

## Glossary of Terms

### Natural Resource and Environmental Conflict Resolution<sup>1</sup>

#### Alternative Dispute Resolution (ADR)

---

Alternative Dispute Resolution (ADR) refers to the resolution of disputes through non-adversarial processes with the assistance of an impartial third party. ADR, including arbitration and mediation among other processes, was developed originally as an "alternative" to litigation, but is more currently viewed as "appropriate dispute resolution".

#### Arbitration

---

Arbitration is an alternative dispute resolution method that enables parties to have their case heard by an independent arbitrator instead of a judge or jury. The arbitrator renders a decision that may or may not be binding, based on less formal rules of evidence and procedure.

#### BATNA

---

The "Best Alternative to a Negotiated Agreement" (BATNA) is a party's best option outside of a negotiated agreement. A clear understanding of your BATNA provides protection from accepting negotiated agreement terms that are too unfavorable, and from rejecting terms that would be in your best interest to accept. This term was coined by Fisher and Ury and described in the book "Getting to Yes."

#### Binding arbitration

---

In binding arbitration the parties select a third party decision-maker (or have one appointed for them) to hear their dispute and resolve it by rendering a final and binding decision or award that must be accepted by all parties.

#### Capacity building

---

"Capacity building" means to improve the ability of an individual, group or organization to be more effective over time in satisfying its own interests and goals. In the context of ECR, building capacity (through training, coaching or other learning activities) refers to increasing people's ability to more effectively engage with others in preventing, managing and resolving environmental conflicts.

#### Case briefing

---

A case briefing is a short document summarizing the background, highlights, lessons-learned, and results of a completed project.

---

<sup>1</sup> Adapted from U.S. Institute for Environmental Conflict Resolution by the Public Policy Research Institute.

### Case evaluation/Neutral evaluation

A form of alternative dispute resolution, where disputants meet informally with an experienced, neutral evaluator who assesses the strengths and weaknesses of each side's case and explores prospects for settlement. If the parties are unable to reach agreement during the evaluation session, the neutral evaluator may offer an impartial non-binding opinion on the settlement value of the case and/or a non-binding prediction of the likely outcome should the case go to trial.

### OMB and CEQ Joint Memorandum on Environmental Conflict Resolution

This 2005 federal policy memorandum directs federal agencies to increase their effective use of environmental conflict resolution and build institutional capacity for collaborative problem solving. It also sets forth basic principles for doing so and requires annual reporting on their progress to the Office of Management and Budget (OMB) and the President's Council on Environmental Quality (CEQ).

### Collaborative monitoring

Through collaborative monitoring, stakeholders as well as public agencies and science and technical experts work together to track progress toward agreed upon goals or outcomes. This can include jointly setting target outcomes, defining criteria and indicators to monitor those outcomes, designing the monitoring system, and participating in data gathering, analysis, and/or interpretation over time.

### Collaborative problem solving

This is a general term that refers to how a group of people work together to reach common goals or solve difficult problems that are affecting everyone in the group or those they represent. In the context of ECR, groups that engage in collaborative problem solving are assisted by third party neutrals and seek to reach agreement on a public policy, plan, or decision. While collaborative problem solving may not involve disputing parties, parties with diverse, competing interests are often involved.

### Conciliation

Conciliation refers to efforts often aided by an impartial third party to improve the relationship between two or more people who have felt harmed or aggrieved by each other.

### Conflict (or situation) assessment

A conflict or situation assessment, usually conducted by an independent process expert, provides parties in conflict with an objective determination of whether and how they might work together to solve their shared or interdependent problems. An assessment is generally based on confidential conversations with people who have an interest or stake in the situation and

can include recommendations for how to move forward in an assisted negotiation or collaborative process.

### **Conflict resolution**

---

Conflict resolution is an inclusive term for the broad range of processes used to resolve a conflict or a dispute in a non-adversarial and non-violent way. It includes alternative dispute resolution techniques such as mediation and arbitration as well as judicial processes, negotiation, consensus building, and diplomacy. The consensual nature of most conflict resolution methods requires that all parties participate jointly and voluntarily in selecting which process best fits their dispute.

