

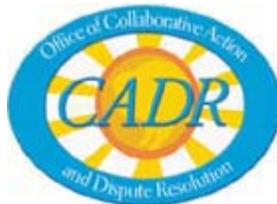
# PRELIMINARY REPORT ON ECR PERFORMANCE: A MULTI-AGENCY EVALUATION INITIATIVE

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*Co-Sponsored by the William and Flora Hewlett Foundation and the  
U.S. Institute for Environmental Conflict Resolution*



**Oregon Dispute  
Resolution  
Commission**



**Federal Energy  
Regulatory  
Commission**

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## Executive Summary

As the demand for Environmental Conflict Resolution (ECR) services expands, the need for improved accountability and reliable performance information grows. In response to this need, the U.S. Institute for Environmental Conflict Resolution (U.S. Institute), with financial support from the William and Flora Hewlett Foundation, has initiated a multi-agency ECR case evaluation study.

The findings summarized in this report are drawn from a preliminary dataset of recently completed ECR cases provided by six government agencies.<sup>1</sup> The dataset includes responses from 191 participants in 24 cases ranging from collaborative efforts to develop or revise natural resource plans, site and construct facilities, negotiate government rules, to assisted negotiations in the context of administrative appeals or litigation. The number of participants in each case ranged from two to over 40. All cases proceeded with the assistance of third-party mediators or facilitators after some level of agency screening or assessment. The preliminary results shed light on how participants in ECR processes (resource users, community members, agency staff, environmental advocates, tribal members, etc.) value those processes and associated outcomes. Given the variability across these cases, the next phase of this study will be to expand the number of cases and agencies in this on-going evaluation study. The initial findings from this dataset reveal positive respondent assessments of ECR performance:

- Based on participant responses, full or partial agreement was reached in 87% of the cases. In the majority of cases, respondents reported that the agreements reached can be implemented (91%) and that responsibilities and roles for implementation had been defined (89%)<sup>2</sup>. In over three-quarters of cases, the respondents indicated that the agreements had sufficient flexibility to sustain the challenges of changing conditions (79%). Respondents in 60% of the cases reported that they had built strong enough relationships to ensure the agreements would last. This suggests that ECR helps participants reach agreements that are implementable.

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<sup>1</sup> The dataset draws on cases from the following agencies: Conflict Prevention and Resolution Center, U.S. Environmental Protection Agency, Federal Energy Regulatory Commission, Florida Conflict Resolution Consortium, Oregon Dispute Resolution Commission, Office of Collaborative Action and Dispute Resolution, U.S. Department of Interior, and the U.S. Institute for Environmental Conflict Resolution.

<sup>2</sup> This report expresses results on a case level and on a participant level. *Tables* in this report include percent of scores that were low (0.00 to 5.00), medium (5.01 to 7.50), and high (7.51 to 10.00) on a "0" to "10" scale. In the *text* we focus on the overall level of achievement: the percentage of scores above the *midpoint* in the scale (5.00). For example, if 80% of cases are reported to have achieved some attribute, this means that in 80% of the cases the average respondent score for that attribute was above 5.00.

- In over three-quarters of the cases, the respondents reported that overall they were satisfied with the process (79%). In 96% of cases, the respondents were very satisfied with the assistance of the third-party mediators or facilitators (the average overall satisfaction score on a case level was 8.32 out of 10.00). This positive assessment of neutrals is of particular interest to the U.S. Institute and other participating agencies, given their investment in developing panels of qualified neutrals, such as the National Roster of Environmental Dispute Resolution and Consensus Building Professionals.
- In the majority of cases, respondents reported that the process helped them understand their core disagreements with other participants (90%) and that they had identified the key differences that needed to be addressed if the controversies were to be resolved (91%). Similarly, in almost all cases, the respondents reported that with the assistance of mediators or facilitators, their concerns were heard (95%) and addressed (96%). This suggests that ECR helps participants narrow the number of issues in dispute and that professional facilitators are viewed as a critical factor in ECR success.
- Respondents were asked a number of questions to measure their improved capacity to manage and resolve conflicts. In over half of the cases evaluated, the respondents reported that: (a) they can now meet with all of the other participants to discuss issues of concern (60%), (b) it is now easier to discuss controversial issues with other participants (61%), and (c) they can now work more productively with other participants with whom they have disagreements (64%).
- Overall, the respondents provided a positive assessment of the value of ECR. In over 75% of cases, the respondents reported:
  - (a) their "first choice" would be to use this type of process again for similar situations (83%),
  - (b) they would "without hesitation" recommend this type of process to others in a similar situation (79%), and
  - (c) they "could not have progressed as far" using any other process (75%).

This suggests that participants view ECR processes as effective in helping resolve environmental disputes and that participants endorse ECR.

## **Introduction**

In 1999, the U.S. Institute for Environmental Conflict Resolution (U.S. Institute) in cooperation with the Policy Consensus Initiative (PCI)<sup>3</sup> and two state alternative dispute resolution (ADR) programs, began the task of designing compatible program evaluation systems. The state programs were the Massachusetts Office of Dispute Resolution (MODR) and Oregon Dispute Resolution Commission (ODRC). Over the next year-and-a-half, the three programs, their consultants, and PCI met three times and participated periodically in conference calls reporting their progress, discussing issues, exchanging instruments and critiquing evaluation frameworks.

As the U.S. Institute, MODR and ODRC began implementing their evaluation systems, PCI with support from the Hewlett Foundation, proceeded to bring additional states into the collaborative effort, including the Florida Conflict Resolution Consortium (FCRC), the Maryland Mediation and Conflict Resolution Office and the Ohio Commission on Dispute Resolution and Conflict Management. Simultaneously, the U.S. Institute launched an evaluation outreach effort to engage other federal agencies. These combined efforts included developing compatible evaluation instruments, protocols and data collection methods.

With additional support from the Hewlett foundation in Fall 2003, the U.S. Institute contacted its federal and state evaluation partners and coordinated the identification and integration of a multi-agency dataset of 37 recently evaluated Environmental Conflict Resolution (ECR) cases. Six agencies were able to contribute cases: the Conflict Prevention and Resolution Center (CPRC), U.S. Environmental Protection Agency (EPA); Federal Energy Regulatory Commission (FERC); Florida Conflict Resolution Consortium (FCRC); Office of Collaborative Action and Dispute Resolution (CADR), U.S. Department of the Interior (DOI); Oregon Dispute Resolution Commission (ODRC) and the U.S. Institute.

