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The National Marine Fisheries Service Take Reduction Team Negotiation Process Evaluation

Prepared by RESOLVE, Inc.

For The National Marine Fisheries Service



U.S. Department of Commerce
National Oceanic and Atmospheric Administration
National Marine Fisheries Service

July 19, 1999

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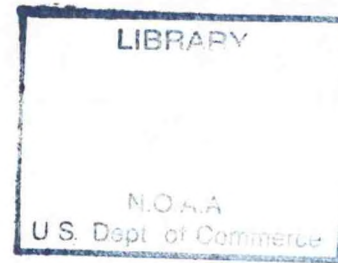
For The National Marine Fisheries Service
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U.S. Department of Commerce
William M. Daley, Secretary
National Oceanic and Atmospheric Administration
D. James Baker, Under Secretary for Oceans and Atmosphere
National Marine Fisheries Service
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National Marine Fisheries Service Take Reduction Negotiation Team Process Evaluation *Table of Contents*

I. EXECUTIVE SUMMARY	i
II. INTRODUCTION	1
A. BACKGROUND ON THE MMPA AND REQUIREMENT TO CONVENE TRT NEGOTIATIONS	1
B. DETAILS ON THE FIVE NEGOTIATIONS	1
C. PURPOSE AND SCOPE OF THE EVALUATION	2
III. FINDINGS	4
A. REPRESENTATION AND INVOLVEMENT OF VARIOUS SECTORS AND THEIR EXPERIENCE WITH MULTI-PARTY NEGOTIATION PROCESSES	4
1. Sector Representation	4
2. Balance of Perspectives	5
3. Experience with Multi-Party Negotiation Processes and TRT Processes	5
4. Multi-Party Negotiation Process Experience	6
5. Membership on TRTs	6
6. Meeting Attendance	6
B. THE VALUE OF THE NEGOTIATION PROCESS	6
1. Opportunity to Express Views and Opinions	7
2. Others Opportunity to Express Views	7
3. Views and Opinion Taken Seriously and Incorporated Into the Recommended Plan	8
4. Data	9
5. Fairness	9
6. Satisfaction With Results/Outcome	10
7. Effectiveness of Process in Marine Resource Management	12
8. Time Management	12
9. Benefits/Difficulties	13
C. FACILITATOR PERFORMANCE	14
1. Facilitator Contact Before Meeting	14
2. Information About Process and Role	14
3. Overall Rating of Facilitator Performance	14
4. Other Ratings	15
D. ADEQUACY OF MEETING ADMINISTRATION	15
E. SUGGESTED IMPROVEMENTS AND ADVICE FOR MULTI-PARTY NEGOTIATIONS	16
1. How to Involve Public When NMFS Publishes Proposed Plan	16
2. How to Improve the Process	16
3. Advice for Future Participants and Facilitators in Multi-Party Negotiation Processes	17
IV. DISCUSSION	17
V. CONCLUSION	19
APPENDIX 1. SURVEY RESULTS FROM FIVE TAKE REDUCTION TEAM PROCESS EVALUATIONS	
APPENDIX 2. SURVEY INSTRUMENT	
APPENDIX 3. SURVEY RESPONDENTS' COMMENTS	

I. Executive Summary

Between 1996 and 1997, Abby Arnold, RESOLVE, in collaboration with Abby Dilley, The Keystone Center, Alana Knaster, The Mediation Institute, and Susan Podziba and Associates, convened and facilitated five multi-party negotiation processes for the National Marine Fisheries Service (NMFS). Under requirements established by the 1994 Amendments to the Marine Mammal Protection Act (MMPA), the NMFS was charged with forming teams made up of academics, researchers, conservation organizations, fisherman, federal and state regulators and gear technologists. The Teams were charged with developing consensus recommendations for how to reduce incidental take of strategic marine mammals during commercial fishing operations. Five Take Reduction Teams met between 1996-1997. Each team met five to eight times over six months. Three of the five teams reached consensus on a management plan to reduce incidental take of marine mammals by fishing activities. One team reached partial consensus and a third did not reach consensus on recommendations for reducing incidental take. The teams that did not reach full consensus delivered a report to the NMFS describing differences and points of agreement. The plans are currently in the implementation stage.

