positions that are rooted in scientific information and assessments and those rooted in organizational values, and make this distinction in written and oral presentations.”

³⁰ Criminal Lobbying Statute, 18 U.S.C. § 1913 (2002).

³¹ Criminal Lobbying Statute, 18 U.S.C. § 1913 (2002).

³² This section will focus on an appropriation act related to the Department of the Interior. However, other acts with similar provisions also exist, such as the Department of Defense Appropriations Act (H.R. 4650, 103rd Cong. (1994)), the Departments of Labor, Health and Human Services, Education, and Related Agencies Appropriation Act (H.R. 4606, 103rd Cong. (1994)), and the Treasury, Postal Service, and General Government Appropriations Act (H.R. 12930, 95th Cong. (1978)).

³³ Department of Interior and Related Agencies Appropriations Act, H.R. 4602, 103rd Cong. § 303 (1994).

³⁴ Letter from the office of the Comptroller General of the U.S. to The Honorable Bud Shuster, Chairman, Committee on Transportation and Infrastructure, House of Representatives, 7 (Dec. 21, 1995) <http://archive.gao.gov/auditpapr2pdf4/155986.pdf>.

- “Strive to understand and accurately interpret, report, and apply scientific information to support management decisions affecting fish and wildlife and their habitats.”
- “Disseminate scientific information to the scientific community and the public to promote understanding and appreciation of fish and wildlife and their habitats.”³⁵

While these provisions in the U.S. Fish and Wildlife professional code do not strictly prohibit advocacy actions, such professional guidelines could affect the federal employee’s participation in the organization’s efforts to influence policy.

The limits on lobbying by an organization’s partnering state agencies vary from state to state. Many states have restrictions similar to those at the federal level. Regardless of an individual state’s lobbying laws, the federal Hatch Act mandates that state employees may not participate in political activities if the state employee is part of a program receiving federal funding.³⁶ “Political activities” under the Hatch Act are those involving actual elections and funding of campaigns, which are outside the scope of basic lobbying.³⁷ Partnering members are also reminded of the Public Trust Doctrine in which policy decisions are predominately made by elected and appointed officials with respect to certain natural resources. While civil servants are expected to implement and not surreptitiously undermine these policy decisions, they often have the ability to influence decisions by providing thorough, objective decision support (i.e. information, analysis, and advice) while respecting the role of elected and appointed officials³⁸. This recognizes the value in seeking broad-based, collaborative recommendations through consensus building leading to politically stable policy decisions³⁹.

Partnering members representing non-governmental organizations have more flexibility with respect to lobbying. Several NAWMP JVs for example have specific anti-lobbying provisions in their by-laws or implementation or strategic plans. Others, such as the San Francisco Bay Joint Venture, encourage individual members of the JV to lobby, to the extent permitted by the member’s organization. In these instances, the Internal Revenue Code is the primary limitation on lobbying. An organization may lose its 501(c)(3) tax-exempt status if it engages in lobbying beyond a certain threshold⁴⁰. There are two different tests used to determine whether an NGO has lobbied too much: the Insubstantial Part Test and the Expenditure Test (20%) within the Internal Revenue Code (501 c(3)).⁴¹ An NGO can choose which test it wishes to be subject to. The insubstantial part test is the default test which provides that the NGO may maintain its tax-exempt status so long as lobbying is an insubstantial part of its activities. Conversely, the NGO

³⁵ U.S. FISH AND WILDLIFE SERVICE, GENERAL ADMINISTRATION, 212 FW 7, SCIENTIFIC CODE OF PROFESSIONAL CONDUCT FOR THE SERVICE, Ch. 7 (2008).

³⁶ Hatch Act, 5 U.S.C. §§ 1501-1502 (2010).

³⁷ Hatch Act, 5 U.S.C. § 1502 (2010).

³⁸ C. A. Smith. 2011. The role of state wildlife professionals under the Public Trust Doctrine. *Journal of Wildlife Management* 75: 1539-1543.

³⁹ C. Johnson and D. Decker. 2008. Governance of state wildlife management: reform and revive or resist and retrench? *Society and Natural Resources* 21: 441-448.

⁴⁰ 26 U.S.C. 501(h)(1) (2010).

⁴¹ Mehta, *supra* n.21; Timothy W. Jenkins and A. L. (Lorry) Spitzer, *Internal Revenue Code Limitations on Lobbying by Tax-Exempt Organizations*, in *THE LOBBYING MANUAL: A COMPLETE GUIDE TO FEDERAL LOBBYING LAW AND PRACTICE* 394 (William V. Luneburg et al. eds. 2009)

will be denied tax-exempt status if “a substantial part of the activities of such organization consists of carrying on propaganda, or otherwise attempting, to influence legislation.”⁴² NGOs might elect not to use this test because the IRS has not defined what “substantial part” means, thereby making it difficult to know whether the NGO has lobbied beyond what the law allows⁴³.

The expenditure test, on the other hand, generally allows the NGO to spend up to 20 percent of its annual expenditures on lobbying efforts,⁴⁴ a preferable test because the NGO will have a good idea as to whether it is in danger of losing its tax-exempt status.⁴⁵ NGOs must specifically elect to be subject to this test, which can be done by filing Form 5768 with the IRS.⁴⁶ This test further distinguishes between direct lobbying and grassroots lobbying. Direct lobbying is considered “any attempt to influence any legislation through communication with any member or employee of a legislative body, or with any government official or employee who may participate in the formulation of the legislation.”⁴⁷ Grassroots lobbying, however, is “any attempt to influence any legislation through an attempt to affect the opinions of the general public or any segment thereof.”⁴⁸ Under the expenditure test, NGOs may only spend up to one-quarter of its total allotted lobbying expenditures on grassroots lobbying.⁴⁹ So even though there are limitations placed on NGOs, partnering members representing these organizations can still engage in some lobbying activities as long as those activities do not jeopardize the tax-exempt status of their respective organizations.

It is important to point out that the limitations vary among states as well. For NGOs there are the Insubstantial Part Test and the Expenditure Test (20%) within the Internal Revenue Code (501 c(3)). Joint Venture approaches within the United States to date have varied. These include:

- Education of the general public through Habitat Fun Packs by the Central Valley JV,
- Education of politicians through efforts such as the Playa Lakes Conservation Effects Assessment Report,
- Providing priority audiences with conservation plans and evaluation reports, and
- Lobbying efforts like that done with the Sodsaver Memorandum, which was a letter written to legislators that was signed by 4 JVs and the National Park Service environmental impact statement preparation.

⁴² 26 U.S.C. 501(h)(1) (2010); Mehta, *supra* n.2 **Error! Bookmark not defined.**

⁴³ Mehta, *supra* n.21.

⁴⁴ Mehta, *supra* n.21.

⁴⁵ Timothy W. Jenkins and A. L. (Lorry) Spitzer, *Internal Revenue Code Limitations on Lobbying by Tax-Exempt Organizations*, in *THE LOBBYING MANUAL: A COMPLETE GUIDE TO FEDERAL LOBBYING LAW AND PRACTICE* 394 (William V. Luneburg et al. eds. 2009, at 395.

⁴⁶ Mehta, *supra* n.21.

⁴⁷ 26 U.S.C. 501(h)(1) (2010); 26 U.S.C. 4911(d); Mehta, *supra* n.21.

⁴⁸ 26 U.S.C. 501(h)(1) (2010); 26 U.S.C. 4911(d)(1)(B); Mehta, *supra* n.21.

⁴⁹ Mehta, *supra* n.21.

4.2 Advocacy in the Public Sector - Canada

Although there are differences across jurisdictions, most provinces have implemented lobbying legislation modeled on the federal legislation. Joint Ventures need to be aware of how the legislation may affect their interaction with government officials, particularly at the senior levels. The Office of the Commissioner of Lobbying of Canada issues interpretation bulletins and advisory opinions⁵⁰ with respect to the enforcement, interpretation or application of the *Lobbying Act* (e.g. the 20% rule⁵¹), as do a number of the provinces⁵².