The number of data contributors was limited by the need to have consistent ECR evaluation data for all cases across contributing sources. Given that the evaluation systems for the U.S. Institute, FCRC and ODRC had benefited from the PCI collaborative and had received guidance from the same evaluation consultant, Dr. Andy Rowe of GHK International, evaluation instruments

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<sup>3</sup> PCI is a national, nonpartisan organization that works with state leaders – governors, legislators, attorney general, and state courts – to promote the use of consensus-building and conflict resolution practices to address difficult policy issues and achieve more effective governance.

common to these systems became the basis for this study. The CPRC, FERC and CADR cases were evaluated through the U.S. Institute's evaluation program. In 2003, the U.S. Institute contracted with an external study team, Bernard Mayer (CDR Associates), Julie MacFarlane (University of Windsor), and Thomas Miller (National Research Center, Inc.), for assistance in conducting the analysis for this phase of the study.

In January 2004, the U.S. Institute invited a group of 50 ECR practitioners, program administrators, evaluators, researchers, trainers and funders to a two-day workshop in Tucson to review the study approach and preliminary findings. The group reviewed and reflected on the initial work and recommended revisions and refinements of the underlying conceptual model, the evaluation instruments, the analytic methods and the reporting methods. An important function of this workshop was to build agreement among the leaders in the ECR field on performance and how to measure it. Valuable input from the workshop participants is now being integrated into the next phase of the study that will extend to a larger number of data contributors, cases and respondents. Nonetheless, the performance findings from this initial dataset were considered valuable in their own right by the workshop participants and are presented in this report for broader distribution.

### **The Dataset: Strengths and Limitations**

This initial study is based on a dataset of 37 recently completed ECR cases evaluated by compatible instruments and consistent data collection methods.<sup>4</sup> In 24 of the 37 cases studied, the survey response rate was over 50%, a rate deemed sufficient for the aggregate analysis reported here. The majority of these cases are from state and federal agencies with young but established evaluation programs. These agencies provided all of their recently completed and evaluated ECR cases available at the time of the study (representing 79% of cases in this dataset). A small number of cases (21%) are from agencies still in the process of implementing or considering implementing comprehensive evaluation programs. These cases are not representative of all cases handled by these agencies. They represent cases for which program managers at the

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<sup>4</sup> While the evaluation instruments from the participating agencies are very similar, not all questions for which results are presented were asked of the respondents in each case.

respective agencies were willing to provide the necessary case information and permission to conduct the evaluations.<sup>5</sup>

The cases in this dataset range from relatively brief two-party processes to complex multi-party cases that engaged over 40 participants (Table 1). All of the study cases received initial screening or feasibility assessment to determine the appropriateness of using ECR by the agency staff. All of the cases received the assistance of third-party mediators or facilitators. The cases address one or more of the following environmental issues: (a) air quality, (b) land use and facility siting, (c) energy, (d) natural resource management and use of public lands, (e) toxins, cleanup and hazardous materials, (f) transportation and urban infrastructure development, and (g) water resources, quality and supply. There were 191 responses to the survey questionnaires mailed out after the cases were completed, with a response rate of 63%.

It is important to underscore the limitations of the dataset upon which this evaluation report is based. There is a nontrivial amount of missing data from the participants in these cases, and therefore it is unclear if the existing data reflect an unmeasured bias. For example, perhaps those who completed the questionnaires in general had a more or less favorable view of the process than those who did not. Furthermore, because some of the agencies contributing data did not ask all of the same questions of the participants, data are missing as well. The missing data are a chief concern with respect to conclusions that can be drawn from this report. Additionally, due to the small number of cases, it is difficult to generalize from the results of this report to ECR cases in general. As the statistical tables reflect, there is *wide* variability at the participant and case level on the majority of the reported variables. When data show great variability and, in general, the distribution of responses to questions is not Gaussian normal (i.e. a bell shaped curve), traditional measures of central tendency such as the mean can be misleading. We have tried to alert the reader to the degree of variability, by reporting the standard deviation for each variable. As noted previously, however, more intensive analyses currently underway are aimed at “unpacking” the variability in order to enhance the understanding and interpretation of the data.

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<sup>5</sup> This latter subset of cases includes both successful and less successful cases based on the range of outcomes measured in this study.

**Table 1. Case and respondent characterization**

Case (N=24) Respondents (N=191)			
Variable	N (%)	Mean (sd)	Range
Number of participants per case	-	12.6 (10.4)	2 - 43
Number of neutrals per case	-	-	1 - 3
One	13 (54%)	-	-
Two	7 (29%)	-	-
Three	4 (17%)	-	-
Number of sessions held by neutral	-	15.4 (16.1)	1 - 56
Hours neutral(s) spent on the project (billed and unbilled)	-	283 (304)	10 - 1,256
Cases in which neutral(s) believe key organizations/ interests were missing	4 (17%)	-	-
Type of process			
Facilitation	8 (33%)	-	-
Mediation	9 (38%)	-	-
Other (e.g., process design, convening, more than one service provided, etc.)	7 (29%)	-	-
Respondents with Governmental affiliation	56 (29%)	-	-
Difficulty of developing & implementing effective collaborative process (0 = “easy” to 10 =“impossible”)	-	7.3 (1.7)	3 - 10

## **Analytic Methods**

For the purpose of this preliminary overview on ECR performance, descriptive statistics (including the mean, standard deviation and percent frequencies) were used to summarize participant responses to evaluation statements. The respondents' ratings of the evaluation statements are grouped into themes representing agreement outcomes, process outcomes and best practice factors. Respondent ratings of the evaluation questions were averaged within each case to generate case-level outcomes. Participant responses were also averaged across the entire dataset to generate participant-level outcomes.

As labeled on the questionnaires, all ratings are based on a 0 to 10 scale where a "0" indicated "totally disagree" and a "10" indicated "totally agree". Although not specifically labeled for the respondents on the questionnaires, a rating of "5" is interpreted to mean "possibly agree/possibly disagree." For reporting purposes, it was desirable to collapse the rating scale into three categories: low (0.00 - 5.00), medium (5.01 - 7.50), and high (7.51 - 10.00). *Tables* in this report include percent of scores that were low, medium and high on the 0 to 10 scale. In the *text*, we focus on the case level of achievement: the percentage of cases where the average respondent score was above the *midpoint* in the scale (5.00). For example, if 80% of cases are reported to have achieved some attribute, this means that in 80% of the cases the average respondent score for that attribute was above 5.00.