The National Oceanic and Atmospheric Administration (NOAA), NMFS, Office of Protected Resources contracted with RESOLVE to evaluate the facilitated portion of the Take Reduction Team negotiation process. RESOLVE, with the assistance of an independent researcher, conducted an evaluation of that process in the summer and fall of 1998. The evaluation design employed a mail survey, with open and closed ended questions. There was one mailing of the survey. The return rate was 71%. This report documents the evaluation of the NMFS Take Reduction Team (TRT) negotiations. The evaluation, and this report, do not include actions that occurred after the Teams submitted their recommendation or reports to NMFS.

The evaluation found that, overall, most respondents thought the negotiation process itself was valuable and that the facilitators were fair and helpful. Respondents thought they could express their viewpoints and, for those teams that reached agreement, the negotiated plan incorporated their views. Respondents who thought their opinions were taken seriously and incorporated into the plan also thought the process was fair. On the other hand, respondents who did not think their opinions were taken seriously did not think the process was fair. Evaluation respondents stated their concern that the process could have used more time than the six months allowed by law. Respondents satisfaction with the results was statistically associated with whether there was adequate time for negotiations, whether they thought their opinions were taken seriously and whether their team reached agreement. Respondents also were troubled by the lack of data and what they described as the lack of unbiased data. Finally, respondents thought some of the groups were too large.

Although, at the request of NMFS, the survey only focused on the actual negotiation process, it is unlikely that respondents evaluated the Take Reduction Team negotiation experience separate from their overall experience with the Take Reduction Plan development process. While many respondents reported satisfaction with the facilitators and the negotiation process, the whole context was important as they assessed the value of the multi-party negotiation process.

There are at least four factors that seem to have affected respondents perception of the process. First, unlike many other mediated processes, these Teams were mandated by federal law (the MMPA). NMFS did not have a choice but to convene the Teams. Parties did not have a choice but to participate, or feel their voice would not be represented. Second, while the technical data used in the process had undergone vigorous scientific review, the data had been generated by NMFS and its contractors. The parties did not agree on the data which was used to establish the need for the team and to identify which marine mammals were in need of recovery. Thus, the need for establishing the teams and the data used in the negotiations was not necessarily endorsed by all parties at the table. A third factor affecting respondents' answers was whether the recommendations developed at the Team level were reflected in NMFS published plans. Finally, whether NMFS published the plans in the time frame promised during the TRT negotiation process was a factor affecting respondents perceptions.

These contextual factors had as much of an impact on respondents' assessment of the TRT process as did the planning, dynamics, facilitation and decision making during the negotiation process. As NMFS contemplates future participation in and use of multi-party negotiation processes, the evaluation results underscore that consensus processes can be time consuming and demanding, and participants may not be willing to invest the needed resources if they are unsure that their recommendations will be implemented.

The findings of this evaluation suggest that NMFS should conduct feasibility and convening assessments before beginning TRT negotiations. The assessment should address and perhaps, develop protocols up front on which parties should participate, what the data requirements are for effective participation, whether the goals of the process are advisory or consensus decisionmaking, how the NMFS will participate at the table, what the time frames for negotiation are and how or whether the consensus agreements will be implemented. These understanding might alleviate many parties' dissatisfaction with the final outcome of negotiations.

II. Introduction

A. Background on the MMPA and Requirement to Convene TRT Negotiations

In 1994 Congress amended the Marine Mammal Protection Act (MMPA). The Act is designed to establish a long-term regime for governing interactions between marine mammals and commercial fisheries. The new section 117 of the MMPA requires NMFS to complete stock assessment reports for all marine mammal stocks in waters under U.S. jurisdiction. These stock assessments must include a calculation of a Potential Biological Removal (PBR). The MMPA defines the term PBR as the maximum number of animals, not including natural mortalities, that may be removed from a marine mammal stock while still allowing that stock to reach or maintain its optimum sustainable population. Stocks which are determined to have incidental takes that exceed the PBR are designated as strategic. In addition, stocks that are declining and are likely to be listed as threatened or endangered under the Endangered Species Act (ESA) or are listed as depleted under the MMPA are designated strategic stocks.

For fisheries that frequently or occasionally interact with strategic stocks resulting in mortalities or serious injury, section 118(f) of the MMPA requires NMFS to establish Take Reduction Teams (TRTs). These TRTs must develop plans for how to reduce incidental take of the strategic stock. The MMPA establishes a six month time frame for the development of TRT plans. Members of teams should include individuals who represent the variety of interested or affected parties from the commercial and recreational fishing industry, appropriate Regional Fishery Management Councils, interstate fisheries commissions, academic and scientific organizations, state officials, native Alaskans or other Native Americans, if appropriate, and environmental groups. The MMPA directs teams to develop plans through consensus. If teams cannot reach consensus, then they submit a report to NMFS identifying areas of agreement and disagreement.

