

E-PARCC

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Maxwell School of Citizenship and Public Affairs

Program for the Advancement of Research on Conflict and Collaboration

Whalebones: Balancing National Priorities, Local Culture, and Private Interests



North American Right Whale

noaafisheries.gov

Prepared by

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Whalebones: Balancing National Priorities, Local Culture, and Private Interests

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Categorization

Policy Areas: Environment, Endangered Species,

Setting: Local, coastal, marine

Sector: Cross-sector

Brief Summary

This simulation creates an opportunity for learners to engage in a realistic multi-party scenario that requires conflict resolution skills and collaborative management strategies to work with federal regulators, university experts, and community stakeholders around the disposition of whalebones from the beaching of an endangered whale, the North Atlantic Right Whale.

Abstract

This instructional simulation focuses on a community conflict on the coast of Maine arising over the implementation of national environmental policies, in this case the Endangered Species Act and the Marine Mammal Protection Act, and the high priority protection status of the North Atlantic Right Whale. The purpose of the simulation is to introduce students to a multi-dimensional, high conflict setting with complex interdependencies. The case includes scientific, legal, cultural and emotional dimensions and multi-scale issue complexity. The simulation creates an opportunity for students to practice conflict resolution skills and cooperative approaches to reach realistic interest-based solutions and develop collaborative management strategies and structures. There are nine parties that represent a range of interests as well as a facilitator(s) role. This simulation can be run in a two-hour class or over multiple class sessions. It is appropriate for use with undergraduates, graduate students, and/or professionals in a number of fields where cross-sector collaboration, collaborative management and governance and/or multi-party interest-based negotiation and conflict resolution are being taught, including public administration, public policy, law, planning, environmental management, geography, biology, economic development and sustainability, among other fields.

Table of Contents

Background Material *for all participants*

Scenario Description 6-8

Relevant Information for Situation and System Context 8-11

North Atlantic Right Whales

National Oceanic and Atmospheric Agency (NOAA)

New England Maritime College (NEMC)

Deephaven Island

Endangered Species Act (ESA)

Marine Mammal Protection Act (MMPA)

Maine Trespassing Laws

Administrative Procedures Act, due process

NOAA Regulations

Stakeholder Overview 12-13

SEA Group Representative, Sarah Shore

Lobsterman, Eugene Bowden

NOAA representative, Alice Breeze

NEMC Whale Watch Professor, Lillian Fin

NEMC Student Researcher John Lewis

NEMC Student Researcher, Rosie Pew

Proprietor of the Scrimshaw Cup, Zeke Radley

Deephaven District Tourism Director, Edward Stein

Deephaven Selectman, Rutherford Strong

Confidential Information *for individual participants*

Confidential Stakeholder Profile Information *for individual participants* 14-32

SEA Group Representative, Sarah Shore

Lobsterman, Eugene Bowden

NOAA representative, Alice Breeze

NEMC Whale Watch Professor, Lillian Fin

NEMC Student Researcher, Rosie Pew

NEMC Student Researcher, John Lewis

Proprietor of the Scrimshaw Cup, Zeke Radley

Deephaven District Tourism Director, Edward Stein

Deephaven Council Co-Chair, Rutherford Strong

<u>Teaching Note for Instructor</u>	33-39
<u>Guidance for Student Facilitation</u>	40-45
<u>Issues List for Instructors and Facilitators</u>	46-47
Endangered nature of the whales themselves	
Endangered Species Act / Marine Mammals Protection Act	
Local trespass and theft law	
Whalebones: integral part of town identity vs. scientific need to study & collect bones	
Promote cooperation of reporting requirements among islanders	
NOAA / FWS mandate: restrictions vs. ability & need to work with local communities	
Field research protocols of NOAA contracted college students	
<u>Worksheets</u>	48-51
<u>Resources</u>	52-55

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Background Material *for all participants*

Scenario Description – Storyline

This is a fictional scenario loosely based on actual events surrounding the beaching of a suspected North Atlantic Right Whale on a small island off the coast of Maine and the resulting interactions among island residents and a group of students from a local college.

Word spread quickly around Deephaven Island that a North Atlantic Right Whale carcass had washed ashore, and island residents flocked to the site to see it. As usual, many residents, among them a fisherman named Eugene Bowden, harvested bones from the whale carcass and took them home as mementos. Eugene grew up on the island and spent his life fishing off the island's waters, learning to appreciate and respect the local marine ecology upon which he depends for his livelihood. Eugene and other local residents were unaware that the Atlantic Right Whale was a federally-protected species and that collecting whalebones of an endangered species was illegal.

A seasonal resident of Deephaven and environmental advocate was well aware of the endangered status of Right Whales and notified the New England Maritime College (NEMC) Whale Watch program since it conducts ongoing research projects about whale sightings and beachings. John Lewis and Rosie Pew, undergraduate research students from the College, took a ferry to the island to assess the situation. Upon arrival, they met Eugene, and he told the students about the bones he had recently hauled up from the beach. Eugene said he and other islanders had been collecting whalebones for decades. Such beachings were now rare occurrences, though whales used to commonly frequent the waters around the island. The whales held a deep historical and cultural significance for islanders, he said as a reminder of the early whaling days of their forefathers and the special bounty of the sea they depend on.

Eugene was heading off for the morning haul but impressed with the students' interest in his whalebones, he explained where he lived and told the students they could go view the new bones in his front yard. The students, knowing that the bones were protected research specimens, later entered Eugene's yard, removed the bones, loaded them on their truck and took them back on the ferry to their college to study.

When Eugene returned home, he was furious to see his front gate open and the whalebones gone. He immediately wrote a fiery op-ed in the *Island Times* stating that Maine islanders should stop reporting whale sightings and beachings because of the cavalier attitudes of the out-of-state students toward local fishing communities, their heritage and their basic property rights. Most island residents agreed and responded with angry assents and vows of future silence. But not all agreed.

Sarah Shore, a longstanding summer resident of Deephaven and director of a local environmental nonprofit called the Save the Environment of the Atlantic Group (SEA Group), encouraged islanders to comply with federal law and promote the scientific efforts of the College. She started a campaign to educate residents about the importance of protecting the

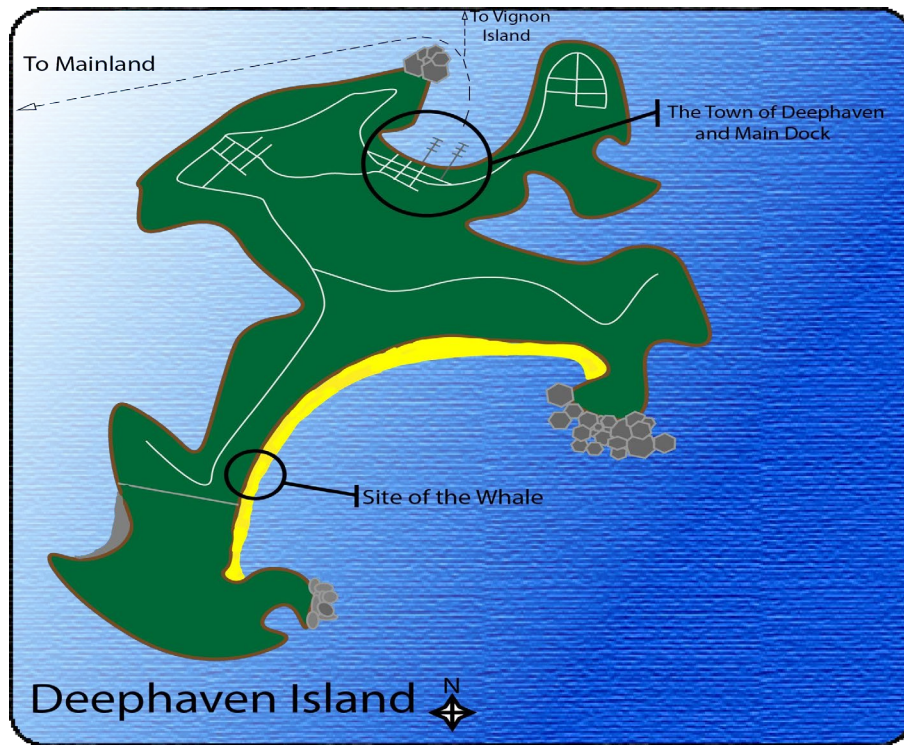
endangered whale species. “How else are we going to learn about what is causing these tragic deaths?” she wrote in her letter to the editor of the *Island Times*, “Their research could find some valuable answers.”

The National Oceanic and Atmospheric Administration (NOAA), charged with protecting marine mammals, got wind of the issue and the New England Regional Manager, Alice Breeze, issued a standard proclamation affirming the laws and regulations that made taking and/or possessing any part or whole of an endangered species illegal under the Endangered Species Act (ESA) and the Marine Mammal Protection Act (MMPA) and punishable by fines and/or prison time. The proclamation included a note that NOAA officers can and will enforce these laws.

Deephaven islanders read the NOAA statement to mean that all whalebones on the island may be seized, and many residents feared that the bones they had collected for years- their family heirlooms- may be taken from them. The Scrimshaw Cup, the local diner that hosts island residents and serves up 4:00am coffee to the fishermen, takes its name from whale bone and ivory art that originated with the whaling industry in the 1800’s. Whalebones and scrimshaw designs adorn the walls of the “Cup.” Zeke Radley, the owner, shares the residents’ fears that the bones may be seized and is determined to protect his property rights.