## **Evaluating ECR Performance**

### ***Agreement Outcomes***

On a **case** level (n=24), the results indicate that in 87% of all cases, full or partial agreement<sup>6</sup> was reached (Table 2). Full agreement was reached for all cases for which respondents unanimously reported agreement was reached. In partial agreements, respondents had differing views on the extent of the agreements reached.<sup>7</sup>

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<sup>6</sup> "An agreement" is defined to include agreed upon plans, proposals and recommendations, as well as formal dispute settlements.

<sup>7</sup> Feedback from the project managers and the mediators or facilitators was used to confirm the process outcome for cases in which partial agreement was reported.

**Table 2. Status of the agreement-seeking processes reported at a case level.**

Agreement Status	n	Percent Frequency (%)	
Respondents unanimously reported agreement was reached.	9	37%	Full or Partial Agreement 87%
Respondents reported agreement on some issues, yet one or more respondents indicated they would continue to work on differences.	5	21%	
Respondents reported agreement on some issues, yet one or more respondents felt they had given up without much progress.	5	21%	
Respondents reported agreement on some issues, yet one or more respondents reported they were going to court.	2	8%	
Respondents reported that little progress was made and/or they had failed to reach satisfactory agreement and were going to court.	3	13%	No Agreement 13%
Total Percent	24	100%	100%

On a **respondent** level (n=170 across all cases), 84% of respondents reported they had either reached agreement (65%) or they would continue to work on differences (19%). A total of seven respondents (4%) reported they had failed to reach satisfactory agreement and were going to court (Table 3).

**Table 3. Status of the agreement-seeking processes reported at a respondent level.**

Agreement Status	n	Percent Frequency (%)	
Everyone signed agreement, implemented as agreed.	17	10%	Agreement Reached 65%
Everyone signed agreement, implemented with agreed changes.	5	3%	
Everyone signed agreement, in process of implementing.	31	18%	
Everyone signed agreement, not yet started to implement.	29	17%	
Reached agreement, final decision makers have yet to sign.	28	17%	
Finished for now, continue to work on differences.	32	19%	Continuing 19%
Given up without much progress.	21	12%	No progress 16%
Failed to reach a satisfactory agreement, going to court.	7	4%	
Total Percent	170	100%	100%

In addition to identifying the status of the agreement seeking processes (i.e. concerning whether agreement was reached or not), the respondents were asked to rate a series of questions on the implementation and durability of the agreements reached (Table 4).

In 91% of cases, the respondents reported that the agreements *can* be implemented. In 72% of cases, the respondents reported that they *expected* the agreements to be *fully* implemented. In most cases (89%), the respondents indicated that the agreements included responsibilities and roles for implementation. This suggests that ECR helps participants reach agreements that are implementable.

In the majority of cases, the respondents also reported that the agreements addressed all of the difficult issues and differences (90%) and that they felt all participants had a similar understanding of the key terms in the agreements (84%). In just under three-quarters of the cases, the respondents reported that the agreements reached took *full* account of the participants' interests (71%). In 79% of cases, the respondents also reported that the agreements have sufficient flexibility to sustain future changes. In over half of the cases (60%), the respondents reported that they had built strong enough relationships to ensure the agreements would last (mean 5.65).

In future phases of this study, revised end-of-process and post agreement follow-up questionnaires will be used to evaluate the extent and attributes of the agreements reached, and whether the agreements hold in the longer term. The follow-up evaluations are critical because of the inherent limitation of evaluating ECR outcomes at a single point in time. They will also be helpful to clarify the ambiguity that occurred in a number of cases, where the majority of respondents indicated that agreement was reached, while the remaining respondents indicated they were continuing to work on differences or had given up. As one respondent put it, "we need a year of implementation and post-mortems before judgments can be made."