### **Consensus building**

---

Consensus building describes a range of collaborative decision-making processes in which a facilitator or mediator helps diverse or competing interest groups to reach agreement on, for example, policy matters or environmental conflicts. Consensus building processes typically encourage dialogue, clarify areas of agreement and disagreement, improve information available, and resolve controversial issues using structured, face-to-face interaction among representatives of stakeholder groups.

### **Consensus decision rule**

---

Those engaged in ECR and collaborative problem solving tend to practice group decision-making based on some form of consensus. A consensus decision rule may be defined as full and unanimous endorsement by all parties or as a range of varying levels of endorsement but with no outright vetoes. Some consensus rules require parties to develop alternative solutions that would meet the group's needs before opting out; minority reports are sometimes provided for.

### **Case Consultation**

---

Case consultation refers to initial discussions with one or more parties in dispute regarding the potential for use of ECR processes to resolve a particular problem or dispute.

### **Convener**

---

The convener's role in mediation or other ECR process is to identify and bring all key interested and affected stakeholders to the table. The convener may be one of the stakeholders, a local leader, a neutral third party, or a government agency or official.

### **Decision rules**

---

Collaborative processes or conflict resolution proceedings require rules for how the parties will make group decisions. "Robert's Rules of Order" are an example of standard formal rules for officials to deliberate and vote at public meetings. Rules may be set for those items that require majority or super-majority votes. Consensus decision rules avoid voting and seek agreement among all parties if

possible or to certain pre-determined levels of unanimity. For ECR, it is important that parties determine and agree early on to the decision rules they will follow.

### **Dispute systems design**

---

Organizations often face a recurring set of disputes that are similar in nature (e.g., personnel grievances, administrative appeals). A dispute system (e.g., a mediation referral process) can be designed to anticipate and channel such disputes more effectively.

### **Environmental Conflict Resolution (ECR)**

---

Environmental Conflict Resolution includes an array of interest-based, agreement seeking processes that serve to improve environmental decision making by directly engaging parties of interest in creative, collaborative problem solving. ECR in the federal context is defined in the 2005 OMB-CEQ Policy Memorandum as: "third-party assisted conflict resolution and collaborative problem solving in the context of environmental, public lands, or natural resources issues or conflicts, including matters related to energy, transportation, and land use. The term 'ECR' encompasses a range of assisted negotiation processes and applications. These processes directly engage affected interests and agency decision makers in conflict resolution and collaborative problem solving. Multi-issue, multi-party environmental disputes or controversies often take place in high conflict and low trust settings, where the assistance of impartial facilitators or mediators can be instrumental to reaching agreement and resolution. Such disputes range broadly from administrative adjudicatory disputes, to civil judicial disputes, policy/rule disputes, intra- and interagency disputes, as well as disputes with non-federal persons/entities. ECR processes can be applied during a policy development or planning process, or in the context of rulemaking, administrative decision making, enforcement, or litigation and can include conflicts between federal, state, local, tribal, public interest organizations, citizens groups and business and industry where a federal agency has ultimate responsibility for decision-making."

### **Evaluation report**

---

An evaluation report examines project results as reported on participant questionnaires. It provides statistical analysis of participant satisfaction with the process, facilitation team, and final outcomes.

### **Facilitation**

---

Facilitation is a process in which an independent facilitator assists a group of individuals to discuss constructively a number of complex, potentially controversial issues. The facilitator typically works with participants before and during these discussions to determine the objectives of the process, help develop an effective agenda, enforce ground rules, assist parties in communicating effectively, and help the participants keep on track as they

work toward their goals. While facilitation bears many similarities to mediation, the facilitator is primarily charged with facilitating communication among parties, rather than assisting them in reaching a resolution or agreement. Facilitation may be used in any number of situations where parties of diverse interests or experience are in discussion, ranging from scientific seminars to management meetings to public forums.