A majority of the NGOs that participate in the administration of Joint Ventures across Canada are registered charities exempt from paying taxes⁵³ and are able to issue charitable receipts for income tax purposes to donors⁵⁴. These charities must adhere to strict regulations regarding the nature of their activities so as to not jeopardize their charitable status. Of particular concern are the requirements that charities must have a charitable purpose and that “substantially all” of their activities must further those charitable purposes. These requirements are problematic as the courts have interpreted charitable purposes as excluding political activities. Moreover, political activities have been broadly defined to include many activities that JV partners may wish to engage in including advocating for regulatory reform.

More recently, the Income Tax Act (ITA) has relaxed the outright ban on political activities by charities and allowed some political activity. Subsections 149.1(6.1) and (6.2) allow charitable foundations and charitable organizations to engage in a limited amount of political activity without risking their registered charitable status provided that the charity:

...devotes substantially all of its resources to charitable purposes and:

- (a) it devotes part of its resources to political activities,
- (b) those political activities are ancillary and incidental to its charitable purposes, and
- (c) those political activities do not include the direct or indirect support of, or opposition to, any political party or candidate for public office.

⁵⁰ The Office of the Commissioner of Lobbying of Canada. Advice and Interpretation accessed 4 March 2012 http://ocl-cal.gc.ca/eic/site/012.nsf/eng/h_00011.html

⁵¹ The Office of the Commissioner of Lobbying of Canada. A Significant Part of Duties ("The 20% Rule") accessed 4 March 2012 <http://ocl-cal.gc.ca/eic/site/012.nsf/eng/00115.html> (Corporations and not-for-profit organizations may conduct some lobbying activities and not be required to file a registration if the cumulative lobbying activities of all employees do not constitute 20% or more of one person's time over a period of a month.)

⁵² Accessed 4 March 2012: British Columbia - <http://www.lobbyistsregistrar.bc.ca/>; Alberta - <http://www.lobbyistsact.ab.ca/LRS/GeneralSettings.nsf/vwEnHTML/Welcome.htm>; Ontario - <https://lobbyist.oico.on.ca/LRO/GeneralSettings.nsf/vwEnHTML/Home.htm>; Nova Scotia - <http://www.gov.ns.ca/lobbyist/>; Quebec - <http://www.commissairelobby.qc.ca/en/commissioner>; and Newfoundland and Labrador - <http://www.gs.gov.nl.ca/registries/lobbyists.html>

⁵³ Income Tax Act [1985, c. 1 (5th Supp.)] at s. Exempt from taxes section

⁵⁴ Income Tax Act Charitable receipts section

The Canadian Revenue Agency (CRA) has defined substantially all to mean no less than 90% of all their activities in a given year.⁵⁵ Thus, up to 10% of a charity's activities can have a political purpose provided that it is related and subordinate to a charity's overall charitable purpose. Not all political activities, however, are permitted under the ITA. As outlined above in (c) partisan political activity is explicitly prohibited.

In a recent Policy Statement, the CRA outlined when an activity will be presumed to be political.⁵⁶ Political activities include those that:

- explicitly communicates a call to political action (i.e., encourages the public to contact an elected representative or public official and urges them to retain, oppose, or change the law, policy, or decision of any level of government in Canada or a foreign country);
- explicitly communicates to the public that the law, policy, or decision of any level of government in Canada or a foreign country should be retained (if the retention of the law, policy or decision is being reconsidered by a government), opposed, or changed; or
- explicitly indicates in its materials (whether internal or external) that the intention of the activity is to incite, or organize to put pressure on, an elected representative or public official to retain, oppose, or change the law, policy, or decision of any level of government in Canada or a foreign country.

Thus, when auditing a charity's activities, communication activities will be likely to face significant scrutiny. However, the CRA recognizes that many charities will have to communicate to either the public or government to achieve its charitable purposes. Provided that the communication does not include the political activities listed above and otherwise satisfies the requirements of a charitable activity, those activities are considered charitable activities. The communication must also be connected the charities purpose, be well-reasoned and not knowingly provide information that is false, inaccurate or misleading. Therefore public awareness campaigns that are designed to give the public information to form their own opinion is a charitable activity. Likewise, communication with elected officials and the subsequent release of the content of that communication to the public through the media even when that communication advocates regulatory reform will be considered a charitable purpose. Therefore, these communications will not be included in the overall calculation of political activities undertaken by a charity.

To assist charities in understanding the distinction between charitable and political communication activities, the CRA has provided examples as guidance.⁵⁷ Acceptable charitable activities include:

- Distributing its research to any interested party
- Publishing its research
- Presenting its research to a Parliamentary Committee

⁵⁵ 3 TC 53, [1891] AC 531, [1888] 2 All ER Rep 296 [*Pemsel*], accepted by *Guaranty Trust Company of Canada v. Minister of National Revenue* (1967) SCR 133.

⁵⁶ CRA, Policy Statement CPS-022 (2 September 2003).

⁵⁷ *Ibid.*

- Giving an interview about its research
- Participating in an international policy development working group
- Joining a government advisory panel to discuss policy changes

Examples of political activities that will be permitted provided that a charity is devoting substantially all of its resources to charitable purposes include:

- Buying a newspaper advertisement to pressure the government
- Organizing a march to Parliament Hill
- Organizing a conference to support a charity's position
- Hiring a communication specialist to arrange a media campaign
- Using a mail campaign to urge supporter to contact the government
- Organizing a rally on Parliament Hill

Whereas the US guidance appears to clearly establish the limits, Canadian cases to test the limits are few or nonexistent. It is clear that participating in any partisan political activity will risk the charitable status of JV members. Nonetheless, a JV may provide a useful structure for charities to engage in advocacy work provided that their participation in the JV remains ancillary to their main charitable activities. It is less likely that advocating policy reform will be viewed as prohibited political activity if they arise from a consensus of agencies working to consider policy positions to endorse, even if those positions counter the status quo.

5.0 SCIENCE INFORMING POLICY

5.1 Understanding the science – policy interface

Policy-making is a complex institutional process with interplay of many factors. Science however plays a critical role in evidence-based policy which is increasingly emphasized by governments⁵⁸. Scientists and science-based organizations are uniquely qualified to become engaged in public (or private) policy deliberations but there is developing consensus this should be limited to the education end of the advocacy continuum—to inform rather than prescribe a particular outcome^{59, 60, 61}. The credibility of scientists is crucial for integrating scientific information into policy, and lobbying may compromise the use of research findings if viewed as not being credible by all sides^{62, 63}.

⁵⁸ J. Holmes and R. Clark. 2008. Enhancing the use of science in environmental policy-making and regulation. *Environmental Science and Policy* 11: 702-711.

⁵⁹ R.T. Lackey. 2007. Science, scientists, and policy advocacy. *Conservation Biology* 21: 12-17.

⁶⁰ J.M. Scott, J.L. Rachlow, R.T. Lackey, A.B. Pidgorna, J.L. Aycrigg, G.R. Feldman, L.K. Svancara, D.A. Rupp, D.I. Stanish, and R. K. Steinhorst. 2007. Policy advocacy in science: prevalence, perspectives, and implications for conservation biologists. *Conservation Biology* 21: 29-55.

⁶¹ The Wildlife Society. 2010. Final position statement: The use of science in policy and management decisions. http://joomla.wildlife.org/documents/positionstatements/Use_of_Science.pdf accessed 19 August 2012.

⁶² J.M. Scott and J L. Rachlow. 2006. Science, policy and scientists. *Frontiers in Ecology and the Environment* 4:68–69.

Many Joint Ventures have expertise that can inform decision-makers and influence policy-decisions. As science based organizations, Joint Venture contributions to the policy process extend beyond information to include critical thinking, objectivity, independence and credibility⁶⁴. How this expertise is transferred to decision-makers and the public may determine if the science is accepted and acted upon.

Decision-makers may or may not understand the science behind an issue so they will fall back on what they do know and feel. Often they will look their staff for information or to the intuition and experience of colleagues who they trust, emphasizing the importance of increasing personal contact and networking between scientists and decision-makers⁶⁵. In addition to access, scientific information should be presented in shorter and easier to comprehend formats to fit the target group(s). Recognizing they may have competition for the attention of the decision-maker, communications need to be carefully planned and cognizant of the possible ways information can be used or misused to meet different political agendas and interests. Scientists must manage and communicate the degree of uncertainty in scientific understanding and prediction, lest uncertainty be manipulated to discredit science or to justify inaction⁶⁶.