NEMC Professor Lillian Fin, fearing bad publicity and the implosion of the College’s research and conservation efforts for Atlantic Right Whales, wrote her own op-ed piece and in an interview at the local talk radio station pleaded with islanders to abide by the law and continue to report sightings and beachings of the whales. Her research program was funded by NOAA and she defended her students’ actions, claiming that by law, as representatives of NOAA, they could have imposed hefty fines on Eugene and other islanders for collecting whalebones, but chose not to. Her recent research has also documented that since lobster fishermen started using stronger ropes to connect their lobster pots to the floating buoys have been attributed to entanglement of whales in fishing lines.

As the public clamor on and off the island threatened to spiral out of control, town officials got involved to try to calm the dispute. Edward Stein, Deephaven’s District Tourism Director met with Deephaven Selectman Rutherford Strong to discuss his worries that the situation could affect the upcoming tourist season, the island’s most economically important season of the year. Rutherford was worried too. The island certainly did not need bad press, just at the time they were trying to attract more fishing families to live on the island. He was also worried that this skirmish would create division on the island between the year-round fishermen and the seasonal residents. To top that off, Deephaven might be held responsible for halting important research and conservation efforts for Atlantic Right Whales, and could face possible criminal fines, or worse, for collecting the bones. Stein and Strong decided to act. They invited several key stakeholders to come to the Deephaven Church to discuss these issues before they escalated into more serious island conflict. To assure a neutral atmosphere, they invited two members of the Island Institute, a Maine-based non-profit organization, to facilitate the meeting.



General Information

North Atlantic Right Whales

The Right Whale is a species of large whale of the genus *Eubalaena* and the family Cetaceans. There are three subspecies, North Atlantic (*E. glacialis*), Pacific (*E. japonica*), and Southern (*E. australis*). They weigh around 70 tons and are up to 55 feet in length. All three species have been protected from whaling since 1949 and the North Atlantic species has been protected under the Endangered Species Act (ESA) since 1970. It is also protected under the Marine Mammal Protection Act (MMPA). The North Atlantic species is estimated to only have 300-450 individuals left in its population. The slow population growth can be attributed to birthing habits like long gestation periods and a single calf per pregnancy in conjunction with human threats like entanglement in fishing gear, collisions with cruise ships, and anthropogenic noise like sonar. There is also emerging research describing the effects of climate change upon their behavior, habitat range, and life circumstances. Right Whales are named thus because they were the “Right” whale to kill in the days of whaling. Their bodies floated once killed allowing for easy extraction of their oil and baleen teeth.

National Oceanic and Atmospheric Administration (NOAA), Science. Service. Stewardship.

The National Oceanic and Atmospheric Association (NOAA) is a U.S. federal agency dedicated to three things. “One, to understand and predict changes in climate, weather, oceans and coasts. Two, to share that knowledge and information with others. Three, to conserve and manage coastal and marine ecosystems and resources” (NOAA). NOAA plays an important role in the public and business sectors of the U.S. weather reports, long-term climate projections, forecasts and warnings, and fishery information. To carry out these goals effectively, NOAA requires that information be available and legible when needed as these entities are constantly changing.

NOAA Fisheries provides “science-based conservation and management for sustainable fisheries and aquaculture, marine mammals, endangered species and their habitats.” Their work is guided by two main goals: one, to ensure the productivity and sustainability of fisheries and fishing communities and; two, to recover and conserve protected marine resources including whales, turtles, and salmon. NOAA’s Fisheries department is obligated by law to carry out the ESA and MMPA.

New England Maritime College

New England Maritime College (NEMC) is a small private college on the coast of Maine with about 4,000 students. It is noted for its marine sciences program, which has a strong focus on hands-on and applied research. Their Whale Watch program is a marine mammal laboratory that focuses on field research of whales off the coast of Maine as well as other whale hotspots around the world. Whale Watch works under a permit from NOAA through which they carry out research, catalog whale sightings, manage population information, and respond to whale and other marine mammal stranding’s on over 2,500 miles of Maine coastline and coastal waters. These actions support NOAA’s mandate to carry out the ESA and MMPA.

Overview of Deephaven Island

Deephaven Island is a small island about 12 miles off the northern coast of Maine. It has about 300 year-round residents, but the island population swells to around 700 in the warmer months. Granite quarrying brought early prosperity to the island, but the quarrying industry has been closed for decades. Today, fishing (primarily lobstering), seasonal residents, and tourism are the main economic drivers on the island. The town of Deephaven is the main village on the island. A quaint main street wraps around the port and hosts two restaurants, The Scrimshaw Cup (a local diner), a handful of art galleries, a hardware store, a penny candy store, a church, a year-round school, a post office, and an outpost of the SEA Group (Save the Environment of the Atlantic).

Endangered Species Act (ESA)

The North Atlantic Right Whale has been listed as an endangered species under the ESA since 1970. As of 2012, the population of North Atlantic Right Whales numbered 440. ESA-listed animal species are protected from intentional and unintentional “takings” of the animal. A “take” is intentional or unintentional attempt to harass, kill, wound, trap, capture, or collect an animal or parts of an animal, including dead body parts like bone, skeleton, and teeth. The ESA allows for permits to take animals or parts of animals for purposes of scientific research. Violating the ESA can result in both civil and criminal penalties of fees up to \$50,000 and up to a year of imprisonment. Both the federal government and private citizens may bring claims to enforce the ESA.

Marine Mammal Protection Act (MMPA)

The MMPA was enacted to protect the ecosystems of marine mammals from the harmful activities of humans. Similar to the ESA, the MMPA prevents a “taking” of any marine mammal or part of a marine mammal. Under MMPA, “take” includes intentional or unintentional collection of dead mammals or parts thereof. Both the U.S. Fish and Wildlife Service (FWS) and NOAA have jurisdiction to enforce the MMPA, though the two agencies cover different species under the Act. NOAA has jurisdiction over whales protected by the MMPA. Violating the MMPA can result in both civil and criminal penalties of fees up to \$100,000 and up to one year of imprisonment.

NOAA Regulations

As prescribed by the Administrative Procedures Act (APA), NOAA has issued its own administrative regulations. These regulations govern the procedures NOAA must take when taking actions like issuing notices of violations, seizing property, requiring a civil penalty fee, and hearing appeals to its agency’s actions (15 CFR Chapter 9). The regulations define the persons authorized to take actions on behalf of the agency to include parties who have entered into an agreement with NOAA to enforce the agency’s statutes (15 CFR §904.2), authorize parties with authority to enforce NOAA regulations to seize any evidence of violation of the regulations (15 CFR §960.14), and require a notice of seizure and allow affected parties to submit claims to the seized property (15 CFR §904.501). NOAA has the ability to partner with local research institutions, including colleges and universities, for a variety of reasons including to fund research, to delegate federal enforcement power, and to share data and research.

Administrative Procedure Act (APA)

The APA prescribes general procedures agencies must follow both for issuing rules and for providing judicial review of agency actions. The APA requires, among other things, disclosure by the agency of findings of wrongdoing and the sanctions-including seizure of property- to be implemented (5 USC § 557), proper jurisdiction of the agency over the sanction to be

implemented (5 USC § 558), and the right of judicial review to persons wronged by agency actions (5 USC § 702).

Local Trespassing Laws

Trespass is a common law tort which allows a party to seek damages or an injunction against the trespasser. There are four elements of a trespass, (1) unlawful entry onto a party's land, (2) intent to be on the land, regardless of intent to trespass, and (3) injury to the party. Section 402 of the Maine Revised Statutes defines trespass as knowingly entering a dwelling place in which the person knows she is not privileged or licensed to enter. The Maine statutes recognize certain fences and signs as indications of prohibited access.

Local Theft Laws

A civil or criminal claim of theft would require proof that the aggrieved party had the right to own the property and suffered damages as a result of the loss of property. In this case, private individuals are not allowed to own the bones of endangered species including Right Whales, so there would be no valid theft claim were the beached whale a North Atlantic Right Whale.

Stakeholder Overviews

SEA group representative, Sarah Shore

Sarah Shore has been coming to Deephaven for over 20 years as a seasonal resident. Not only is she very passionate about protecting the environment and staving off climate change, she is a renowned expert in coastal ecology. Now retired from her university position at the University of Maine, Sarah is the director of Save the Environment of the Atlantic Group (SEA). SEA is an environmental defense and advocacy group that focuses on coastal New England environments and wildlife. They advocate for the protection of all endangered and endemic species and of coastlines from development. Educational outreach is a large part of their work.

Lobsterman, Eugene Bowden

Eugene Bowden is a third-generation islander and fisherman. After a brief visit to the mainland where he studied philosophy and journalism, he returned to Deephaven Island to follow his family's heritage and keep hauling lobsters. He is known as one of the best fishermen on the island and keeps the harbor's fastest boat in perfect condition. He has an intimate knowledge of and respect for the ocean and its resources gained over a lifetime of working with it.

NOAA representative, Alice Breeze

Alice Breeze is the Regional Manager for NOAA. She is bound by federal law to enforce the ESA and the MMPA while following procedures set out in the APA and the NOAA administrative regulations. Alice works at the Orono, Maine NOAA field station, and has been involved in many NOAA enforcement actions in the state. She is committed to understanding the causes of the increase in Right Whale mortalities and how to prevent them. The survival of the species is at stake.

NEMC Whale Watch Professor, Lillian Fin

Lillian Fin is the third Director of NEMC's Whale Watch research program. She manages the program, is a part time professor, and the liaison to NOAA for any research or cooperative agreement matters. She is also directly responsible for research students and their actions while in public. She is committed to continuing research and monitoring efforts as she realizes that it is integral to marine endangered species, especially the survival of the Right Whale.

NEMC Student Researcher Rosie Pew

Rosie Pew is a junior majoring in marine biology and wants to pursue a master's degree in participatory resource management. She has been volunteering for the marine mammal research team for 2 years. Together with fellow student, John Lewis, she was responsible for responding to reported whale beachings and visited Deephaven to conduct an initial survey and

gather evidence to be analyzed later at the school's labs. As the more senior student, she feels considerable regret for her role in this incident.