At the end of the negotiation period, each Take Reduction Team is required to present a draft Take Reduction Plan to the NMFS. NMFS is to consider these draft plans in developing implementation plans. The proposed plans are to be published in the Federal Register for public comment. If NMFS proposed plans differ from TRT recommendations, NMFS is to state the differences and rationale for the differences in the Federal Register notice. Plans are then finalized.

B. Details on the Five TRT Negotiations

NMFS convened five Take Reduction Teams between 1996-1997. NMFS awarded Abby Arnold, RESOLVE, a contract to manage the facilitation of the five TRT processes. Ms. Arnold facilitated two negotiations and Abby Dilley, The Keystone Center, Susan Podziba, Susan Podziba and Associates, and Alana Knaster, The Mediation Institute, each facilitated one team negotiation.

Each team included representatives from a cross spectrum of interests including academics, conservation organizations, fishermen, federal and state regulators, and gear technology experts. Team members were chosen in consultation with affected parties and NMFS. The facilitators generated a list of possible team candidates from convening calls. NMFS selected who would be invited. NMFS had at least one, if not two or more representatives, as team members during each TRT meeting. NMFS representatives from the headquarters Office of Protected Resources were present at all negotiations. However, in most negotiations, the NMFS Regional Office of Protected species representative was the primary NMFS representative to the team.

The names of the teams, numbers in each team and facilitator for each team follows:

Take Reduction Team (TRT)	Number of Members	Facilitator
Atlantic Large Whale TRT	32	Abby Dilley, The Keystone Center
Mid-Atlantic Harbor Porpoise TRT	32	Abby Arnold, RESOLVE
Gulf of Maine Harbor Porpoise TRT	22	Abby Arnold, RESOLVE
Atlantic Offshore Cetacean TRT	18	Susan Podziba, Susan Podziba and Associates
Pacific Offshore Cetacean TRT	12	Alana Knaster, The Mediation Institute

Some participants served on more than one Take Reduction Team.

Each team met five to eight times over six months. TRT teams met locally. The Atlantic Large Whale team and the Atlantic Offshore Cetacean team met in the Boston area; the Gulf of Maine TRT meetings were in New England, outside of Boston; and the Mid-Atlantic team meetings were in Virginia Beach, Virginia, and Washington, DC. The Pacific Offshore Cetacean team met in San Diego, Los Angeles, and the San Francisco Bay area.

The recommended TRT plans needed to address the dual challenge of meeting MMPA and ESA requirements. The fishery data was developed by NMFS and its contractors and provided to each team. Three of the five teams reached consensus on a management plan. These teams were the Gulf of Maine Harbor Porpoise, Atlantic Offshore Cetacean, and the Pacific Offshore Cetacean Take Reduction teams. The two teams that did not reach full consensus delivered a report to NMFS describing points of agreement and differences. These teams were the Atlantic Large Whale and the Mid-Atlantic TRT. When TRTs did not reach consensus, NMFS used information gathered during the negotiation process to develop a proposed and final take reduction plan.

C. Purpose and Scope of the Evaluation

A year after the completion of all the teams' deliberations, RESOLVE, at the request of NMFS, conducted an evaluation of the TRT process. NMFS wanted to evaluate the process of using multi-party negotiation in take reduction teams to develop recommendations on resource management, including how NMFS should improve the process. RESOLVE conducted the evaluation in consultation with the three other facilitators.

RESOLVE designed the evaluation method and instrument in collaboration with Michelle

LeBaron, of the Institute of Conflict Analysis and Resolution, George Mason University. Professor LeBaron has extensive expertise in evaluating dispute resolution processes. She was also able to ensure objectivity in the evaluation design, data analysis and in report review. The NMFS staff and all four facilitators also reviewed and edited the evaluation instrument. This report was written by Juliana Birkhoff, RESOLVE's Director of Research and Education, and edited by the four facilitators and NMFS for accuracy.