The science-policy interface has been characterized as a fuzzy, dynamically shifting boundary between two systems that differ in terms of objectives, purpose, information needs, and the ways they operate⁶⁷ but yet is striving to balance three tensions: maintaining scientific credibility, assuring practical saliency, and legitimizing the process to multiple participants⁶⁸.

In the context of Joint Ventures, the science-policy interface is about how to become more effective in informing (influencing) environmental policy. This activity should be viewed as a “continuum of influence and utility, ranging from clear and immediate impacts to long term, subtle processes in which problem definitions and modes of thinking change”⁶⁹. The International Union of Forest Research Organizations produced a best practice guide⁷⁰ to assist

⁶³ Y.T. Yamamoto. 2012. Values, objectivity and credibility of scientists in a contentious natural resource debate. *Public Understanding of Science* 21: 101-125.

⁶⁴ D.E. Blockstein. 2002. *supra* n.6.

⁶⁵ G. Janse. 2008. Communication between forest scientists and forest policy-makers in Europe – A survey on both sides of the science/policy interface. *Forest Policy and Economics* 10: 183-194.

⁶⁶ W. Ascher, 2004. Scientific information and uncertainty: challenges for the use of science in policymaking. *Science and Engineering Ethics* 10: 437-455.

⁶⁷ M. Kleine. 2009. Capacity building for effective work at the interface of forest science and forest policy. *Mountain Research and Development* 29(2): 114-120.

⁶⁸ Cash, D., Clark, W., 2001. From Science to Policy: Assessing the Assessment, Faculty Research Working Papers Series RWP01-045. John F. Kennedy School of Government. Harvard University, Boston, MA

⁶⁹ S. Owens, J. Petts, and H. Bulkeley. 2006. Boundary work: knowledge, policy and the urban environment. *Environment and Planning C: Government and Policy* 24 (5): 633-643.

⁷⁰ R.W. Guldin, J.A. Parotta, E. Hellström. 2005. Working effectively at the interface of forest science and forest policy. Guidance for scientists and research organizations. IUFRO Task Force on the Forest-Science Policy Interface. IUFRO Occasional Paper 17. Vienna, Austria.

the science community improve the flow of information across the science-policy interface. Specific actions are identified around four key themes:

- Focus research on questions that are relevant to policy issues;
- Conduct research in a communicative and collaborative manner;
- Understand, serve and engage in policy processes; and
- Create organizational capacity and culture that enables and encourages work at the science-policy interface.

Case studies by the Prairie Habitat Joint Venture and the Playa Lakes Joint Venture demonstrate a number of the approaches discussed above. These Joint Ventures were able to bridge the science-policy interface to effect changes in agricultural and land use policy/program development and implementation. Policy-relevant science was brought to the attention of decision makers and all interested parties using targeted messaging in an appealing for informative format.

5.1.1 Broughton's Creek – Prairie Habitat Joint Venture

Broughton's Creek is a 25,139-ha prairie watershed located in southwestern Manitoba that has experienced significant wetland loss and degradation. Research was undertaken by Ducks Unlimited Canada, a member of the PHJV, to evaluate the environmental benefits of prairie wetlands at a watershed scale by quantifying watershed hydrologic processes and corresponding water quantity and quality benefits. A key objective of the research was to assess the prospective wetland conservation and restoration scenarios in the Broughton's Creek watershed.

The Broughton's Creek research enabled Ducks Unlimited Canada (DUC) to provide compelling and quantifiable evidence of the magnitude and impacts of prairie wetland loss⁷¹. It allowed DUC to link wetland loss to the high political priorities of climate change and water quality in Manitoba specifically and throughout the prairies more generally. The research itself was done in conjunction with leading scientists at the University of Guelph and Texas A&M University. The results were further vetted with various academics as well as provincial representatives.

The researchers, policy staff, and the marketing and communications staff worked closely together to ensure that they were communicating the science to the right audiences in a manner that they understood and that would motivate action. For example, the export of nutrients was transformed into tractor trailer equivalents dumping fertilizer into Lake Winnipeg – an analogy both visual and visceral.

⁷¹ W. Yang, X. Yang, S. Gabor, L. Boychuk, P. Badiou. 2008. Water quantity and quality benefits from wetland conservation and restoration in the Broughton's Creek watershed. A research report submitted to Ducks Unlimited Canada. IWWR, Ducks Unlimited Canada, Stonewall, Manitoba. 51 pp.

Results were used to develop consistent messaging used with various audiences and adjusted to focus on key issues of importance to that audience (i.e. water quality for cottage owners). This enabled the development of a detailed technical report as well as various communications products that could be used as handouts and displays. There was also a deliberate decision to incorporate negative images into the material; a movement to include the drained and burned wetlands that are causing the problems in the first place.

The ability to link the results to Lake Winnipeg and other important water resources issues across the province, and attach economic implications and comparative cost effectiveness of wetland conservation to other provincial initiatives proved to be very beneficial. The rigor of the research, its collaborative nature addressing policy relevant issues, and communication strategies significantly enhanced Ducks Unlimited Canada's political voice/capital that subsequently is influencing public awareness of wetlands and government to investigate further protection for wetlands.

5.1.2 Lesser Prairie Chicken Spatial Targeting – Playa Lakes Joint Venture

In 2010, Playa Lakes Joint Venture (PLJV) worked with various partners to develop a proposal for a new Kansas State Acres for Wildlife Enhancement (SAFE) practice that advocated for 30,000 Conservation Reserve Program (CRP) acres to be enrolled in specified target areas to benefit the Lesser Prairie-Chicken (LEPC), a species of conservation concern. The additional SAFE acres would be located in areas within the LEPC range where new or re-enrolled CRP acres will provide the most benefit for the birds by expanding large patches of native habitat. In targeting areas, this would be an alteration in the implementation of USDA Farm Service Agency (FSA) and Natural Resources Conservation Service (NRCS) procedures to review and approve private land owner eligibility in the SAFE program.

From the beginning, the proposal was developed in a collaborative and communicative approach. The PLJV worked closely with FSA and NRCS cooperators from Washington, D.C., as well as the state and local USDA offices. As part of the development team, USDA NRCS and FSA staff were able to quickly and effectively communicate the purpose and targeting approach and thereby build support among their appropriate staff, namely field office personnel who review SAFE applications. Additionally, PLJV and USDA promoted the SAFE program to landowners via news articles to build support and allay possible controversy in the allocation of SAFE acres. Farmer Bureau and special interest groups were also involved.

Development of the targeting approach involved a number of additional partners concerned with LEPC conservation including Kansas Department of Wildlife and Parks, Pheasants Forever, The Nature Conservancy, Kansas Wildlife Federation, Audubon of Kansas, and the US Fish and Wildlife Service. A Decision Support Tool (DST) was developed to identify target areas, using a Geographic Information System (GIS) to evaluate land against several criteria related to LEPC habitat needs including proximity to core LEPC habitat patches, size of nearest LEPC habitat patch, and percent of CRP expiring in areas adjacent to habitat patches.

The science used to develop the DST was based upon the best available information and subject to review by both FSA and NRCS. All partners involved in the development of the DST also gave the product final review and approval before submitting it to USDA. It was important to get feedback not only from LEPC biologists but also from partners familiar with CRP policy and administration.

The proposal was accepted by the USDA in November 2010. The success of the change in implementation of the SAFE program in Kansas is being measured by the number of SAFE acres enrolled. Currently, the KS LEPC SAFE is oversubscribed with more than 33,000 acres being offered for the 30,000 acres allocated under the program. A request to allocate more acres to the KS LEPC SAFE was being submitted.

6.0 ENGAGING THE POLICY PROCESS

6.1 Horizon Scanning: Identifying the Issue

As noted in the introduction, conservation programs and policies external to the NAWMP have a significant effect on waterfowl breeding landscapes. While the CPA referred to those which were positive, it is to be expected that not all industry or government programs and policies will be positive or neutral in their effect. Assessing the factors that can cause changes in ecosystems is essential in designing policies/programs that accentuate their positive and minimize their negative impacts.