NEMC Student Researcher John Lewis

John Lewis is a sophomore at NEMC and just recently signed up for the marine mammal research team. He is a marine biology major and an ardent environmental advocate. After his visit to the island with Rosie, he was convinced that the fishermen were intent on misleading the researchers and opposed to all whale conservation efforts. After all, their livelihoods came first. In John's view, the lobster fishermen are responsible for the demise of the Atlantic Right Whale species.

Proprietor of the Scrimshaw Cup, Zeke Radley

Zeke Radley is the proprietor of the Scrimshaw Cup, a coffee shop and summer restaurant. It is the early morning gathering place for fishermen before they go out for the day and a popular evening retreat for all island residents. Zeke plays such an integral role in the island's culture and is known for his extreme anti-government political views. He opened the Scrimshaw Cup twenty-five years ago. It is named after scrimshaw, the carved ivory or bone from whales, an art originating with whalers in the 1800s. The "Cup" as it is called, is decorated with various pieces of scrimshaw and marine wildlife bones collected by Zeke and other residents over the years.

Deephaven District Tourism Director, Edward Stein

Edward Stein is a mainland transplant who heads up the Deephaven District Tourism association. The association represents seven nearby islands by promoting their unique tourist attractions, vacation homes, art galleries, and natural resources. He has been an integral force in protecting the island's economies through the 2008 recession and fluctuating fish and lobster populations. He knows every potential draw for tourists to these islands is vital in maintaining the local economies.

Confidential Stakeholder Background
for individual participants



Sarah Shore, SEA Group Director

You are the lead negotiator/advocate representing the SEA Group.

Background

The SEA Group is an environmental defense and advocacy group that focuses on coastal New England environments and wildlife. You advocate for the protection of all endangered and endemic species and of coastlines from development. Educational outreach is a large part of your work. Through it you seek to create a grassroots collaborative coalition of New Englanders to protect local coastal environments.

Your Interests

- Create a coalition of New Englanders that work together to protect the coastal environments and animal species.
- Participate in a process that promotes the fair and respectful resolution of different interests.
- Educate New Englanders about their local environment and how they can help mitigate their effects upon the coastal environment.
- Conserve, protect, and enhance the fish, mammal, and other marine species environments that are affected by human activity.
- Facilitate the recovery of species proposed or listed under the Federal Endangered Species Act.
- Change fishing practices and equipment to promote environmental health and the continued economic viability of the region's industry.

Your Concerns

1. Continuing decline in the Right Whale population, as well as the populations of other endangered species, and the decline in the health of the coastal and marine environment.
2. The halting of research efforts by NEMC to learn more about Right Whales, which may help protect them.
3. If residents continue to oppose research efforts, it could be detrimental to the larger goal of the SEA Group to educate New Englanders and create a citizen coalition that seeks to protect the environment.
4. Citizen resentment of off-island groups that are involved in local habitats and industry.
5. The tools the fishing industry uses have changed in recent years, and some studies have found that this may be contributing to the rise in whale mortality. Specifically, the lines used to connect lobster pots to marker buoys have greatly increased in strength and durability, making it much harder for whales to break free if they get entangled in the gear.

6. The effects of climate change on the coastal environment as well as the culture and economy that relies upon it.

Your Abilities

1. As a non-profit you stand between the islanders, the federal government, and the College. You could use this position to further the cause of the SEA group while creating a collaborative space.
2. Litigation has been a tool the SEA Group has used in the past; however, you are hesitant to use litigation due to the complexity of this situation and the parties involved.



Eugene Bowden, Lobster Fisherman on Deephaven

You represent the interests of local island fishermen.

Background

As a Maine island fisherman, you depend primarily on lobstering and the health of the lobster fisheries along the coast and specifically where you are licensed to fish. You have an intimate knowledge of and respect for the ocean and its resources, gained over a lifetime of working with it. Preserving your right to harvest the ocean's bounty is your number one goal, although you know from experience that human impacts upon marine animal populations can be catastrophic. Your opening statement might include:

"Why should I ever report another whale beaching on Deephaven shores?" You wrote an angry op-ed piece conveying your frustration over the situation. What about "endangered lobstermen?"

Your Interests

- Continue the tradition of your father and his father before him, of fishing the coastal waters of Maine and preserve the culture of Deephaven and other islands. Conserve and protect the lobster fishery.
- Represent the full range of fishermen's concern on this issue, knowing that many are fed up with federal regulations of their industry, especially since they have been such good stewards of the lobster fishery.
- Defend your basic property rights (the bones were stolen from your yard) and the autonomy of the island from external groups that may affect your way of life.
- Preserve the Deephaven and other islands' economies. In recent years, island residents have had to seek alternative forms of income as fishing income has become less stable than in the past.

Your Concerns

1. Effects on the lobster industry. The equipment you use to make a living may have detrimental effects on marine animals. A recent article points the finger at the strengthened plastic lines that link lobster pots together and to the marker buoy. While they result in a lower chance of you losing your pots and having to buy new equipment, they have been linked to increased whale mortality. Further research might confirm this, yet you believe there are multiple causes for whale mortalities, including collisions with ships and rising ocean temperatures. Furthermore, most of the whale deaths have been occurring in Canadian waters, not the coastal waters where Maine fishermen work.
2. Changing water temperatures and chemistry have created unstable lobster populations. While the last three years saw high populations, the forecast for this year is low and you are

worried about making ends meet. Regulations on gear would definitely affect your bottom line.

3. The NOAA proclamation to uphold federal law has you concerned about the whalebones all across your island. They represent generations of culture, as well as a potential source of legal action against you and your neighbors.
4. You are aware that environmental tourism has grown in recent years as a needed source of income for the island. The tourists stay at local B&Bs and eat at the Scrimshaw Cup.

Your Abilities

1. Your representation of the lobstermen and woman of Deephaven Island and beyond makes you a powerful voice in these meetings. NOAA and the NEMC require your cooperation to continue carrying out research. However, if this relationship were to sour it could impact your income from the cottage you rent out. It is often filled with visitors drawn to the island by whale watching.



Alice Breeze, NOAA New England Regional Manager

You represent the interests of the National Oceanic and Atmospheric Association (NOAA) and its Fisheries program.

Background

NOAA is a federal agency dedicated to understanding and predicting changes in climate, weather and the effects on oceans and coasts; sharing knowledge and information; and conserving and managing coastal and marine ecosystems and resources. NOAA plays an important role in the public and business sectors of the U.S. weather reports, long-term climate projections, forecasts and warnings, and fishery information. NOAA Fisheries provides “science-based conservation and management for sustainable fisheries and aquaculture, marine mammals, endangered species and their habitats.” Their work is guided by two main goals: (1) to ensure the productivity and sustainability of fisheries and fishing communities, and (2) to recover and conserve protected marine resources including whales, turtles, and salmon. NOAA as a whole and the Fisheries department, in particular, are obligated by law to carry out the ESA and MMPA.

Your Interests

- Facilitate the recovery of species proposed or listed under the Marine Mammal Act.
- Assure compliance with federal laws, comprehensive plans, and treaties.
- Continue to conduct high-quality research and provide trusted data to other organizations and the public.
- Participate in a process that promotes the fair and respectful resolution of different interests.
- Conserve the environment and responsibly manage its animal populations by promoting responsible human actions through the use of data and applied research.

Your Concerns

1. The islanders don't understand the MMPA and the prohibition on moving or taking endangered whalebones.
2. If the situation progresses, you will be required to enforce the law and seize whalebones and other items known to have been collected by other islanders. This is a last resort.
3. If residents cease to report whale sightings and beachings along with other marine species, a key part of NOAA's research may be compromised. Budgets have shrunk in recent years and NOAA cannot afford to perform adequate oversight. They depend on citizen reports and support.
4. Research suggests that new equipment used by the lobster industry poses greatly increased danger to Atlantic Right Whales and other marine species. If the Right Whale populations continue to decline it could mean extinction of the species. You are not sure how to broach

this topic, because if further research verifies the role of the newer stronger line used by lobster fishermen, measures will have to be taken to restrict its use, detrimentally impacting the economics of fishing. That said, there are some emerging studies that suggest most of the whale deaths are occurring in Canadian waters, where Maine fisherman do not fish.

5. You want the College to work well with local communities, but the College also needs to comply with federal law if it continues to hold a NOAA grant. If the College fails to comply with these laws, or if the controversy gets too big so that the College cannot in good faith comply with federal law, you may be required to revoke their NOAA grant.

Your Abilities

1. NOAA Fisheries can directly (or through their partners like the college) issue collection permits to gather or display endangered marine mammal material, such as bones, for specified public purposes, such as education. Such a permit might be an option for the right entity on the island or serving the island. You are hesitant to mention this because you are unsure that the islanders could comply with the permit's rigorous standards.
2. NOAA is granted powers based on federal laws like the ESA and the MMPA. These laws must be followed but you are hesitant to use them as punitive measures.



Lillian Fin, NEMC Whale Watch Professor

You represent the interests of New England Maritime College (NEMC)

Background

The NEMC has a longstanding history of supporting local marine ecology and science. Founded in 1925, NEMC was established as a small interdisciplinary college to help the local economy grow. Over the years, the College became known for its unique involvement with local marine science and ecology issues through its Oceanic and Marine Sciences Research Center. The Center pushed NEMC to the front lines of Right Whale research. In 2010, the College was awarded the Barbara Wilson Marine Mammal Rescue Grant from NOAA, which provided funding and support for the College to (1) recover and treat stranded marine mammals, (2) collect data from living or dead marine mammals, (3) provide financial resources for facility upgrades, operation costs, staffing needs directly related to the recovery and treatment of stranded marine mammals and the collection of data from living or dead stranded marine mammals. As a part of the grant, the College must comply with federal law, including the Endangered Species Act, and report any violations of the law.