The survey focused solely on the negotiation process for developing recommendations for the initial draft take reduction plans and did not question respondents about the implementation of the recommendations or development of the Final Take Reduction Plans. These issues are NMFS's responsibility and outside the stakeholders' responsibility. The Process Evaluation Survey was organized around four general questions:

1. *Who participated in the Take Reduction team, which groups did they represent, were enough viewpoints and an appropriate balance of stakeholder interests included?*
2. *How valuable was the negotiation process for participants? How did participants rate the opportunities to express their viewpoints? Did participants think the process was fair? Were they satisfied with the results at the end of the negotiation process?*
3. *What was the role and effectiveness of the TRT facilitators?*
4. *Should NMFS use this process again, and if so, how should NMFS improve it?*

Team members were asked to answer yes or no questions, short answer questions, to classify items as satisfactory or not satisfactory, and to rank several facilitator characteristics as excellent, good, or poor. RESOLVE mailed the survey to all 92 members of the five Take Reduction teams. Team members were given three weeks to complete the survey. Sixty-five respondents returned surveys to RESOLVE. The 71% response rate indicates a high level of TRT member participation and interest.

Responses to the open-ended questions were summarized and the number of times a person mentioned a theme was recorded. Responses to the close ended questions were coded by team in a Microsoft Excel Spreadsheet. Responses were summarized by percentage, and by team for each question. Several of the questions were coded by individual response in the Statistical Software Package. Only questions with a large enough number of responses which included an important variable were coded individually. Non-parametric statistical tests of significance were performed on those questions.

This report describes the survey evaluation instrument and summarizes the survey results as general findings for all the TRT negotiations. Appendix 1 includes the survey results, coded by team. Appendix 2 is the survey instrument. Appendix 3 is the code book for the variables that were coded by individual. Appendix 4 is the aggregated comments from the responses to the survey. The findings are presented under the following report headings:

- A. Representation and Involvement of Various Sectors and Their Experience with Multi-Party Negotiation Processes
- B. The Value of the Negotiation Process
- C. Facilitator Performance

- D. Adequacy of Meeting Administration
- E. Suggested Improvements and Advice for Multi-Party Negotiations

III. Findings

A. Representation and Involvement of Various Sectors and Their Experience with Multi-Party Negotiation Processes

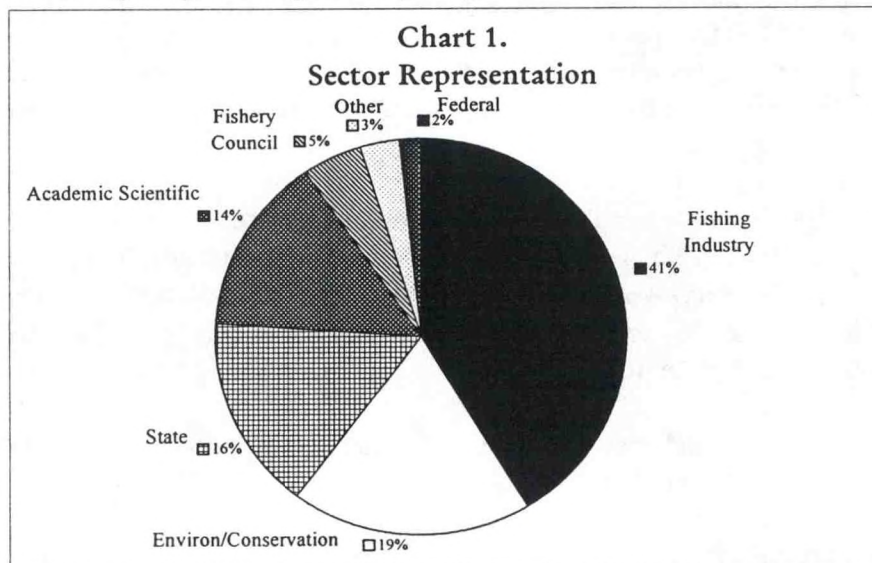
The representation and involvement of various sectors in the process is an important measure of the legitimacy of consensus processes and contributes to success. The survey explored the following questions about each participant:

- *Who participated in the Take Reduction team compared to who is represented in the survey?*
- *Which groups were represented?*
- *Did the individuals know each other in advance?*
- *Were enough and all those affected or impacted included in the process?*
- *How many meetings did participants attend?*

Generally, survey respondents came from a variety of viewpoints, knew people from their own and at least one other sector, and thought the team composition reflected a balance of perspectives.