Horizon or environmental scanning is the systematic approach to the detection, analysis, and diffusion of strategically relevant information related to affirming or discrediting existing trends and developments, or identifying new and emerging trends and developments confronted by government, business, or civil organizations at the present time that may impact upon their future actions^{72, 73}. Its aim "...is to provide advance warning of issues so that there is the opportunity to plan ahead, thereby raising awareness of emergent issues among researchers and encouraging a more rapid accumulation of relevant knowledge, with the result that decisions made by policymakers and actions taken by practitioners may be better informed"⁷⁴.

The Millennium Ecosystem Assessment Conceptual Framework⁷⁵ (Figure 3) provides a convenient template to structure an evaluation of which direct and indirect drivers of change may be influencing ecosystem change at multiple scales, and where interventions can occur to

⁷² W.J. Sutherland and H.J. Woodroof. 2009. The need for environmental horizon scanning. *Trends in Ecology and Evolution* 24: 523-527.

⁷³ B. Habegger. 2010. Strategic foresight in public policy: Reviewing the experiences of the UK, Singapore, and the Netherlands. *Futures* 42: 49-58.

⁷⁴ W.J. Sutherland and R.P. Freckleton,. 2012. Making predictive ecology more relevant to policy makers and practitioners. *Philos. Trans. R. Soc. B* 367: 322–330

⁷⁵ Millennium Ecosystem Assessment. 2003. *Ecosystems and Human Well-being: A Framework for Assessment*. Island Press, Washington, DC.

positively affect the achievement of a Joint Venture’s objectives in delivering specific ecosystem goods and services.

Included in the assessment process is both the temporal and spatial scale of the direct or indirect drivers affecting the ecosystem. A driver that can be influenced by a decision-maker is referred to as an endogenous driver and one over which the decision-maker has no control is an exogenous driver. Recognizing where influence can be had will assist in determining at what level the issue should be addressed, i.e. local, regional, national, or international. For example, a farmer can make decisions on which crops may be grown or the amount of fertilizer to be applied (endogenous direct driver of change), but has no control (exogenous) over commodity prices and markets, both of which can affect land use. Decisions affecting these latter factors may however be endogenous to national or regional decision-makers who can exercise more control over macroeconomic policy, trade, and finance. Similarly, drivers of change that are exogenous to a decision-maker in the short term, e.g. population growth, can become endogenous in the longer term by influencing factors known to impact population growth, e.g. education and health services.

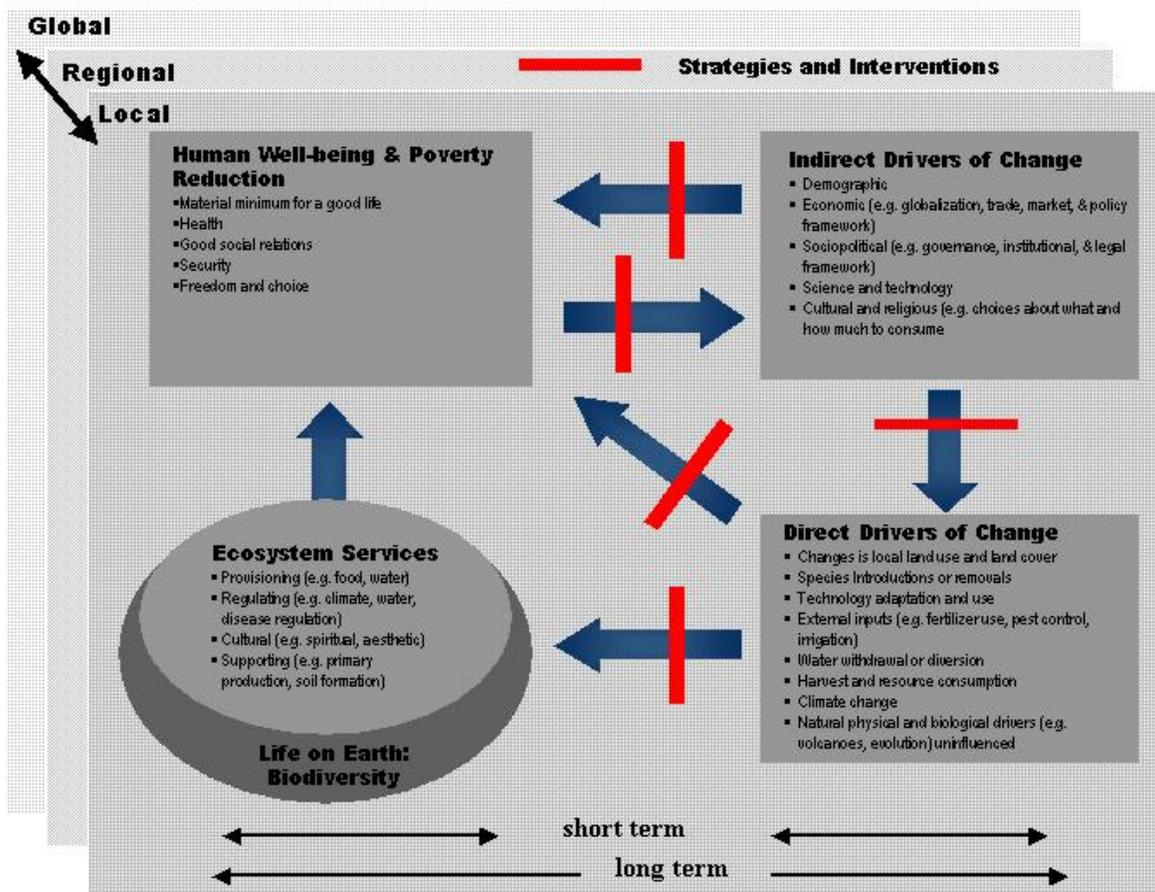


Figure 3. The Millennium Ecosystem Assessment Conceptual Framework

Concurrent within issue identification is an assessment of its impact on the realization of Joint Venture objectives. In many instances, there are numerous issues at different spatial and temporal scales operating in a synergistic manner due to functional interdependencies between and among direct and indirect drivers of change. For those instances where cause and effect are readily determined with little interaction among factors, it is possible to qualitatively assess the need for a response option using a risk assessment matrices (Figure 4) based upon likelihood of the issue occurring and the impact of the issue on Joint Venture objectives. An increasing likelihood of occurrence and level of impact changes the need for a response option from low through medium to high and critical.

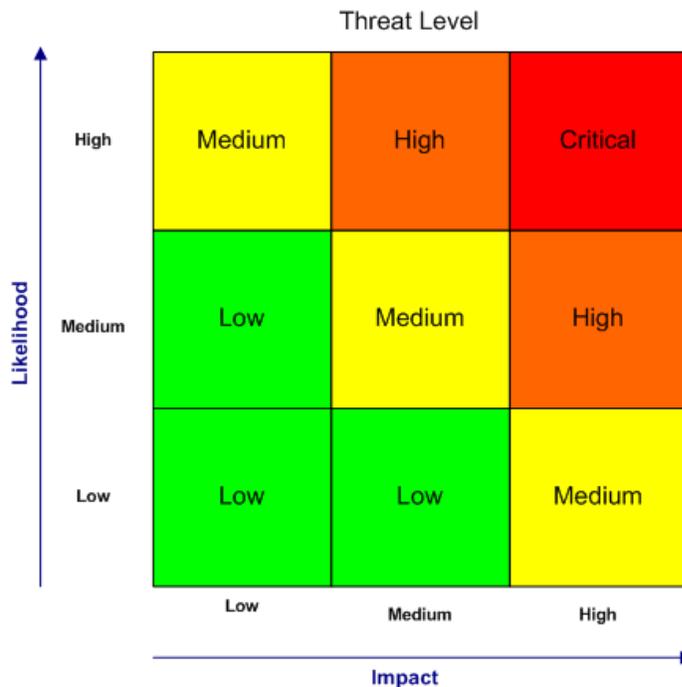


Figure 4. Risk assessment matrices.

The process for the assessment can be relatively simple, based upon a brainstorming exercise in which a series of questions are addressed in a structured manner to identify direct or indirect drivers of change in ecosystems; their scale, time frame, likelihood (actual/potential) and risk; cause(s); and who or which agency has decision-making authority (Table 1). This can be undertaken as a single or multiple threat analysis, the latter considering interaction effects, to identify possible solutions and needs (Table 2). Decide which solutions make the most sense based on criteria and measures.