As the College's administrator of the NOAA grant, you understand not only the extreme importance of preserving North Atlantic Right Whalebones to advance scientific understanding of the species and to prevent the extinction of Right Whales. You also know that the students have a right, backed by agreement with a federal agency enforcing federal laws, to take the whalebones.

Your Interests

- Work with the community to foster better understanding of the importance of preserving the Right Whale and saving the species from extinction.
- Uphold your duties under the NOAA contract to protect Right Whales by preserving whale specimens that can provide important scientific answers about the species' decline.
- Defend the actions of your students by emphasizing their pure motives to uphold scientific principles and to act in accordance with the agreement with NOAA.
- Ensure that the work you and your students do complies with both local and federal law.

Your Concerns

1. You want the College to have a good relationship with the local communities, but you also know that federal laws, like the Endangered Species Act, must be enforced, and the residents could face harsh penalties for violating federal law.
2. The residents may choose to not report whale sightings and beachings if this collaborative process fails, and that could hinder the College's research on Right Whales.

3. In failing to turn over the Right Whalebones, the residents of the town have shown that they don't understand the importance of the Right Whale, nor the probability of the species' extinction.
4. If you don't uphold your end of the NOAA contract, NOAA may cease to provide funding to the college for marine research. The College is best known for its marine research center, and loss of NOAA funding could cause a chain of larger issues for the College.
5. The College brings a lot of revenue to the local communities. You want to make sure that Deephaven understands how the College, and its research, are good for the town. Loss of NOAA funding for the College could hurt the reputation of the college and of the community in general.

Your Abilities

1. You act as a bridge between NOAA and the Island residents. Leverage your relationship with Stein and Strong to promote collaboration.
2. The Whale Watch program's notoriety brings tourists to Deephaven and other islands to see aquatic life. This is an important part of the island's economy.
3. NOAA and NEMC, as its agent, has the ability to issue special collection permits for the gathering and keeping/display of endangered marine mammal material, such as bones. You are hesitant to mention this, as you are not confident in the ability of the island to comply with the permit conditions. However, this is a potentially effective option to consider if needed to assist in resolving this part of the conflict.



Rosie Pew, NEMC Student Researcher

You are the senior member of the student research team who visited Deephaven and took the whalebones from Eugene Bowden's property. Lillian Fin is your professor and supervisor.

Background

The NEMC has a longstanding history of supporting local marine ecology and science. Founded in 1925, NEMC was established as a small interdisciplinary college to help the local economy grow. Over the years, the College became known for its unique involvement with local marine science and ecology issues through its Oceanic and Marine Sciences Research Center. The Center pushed NEMC to the front lines of Right Whale research. In 2010, the College was awarded the Barbara Wilson Marine Mammal Rescue Grant from NOAA, which provided funding and support for the College to (1) recover and treat stranded marine mammals, (2) collect data from living or dead marine mammals, (3) provide financial resources for facility upgrades, operation costs, staffing needs directly related to the recovery and treatment of stranded marine mammals and the collection of data from living or dead stranded marine mammals. As a part of the grant, the College must comply with federal law, including the Endangered Species Act, and report any violations of the law.

You are a Junior at the College and the senior member of the student research team working with the NOAA grant. You are currently studying to receive your bachelor's in marine biology, although you plan on pursuing a masters in participatory resource management. You have had numerous trainings on the conditions of the NOAA grant, and you take your work very seriously. That said, you have never found whalebones before, so this was both exciting and totally new. You are deeply conflicted about your role in taking the bones. You are mortified that you upset so many people and want to take this opportunity to apologize for your actions. Yet, at the same time, you know you did the right thing based on what you've has learned at the College and under Professor Fin's instruction. You were dismayed when talking with the islanders during your previous visit about how little the they understood about the threats to the Atlantic Right Whale and its likely extinction in the near future.

You recently learned of some studies suggesting that whale mortalities were primarily happening in Canadian waters and wonder just how much the Maine lobstermen are really contributing to whale deaths. You have mentioned this to Professor Fin along with your questioning the state of the science, but Fin discouraged you from bringing this up at the meeting. However, you still believe that cooperative international research would be very useful. Professor Fin insisted you come to this meeting.

Your Interests

- Save the Right Whales.

- Further the College's research on Right Whales by monitoring the local community for sightings and beachings.
- Uphold the mandates that come with the NOAA grant to ensure your work complies with federal law.
- Make sure that decisions made at the upcoming meeting are based on rigorous and thorough research.
- Seek forgiveness and prevent the islanders from not reporting future whale beachings.

Your Concerns

1. The town residents are angry, and you are concerned that their overreaction to your attempt to follow protocol, and federal law, could somehow land you in trouble with local law. You did what you thought you needed to do to protect the bones, but now you are not sure that taking the bones was the right choice.
2. The College has a longstanding tradition of engaging the community with marine scientific research, you don't want to be the cause of a rift that would stop this collaboration.

Your Abilities

1. You are very knowledgeable about the current state of research on endangered marine mammals. You are not so sure that targeting the fishing industry and its gear will be the most effective way to save the whales. While you know the fishing must change to a certain degree, you want to ensure a holistic view of the threats to Right Whales is the foundation for future solutions.



John Lewis, NEMC Student Researcher

You are the junior member of the student research team who visited Deephaven and took the whalebones from Eugene Bowden's property. Lillian Fin is your professor and supervisor.

Background

The NEMC has a longstanding history of supporting local marine ecology and science. Founded in 1925, NEMC was established as a small interdisciplinary college to help the local economy grow. Over the years, the College became known for its unique involvement with local marine science and ecology issues through its Oceanic and Marine Sciences Research Center. The Center pushed NEMC to the front lines of Right Whale research. In 2010, the College was awarded the Barbara Wilson Marine Mammal Rescue Grant from NOAA, which provided funding and support for the College to (1) recover and treat stranded marine mammals, (2) collect data from living or dead marine mammals, (3) provide financial resources for facility upgrades, operation costs, staffing needs directly related to the recovery and treatment of stranded marine mammals and the collection of data from living or dead stranded marine mammals. As a part of the grant, the College must comply with federal law, including the Endangered Species Act, and report any violations of the law.

You are a sophomore marine biology major who joined the Whale Watch research team this year. You are an avid environmental activist and spent time on the Sea Shepherd the previous summer. You do not share Rosie's misgivings about taking the bones in Mr. Bowden's yard. You were dismayed when talking with the islanders during your previous visit about how little the islanders understood about the threats to the Atlantic Right Whale and its likely extinction in the near future.

You are convinced that the growing lobstering industry is killing the Right Whales with its new fishing gear. You hope this conflict will put the islanders in their place and would potentially support NOAA in fining anyone who collected the whalebones whether they knew about the law or not. You are determined to have your voice heard and want to make it loud and clear that these whales are dying. There are so few left, that the scientists have been able to name and number each remaining individual. You are deeply attached to their loss and blames fisherman as well as the cruise ship lines for their demise.

Lillian Fin, your professor and supervisor, insisted that you come to the meeting. You have had numerous trainings on the conditions of the NOAA grant, and you take your work very seriously. You have never found whalebones before, so this was both exciting and totally new.

Your Interests

- Save the Right Whales.

- Further the College’s research on Right Whales by monitoring the local community for sightings and beachings.
- Uphold the mandates that come with the NOAA grant to ensure your work complies with federal law.
- Show the lobstermen just how threatened the Right Whale has become and impress on them the results of recent studies that find the rising mortality rates to be the result of their gear.

Your Concerns

1. The town residents are angry, and you are concerned that their overreaction to your attempt to follow protocol, and federal law, could somehow land you in trouble with local law. You did what you thought you needed to do to protect the bones, but now you are not sure that taking the bones was the right choice.
2. The College has a longstanding tradition of engaging the community with marine scientific research, you don’t want to be the cause of a rift that would stop this collaboration.

Your Abilities

1. You are an ardent environmental activist and want to tackle issues like climate change and biodiversity loss head-on. As a young person you see it as your duty to inspire the change that is necessary to avert climate catastrophe, the loss of the Right Whale, and preserve a livable future. You are knowledgeable about the role of whales in the carbon cycles of the oceans and how they are keystone species in marine ecosystems.



Zeke Radley, Proprietor of the Scrimshaw Cup

You are primarily concerned about the continued success of your café and deeply suspicious of the federal government.

Background

Controversy over the stolen whalebones has ignited a lot of anger among the residents of Deephaven. As the proprietor of the Scrimshaw Cup, you interact with all island fisherman and residents. The snatched whalebones are all anyone can talk about these days. You come from generations of independent Deephaveners who made the town what it is today without any interference from the federal government. This situation with the regulators and hot shot university-types has reignited your strong defense of private property rights.

You have a direct stake in the whalebone controversy. The Scrimshaw Cup is named after scrimshaw, the carved ivory or bone from whales, an art originating with whalers in the 1800s. The walls of the Cup are adorned with scrimshaw artwork, so you understand the deep connection island residents feel towards the whales and the bones that wash ashore. Homes across Deephaven have long displayed whalebones and other marine life discovered on the beaches. Now residents are worried that NOAA will come in and take away all kinds of items residents have collected from the beaches. This could mean the loss of personal property that represents generations of Deephaveners' connection to their land. Collecting whalebones has been going on for a long time and you are not about to let these outsiders take your island culture away and impinge on your freedom.