**Table 4. Respondents' feedback on the agreements reached.**

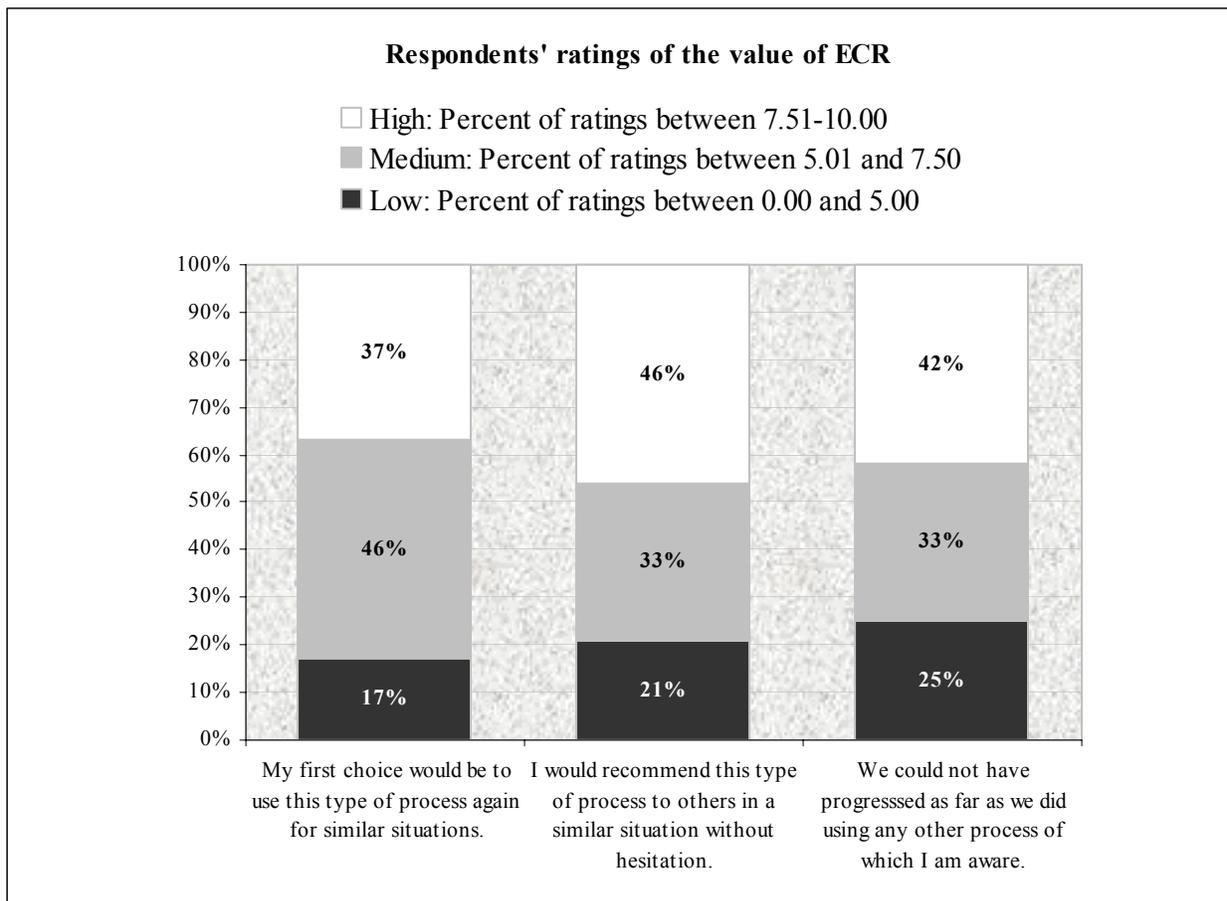
Measures of Achievement	Respondent Level Analysis			Case Level Analysis					
	n	Mean (SD)	Level of Achievement	n	Level of Achievement (% of cases with mean score)			Overall Mean (SD)	Overall Level of Achievement
					Low 0.00 to 5.00	Medium 5.01 to 7.50	High 7.51 to 10.00		
Participants <i>feel</i> the agreement <i>can</i> be implemented. (20b <sup>8</sup> )	136	7.36 (2.98)	Medium	21	9%	43%	48%	7.65 (1.65)	High
						91%			
Participants <i>expect</i> the agreement to be <i>fully</i> implemented. (19a)	121	6.67 (3.38)	Medium	18	28%	39%	33%	6.63 (2.28)	Medium
						72%			
Agreement takes <i>full</i> account of participants' interests. (20a)	136	6.30 (3.36)	Medium	21	29%	38%	33%	6.77 (1.68)	Medium
						71%			
Participants have a similar understanding of key terms in the agreement. (18e)	126	6.74 (3.03)	Medium	19	16%	42%	42%	7.10 (2.01)	Medium
						84%			
Agreement addresses <i>all</i> of the difficult issues and differences. (18b)	125	6.78 (3.27)	Medium	19	10%	37%	53%	7.18 (1.77)	Medium
						90%			
Agreement includes responsibilities and roles for implementation. (18d)	127	7.19 (2.99)	Medium	19	11%	47%	42%	7.49 (1.84)	Medium
						89%			
Participants built strong enough relationships with each other to ensure that the agreement will last. (20c)	136	5.74 (3.12)	Medium	20	40%	40%	20%	5.65 (2.33)	Medium
						60%			
The agreement has sufficient flexibility to sustain future changes. (18a)	126	6.64 (3.09)	Medium	19	21%	37%	42%	6.97 (1.78)	Medium
						79%			

<sup>8</sup> The numbers in brackets represent the question numbers as they appear on the U.S. Institute's evaluation questionnaires.

### Value of ECR to Participants.

Respondents were asked to rate the value of the ECR processes. This factor was divided into three sub-categories. Overall, the respondents provided a positive assessment of the utility of ECR reporting that: (a) in 83% of cases, their “first choice” would be to use this type of process again for similar situations, (b) in 79% of cases, they would recommend others to use this type of process again in similar situations “without hesitation”, and (c) in 75% of cases, they feel they “would not have progressed as far” using any other process of which they were aware (Figure 1 and Table 5). This suggests that participants view ECR processes as effective in helping resolve environmental disputes and that participants endorse ECR.

**Figure 1. Respondents' ratings of the value of ECR.**



**Table 5. Respondents' ratings of the value of ECR.**

Measures of Achievement	Respondent Level Analysis			Case Level Analysis					
	n	Mean (SD)	Level of Achievement	n	Level of Achievement (% of cases with mean score)			Overall Mean (SD)	Overall Level of Achievement
					Low 0.00 to 5.00	Medium 5.01 to 7.50	High 7.51 to 10.00		
The participants' first choice would be to use this type of process again for similar situations. (6c)	185	6.54 (3.13)	Medium	24	17%	46%	37%	6.91 (1.74)	Medium
						83%			
The participants would recommend this type of process to others in a similar situation without hesitation. (6d)	185	6.78 (3.26)	Medium	24	21%	33%	46%	7.21 (1.91)	Medium
						79%			
The participants felt they would not have progressed as far using any other process of which they are aware. (6a)	186	6.45 (3.29)	Medium	24	25%	33%	42%	6.61 (1.84)	Medium
						75%			

### ***Process Outcomes***

The ECR cases were evaluated to better understand respondents' impressions of the process. The process outcomes evaluated included respondents': (a) satisfaction with the process, (b) understanding, identification and narrowing of issues in dispute, and (c) increased capacity to manage and resolve conflict. On average, (whether evaluated at a respondent or case level), the process outcomes were rated in the medium to high levels of achievement.

#### Respondents' satisfaction with the process.

The process outcome *participant satisfaction* captures the respondents' satisfaction with key process characteristics and outcomes (Table 6). All eight sub-categories received a medium rating with the exception of the respondents' satisfaction with the services provided by the neutrals (mediators or facilitators), which received a high rating (mean 8.32).

In most cases, the respondents reported satisfaction:

- that all interests were represented (96%),
- that key issues were explored (86%),
- that key issues were addressed (87%),
- that parties worked well together (75%),
- with the process used in working towards reaching agreement (77%),
- with the options developed in working towards reaching an agreement (70%),
- with the services provided by the neutrals (96%), and
- with the process in general (79%).