Table 1. Structured approach to identify and organize influences on direct and indirect drivers of change in ecosystems.

Driver of Ecosystem Change	Scale	Timeframe	Actual/Potential	Risk Level?	Why is this happening?	Regulatory Jurisdiction

Table 2. Single or multiple threat analysis to identify possible solutions and associated needs.

Threats	Solutions	Effectiveness	Benefits	Stakeholders*	Risks	Political Feasibility	Funding and Capacity Needs	Communication Needs

*Who is involved and has a stake in the issue? Who would endorse change, who would resist change? Who benefits from the status quo? Who would benefit from change? Who needs to be onside?

Identifying solutions to issues is often complex due to multiple objectives and stakeholders, overlapping jurisdictions, short and long term effects, cumulative effects and high levels of uncertainty and associated risk. Depending upon the question and complexity, other assessment methods may be more appropriate such as “foresighting” (discussed above) or Structured Decision Making (SDM). The latter is a decision analysis framework that can be applied to determine objectives, alternatives, and optimal solutions for environmental issues. It is an organized approach that focuses on engaging stakeholders, experts and decision makers in productive decision-oriented analysis and dialogue that deals proactively with complexity and judgment in decision making. The goal of an SDM process is to inform difficult choices, and to make them more transparent and efficient. SDM is particularly useful for decisions involving the integration of technical analysis with value-based deliberations, and is helpful for facilitating multi-disciplinary technical planning and stakeholder involvement⁷⁶.

SDM progresses through a series of iterative steps (Figure 5) from problem identification, determining quantitative management objectives, developing alternatives to realizing objectives, assessing consequences or effectiveness of alternatives, examining tradeoffs among objectives and alternatives to select the best/optimum approach, and implementing a program that employs an adaptive management framework⁷⁷. The steps provide the framework to work

⁷⁶ Structured Decision Making. 2008. accessed 1 March 2012 <http://www.structureddecisionmaking.org/index.htm>

⁷⁷ CSP3171. 2008. Introduction to Structured Decision Making. accessed 28 Feb 2012

http://www.fws.gov/science/doc/structured_decision_making_factsheet.pdf

through stages of thinking and analysis central to structured decision making although their exact use may vary depending upon the situation.

The SDM process explicitly confronts the uncertainty and evaluates the likelihood of different outcomes and their possible consequences on how management actions will affect natural systems. Uncertainty is accompanied with risk, and understanding the risk tolerance a decision-maker is willing to accept, or the risk response determined by law or policy, will make the decision-making process more objectives-driven, transparent, and defensible. An array of simple to highly quantitative analytical methods is available to provide discipline and decision-focus for structured decision analysis that includes *inter alia* influence diagrams, expert judgments, value trees, Bayesian networks, inference trees, strategy tables, value models, and defined level scales⁷⁸. Brief overviews of the steps can be reviewed in the USFWS fact sheet⁷⁹ or website⁸⁰.

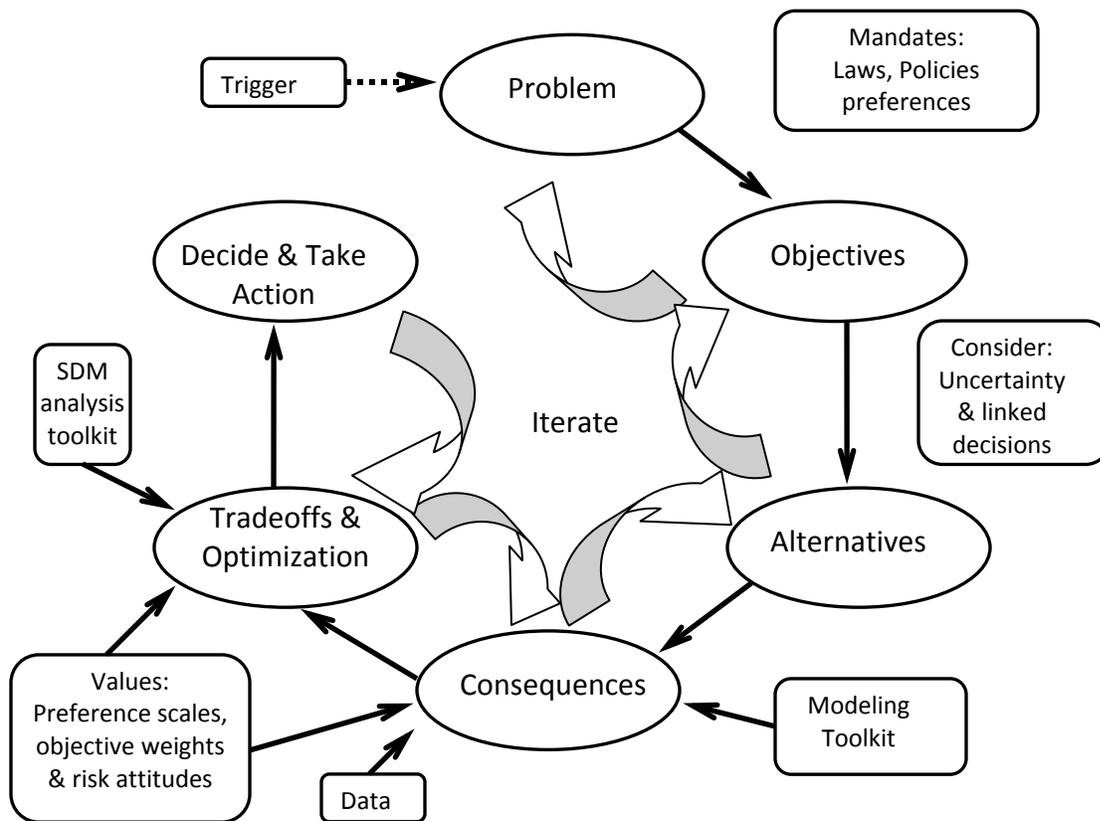


Figure 5. Structured Decision Making Steps, adapted from CSP3171⁸¹

⁷⁸ Structured Decision Making 2008, accessed 1 March 2012 <http://www.structureddecisionmaking.org/index.htm>

⁷⁹ CSP3171. 2008 Introduction to Structured Decision Making. accessed 28 Feb 2012

http://www.fws.gov/science/doc/structured_decision_making_factsheet.pdf)

⁸⁰ Structured Decision Making 2008, *supra* n 76

⁸¹ *Ibid*

An alternative to SDM is the DPSIR Framework (Driving Forces-Pressures-State-Impacts-Responses) used to assess and manage environmental problems as a causal framework describing the interactions between society and the environment. Social and economic developments and natural conditions (driving forces) exert pressure (e.g. land use change, water withdrawal) on the environment and, as a consequence, the state of the environment (combination of physical, chemical and biological conditions) is affected (eg. water quality, biodiversity, ecosystem health). Changes in “state” may have undesired environmental and economic “impacts” on the functioning of ecosystems and provisioning of society benefiting goods and services, eliciting a societal or government “response” affecting all or part of the causal chain. Describing the causal chain from driving forces to impacts and responses tends to be broken into sub-tasks that consider the relationship between the components. This can be based on qualitative understanding or analytical information describing the relationships. An example of the DPSIR conceptual framework for assessing water quantity resources shows the state of water is determined by natural factors (e.g. geology and climate) and also by pressures exerted by human activities. The results of the response on any of the elements in the causal change depend upon the effectiveness of the response and the framework thus lends itself to an adaptive management approach (Figure 6)⁸².

The strategy and implementation plan will build upon the information gathered during this initial phase to address key elements posed as questions:

- What’s the message?
- What are the tools?
- Where’s the expertise and money?
- Who’s the audience?
- Who are the players? And
- How do we recognize success?

It is not the purpose of this document to identify the diversity (e.g. Causal Chain Analysis⁸³) or describe in detail the application of different approaches or analytical tools for identification of issues that may affect the achievement of Joint Venture objectives. An emphasis is however placed on first assessing the problem, identifying possible solutions (responses), and determining whether and at what level the Joint Venture is able to engage with decision-makers using an approach that meets the Joint Venture’s needs. This approach may be “brainstorming” by members, or a very structured approach using a trained facilitator in one or more assessment techniques. Only once this step is accomplished, should the Joint Venture discuss whether to develop a strategy and implementation plan that may require advocating policy support or change.