### **Facilitator**

---

"Facilitator" refers to a third party neutral as he/she helps people engage effectively to reach specific goals, not necessarily to resolve a particular dispute. Facilitators and mediators are professionals with very similar skill sets but their work and experience can be distinguished primarily by the purpose and needs of the group they are assisting. We often refer to "facilitator/mediator" in part because many practitioners often practice both, and sometimes within a given case, depending on the demands of the situation.

### **Government-to-government consultation**

---

Government-to-Government (G-t-G) consultation refers generally to consultation between the federal government and a Federally recognized American Indian or Alaska Native Tribal government or Native Hawaiian organization. Each federal agency has its own policy that outlines how that agency should conduct g-t-g consultation. The general parameters of g-t-g consultation are shaped by several Executive Memoranda and Executive Orders which direct federal agencies to: consult with federally recognized tribal governments on matters that significantly or uniquely affect them, including development of federal policies that have tribal implications; consult prior to taking action that may affect a tribal government; to establish regular and meaningful consultation and collaboration with tribal officials; to establish an accountable process to ensure meaningful and timely input by tribal officials. Ideally, the consultation process begins with an agreement between the federal agency and the tribal government as to what "a timely and meaningful exchange of information between governments" means and how the consultation process will be tailored to the subject matter.

### **Ground rules**

---

Ground rules establish open and fair procedures for the parties to follow when negotiating or collaborating together. Ground rules may include such provisions as how individuals should behave in meetings (e.g., don't interrupt each other), what decisions rules to use, how to communicate with the media, etc. Sometimes these are pre-set ground rules to govern a long meeting; in complex longer-term processes, parties develop their own ground rules with the assistance of the neutral.

### **Interest-Based Negotiation (IBN)**

---

Interest-Based Negotiation, also referred to as mutual gains bargaining, is a style of negotiation based on the theory that parties are more likely to come to

a mutually satisfactory outcome when their respective interests are met than when one "position" wins over the other. Negotiators collaborate to find ways to meet each other's interests, rather than stake out opposing positions.

### Intergovernmental Agreement (IGA)

An Intergovernmental Agreement is a formal agreement between two agencies or other governmental bodies to pursue a shared objective. IGA's are used to define the terms and responsibilities of agreements on training, policy making, research, third party facilitation, or provision of services from one governmental body to another.

### Interest

In the context of interest based negotiation, interests are the underlying needs of a negotiating party; what a negotiator requires to be satisfied with a negotiated outcome. Interests can often be met in a variety of ways and thus provide a basis for finding mutually-acceptable solutions while specific, predetermined positions often result in one party's win and another's loss in getting what they need.

### Intractable conflict

Intractable conflicts are conflicts that are long-standing and resistant to resolution.

### Joint fact-finding

Many public policy conflicts include disputes over scientific or technical information. The goal of joint fact-finding is to reach agreement among disputing parties over the nature or interpretation of available information. Parties may select their own experts or they can jointly select an unassociated third-party expert or panel of experts. A facilitator/mediator works to clarify and define areas of agreement, disagreement, and uncertainty. The facilitator/mediator may also work with the experts to translate technical information into an easily understandable form.

### Mediation

Mediation is a negotiation in which an impartial third party assists negotiations between parties to a dispute by improving communication, identifying interests, and exploring possibilities for mutually agreeable resolution. The mediator does not impose a solution (unlike arbitration), but rather helps parties reach their own agreement. Mediation typically occurs in the context of a specific dispute involving a limited number of parties, but mediative procedures are also used to develop broad policies or regulatory mandates and can involve dozens of participants representing diverse interests. Mediation may be voluntary or mandated by court order or statute.

## 📌 Mediator

---

Mediator refers to a third party neutral as he/she helps people reach agreements to resolve specific disputes at issue. A mediator helps parties improve communication, identify interests, explore possibilities for a mutually agreeable resolution and, ultimately, to resolve the dispute. A mediator manages interactions that occur in meetings and dynamics that occur outside of meetings. Facilitators and mediators are professionals with very similar skill sets but their work and experience can be distinguished primarily by the purpose and needs of the group they are assisting. We often refer to "facilitator/mediator" in part because many practitioners offer both services, and sometimes do so within a given case, depending on the demands of the situation.