**Table 6. Respondents' satisfaction with the process.**

Measures of Achievement	Respondent Level Analysis			Case Level Analysis					
	n	Mean (SD)	Level of Achievement	n	Level of Achievement (% of cases with mean score)			Overall Mean (SD)	Overall Level of Achievement
					Low 0.00 to 5.00	Medium 5.01 to 7.50	High 7.51 to 10.00		
Participants were satisfied that <i>all</i> interests were represented. (10c)	181	7.16 (2.92)	Medium	24	4%	54%	42%	7.46 (1.54)	Medium
						96%			
Participants were satisfied with the services provided by the neutral(s). (10hij)	166	8.13 (2.44)	High	24	4%	21%	75%	8.32 (1.59)	High
						96%			
Participants were satisfied with the process used in working towards reaching agreement. (10g)	166	6.42 (3.47)	Medium	22	23%	36%	41%	6.48 (2.44)	Medium
						77%			
Respondents were satisfied that key issues were addressed. (10d)	181	7.03 (2.90)	Medium	24	13%	33%	54%	7.15 (2.00)	Medium
						87%			
Participants were satisfied that the interests of all key participants were fully explored. (10e)	175	6.87 (2.86)	Medium	22	14%	45%	41%	6.96 (2.04)	Medium
						86%			
Participants were satisfied with the options developed in working towards reaching an agreement. (10f)	163	6.38 (3.16)	Medium	20	30%	30%	40%	6.29 (2.35)	Medium
						70%			
Participants were satisfied with the way they worked together. (10b)	181	6.09 (2.94)	Medium	24	25%	42%	33%	6.25 (2.36)	Medium
						75%			
Overall, the participants were satisfied with the process. (10a)	183	6.79 (3.02)	Medium	24	21%	33%	46%	7.08 (1.91)	Medium
						79%			

Understanding, identification and narrowing of issues in dispute.

The respondents rated a series of questions on whether ECR improved their understanding of the issues in dispute (Table 7) and whether it effectively identified and narrowed the issues in dispute (Table 8). Both at the respondent level and at the case level, the respondents rated the evaluation questions at the medium or high levels of achievement.

In 90% of cases, the respondents reported they were now clear about the core of their disagreements with the other participants (mean 7.65). In just over three-quarters of cases (77%), the respondents indicated they were able to separate substantive differences from differences that had more to do with factors such as communications style and personality (mean 6.25).

**Table 7. Respondents' understanding of the issues improved.**

Measures of Achievement	Respondent Level Analysis			Case Level Analysis					
	n	Mean (SD)	Level of Achievement	n	Level of Achievement (% of cases with mean score)			Overall Mean (SD)	Overall Level of Achievement
					Low 0.00 to 5.00	Medium 5.01 to 7.50	High 7.51 to 10.00		
Participants are now clear about the core of their disagreements with the other participants. (6b)	172	7.68 (2.62)	High	21	10%	33%	57%	7.65 (1.53)	High
			90%						
Participants were able to separate substantive differences from differences that had more to do with factors such as communications style and personality. (16b)	171	6.30 (3.08)	Medium	22	23%	45%	32%	6.25 (2.19)	Medium
			77%						

In 91% of cases, the respondents reported they were able to identify the key differences that needed to be addressed if the controversies were to be resolved. In 73% of cases, the respondents were able to reduce the total number of issues they started with to a small number of differences.

**Table 8. Identification and narrowing of issues in dispute.**

Measures of Achievement	Respondent Level Analysis			Case Level Analysis					
	n	Mean (SD)	Level of Achievement	n	Level of Achievement (% of cases with mean score)			Overall Mean (SD)	Overall Level of Achievement
					Low 0.00 to 5.00	Medium 5.01 to 7.50	High 7.51 to 10.00		
Participants were able to identify key differences that needed to be addressed if the controversy was to be resolved. (16c)	174	7.81 (2.47)	High	22	9%	27%	64%	7.57 (2.21)	High
						91%			
We were able to reduce the total number of issues we started with to a small number of differences. (16a)	173	6.02 (3.15)	Medium	22	27%	46%	27%	5.86 (2.44)	Medium
						73%			

This suggests that ECR enhances participants' understanding of core issues and narrows the issues in dispute.

Improvements in respondents' capacity to manage and resolve conflict.

Respondents were asked a number of questions to measure their improved capacity to manage and resolve conflict. This outcome was divided into three general themes: (a) increased capacity to communicate, (b) increased capacity to meet and work together in the future, and (c) increased ability to problem-solve, including an increased understanding of when ECR can help resolve disputes. Both at the respondent level and at the case level, the respondents rated this outcome at a medium level of achievement (Table 9).

Respondents provided relatively lower ratings (compared to the other performance ratings in general) concerning their improved ability to meet (60% of cases), discuss (61% of cases) and work more productively (64% of cases) with other participants.

**Table 9. Improvements in respondents' capacity to manage and resolve conflict.**

Measures of Achievement	Respondent Level Analysis			Case Level Analysis					
	n	Mean (SD)	Level of Achievement	n	Level of Achievement (% of cases with mean score)			Overall Mean (SD)	Overall Level of Achievement
					Low 0.00 to 5.00	Medium 5.01 to 7.50	High 7.51 to 10.00		
Participants feel it is now easier to <i>discuss</i> controversial issues with the other participants. (12g)	85	5.90 (3.16)	Medium	13	39%	46%	15%	5.58 (2.54)	Medium
						61%			
Participants now feel much more comfortable <i>discussing</i> disagreements with the other participants in the controversy. (8d)	169	6.14 (2.95)	Medium	22	27%	55%	18%	6.05 (1.68)	Medium
						73%			
Participants can now <i>work</i> productively with all of the participants on other controversial issues. (11c)	152	5.59 (3.05)	Medium	21	29%	52%	19%	5.53 (2.65)	Medium
						71%			
Participants can now <i>work</i> much more productively with other participants where they have disagreements. (12c)	165	5.58 (2.87)	Medium	22	36%	55%	9%	5.57 (1.26)	Medium
						64%			
Participants can now <i>meet</i> with all of the other participants to discuss issues of concern. (11a)	152	6.13 (3.30)	Medium	20	40%	25%	35%	5.84 (2.88)	Medium
						60%			
Participants' experience in the process has made them <i>more effective problem-solvers</i> . (12k)	112	6.03 (3.00)	Medium	16	12%	76%	12%	6.17 (1.22)	Medium
						88%			
Participants are more likely to know when a <i>collaborative process can help</i> reach agreements and resolve disputes. (12f)	166	7.14 (2.62)	Medium	22	0%	59%	41%	7.38 (1.18)	Medium
						100%			

### ***Additional Benefits to Participating in an ECR Process***

Respondents were asked to respond to an open-ended question regarding additional benefits to participating in the ECR process. Of the respondents who addressed this question, the majority noted variants in the beneficial process and agreement outcomes mentioned above (i.e., relationship building, greater understanding, improved dialogue, etc.). It should be noted, however, that this question specifically asked respondents to identify "additional benefits" from participating in the processes. The respondents were not asked to specifically identify negative or non-beneficial aspects of the process, if any.