⁸² Peter Kristensen. 2004. The DPSIR Framework. Paper presented at the 27-29 September 2004 workshop on a comprehensive /detailed assessment of the vulnerability of water resources to environmental change in Africa using river basin approach. UNEP Headquarters, Nairobi, Kenya. accessed 28 February 2012
http://enviro.lclark.edu:8002/rid=1145949501662_742777852_522/DPSIR%20Overview.pdf

⁸³ Juan Carlos Belausteguioitia. 2004. Causal Chain Analysis and Root Causes: The GIWA Approach. *Ambio* 33: 7 – 12.

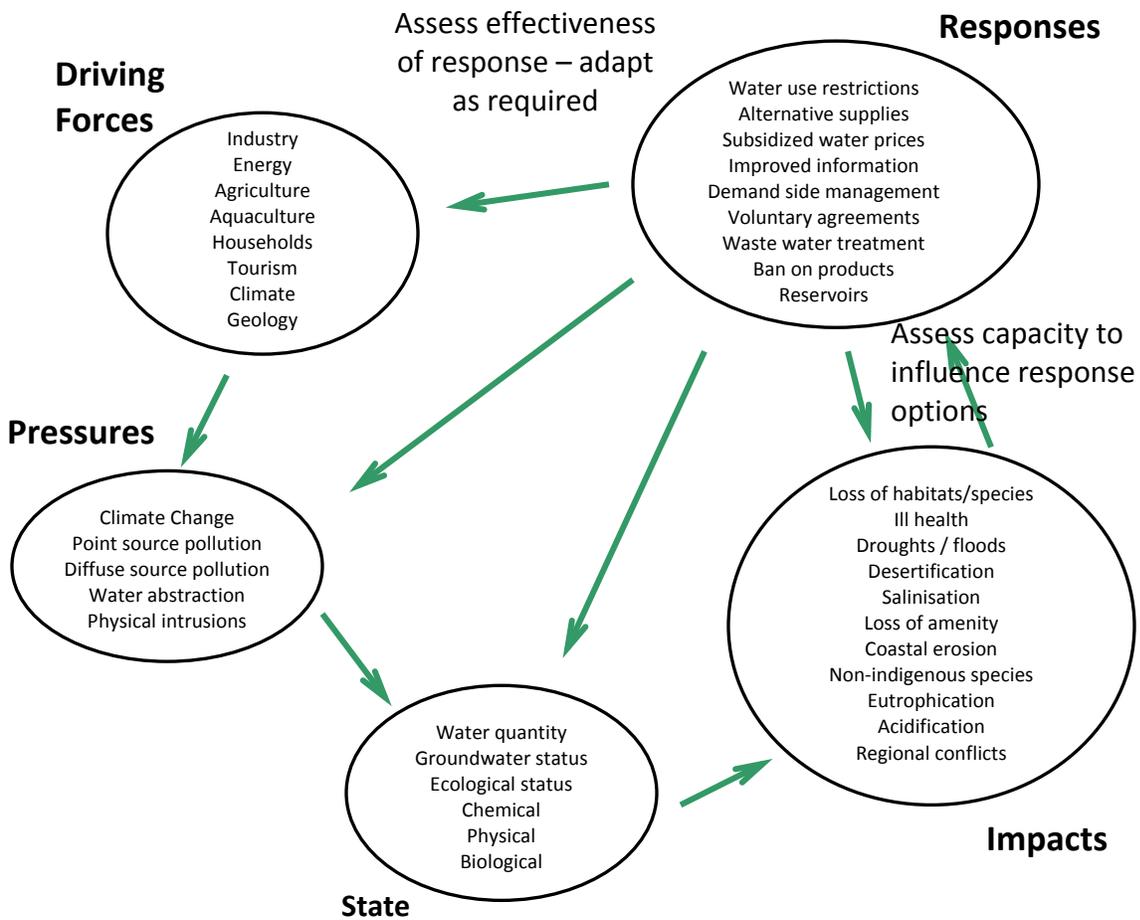


Figure 6: A generic DPSIR framework for water, adapted from Kristensen⁸⁴

6.2 Strategic Foresighting: Anticipating issues relevant to future policy

A technique increasingly being used by governments, business and civil society organizations in both strategic planning and policy development is “foresighting”. Implicit in foresighting is acknowledgement that the world is relatively complex, change is inevitable, and the rate of science and technology discovery is higher than ever before. Foresighting is about possibility, not probability, and is designed to produce multiple images of possible futures by incorporating

⁸⁴ Peter Kristensen. 2004. *supra* n. 82.

uncertainty and complexity. It involves analysis and subjective judgment to enable new and creative insights, and emphasizes the future can be shaped by human choice and action^{85, 86}.

Organizations invest in foresight to be:

- more forward looking and strategic;
- more anticipatory of the opportunities and challenges associated with change; and
- better positioned to incorporate this knowledge and make well informed strategic decisions in the present.

The foresight process can function as an interface between science and policy by considering future challenges and opportunities to help inform decision makers fulfill their mandates. It is an interactive process used to search out early signs of new trends, opportunities and risks that might become important before they unfold unexpectedly through exploration of future dynamics of science, technology, the economy, the environment, and society. Critical to foresighting is the bringing together of different stakeholders with multiple perspectives to promote strategic dialogue. A diverse group that includes policy-makers builds political awareness, reduces surprises, and usually results in richer, more useful information than only consulting a few “experts”.

A foresighting exercise requires detailed planning and is typically conducted in structured workshops lasting several days and typically conducted over a several months⁸⁷. It requires the active engagement of the interdisciplinary stakeholders to share values, identify needs and trade-offs, develop a mutual understanding and a common language by which to explore the problem⁸⁸. Over the course of the exercise, participants are engaged in visioning alternate scenarios 20-30 years into the future. The goal of the exercise is to identify co-created innovative solutions using policy as a means to shape the desired alternative. In addition, the process can lead to extended networks, enhanced communication and build an emotive commitment (“buy-in”) among the participants to the identified options for possible paths forward and facilitate a desired policy alternative.

6.3 Formulating a strategy

Following an analysis of the issue and identification of options, a Joint Venture must determine if there is a will to act collectively as a Joint Venture or individually by the partnering organizations. If it is a collective approach, the JV must develop a strategy to influence the policies of others, including clearly identifying who are allies, options/strategies to achieve desired results, whether actions are in conflict with Joint Venture goals and the legal risk to

⁸⁵ B. Habegger. 2010. *supra* n.73.

⁸⁶ J. Voros,. 2003. A generic foresight process framework. *Foresight* 5 : 10 – 21.

⁸⁷ J.F. Coates. 2010. The future of foresight - A US perspective. *Technological Forescasting & Social Change* 77:1428-1437.

⁸⁸ D. Copeland. 2006. Preparing the team for strategic-foresight work. *Futurist* 40: 23.

partners and financing. Developing a strategy to influence development or change in policy whether in the public or private domain is iterative and includes a number of steps that can occur concurrently (Figure 7).

Develop a **Strategy** that takes the shape and function of a dynamic campaign, not a bureaucratic exercise. Use crisis as an opportunity; introduce reforms when the political / economic climate is favorable. Organizations and agencies ride waves of support and opposition. Joint Ventures need to know where their organization fits in the grand scheme of issues and they need to know when to press and when to back off. Sometimes you need to lose a battle to win the war.

Implications on Stakeholders and Decision makers - Scope out the playing field, a thorough analysis of the policy's impact on the playing field will identify strengths, weaknesses, opportunities, and threats. The current political environment weighs heavily on policy makers. Which party is in power? What is their ideology with respect to the policy issue? Where do other policy makers stand on the issue? Much of this occurs behind closed doors and can be difficult to ascertain but it is reality.

Assess Resource needs / Partner Capacity – Undertake a comprehensive and honest assessment of the resources required and available including: scientific knowledge and evidence, political knowledge, stakeholder knowledge and attitudes, communication skills, financial resources, time commitment and staff availability, and an evaluation process to measure effectiveness and guide future activities.