Your Interests

- Make damn sure the College and its students respect islanders and recognize any laws the students may have broken in taking the bones.
- The Scrimshaw Cup has carved whalebones on display, and you want to protect your own property and the identity of the Cup that is tied to the artwork.
- You are determined not to recognize that the lobstering activity has any effect on the loss of the Right Whales. You are not even convinced that they are really endangered. Whale populations rise and fall as you well know over the decades. Climate change is a myth.

Your Concerns

1. You know there may be more artifacts of interest to NOAA spread across homes of Deephaven. You want to send the professor, her students, and the NOAA representative packing. You know you represent many of the fishermen on the island.
2. Zeke Radley is a fiery figure, but you also understand the incredible amount of ecological and marine knowledge embodied in the fisherman community and you want to make sure everyone at the discussion recognizes it too. You know the fishermen, including Eugene,

have a deep respect for the many creatures that live in the ocean, but it doesn't seem like the College, or NOAA, understand this.

Your Abilities

1. It would be easy to organize angry residents against the College or against attempts by NOAA to come into the community. If the parties are not willing to listen to residents' concerns, this is a last resort.



Edward Stein, Deephaven District Tourism Director

You represent the interests of the Deephaven economy.

Background

As the Director for the Deephaven District Tourism Association, you represent seven nearby islands by promoting their unique tourist attractions, vacation homes, art galleries, and natural resources. The Tourism Association brings together business and property owners, public agencies, and community organizations to promote and protect the unique cultures of the islands. Deephaven's economy is driven by fishing culture and commodities, and this controversy is bad for business. But you know this is an issue that goes beyond Deephaven Island. All of the nearby coastal towns have to grapple with the different expectations community members and local scientists have about how to manage local marine life.

You understand the delicate balance of Deephaven's tourism economy because you held a major role in protecting Deephaven's economy through the 2008 recession and fluctuating fish and lobster populations. Every potential draw for tourists to these islands is vital in maintaining the local economy.

Your Interests

- Promote one cohesive view of managing the Island's marine life so the Island can present a clear message to outsiders.
- Foster an understanding that both the community members and the College ultimately want the same thing: to preserve the Island. They just have different ideas about how that needs to be done, and both ideas are subject to local and federal laws. You want to foster a better understanding between the two groups about why each group holds legitimate opinions.
- Help the group see the big picture: that the livelihood of everyone in the room depends on the Island and its resources, so there must be a way to move forward together from this issue.
- You also own a sizeable rental cottage outside the village of Deephaven and you want to protect that rental income.
- Find a way to spin this issue as a positive for the town and its economy.

Your Concerns

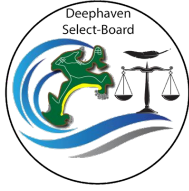
1. There cannot be a winner and loser to these talks, as tourism will be hurt equally if the townspeople are painted as refusing to preserve their island or if the College's science research is seen as dictating town culture. In particular, you have heard some of the false rumors that are spreading across the local communities that Deephaven no longer allows

residents to take items from beaches, or an even worse one, that Deephaven is restricting public access to beaches. You have shared these concerns with Rutherford Strong, Deephaven Selectman.

2. Legal action against anyone is bad for business, you want to promote conversation over litigation.

Your Abilities

1. You can help facilitate tourism on Deephaven and the surrounding islands. Tourism is becoming a more important part of island economies as a whole and for each resident. You recognize a way of life is at stake, but you want to ensure the continued viability of island economies.



Rutherford Strong, Deephaven Selectman

You represent the interests of Deephaven Island residents.

Background

The Deephaven Town Select Board oversees the day-to-day operations of the town and hosts town meetings to discuss issues within the community. As Selectman and Board Co-Chair, you understand that much of the local economy is based on the natural environment of Deephaven. If this controversy hurts the fishing or tourism industries, the town brings in less revenue. This will hurt the Council's five-year goal to improve some roads, the beach, and housing around the island. Even one year of depleted revenue can prevent the town from moving forward on any of its infrastructure projects.

You have lived in Deephaven for most of your life and have never seen the town so divided. You are a Maine native and grew up on the island. After a brief stint in the Navy and a degree in marine engineering, you returned to Deephaven and raised your family. Long retired from lobstering, your two sons continue to fish, and their children bring you and your wife much comfort along with busy grandparenting responsibilities. Conflict at the last town meeting escalated quickly, and it didn't help that the media had caught on to the controversy and had attended the meeting en masse. You have assembled the group here today to come to a quick and amicable solution to this issue. You know that there are some very angry fishermen, including one of your sons.

Your Interests

- Work with the group to come to a non-litigation solution to the issue with the whalebones taken from and by Eugene.
- Help develop a new procedure for students to follow when interacting with local residents about scientific research.
- Protect the revenues from fishing and tourism that help fund town infrastructure projects.

Your Concerns

1. The Select Board is made up of local residents, politicians, and heads of government and safety departments of the town. The controversy over the whalebones has divided the Council and is making it more difficult to solve any of the town's problems.
2. There cannot be a winner and loser to these talks, as tourism will be hurt equally if the townspeople are painted as refusing to preserve their island or if the College's science research is seen as dictating town culture. The town's Tourism Director, Edward Stein, told you about some of the false rumors that are spreading across the local communities that

Deephaven no longer allows residents to take items from beaches, or an even worse one, that Deephaven is restricting public access to beaches.

3. You want to represent all of the citizens who feel that the College students were wrong to take the whalebones, but you also do not want to be painted as the anti-environmental member of the board. The town is becoming increasingly divided over the issue. You want to get re-elected.

Your Abilities

1. You can provide funding for projects to help bring the community together, or to educate citizens, or to help the College create a better community relations protocol, depending on how the discussions unfold.

Teaching Note for Instructor

Summary and Learning Objectives

This simulation focuses on a community conflict arising over the implementation of national environmental policies, in this case the ESA and the MMPA, and the high priority protection status of the North Atlantic Right Whale. The purpose of the simulation is to introduce students to a multi-dimensional high conflict setting with complex interdependencies. The case includes scientific, legal, cultural and emotional dimensions and multi-scale issue complexity. The simulation creates an opportunity for students to practice multi-party negotiation and seek realistic solutions that build relationships and mutual learning, as well as to develop collaborative management structures and strategies. The simulation includes nine participants that represent a range of interests as well as a facilitator(s) role. This simulation can be run in a two hour-long class, in multiple class sessions, or over the course of a semester.

This simulation exercise is designed for undergraduates and graduate students or professionals in a number of fields where multi-party interest-based negotiation and collaborative management are being taught, including: public administration, public policy, law, planning, environmental management, geography, biology, economic development and sustainability, among other fields. Before running this simulation, participants should have some orientation to multi-party interest-based negotiation and collaborative management or collaborative governance. Instructors are encouraged to emphasize additional components of the simulation that are relevant to their course objectives. For example, a public administration course might focus on the nature of accountability in collaborative processes; an environmental law course could spend time investigating the broader regulatory structure and consider how stakeholders might act differently based on their legal authority; or an environmental studies course could focus on species protection and the challenges for community engagement and the prospects for citizen science.

The key **learning objectives** for this simulation exercise are:

- To explore conflicts in public policy implementation when multiple interdependencies exist between differing the national priorities and affected community concerns.
- To better understand value differences and cultural diversity among contending stakeholders with varying views on the role of government, on the credibility of science, and the importance of place.
- To practice multi-party interest-based negotiation and build negotiation skills.
- To develop collaborative management structures and strategies.

First Meeting Preparation and Facilitation

Roles: This simulation includes nine participants and one or more facilitators. Depending on the size of the class, 1-2 students could be assigned to each role, including the facilitation team. The facilitator role is designed for students with some exposure to facilitation. The course instructor could also serve as the facilitator. For a large class, you could also conduct concurrent simulations, and then compare processes and outcomes during the debriefing session. For the specific role assignments, change the first names to accord with the student gender.

Materials: In addition to this *Teaching Note*, support materials are provided in this packet, including:

1. General Background Information for all Participants
2. Confidential Stakeholder Role Descriptions
3. Instructions for Student Facilitator(s)
4. Issues Overview
5. Worksheet
6. Resources

For the simulation, you will need to assemble easels, easel paper, and markers and have handouts copied. It will be useful to develop some outline PowerPoints to introduce students to the case and to the timeframe and sequence of tasks.

Preparation for the instructor: After reviewing all the materials for this simulation, you may want to develop specific resource materials for the students to read prior to the simulation. Links are provided to several sources along with two news articles. You will need to decide what available time you have for the facilitated discussions per below.

Preparation for students: It would be best if students had some introduction to or familiarity with interest-based negotiation and concepts and frameworks for understanding collaborative management and governance. A general orientation to environmental regulations and the role federal agencies play in managing energy and the environment would be helpful as well. While it is not essential, some degree of familiarity with whale conservation or ecology, coastal fisheries and economy development, and/or island communities, would be helpful. The more diverse the class, with students from various backgrounds and disciplines, the better. Similarly, the more students are familiar with the issues present in this simulation, the better. Please encourage students to review the resources links provided at the end of this package about the real time controversy. Students can also search for more current studies and news items as the issue continues to unfold. You will want to spend some time with the facilitator(s) to work out the agenda and provide some coaching.

Time Requirements: The first meeting in the simulation could be run in one 2-hour class session with advanced preparation and deferred debriefing. With the extension of additional meetings that move from specific resolution of one issue to the design of an ongoing collaborative group, the full simulation could easily be expanded to two 2-3 hour class periods, a half-day workshop, an intensive weekend workshop, or run throughout a semester.