Representative positive comments included:

*"Cheaper than an administrative hearing would have been."*

*"Litigation (time and cost savings) avoided, precedence of law penalty published, avoided embarrassment to the federal agency...federal agency has changed policy to prevent reoccurrence."*

*"Becoming part of the solution instead of viewed as adding to the problems."*

*"Deeper relationship with all affected participants. Greater public awareness of the issues and our agency."*

*"Process allows significant cultivation or development of professional/personal relationships with virtually all key members. These relationships and mutual respect have quietly enhanced communication and opportunities to work together with all members."*

*"Compared to the previous adversarial relationships between residents, loggers, and environmentalists, this program went smooth and was excellent."*

*"This process facilitated a positive environment for me, as a representative of my organization, to interact with many community members pertaining to issues other than the conflict."*

Note that the final question on the participant questionnaire asked respondents to add any additional thoughts or reflections on the processes. Representative responses to this open-ended question are provided in Appendix A.

### ***Best Practice Factors***

Four fundamental best practice factors (i.e., basic ingredients or inputs) to ECR processes were evaluated. The best practice factors include the degree to which: a) the right parties with decision-making authority were effectively engaged, b) the right neutral(s) guided the process,

c) the parties had the capacity to engage in the process, and d) the best information was available to all of the parties.

Right participants effectively engaged.

The basic ingredient of having the right parties with decision-making authority effectively engaged was rated at the medium level of achievement (Table 10). In over 90% of cases, respondents reported that: (a) the right participants that were needed were engaged in the process from the start, (b) the participants were fully engaged, (c) the participants kept their members/constituents informed, and (d) the representatives at the table had decision-making authority. In just over 80% of cases, respondents indicated the participants remained involved as long as their involvement was necessary.

**Table 10. Right participants (stakeholders) effectively engaged**

Measures of Achievement	Respondent Level Analysis			Case Level Analysis					
	n	Mean (SD)	Level of Achievement	n	Level of Achievement (% of cases with mean score)			Overall Mean (SD)	Overall Level of Achievement
					Low 0.00 to 5.00	Medium 5.01 to 7.50	High 7.51 to 10.00		
Participants that were needed were engaged from the start. (7a)	178	7.12 (3.01)	Medium	22	9%	50%	41%	7.38 (1.71)	Medium
						91%			
Participants were fully engaged. (7b)	178	6.46 (2.83)	Medium	22	9%	59%	32%	6.82 (1.84)	Medium
						91%			
Participants were involved as long as their involvement was necessary. (7e)	178	6.76 (2.98)	Medium	22	18%	46%	36%	6.92 (2.21)	Medium
						82%			
Participants kept their members/constituents informed. (7f)	115	6.84 (2.57)	Medium	16	0%	56%	44%	7.40 (1.46)	Medium
						100%			
Representatives at the table had decision-making authority. (7c)	175	6.85 (3.23)	Medium	22	9%	50%	41%	7.07 (1.73)	Medium
						91%			

Participants' ratings of the skills and practices of the neutrals.

Respondents rated the skills and practices of the third-party neutrals (mediators or facilitators) at the medium to high levels of achievement (Table 11). In general, respondents provided relatively higher ratings compared to the other performance ratings.

Recall that respondents in 96% of cases reported that they were very satisfied with the services provided by the neutrals (mean 8.32) (Table 6). When asked more specific questions about the neutrals skills and practices, the respondents provided very positive ratings (with the majority of the average ratings in the 7 and 8 range). Notably, respondents provided relatively lower ratings regarding whether any party dominated to the detriment of the process or others (mean of 5.63 at the participant level and 6.06 at the case level).

Ratings of 8.00 and above were received for categories regarding the neutrals' (a) understanding of participants' concerns, (b) ensuring all participants' concerns were heard, and (c) ensuring that participants' concerns were addressed. This suggests that professional facilitators are viewed as a critical factor in ECR success. In addition, in 96% of cases, the respondents indicated they would "be happy to work with the same neutrals again" (mean 8.05).

**Table 11. Respondents' ratings of the skills and practices of the neutrals.**

Measures of Achievement	Respondent Level Analysis			Case Level Analysis					
	n	Mean (SD)	Level of Achievement	n	Level of Achievement (% of cases with mean score)			Overall Mean (SD)	Overall Level of Achievement
					Low 0.00 to 5.00	Medium 5.01 to 7.50	High 7.51 to 10.00		
The neutral always understood the issues being discussed. (9a)	171	7.49 (2.10)	Medium	22	9%	50%	41%	7.45 (1.35)	Medium
						91%			
The neutral understood our concerns. (9e)	155	8.20 (2.12)	High	22	0%	32%	68%	8.22 (1.15)	High
						100%			
The neutral made sure that the concerns of all participants were heard. (9f)	164	8.51 (2.13)	High	22	5%	18%	77%	8.45 (1.21)	High
						95%			
The neutral made sure the concerns of all participants were addressed. (9g)	167	8.04 (2.38)	High	24	4%	25%	71%	8.06 (1.39)	High
						96%			
The neutral helped us manage our time well. (9h)	169	7.27 (2.55)	Medium	24	4%	29%	67%	7.58 (1.41)	High
						96%			
The neutral made sure that we all had a roadmap of where we were going with the process. (9i)	170	7.72 (2.12)	High	24	13%	29%	58%	7.75 (1.46)	High
						87%			
The neutral ensured that all participants were fully engaged in the process. (9j)	169	7.64 (2.43)	High	24	9%	33%	58%	7.64 (1.49)	High
						91%			
At no time did one of the parties dominate to the detriment of the process or others. (7d)	178	5.63 (3.52)	Medium	22	32%	41%	27%	6.06 (2.37)	Medium
						68%			
When things got tense the neutral was always able to help us find ways to move ahead constructively. (9k)	167	8.13 (2.47)	High	24	8%	25%	67%	7.86 (1.64)	High
						92%			
The participants would be happy to work with the same neutral again. (6e-f-g)	152	7.96 (2.76)	High	23	4%	18%	78%	8.05 (1.83)	High
						96%			

Participants' capacity to effectively engage in the process.

The ECR processes were evaluated to determine if the participants had the capacity (time, money and skills) to effectively engage. In over 80% of cases, the respondents reported they had the financial resources (mean 7.45), time (mean 7.10), and appropriate skills (mean 8.13) to effectively participate (Table 12). Future phases of this study will involve more detailed analysis of the resources needed to engage in ECR processes, and will provide a perspective on how the processes were funded or co-funded.