SMART Objectives - Define the objective in a SMART fashion: Specific, Measurable, Attainable, Realistic, and Timely. Don't confuse broad-reaching, department/agency-wide strategic plans with one that is very specific to the policy objective in mind. Prioritize and focus upon which issues are fundamentally important rather than ones which would be nice to achieve but would dilute your effort and impact. Assess whether the objective is "winnable" in one effort or through a series of steps over an extended time frame. Decisions linked over time need to be dealt with effectively by isolating and resolving near term issues while sequencing the collection of information needed for future decisions.

Policy tools provide a means for implementing new policy and a broad suite of tools should be evaluated and given full consideration by conservation organizations prior to making recommendations to policy makers. Many constituencies believe that changing legislation or regulations are the most effective means of implementing policy. However, these tools may

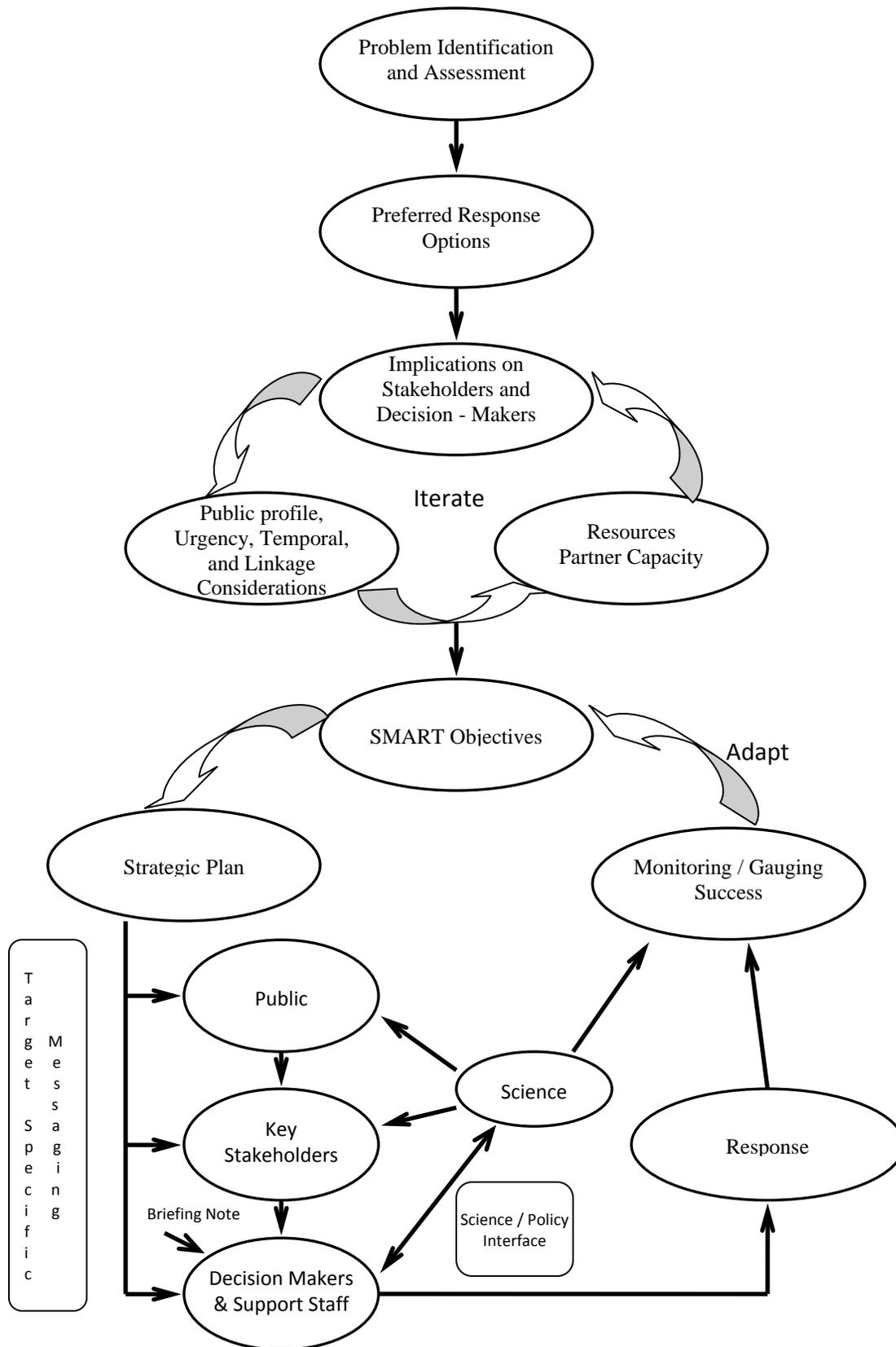


Figure 7. Conceptual strategic framework for policy advocacy.

not provide the flexibility and innovation that is often required to achieve real world outcomes. In contrast to legislation and regulation, positive or negative incentives (payments or taxes) can be considered. One of the often forgotten suites of policy tools involves changing administrative authorities, building capacity, or enhancing cooperation and collaboration between administrations of the numerous departments or agencies responsible for implementing policy.

Identify key Stakeholders and Decision makers and their level of interest and support – Clear identification of stakeholders both pro and con will be an important exercise as you develop and implement a strategy. A tendency to avoid is to only focus on individuals and groups who support the policy development without taking into account the full range of actors who will be involved. It's as much about relationship-building as it is a content-driven enterprise (i.e. politicians and administrators will listen to people they trust, or people who they believe are reasonable and they want to trust). The confidence level of the policy maker is also critical to influence policy. There are movers and shakers that operate with the full confidence of their employer and there are others who just take up your valuable time. Policy makers stake their reputations on the public policies that emanate from their agency or organization. Understanding the confidence level of those individuals is important.

The list of players or key individuals within the agencies involved in policy development is dependent upon the jurisdiction where the policy change needs to occur and is very different in Canada and the U.S. For example, to have an impact on national wetland and waterfowl conservation policy in the U.S., key individuals beginning with scientists and ending with the Executive Branch of the White House need to be engaged. Within this continuum, members of the Council on Environmental Quality (CEQ), the Senate Committees (Environment and Public Works, Agriculture, Nutrition and Forestry, and Energy and Natural Resources), the House Committees (Natural Resources, Agriculture, and Energy and Commerce) and other interest groups and industry leaders all need to be a part of the policy development process. In order to effect real policy change, the key players must understand and support the messages and desired outcome(s) of the proposed policy. In contrast, to impact policy change in Canada there is much greater need to educate and collaborate with departmental staff and senior executives who have significant influence over provincial or national policies. At the same time, there are significant benefits to educating ministerial staff so that ultimately when a Memorandum to Cabinet (MC) goes forward to the appropriate cabinet committee, all administrative and political issues will have been adequately addressed.

Targeted Messaging - Frame the message considering the desired impact on the intended audiences. Messages can be formulated in many different ways, each having different types of impacts on the intended audiences. Evidence or experience-based messages are best used to address public concerns because the issues often transcend political and/or stakeholder ideologies. Messages that identify predictions or model results which identify better, less expensive, or smarter approaches to addressing an issue will often garner bipartisan appeal. Lastly, when real world outcomes are incorporated into a message such that policy makers can

understand the tangible and cost-effective benefits of a policy, the message offers relevancy, learning, and grassroots support.

The message is important, but who and how you convey your message is an equally vital element of successfully encouraging policy change. The message needs to be consistent with consideration for the nuances of each audience. There is a wide array of potential audiences, however, three key groups should be considered – public, stakeholders, and decision makers (politicians, staffers, and administrators). Stakeholders are important for building grassroots support for your policy recommendation, while politicians are the obvious target for legislation and regulatory changes. Political staffs have a significant amount of influence with politicians thus they too are a key group to target with policy information and educational messages. Lastly, administrators within local, state/provincial, and federal governments are an important group when trying to change policy through more indirect means such as encouraging greater cooperation and collaboration. In Canada, administrators are much more involved in the policy analysis and development phases of the process; therefore they are perhaps a more important audience when trying to influence legislation and regulation.

Policy Briefing Note - Once the comprehensive plan is constructed and ready to implement, develop a policy brief for the appropriate policy-maker/administrator. The briefing needs to be clear and concise with an executive summary, and the introduction must catch the eye of the reader. It should describe the current situation of the policy issue or lack thereof, the desired situation, and why the agency or organization should expend efforts to change. There should be an honest description of what the public will be exposed to and the benefits and costs associated to the public and agency. Finally, a concrete recommendation should follow – one that is SMART – specific, measurable, attainable, realistic, and timely. If the policy briefing results in an audience, the presentation should also be clear and concise. Downsides to the proposal should be covered in as much or more detail than the upsides to the proposal.