Worksheets: Worksheet 1 is a stakeholder positions and interest worksheet that students may complete prior to the first meeting, which will guide them in thinking about their own interests and positions as well as their initial views on the other stakeholders' interests and positions. They can be encouraged to review this sheet and revise it at a later point in the negotiation. Worksheet 2 can be used to guide discussion on if and how to develop an ongoing collaborative work group to address multiple issues and strengthen and maintain ongoing relationships.

Sample agendas for first meetings: Here are two sample agendas for the first meeting: one for a 3-hour simulation, and another for a two session simulation. Both require prior discussion with class to review the simulation, hand out materials and background information and assign roles. Students should complete their role preparation ahead of time, including Worksheet 1. You will want to have consulted with the student facilitator(s). Debriefing with students is not built into these timeframes.

One 3 Hour Class Session Sample Agenda

- 9:00 Facilitator Introductions, Orientation to Situation, Explain Purpose of Meeting and Agenda, and Develop Ground Rules
- 9:15 Stakeholder introductions: who they are, what is important to them, their chief concerns about the situation [facilitator or co-facilitator takes notes on easel paper]
- 10:15 Short informal break [stay in role; have side bar conversations]
- 10:30 Stakeholder questions: opportunity for stakeholders to ask each other questions, clarify information and perceptions, learn more about each other
- 11:00 Exploration of any common ground and brainstorm ideas to resolve some issues and get a sense from the group of agreement on one or two next steps for short term and long term action
- 12:00 Adjourn

Two 2 Hour Class Sessions Sample Agenda

First Class

- 9:00 Facilitator introductions, orientation to situation, explain purpose of meeting and agenda, and develop ground rules
- 9:15 Stakeholder introductions: who they are, what is important to them, their chief concerns about the situation
- 10:15 Short informal break [stay in role; have side bar conversations]
- 10:30 Stakeholder questions: opportunity for stakeholders to ask each other questions, clarify information and perceptions, learn more about each other. Ask stakeholders to seek missing information before next session
- 11:00 Adjourn

Second Class

- 9:00 Welcome, share agenda, remind everyone about ground rules
- 9:10 Explore common ground [are there any areas the group can agree on?] and options to resolve some issues taking any new information or research into account
- 9:45 Consider questions and refinement of some of the options
- 10:15 Focus on one or two next steps for short term and long term action; seek commitment from stakeholders individually or collectively to take specific actions
- 11:00 Adjourn

First Meeting Debrief

The second news article link in the Resources section reports a meeting in April 2019 where 60 stakeholders came together to discuss how to reduce injury and mortality of the North Atlantic Right Whales. As instructor, you may want students to read this before the simulation to convey the reality of the underlying policy setting and deepen their understanding of some of the background issues. Or you might want to share this after the simulation to demonstrate the use of a collaborative process that successfully brought all the stakeholders together to address helpful measures to reduce impacts of fishing on the whales.

In the debriefing session, students should be prompted to reflect on what they learned through the simulation. Three areas in particular are useful discussion topics: the dynamics of the negotiation and consensus building process; the nature of the conflict itself; and managing public policy implementation and enforcement. Here are some questions to guide post-simulation discussion in those three areas.

On Negotiation and Consensus Building Process

1. What happened? How did you get to agreement if any developed?

2. What were the turning points, if any, in the negotiation?
3. Are you satisfied with the outcome? Why or why not?
4. Are you satisfied with the process? Why or why not?
5. Let's give some feedback (and thanks) to the facilitator:
 - a. What did s/he/they do that was particularly helpful?
 - b. How could s/he/they have been more effective?
5. What lessons have you learned about interest-based negotiation?
6. What lessons have you learned about yourself? What do you need to work on to improve your negotiating skills?

On the Nature of the Conflict Itself

1. Why did this conflict arise?
2. Was there more than one conflict at issue here? If so, what were they?
3. What interdependencies existed among the stakeholders?
4. Is this a place-based or a policy-based dispute? Does it matter?
5. What role does scale play here?
6. Who were the most powerful stakeholders at the table?
7. What different sources of power existed and how did the stakeholders use their power?
8. What role did science play in this conflict?
9. With whom did your own sympathies lie at the outset? Have you changed your view of these issues in any way as a result of the simulation?
10. How could the conflict have been avoided in the first place?
11. Do you think the agreements you reached were realistic? What are the odds that the agreements you reached would be acted on?

On Managing Policy Implementation and Enforcement

1. Were you the NOAA representative, how would you have handled the situation?
 - a. To whom would you be accountable?
 - b. Given the federal policies in place, what discretion would you have to resolve this implementation issue on the ground?
 - c. What management skills should you have to manage this kind of situation?
2. What might the NEMC do differently?
 - a. To whom would you be accountable, as the administrator and as the students?
 - b. Using this as a teachable moment, how would you prepare your students in the future for Whale Watch work?
3. What challenges did the islanders face?
 - a. Were there any other options for the town elders for managing this situation?
 - b. If they had not taken action to convene the meeting, what would have happened?

- c. How might fishermen view the NOAA science on whale mortalities?
 - d. How might the islanders resolve their own differences in the future?
4. How can environmental advocates work with local communities better?
- a. How can environmental advocates reconcile their individual commitments to save species with the realities of shared interdependencies?
 - b. What opportunities for common cause exist between environmental advocates and fisherman?

The third set of questions provides a good segue for extending this simulation into additional tasks and meetings around developing structures and strategies for ongoing collaborative engagement on this and related issues that are likely to arise in the future between these parties.

Collaborative Management Meetings

The initial meetings may or may not lead to solutions specific to the disposition of the whalebones. What undoubtedly will arise (as suggested by the Issues List) will be a number of related issues that may warrant ongoing discussion and future cooperation. A second meeting or set of meetings can evolve then to consider the potential direction and shape of a standing working group or collaborative team. Two sessions are suggested. The first facilitated by the instructor; the second facilitated by a student team.

Session 1 (instructor led): This would start with a discussion with the full class about the preconditions for collaboration. Students can prepare by completing Worksheet 2 on identifying drivers for collaboration. The class can conclude whether the context and the participants' incentives warrant an investment in further collaboration. If not, they can consider what might need to change and then revise the participant roles or situation sufficiently to take the next step in designing a collaborative effort. Finally, conduct brainstorming about what topics should be covered in a subsequent design discussion with the participants (in role) around structuring an ongoing collaboration. Topics might include some of the following, some of which could be covered in a number of meetings:

- Can they agree on a shared goal? --purpose and scope of collaboration-
- Who should be involved? – representation and selection of participants
- Why should they participate? – incentives, shared motivation
- How should they structure participation? – ground rules, decision rules, and creating norms for principled engagement, including meeting procedures (when, where, how often, how open or public, etc), meeting management, and coordination between meetings
- What skills and resources would be needed – capacity for joint action
- What kinds of leadership needs will the group have? – multiple leadership roles and skills, shared leadership options

- Can they agree on how to accomplish their goals and objectives? – a share theory of change
- What challenges lie ahead and how might they overcome them?

Session 2+ (student facilitators led): Based on the topics developed in previous session, student facilitators can further develop an agenda and manage one or more meetings with the other students in their original roles. Facilitation teams could be rotated through the meetings to provide facilitation skill-building experiences for more students. The purpose of this meeting would be to facilitate the collaborative design of the collaboration.

Debriefing after each meeting is encouraged. Reading assignments from the references provided could be used to generate student questions, class discussion, and simulation evaluation.

Guidance for the Student Facilitators

Background

You and your colleague work of the Island Institute, a non-profit organization, and focus on economic development and preserving working waterfronts for Maine coastal islands. You have also been trained to facilitate community meetings and have some experience, particularly in southern and mid-coast Maine in mediating some difficult issues around siting of windmills for local power generation and developing aquaculture businesses to diversify lobster-dependent fishing communities.

You have been asked by your boss at the Island Institute to facilitate a community meeting in Deephaven over the collection of Right Whalebones. The Maine Community Foundation will be paying for your time through an existing grant to the Island Institute and your role is to serve in an impartial capacity to assist all the stakeholders in identifying the issues of concern and potential ways forward to de-escalate the conflict and guide them toward some agreed upon goals and action steps.

You are familiar with the situation through background information on the case and the individual descriptions of each stakeholder. You can presume that you have talked with each stakeholder ahead of time through phone call or in person interviews. You should take care to not reveal any confidential information, but you may take it into account as you encourage parties to engage in the negotiations.

You have no direct substantive stake in the outcomes. However, professionally, you would like to see the community come together and reach some agreement on steps moving forward.

Preparation

Work with the class instructor to prepare the agenda for the available time for this simulation. The minimum recommended time would be 3 hours of play plus debriefing. The simulation could run for a full day, over two class periods, or over a number of weeks which would allow for a deeper dive into this issue.

There should be easels and paper to write on. You might want to come to the classroom a bit early to make sure that they are set up as you would like. Throughout the session, think about what information (such as an agenda or ground rules) should be posted. You should also use the easels to capture stakeholders' interests and the course of the negotiations.

Normally you should work in pairs, with one of you facilitating while the other records. You can switch off on these roles during the meeting. Talk together about how you will communicate with each other during the meeting.

It will be helpful if you have some basic background in interest-based negotiation and mediation to inform your meeting facilitation. Talk with your instructor about this. You are not there to be a subject-area expert, but understanding the basics related to the issues at hand is very helpful. Refer to the Issues sheet for more information on likely issues you may encounter.