**Table 12. Respondent's rating of their capacity to effectively engage in the process.**

Measures of Achievement	Respondent Level Analysis			Case Level Analysis					
	n	Mean (SD)	Level of Achievement	n	Level of Achievement (% of cases with mean score)			Overall Mean (SD)	Overall Level of Achievement
					Low 0.00 to 5.00	Medium 5.01 to 7.50	High 7.51 to 10.00		
The costs of participating in the process were affordable given the participants resources. (8f)	169	7.12 (3.23)	Medium	24	17%	33%	50%	7.45 (1.81)	Medium
					83%				
The participants had the time required to fully participate in the process. (8g)	176	6.67 (3.16)	Medium	22	9%	50%	41%	7.10 (1.59)	Medium
					91%				
The participants had the skills necessary to fully participate in the process. (8h)	177	7.80 (2.41)	High	23	9%	17%	74%	8.13 (1.48)	High
					91%				

Best information used by the participants.

Respondents were satisfied with the quality of information made available to them during the process (Table 13). The questions were divided into four sub-categories each of which received a medium rating at the respondent and case level of analysis. The information categories were: (a) quality of best scientific information, (b) quality of best legal information, (c) quality of best economic information, and (d) quality of other information. Respondents provided relatively lower ratings concerning the quality of the economic information compared to the other information ratings (mean of 5.78 at the participant level and 6.67 at the case level). Notably, in 35% of cases, respondents rated the quality of the economic information made available to them as "low" (average ratings of 5.00 or lower).

**Table 13. Respondents' ratings of the quality of information made available to them.**

Measures of Achievement	Respondent Level Analysis			Case Level Analysis					
	n	Mean (SD)	Level of Achievement	n	Level of Achievement (% of cases with mean score)			Overall Mean (SD)	Overall Level of Achievement
					Low 0.00 to 5.00	Medium 5.01 to 7.50	High 7.51 to 10.00		
Quality of scientific information (27a)	111	7.02 (2.82)	Medium	16	13%	31%	56%	7.38 (1.56)	Medium
						87%			
Quality of legal information (27b)	97	6.49 (3.03)	Medium	17	18%	47%	35%	7.08 (1.91)	Medium
						82%			
Quality of economic information (27c)	101	5.78 (3.19)	Medium	17	35%	30%	35%	6.67 (2.30)	Medium
						65%			
Quality of other information (27d)	59	6.74 (2.78)	Medium	16	19%	43%	38%	6.92 (2.16)	Medium
						81%			

The respondents that checked the “other” information category were asked to specify the other type of information. The respondents identified the following general categories: (a) settlement statistics, (b) maps and spatial analysis, (c) conflict resolution information, (d) political and social information, (e) available studies and research pertinent to the dispute, (f) general background information, (g) local knowledge, and (h) historical data.

The respondents' qualitative responses provided insight into their ratings. The responses represented a diversity of views including: (a) concern with having to rely on information provided by agencies known to have biases, (b) the invaluable contribution of local knowledge sources, (c) lack of data about the number of people and degree to which they were affected by the dispute, and (d) the furthering of divisions and entrenchment of positions due to the provision of technical information.

### **Discussion and Next Steps**

It is important to reiterate that the findings of this study should not be seen as representative of all ECR cases, but may well represent a baseline for expected outcomes of a set of cases, that is those initially screened or assessed by public agencies as likely to benefit from the assistance of third-party mediators or facilitators. In addition, participants in a January 2004 workshop provided comments and recommendations regarding the use of these evaluation data. The recommendations included the disaggregation of the data in order to better understand the achievement of outcomes presented in this report. In response to these recommendations, an external evaluator with expertise in measurement and data analysis is currently conducting additional analyses aimed at a better understanding of the present dataset. Although the dataset is small with respect to the number of available cases and has limitations, the results can still provide useful information. In addition to a more complete understanding of ECR performance, the results of these analyses will likely generate many questions, perhaps more than can be answered with the current dataset. However, hypothesis generation is a necessary and useful step in interpreting the results and designing the next round of this ongoing evaluation effort. Moreover, recommendations will be made regarding improvements in the evaluation logic model and subsequent changes in the questionnaires in alignment with the model.

A major step in the improvement of the evaluation of ECR involves making changes in the logic model to better reflect what participants in the January workshop and other ECR professionals propose to be relevant factors in the ECR process and agreement outcomes of interest. Improvement of the evaluation logic model will then guide the re-design of the measures to be used to assess these relevant factors and outcomes of interest. At the same time, it will guide the data analysis plan so that important evaluation questions can be addressed. Plans for future

analyses will likely include the use of mixed models (also known as hierarchical linear modeling or HLM), which should help to address evaluation questions in a statistically more robust manner. Other analyses will be considered as well, based on the evaluation questions to be addressed.

## **Appendix A. Respondents' thoughts and reflections on the processes**

The final question on the participant questionnaire asked respondents to add any additional thoughts or reflections on the processes. For reporting purposes the respondents comments were divided into three themes: (a) challenges and criticisms of the processes, (b) appreciation of the processes, and (c) recommendations on how to improve the processes. Representative comments included:

### Respondents' identification of challenges and criticism of the processes

- *"The managing agency could have been more forceful in managing the process to keep participants on track. I did detect some favoritism towards non-government participants. The managing agency could have recognized the impasse in progress earlier and stopped process."*
- *"Withheld information is always a problem with government parties. However, with the neutral's assistance the information was more forthcoming."*
- *"The most significant problem we encountered was that the timeline was unrealistic, and the funding was also. The next biggest obstacle was that one agency reversed it's neutral stance with a change of manager mid-process."*
- *"This process was set up to reach a consensus agreement, which was never going to happen given that some members had constituencies that were so large that they weren't able to negotiate an agreement. Others had constituencies with mandates, which hindered their flexibility to negotiate. We got about as far as a collaborative process requiring a full consensus could get under those circumstances."*
- *"There was probable political/governmental interference."*
- *"Conducting negotiations/mediation with a number of groups is fraught with potential for failure. The danger lies in inviting a group into the mediation that believes it has a better alternative that it can and will pursue outside the mediation effort."*
- *"Actual funding source raised a potential question of neutrality between the parties, and mediator billing with no control allowed the process to go much longer than either side of the mediation felt was necessary."*