Monitoring/Gauging Success – The strategy should not be rigid, policy creation is a linear and logical process. Successfully influencing policy is like the adaptive management process familiar to joint ventures. It is a continuous flow of information, analysis, evaluation, and adaptation based on what works and what does not work. Be willing to adjust efforts and reallocate resources as the policy cycle goes forward. Success is rarely continuous but occurs in stages. There's immediate success (announcement day), mid-term success (implementation yielding results), and long-term success (implementation working effectively based upon review of outcomes). Ultimately success is gauged on whether the policy/program in the way it is being implemented meet the fundamental tests it was designed to achieved. Consult within government and the wider community for their views, and if required review and adapt your plan.

7.0 POLICY COMMITTEES ACROSS JVS: STRUCTURE/FUNCTION/REPORTING

Four partnerships (2 US and 2 Canadian) with active policy working groups presented case study overviews (see Annex 3.3 – 3.5) of their structure, function, and policy work. Differences in the working group structure reflect the organizational reality of individual partnerships and comfort level of individual partners to engage in the different levels of advocacy. The British Columbia Wetland Stewardship Partnership (WSP) is unique among the four of having originated as a government agency initiative to advance wetland conservation that evolved to include non-government members. Its wetland conservation objectives complement those of the Canadian Intermountain and Pacific Coast Joint Ventures, and the WSP is acknowledged as the policy arm for these BC Joint Ventures. Many of the Joint Venture Board members or their respective groups are represented at the WSP. Significantly, the role of the WSP supported by the provincial government is to actively advocate for wetland conservation.

Operationally the WSP, the Playa Lakes Joint Ventures (PLJV), and policy subcommittee of the Prairie Habitat Joint Venture (PHJV) rely on a policy coordinator to organize meetings and events, interact with the partners, convey information within the partnership, coordinate specific projects and correspondence, and be available on request to present information on behalf of the partnership. While the PLJV and PHJV policy coordinators are funded positions, this role is provided unofficially by a NGO partner in the WSP, and the NGO Chair of the U.S. NABCI Committee's Policy and Legislative Subcommittee (P&LS).

The policy groups are considered as “safe havens” to facilitate open and full discussion among the participants, and can include participation by others (NGOs and government agencies) that can bring additional perspectives and information to the discussions. The groups provide a forum for the dissemination of information on the policy and programming activities of partners and others where these activities relate to the goals of the organization. Operating by consensus, the groups analyze and prioritize the most effective policy techniques and processes that will enable the organization and their partners to achieve their conservation goals; review public policies concerning agriculture, land use, wetlands, wildlife and water resources to determine their impacts on conservation goals; identify required adjustments to existing policies; develop strategy papers; and recommend action for partners and other interested agencies.

In each of the case studies, there is oversight in the policy activities undertaken on behalf of the organization. While working groups may develop a position on a policy issue, recommended actions require the approval of the organization as per their Terms of Reference. For example, the PHJV Chair of the Policy Committee reports actions and progress to the Board. All documents and drafted positions are circulated to all Committee members for review and comment. It is imperative that all Committee members have the opportunity to voice opinions and in some cases documents have been modified, or wording regarding the disclaimer is made stronger. The documentation and positions are those of the Committee. Similarly, the NABCI's

P&LS is fully accountable to and cannot independently take action on behalf of the NABCI Committee.

Government representation provides the opportunity to communicate with representatives and leaders of those agencies early and often during the discussions of key policy issues. However the participation by government agencies is tempered by the constraints they must operate within. Government agencies and its employees are barred from lobbying for specific legislation. However, they can provide relevant information (excluding certain things, e.g., advance knowledge of budget proposals, etc.) and participate in discussions as long as they don't cross lines laid out in law and agency policy. This constraint has been acknowledged in how the organizations advocated on policy issues. For example, any correspondence from the NABCI P&LS on behalf of the Committee is sent on NABCI Committee letterhead with non-federal members clearly identified as the organizations sending the letter.

The PHJV Board Chair is typically a federal government employee and this has caused some angst regarding PHJV positions on certain policy issues in letters signed by (for example) Environment Canada employees addressed to Federal Ministers. This has been addressed by ensuring the use of PHJV letterhead and clarifying that the employee is acting as Chair of the PHJV. Similarly, submissions to public consultations are often presented by the Policy Committee coordinator on behalf of the partners rather than a partner who is also a government employee. All material is on PHJV letterhead and stresses that the submission is by the Partners and does not necessarily represent the views of any one organization⁸⁹.

The WSP is again unique in how they are able to comment on policy issues. The WSP includes within its mission the implementation of a *Wetland Action Plan* for the province as part of the signed Memorandum of Understanding between Government and partners which formalized the WSP. The action plan includes a goal to "Enhance legal protection of wetlands through effective and effectively enforced laws and policies." Partnership context is one that circumvents the idea of 'lobby' and emphasizes cooperation and co-benefit. Current *Lobby Act* stipulations in BC are such that partnership work that is requested by government does not qualify as lobbying.

The case studies identified benefits and challenges in pursuing policy initiatives within a partnership.

Benefits:

- Partnering organizations can create strength by aligning their activities to the extent possible, and avoid contradictory positions and actions;

⁸⁹ For example, the written PHJV response to the Manitoba Water Council – "Seeking Manitobans perspectives on Wetlands" in 2010 included the following disclaimer: *While the perspectives expressed in our submission represent the collective thoughts of the PHJV partnership, they do not necessarily represent the official positions of any partner agency.*

- Partnering organizations are often members of other coalitions and have the opportunity to take issues before broader groups to further diversify and strengthen support on an issue;
- Participation by Government and resource based organizations membership provides the opportunity to communicate with representatives and leaders of those organizations early and often during the discussions on priority policy issues;

Challenges:

- Overcoming the inertia resulting from real and perceived issues attached to advocacy on policy issues often engendered among government agencies and non-government organizations unwilling to look at alternatives;
- Policy goals are often long term and progress is sometimes difficult to measure in the interim;
- It can be difficult to establish consensus on some issues;
- Participation by partners varies and can reflect the mandates of the partner organizations, the capacity of partner organizations to devote time to the task, and the interest and involvement of the individuals in policy work;
- Dedicated funding for a coordinator

8.0 SUMMARY CONCLUSIONS

The context within which policy is developed is vitally important and organizations desiring to influence policy are advised to provide answers to questions within the wider public context, while helping to educate policy makers in regard to issues within the realm of the political and organizational contexts. Participating as a Joint Venture within the policy process requires a critical evaluation of the strengths and challenges of doing so. Although necessarily an individual exercise, Joint Venture strengths generally include: planning expertise, partnerships, experience, and credibility while challenges typically revolve about the implications of assuming an advocacy role by the Joint Venture or its partners. Although important, the challenge is not insurmountable. In cases where the rules of the Joint Venture partnership preclude engagement as a body in policy initiatives, it may still be possible to adopt an alternative strategy whereby non-government organizations (NGOs) advocate on behalf of the Joint Venture with government personnel contributing as a resource staff. Alternatively, build alliances with like-minded NGOs with lobby status who can undertake the lobbying efforts while the Joint Venture actively provides information and other resources based upon its strengths. This whitepaper has identified a number of key points for consideration by Joint Ventures that may be considering policy advocacy to support their conservation programs as follows:

- The process to develop a strategic policy approach is generic and conservation groups can benefit from developing an improved understanding of the policy development process and the options they have to influence policy in both countries;
- Policies are an integral and important component of resource management;

- Policies provide principles or rules to guide decisions about resource allocation;
- Policy development requires a structured and complex process, analysis, evaluation, and feedback loop;
- Successful policy development efforts consider what influences policy-makers and stakeholders and considers internal and external influences on the decision;
- Joint Ventures can leverage their recognition as excellent examples of stakeholder development and partnerships with expertise gained by research and experience in order to contribute to regulatory reform and conservation policy issues;
- Partnerships of government agencies and non-government organizations are not a barrier to advocacy on policy issues.