A 1. Sector Representation

Chart 1 provides more details about participation. To determine the representation of interested parties of the five Take Reduction teams, question three of the survey inquired which *sector the respondent represented*. The largest number of survey respondents represented the fishing industry (41%). The next largest numbers of survey respondents represented the environmental or conservation sector (19%), state agencies (16%), and academics/scientists (14%).

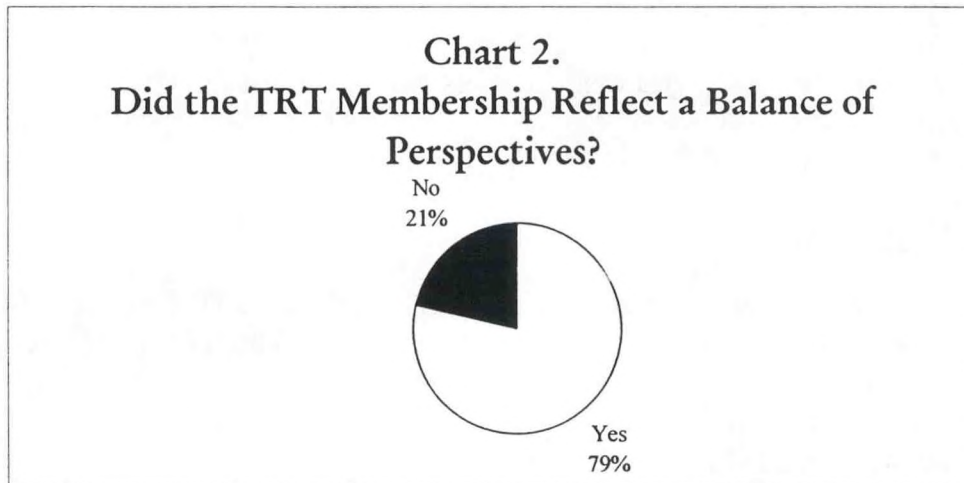


The response to the survey does not differ significantly from the sector representation in the

original TRT. The original Take Reduction Teams included 39% fishing industry, 20% academic/scientific, 19% state, 14% environmental/conservation, 7% fisheries council, 1% non-NMFS federal representatives.

A 2. Balance of Perspectives

Seventy-nine percent of the respondents thought that the *TRT membership reflected a balance of perspectives*, while 21% thought it did not. Six participants in the Atlantic Offshore Cetaceans team thought their TRT reflected a balance of perspectives, while five members thought that it did not. In both the Atlantic Offshore Cetacean and the Mid-Atlantic teams, respondents suggested there was not enough representation from scientific and environmental viewpoints.



A 3. Experience With Multi-Party Negotiation Processes and TRT Processes

The survey assessed what kinds of experiences participants had with negotiation processes in general and specifically with other TRT negotiation processes. Participants with previous experience in multi-party negotiation processes might participate differently from those who had no previous experiences. Previous experience with multi-party negotiation processes might serve as informal negotiation training and therefore, those informed participants might be better prepared to participate. To understand this dimension of their experience, the survey explored the following questions:

- *what kinds of experiences did participants have with multi-party negotiations before the process?*
- *and specifically, did they have experiences with other Take Reduction team processes?*

In general, the survey found that about two thirds of the respondents had some experience with general negotiation processes. However, for one half of the respondents, the specific TRT multi-party negotiation process was new. The following provides more details about findings on negotiation experience.

A 4. Multi-Party Negotiation Process Experience

Sixty-six percent of the respondents had previously participated in similar multi-party negotiation processes, while 34% had not. For those who had participated in other processes: 40% participated in at least one to two other negotiations and 16% participated in three to four other negotiations. Forty-four percent of the respondents took part in more than five other negotiations before participating in this multi-party negotiation. There was no statistical association with level of experience and perception of process fairness, satisfaction with the outcome, or mediators performance, largely because the response rate was not large enough.

A 5. Membership on TRT 's

Fifty-one percent of the respondents were members of only one TRT. However, 29% of the respondents were members of at least two TRTs; 2% of the respondents participated in three TRTs; and 18% participated in four TRTs.

A 6. Meeting Attendance

Seventy-seven percent of the respondents participated in all of their TRT meetings, 20% attended more than half of their TRT meetings and 3% of the respondents participated in one to two of their team's meetings.