Here are two sample agendas you can build from for the initial meeting:

One 3 Hour Class Session Sample Agenda

- 9:00 Facilitator Introductions, Orientation to Situation, Explain Purpose of Meeting and Agenda, and Develop Ground Rules
- 9:15 Stakeholder introductions: who they are, what is important to them, their chief concerns about the situation [facilitator or co-facilitator takes notes on easel paper]
- 10:15 Short informal break [stay in role; have side bar conversations]
- 10:30 Stakeholder questions: opportunity for stakeholders to ask each other questions, clarify information and perceptions, learn more about each other
- 11:00 Exploration of any common ground and brainstorm ideas to resolve some issues and get a sense from the group of agreement on one or two next steps for short term and long term action
- 12:00 Adjourn

Two 2 Hour Class Sessions Sample Agenda

First Class

- 9:00 Facilitator introductions, orientation to situation, explain purpose of meeting and agenda, and develop ground rules
- 9:15 Stakeholder introductions: who they are, what is important to them, their chief concerns about the situation
- 10:15 Short informal break [stay in role; have side bar conversations]
- 10:30 Stakeholder questions: opportunity for stakeholders to ask each other questions, clarify information and perceptions, learn more about each other. Ask stakeholders to seek missing information before next session
- 11:00 Adjourn

Second Class

- 9:00 Welcome, share agenda, remind everyone about ground rules
- 9:10 Explore common ground [are there any areas the group can agree on?] and options to resolve some issues taking any new information or research into account
- 9:45 Consider questions and refinement of some of the options
- 10:15 Focus on one or two next steps for short term and long term action; seek commitment from stakeholders individually or collectively to take specific actions
- 11:00 Adjourn

We recommend that facilitators write out an annotated agenda that includes your self-introductions, who is leading which part and who is writing notes on easel paper, who is keeping track of time, specific language to share, and other detailed notes.

Introductions and Agenda

Start the meeting by introducing yourself and who you work for, establishing your impartiality and your experience. Then review the purpose of the meeting and the working agenda you have come up with based on your discussions with each of the stakeholders. Ask everyone to go around and introduce themselves and briefly explain why they are here in the meeting.

The purpose of the meeting should be written on the easel sheet above the agenda:

- Provide an opportunity to express everyone's interests
- Clarify the issues of concern for everyone
- Identify areas of agreement and disagreement
- Explore options for moving forward and possible next steps

Setting Ground Rules and Decision Rules

You can provide a few ground rules and ask the group to add to them, or have the group generate the ground rules by scratch. Ground rules should cover how stakeholders interact. Decision rules will be important as well, but this group needs to explore issues first and spending a lot of time on decision rules may not be appropriate. At the outset, you can suggest that you hope the group may arrive at some possible actions moving forward and that you will facilitate them reaching some consensus. If decision rules are needed you can recommend how to determine that at a later point. At various junctures in the discussion, you might ask for a confirmation about some procedural point, like moving on to the next topic or checking for preliminary agreement on an issue or action. At these times, you might ask people for a

“thumbs up, or down or sideways” to get an indication of the level of agreement in the room and how to move forward.

Sequence of Discussion

The agendas suggest a general sequence for the discussion that parallels interest-based negotiation steps as outlined in Getting to Yes (Fisher and Ury).

- Stakeholder introductions: who they are, what is important to them, their chief concerns about the situation
- Stakeholder questions: opportunity for stakeholders to ask each other questions, clarify information and perceptions, learn more about each other. Ask stakeholders to seek missing information before next session
- Elicit parties values and then sticking points or conflicts bringing you to the table.
- Explore common ground [are there any areas the group can agree on?] and options to resolve some issues taking any new information or research into account.
- Consider questions and refinement of some of the options.
- Focus on one or two next steps for short term and long-term action; seek commitment from stakeholders individually or collectively to take specific actions.
- It may be helpful to sort options being discussed into topics and short and long-term actions.

Helpful Facilitation Tips

Process Management (Carpenter and Kennedy)

- Establish agenda
- Focus on the agenda
- Clarifying statements
- Summarizing statements
- Explore ideas
- Encourage all to participate
- Maintain positive tone
- Enforce ground rules
- Describe what is happening
- Offer process suggestions
- Supervise record keeping
- Test for agreement

It's not about you

- Remember it is their problem, not yours

- Be impartial to the outcome, yet assure it is of highest quality possible
- Enable and empower the parties to solve their problem
- Model the behavior you want from them
- Be fair, balanced, transparent, compassionate
- Listen, listen, listen
- If you have a substantive suggestion, wait.... then pose as question and get them to critique it
- Breathe!

Rules for Brainstorming (Kaner)

Dos

- Lots of mirroring to keep pace brisk and lively
- Remind people to suspend judgment. No critiquing allowed.
- Treat silly ideas the same as serious ideas. • Move around to hold people's attention and boost group's energy. • Encourage full participation
- Repeat purpose often.
- Give a warning when end approaches
- Expect second wind of creative ideas after obvious ones are exhausted.

Donts

- Interrupt.
- Say, "We've already got that one."
- Say, "Oooh, good one." • Say, "Hey, you don't really want me to write that down, do you?"
- Favor the best thinkers.
- Use frowns, raised eyebrows, etc. to signal disapproval.
- Give up the 1st time the group seems stuck.
- Be leader, facilitator, and chart writer.
- Start process without setting time limit.
- Rush or pressure group. Silence means people are thinking.

Options for Structuring Discussion (Stulberg)

- Easy issues first ("Low hanging fruit")
- By issue categories
- By time/urgency (first things first)
- By parties' choice

****Note:** Be intentional about structuring discussion

Developing a Collaborative Strategy and Structure

The initial meetings may or may not lead to solutions specific to the disposition of the whalebones. What undoubtedly will arise (as suggested by the Issues List) will be a number of related issues that may warrant ongoing discussion and future cooperation. A second meeting or set of meetings can evolve then to consider the potential direction and shape of a standing working group or collaborative team.

We have recommended that the instructor lead a full class discussion on the preconditions for collaboration, after which student facilitation teams can plan additional design meetings with the participants (in role) to develop collaborative structures and strategies. Two sessions are suggested. The first facilitated by the instructor; the second facilitated by a student team.

Session 1 (instructor led): This would start with a discussion with the full class about the preconditions for collaboration. Students can prepare by completing Worksheet 2 on identifying drivers for collaboration. The class can conclude whether the context and the participants' incentives warrant an investment in further collaboration. If not, they can consider what might need to change and then revise the participant roles or situation sufficiently to take the next step in designing a collaborative effort. Finally, conduct brainstorming about what topics should be covered in a subsequent design discussion with the participants (in role) around structuring an ongoing collaboration. Topics might include some of the following, some of which could be covered in a number of meetings:

- Can they agree on a shared goal? --purpose and scope of collaboration-
- Who should be involved? – representation and selection of participants
- Why should they participate? – incentives, shared motivation
- How should they structure participation? – ground rules, decision rules, and creating norms for principled engagement, including meeting procedures (when, where, how often, how open or public, etc), meeting management, and coordination between meetings
- What skills and resources would be needed? – capacity for joint action
- What kinds of leadership needs will the group have? – multiple leadership roles and skills, shared leadership options
- Can they agree on how to accomplish their goals and objectives? – a share theory of change
- What challenges lie ahead and how might they overcome them?

Session 2+ (student facilitators led): Based on the topics developed in previous session, student facilitators can further develop an agenda and manage one or more meetings with the other students in their original roles. The purpose of this and subsequent meetings would be to facilitate the collaborative design of the collaboration.

Issues List for Instructors and Facilitators

This situation raises several issues and tensions that may come to the fore in this simulation. As players in the simulation, consider where your stakeholder would position herself vis a vis these issues; how far she is willing to go to defend her stance; with whom she agrees or disagrees; and how willing she is to move forward.

As the facilitator of the simulation, consider how to frame the discussion around these issues: which issues could be dealt with in what order; what information may be needed to clarify the conflict; what opportunities there might be to resolve issues independently or as a package of tradeoffs. You might share some of these issues with the group at the outset as the result of an earlier set of interviews you conducted or let the issues emerge during the discussion.

As class instructor, consider how to debrief the simulation and lead class discussions out-of-role on these topics.

1. Endangered nature of whales themselves

- a. The North Atlantic Right Whale is a severely endangered species: less than 400 are still in existence. There is an inherent benefit in preserving the species and they play a critical role in the regional ocean ecosystem. Thus, it is important to identify and study the whalebones that wash ashore to better understand how they died and how to protect the species.
- b. Local residents may neither understand the endangered nature of the whale, nor the importance and benefit in protecting and reporting whale carcasses.

2. Endangered Species Act / Marine Mammals Protection Act

- a. Residents of the town, including Eugene and Zeke at Scrimshaw Cup, unknowingly violated federal laws in the ESA and MMPA by collecting whalebones.
- b. Violations of these Acts carry with them potential fines and prison terms, however, such punishments are up to the discretion of NOAA to a degree.
- c. It is important to note that prohibition of collecting endangered species parts is essential to limiting the black market trade.

3. The value of research and potential effects on the lobstering industry

- a. Further research based on study of new beachings and carcasses may confirm the role of new lobster fishing gear in Right Whale mortalities.
- b. Some lobstermen may not trust government science or accept that their livelihoods are really affecting Right Whale deaths. They worry too about the potential economic consequences if the effects of their trade on the species are confirmed.

4. Local trespass and theft law

- a. College students may have violated local trespass laws to go on Eugene's land to retrieve, or arguably steal, the whalebones.
- b. Students may have understood Eugene to give implicit or explicit permission to go on to his property and remove the bones.

5. APA/ NOAA Administrative Policies

- a. The Administrative Procedure Act, and the subsequent NOAA internal regulations, require the agency to follow certain due process procedures for notices of violations, seizure of property, acquisition of civil penalties, and for appeals to agency actions.
- b. It is unclear what steps the College is authorized to take to enforce NOAA regulations. If the College is authorized to enforce NOAA regulations, it still may have some flexibility in the way it enforces the law.