- *"The facilitator allowed parties to move their agendas forward without regard for all parties' needs."*
- *"Process failed because parties involved were unable to compromise. The plan could have started out small and been gradually increased so all constituents would have been able to adjust."*
- *It was difficult to exhibit ownership and responsible action on such a varied agenda. Working on a more limited basis is probably more productive. The government agency could probably do a better job if their decisions were objective, scientifically based and made with common sense, and not prone to appeals for insignificant errors."*
- *"The selection of participants must assure that there is a balance of representation. One side should not need to feel "outgunned" by the other side due to an imbalance of roles."*
- *"Although I think the third-party mediation/facilitation process was useful, the process could have moved along at a much faster rate; there was too much repetition of points/issues already discussed and agreed upon."*
- *"Not all of the key players participated throughout the process, which hindered acceptance of the agreement. When things got tense, the process "broke down" into behind-the-scenes negotiations. While I appreciate the skill this took, it didn't feel like we were building consensus."*
- *"I feel that mediation is a good process. We just did not have a good facilitator."*
- *"Although the requested mediation assistance and distrust of one party was a primary issue resulting in the controversy, one party was not fully committed or engaged in the process. Meddling by some may have interfered with the outcome and the endurance of the agreement. It certainly caused one participant to expect they could get better results outside mediation. This individual signed the agreement, then a month later withdrew their signature and support, and then opposed the proposal in public hearing. I feel certain parties and this one individual did not behave in good faith."*
- *" The neutrals should have started with a "straw man" agreement rather than start from scratch."*

- *"Scientific, legal and economic information was not balanced. It may be impossible, but a thorough literature survey at the beginning, including lectures and debates, might narrow areas of disagreement on the background -- before you get to the disputes."*
- *"Enforcement will remain an issue, and this is a financial matter not resolved by committee meetings."*

#### Respondents' expressions of appreciation and identification of strengths of the processes

- *"I think the process was extremely successful, which was made possible by three factors: an agency that was amenable to the process; skilled facilitation; general amicability and shared values among the parties."*
- *"Since we've been at a total impasse for years, the proposed settlement represents the possibility of some progress."*
- *"The neutral did a great job of letting the parties know the problem areas and directing the parties back to those areas when necessary; additionally, the neutral's approach was neutral which added to the mystery of the potential result and motivated the parties to clarify facts, circumstances and the law."*
- *"Process is incredibly effective and should be used more widely in enforcement matters, both to get them over with and to give the federal agency staff a straight-talking dose of reality on how the federal agency internal decision-making is working out in the world of people on the receiving end of the decisions. The echo chamber of insiders hearing each other's voices needs this process to alter other voices to be heard affordably. Use this process earlier and more frequently. Saves lawyering and technical time!"*
- *"The facilitator did an excellent job as a neutral in leading us through the process. At the end, one organization did not buy-off on the proposed plan. They eventually filed a lawsuit which is still in progress. I feel the facilitated meetings were extremely successful because several groups were able to find the common ground. This in a major way was due to the neutral's style and expertise. We continue to use the neutral as we move through another process which is closely tied to the facilitated meetings and the lawsuit."*

- *"The conflict resolution was a positive benefit to the governmental agency and to the other agency involved. It will take many years to resolve this particular action/problem but this was a good step in the right direction."*
- *"The negotiated rule making was very successful, and the assistance of your agency was critical to the successful outcome."*
- *"I think the process was great and if there were any shortcomings, it occurred from this end with time constraints and conflicts (mine) not allowing for more discussion between the neutral and my office. If I were to do this again, I would schedule dates for all to teleconference on at least a quarterly basis. The facilitator was super-supportive and made sure we all knew what they were there for us whenever needed. I wish I had taken better advantage of that tremendous resource."*
- *"The conflicts in question are complex, deeply rooted, and tied directly and indirectly to the adjudication of rights, implementation of the Endangered Species Act, and further aggravated by lawsuits and politics at all levels and environmental issues. The controversy continues, and likely will for sometime. The road to implement this plan is arduous, but the work conducted by the neutrals advanced the effort. In some issues of this complexity, it is often not possible to achieve resolution as a desired outcome; rather, more realistically, the outcome is that stakeholders remain at the table, the possibility of greater resolution remains a mutually-desired outcome, and the stakeholders develop a strong understanding and working relationship with each other. From my perspective, the work through the neutral helped accomplish these latter goals, and we are all better positioned to go forward, still looking for mutually beneficial outcomes for all stakeholders."*
- *"It is hard to guarantee that our full plan will be totally implemented, since we selected the desired future condition of the forest which is 50-100 years out. Compared to the previous adversarial relationships between residents, loggers and environmentalists, this program went smooth and was excellent."*
- *"Mediator's skill, patience and high standards were key to achieving an outcome for this horribly difficult dispute. I cannot praise the mediator highly enough. I am in awe of the mediator's ability to get to the heart of the issue, to help participants see where they could*

*find a common interest and a solution, and to deal with some truly difficult people (including those on our side)."*

- *"Mediator did a great job. The mediator earned combat pay."*
- *"It was a great experience, and I was proud to participate."*
- *"This process was quite successful in getting concurrence of the problem or problems and the best path forward to find needed solutions. Sadly, as in so many cases, funding continues to be a problem. This process was invaluable getting us to this point. Thank you."*

#### Respondents' recommendations on how to improve processes

- *"I would like to see the neutral have more discretion in estimating the time for ADR rather than have to extend each month."*
- *"The process began very formally with written agreements, disclaimers, etc. and was very thorough. Later in the process, agreements weren't as such ---therefore, more written and specific 'agreement' conclusions, disagreements, etc. would be beneficial."*
- *"There was an attempt to provide an overview of resources - that was done well with good maps. More data (summarized) about resource condition would have been helpful. There was limited discussion on legal impacts of our decision/recommendations."*
- *"I would like to have had more time preparing for and knowledge of the process. I think this whole process was pushed through way to fast for anybody to feel they had accomplished anything definite."*
- *"I was disappointed that some of the participants joined the process very late. However, I think it is critical to let anyone join in, even if they choose to do so at a late date. In addition, these latecomers should always be welcomed for taking time out of their schedule to participate. In order to avoid those people that say they were not informed about the process, every effort should be made to make as big a media 'splash' as possible in the beginning to make sure everybody is aware of the process that is about to start. Even then, there will still be those who will believe that they are being excluded from the process intentionally."*

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