## 📌 Memorandum of Understanding (MOU)

---

A Memorandum of Understanding is a legal document that records agreed-upon points of view and intended actions.

## 📌 Multi-party negotiation

---

Multi-party negotiation is a complex, iterative process involving the exchange of views, ideas and perspectives among a number of parties that might include organizations, groups, regions, countries or individuals within larger entities. Multi-party negotiation is not necessarily a facilitated or mediated process, but can benefit from third party assistance when the complexity or conflict of the situation is high. Multi-party negotiation can also benefit from the application of interest-based negotiation principles to the dynamic interactions of more than two parties.

## 📌 Negotiated rulemaking

---

Negotiated rulemaking, also called "regulatory negotiation" or "reg-neg," is a consensus process in which a multi-party negotiating committee seeks agreement on the substance of a proposed agency rule, policy, or standard. The negotiating committee is composed of representatives of parties that will be interested in or affected by the rule, including the rulemaking agency itself. Participants in negotiations are expected to abide by any resulting agreements and implement their terms. "Reg-negs" are governed by the Negotiated Rulemaking Act.

## 📌 Negotiation

---

Negotiation is a form of direct or indirect, verbal and non verbal communication between two or more parties where each party seeks to get his/her interests met or resolve an apparent conflict. Interest-based negotiation is one form of negotiation.

## 📌 Neutral

---

A "neutral" is one term for a third party, impartial practitioner who is engaged to help resolve a dispute or facilitate a discussion.

### 📌📌 Notice of Intent (NOI)

---

A notice of intent is a formal notification given by one agency or party to another for the purpose of formally initiating a course of action or process. Examples include initiation of environmental impact statements, litigation or arbitration processes, and other planned agency initiatives. NOI's typically include a description of the action to be taken, the names of the parties involved, and a planned schedule for meetings and proposed actions.

### 📌📌 Policy dialogue

---

Policy dialogues among multiple parties are designed to reach agreement on non-binding recommendations or broad policy preferences for a governmental agency to consider in subsequent policy development. Policy dialogues bring together representatives of groups with divergent views or interests to begin a discussion, improve communication and mutual understanding, and explore the issues in controversy to see if consensus recommendations can be reached.

### 📌📌 Position

---

Positions, in the context of interest-based negotiation, are specific, stated outcome preferences by parties that may not reveal their underlying needs or interests. Positions are often starting points for negotiations that appear inflexible or adversarial but may be primarily strategic. Distinguishing between positions and interests so that parties may learn more about each others' needs is a basic tenet of interest-based negotiation.

### 📌📌 Process design

---

Structuring a complex, multi-party negotiation or collaborative problem solving takes thoughtful, informed design. Once an assessment of the situation or conflict has been conducted, a process design can be developed and shared with the project initiators and/or all the parties. The process design also takes into account time, budget, and staffing constraints to assure its feasibility. Third-party neutrals are experienced in process design as well as meeting facilitation and/or mediation.

### 📌📌 Public Dispute Resolution

The theory and practice of negotiation, facilitation, mediation, collaborative problem solving, and consensus building as applied to public issues.

### 📌📌 Public Participation

Any process that is designed to engage citizens in the process of making public decisions. The objectives of public participation may be to inform and educate, seek input and advice, build agreement, and/or resolve disputes.

### 📌📌 Record of Decision (ROD)

---

In a National Environmental Policy Act (NEPA) review process, a Record of Decision is a formal, signed document stating a specific decision. Also included are the factors that informed the decision, the alternatives considered,

including the environmentally preferable alternative(s), and a description of mitigation measures, enforcement mechanisms, and monitoring to be undertaken.

#### Sponsor

---

The individual, group, or organization that is considering initiating a consensus process to address or resolve some issue.

#### Stakeholder

---

An individual or group with an interest in or who may be affected by a situation or conflict. They hold a "stake" in the outcome of a future governmental decision or an effort to resolve the situation or conflict. "Parties" and "stakeholders" are often used interchangeably, although the term "party" is sometimes understood more specifically in the context of someone being a party to or having standing in a legal action.