6. Whalebones as integral part of town identity vs. scientific need to study and collect bones

- a. Town residents have been collecting whalebones for over 100 years, and the bones have become a symbolic and visible representation of the town's history and lore, and identity.
- b. The college, its students, and NOAA have a need and mandate to protect whalebones and use them for scientific research to promote preservation of the species.

7. Promote cooperation of reporting requirements among islanders

- a. The College, NOAA, and FWS have an interest in gathering scientific data and thus encouraging local residents to report whale carcass findings, though enforcing mandatory reporting laws may disincentivize reporting.
- b. The groups also have an interest, and possibly a mandate, to enforce local and federal regulations.

8. NOAA and FWS mandate restrictions vs. ability and need to work with local communities

- a. Neither the ESA nor the MMPA allow for permitted taking of whalebones no longer necessary for scientific purposes, but can either agency create a category of exception allowing local residents to keep bones that have been studied?
- b. Both the ESA and the MMPA allow federal agencies discretion in enforcing the laws unless individual violators had previously been issued permits under these laws. The agencies "may" enforce these laws against violators who do not possess permits.

9. Field research protocols of NOAA contracted college students

- a. The College and its students have certain rights over Atlantic Right Whale carcasses.
- b. It is in the interest of the College and its students to enforce those rights in a manner that fosters community relationships with local residents.

**Whale Bone Simulation WORKSHEET 1:
ROLE PLAY PREPARATION**

After reviewing all materials and background information for this case and your confidential role information, please prepare answers to the following questions prior to the meeting.

STAKEHOLDER POSITIONS & INTERESTS

	Position <i>(Desired best outcome or solution)</i>	Interests <i>(Underlying baseline needs)</i> ☐ Order by importance
YOU		
Other Party <i>(insert name)</i>		
Other Party		

Other Party		
Other Party		
Other Party		
Other Party		
Other Party		

Other Party		
Other Party		
Other Party		

**Whale Bone Simulation WORKSHEET 2:
Identifying Drivers for Collaboration**

Consider the situation after the initial meetings to resolve the conflicts raised by the whalebones controversy. What drivers exist that might incentivize and enable ongoing collaboration among the parties?

Drivers for Collaboration	Level and Sources of Drivers	Parties for Whom Drivers are Most Salient
Uncertainty - Doubt, ambiguity, limited information; instability re. current and existing conditions, events, available resources, decisions by other actors		
Interdependence - Mutual reliance for accomplishing goals		
Consequential Incentives - Recognized issues, resource needs, interests, or opportunities that must be addressed to mitigate salient risk or advance desired outcomes		
Initiating Leadership - Person or core group that stimulates interest in or instigates collaborative endeavor		

Based on Emerson and Nabatchi, *Collaborative Governance Regimes* 2015.

Resources

A note on the resources below: These resources are just the tip of the iceberg. The status of the Right Whale (population, health, protection status, ship strikes, etc.) is constantly changing. There is ongoing dialogue between scientists, state and federal governments, and other groups to respond to new events and information and to forge collaborative solutions to this issue. Before running this simulation students, facilitators, and instructors should research the latest status of this issue

Whales and other large animals act as sentinels to the overall health of ecosystems. Humanity is currently realizing to a greater degree that the health of the natural ecosystems around us represents our own health and future prospects as a species. The protection of the North Atlantic Right Whale is a mirror to this intensification of international alarm stemming from climate change and biodiversity loss (See section 3.).

1. Right Whale Information

<https://www.fisheries.noaa.gov/species/north-atlantic-right-whale>

http://wwf.panda.org/knowledge_hub/endangered_species/cetaceans/about/right_whales/north_atlantic_right_whale/

https://www.researchgate.net/publication/46414421_The_Impact_of_Whaling_on_the_Ocean_Carbon_Cycle_Why_Bigger_Was_Better

2. News Articles and Press Releases on Atlantic Right Whale

<https://www.fisheries.noaa.gov/feature-story/team-reaches-nearly-unanimous-consensus-rightwhale-survival-measures>

North Atlantic Right Whale Population Condition:

https://www.eurekalert.org/pub_releases/2020-04/au-tna042720.php

Right Whale Slow Zones: <https://www.fisheries.noaa.gov/national/endangered-species-conservation/reducing-vessel-strikes-north-atlantic-right-whales>

AI Tech for Whale Detection: <https://www.forbes.com/sites/priyashukla/2020/09/19/this-new-ai-technology-could-prevent-ships-from-colliding-with-whales/#270a89963ebb>

Canadian Whale Protection Measures: <https://www.canada.ca/en/transport-canada/news/2020/02/government-of-canada-unveils-its-2020-north-atlantic-right-whales-protection-measures.html>

NOAA Rejects Maine Protection Plan:

<https://www.newscentermaine.com/article/news/local/as-seen-on-tv/maines-top-marine->

official-responds-to-noaa-right-whale-protection-plan-rejection/97-332536e3-008f-41d7-a96d-d693ffd4877f

Ruling Regarding Lobster Gear: <https://www.bostonglobe.com/2020/05/01/metro/another-significant-ruling-right-whales-federal-judge-rules-that-massachusetts-is-violating-endangered-species-act/>

Maine Lobsterman Legal Defense Fund: <https://mlcalliance.org/2020/06/04/lobstermen-step-up-to-help-mla-legal-defense-fund/>

Maine Lobster Industry Loses Sustainability Certification: <https://bangordailynews.com/2020/08/04/news/maine-lobster-industry-to-lose-sustainability-certification-over-its-effect-on-right-whales/>

Whale Entangled: <https://globalnews.ca/news/6613110/north-atlantic-right-whale-entangled-nantucket/>

Lobster Population: <https://www.pressherald.com/2018/01/22/lobster-boom-over-as-population-starts-to-decline/>

3. Climate Change and Biodiversity Loss

WWF Biodiversity Report: <https://livingplanet.panda.org/en-us/>

UN Global Biodiversity Outlook: <https://www.cbd.int/gbo/gbo5/publication/gbo-5-en.pdf>

<https://phys.org/news/2019-10-whale-food-krill-carbon-dioxide.html>

Changing Climate Means Changing Fisheries: <https://bangordailynews.com/2018/05/12/business/fisheries/scientists-say-maines-lobster-boom-wont-last-here-are-the-fisheries-coming-next/>

Warming Ocean Linked to Right Whale Population Decline: <https://www.theguardian.com/environment/2019/may/27/right-whale-population-decline-tied-to-ocean-warming-research-says>

4. Pertinent Laws and Regulations

Administrative Procedures Act: <https://www.law.cornell.edu/uscode/text/5/part-I/chapter-5>

Marine Mammals Protection Act: <https://www.fisheries.noaa.gov/topic/laws-policies#marinemammal-protection-act>

MMPA “Taking” Definition: <https://www.fisheries.noaa.gov/insight/glossary-marine-mammal-protection-act-definitions#what-does-take-mean-under-the-marine-mammal-protection-act-and-what-is-incident-take?>

NOAA Administrative Regulations: <https://www.law.cornell.edu/cfr/text/15/chapter-IX>

NOAA Research Agreement:

https://www.corporateservices.noaa.gov/ames/administrative_orders/chapter_201/NAO_201_103_Appendix_A_Revised_June_18_20_2013-Final.pdf

NOAA Grant Program: <https://www.fisheries.noaa.gov/grant/john-h-prescott-marine-mammalrescue-assistance-grant-program>

NOAA in Maine: <https://www.legislative.noaa.gov/NIYS/NIYSME.pdf>

5. Negotiation, Environmental Conflict Resolution, and Facilitation/Mediation

Carpenter, S.L. and Kennedy, W.J., 1988. *Managing public disputes: A practical guide to handling conflict and reaching agreements* Jossey-Bass.

Daniels, S.E. and Walker, G.B., 2001. *Working through environmental conflict: The collaborative learning approach*. Praeger.

Fisher, R., Ury, W.L. and Patton, B., 2011. *Getting to yes: Negotiating agreement without giving in*. Penguin.

Kaner, S., 2014. *Facilitator's guide to participatory decision-making*. John Wiley & Sons.

O'Leary, R. and Bingham, L.B., 2007. *A manager's guide to resolving conflicts in collaborative networks*. IBM Center for the Business of Government.

Raines, S.S., 2019. *Conflict management for managers: Resolving workplace, client, and policy disputes*. Rowman & Littlefield.

Schwarz, R.M., 2002. *The skilled facilitator: A comprehensive resource for consultants, facilitators, managers, trainers, and coaches*. John Wiley & Sons.

6. Collaborative Management, Cross-sector Collaboration, and Collaborative Governance

Ansell, C., and Gash, A., 2008. "Collaborative governance in theory and practice." *Journal of public administration research and theory*, 18(4), 543-571.

Bryson, J. M., Crosby, B.C. and M. M. Stone, M.M., 2015. "Designing and implementing cross-sector collaborations: Needed and challenging." *Public administration review* 75(5), 647-663.

Carlson, C. 2007. *A practical guide to collaborative governance*. Policy Consensus Initiative.

Emerson, K., Nabatchi, T., & Balogh, S., 2012. "An integrative framework for collaborative governance." *Journal of public administration research and theory*, 22(1), 1-29.

Emerson, K. and Nabatchi, T. 2015. *Collaborative governance regimes*. Georgetown University Press.

Linden, R.M., 2010. *Leading across boundaries: Creating collaborative agencies in a networked world*. Jossey-Bass: 95-121.

O'Leary, R., & Bingham, L. B. (Eds.), 2009. *The collaborative public manager: New ideas for the twenty-first century*. Georgetown University Press.

Wondolleck, J.M. and Yaffee, S.L., 2000. *Making collaboration work: Lessons from innovation in natural resource management*. Island Press.