B. The Value of the Negotiation Process

To assess how valuable the negotiation process was for participants, the survey asked them about:

- *opportunities to express viewpoints,*
- *the adequacy of data and support in understanding it,*
- *the structure and use of time in the negotiation process,*
- *and meeting times and locations.*

In general, the respondents thought the process was valuable. They thought they could express their viewpoints and, for those teams that reached agreement, the negotiated plan incorporated their views. Many respondents thought there was not enough data to help them in making good decisions. However, in all but one of the TRT teams, respondents thought they had enough help interpreting the data that was available. Many respondents thought the process would have benefited from more time for formal negotiations. However, most respondents thought there was enough time for the more informal negotiations and caucuses.

Approximately three quarters of the respondents thought the negotiations were fair, while one quarter thought they were not. However, 60% of the respondents were dissatisfied with the final results at the end of the last meeting. Respondents who were dissatisfied with the final results at the end of the last meeting thought there was not enough time for negotiations. Teams that reached agreements and respondents who thought their opinions were taken seriously and

incorporated into the plan were more likely to report satisfaction with the results of the meeting.

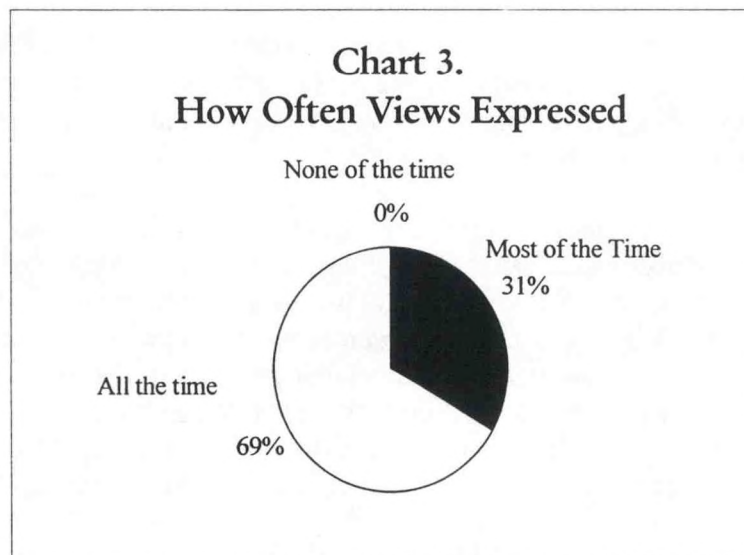
It is also likely, based on the comments, that if the recommendations had been implemented as agreed there would be less dissatisfaction with the negotiation process.

The following three pages provide more details on respondents assessments of the value of the negotiation process.

B 1. Opportunity to Express Views and Opinions

To assess respondents participation and voice in the negotiations, the survey asked participants how often during the TRT meetings *they were given the opportunity to express their views*.

Sixty-nine percent of the respondents said they could always express their views. Thirty-one percent of the respondents said they could express their views most of the time. Several respondents from the Atlantic Large Whale and the Mid-Atlantic teams commented that their TRT group was too large to explore ideas in depth.

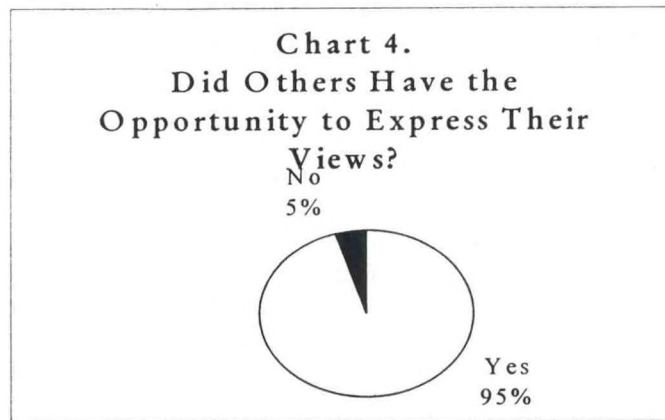


B 2. Others Opportunity to Express Views

Participants were asked whether they thought *others were given the opportunity to express their views during meetings*.

Ninety five per cent thought others could express their views. 5% of the respondents thought others were not given the opportunity to express their views during meetings. Respondents from the Atlantic Large Whale, Pacific Offshore Cetaceans, and Mid-Atlantic teams commented that most of the time others were given the opportunity to express their views. However, time constraints and the size of the group sometimes hindered complete expression of views. The respondents thought the other participants had more opportunities to express their views than

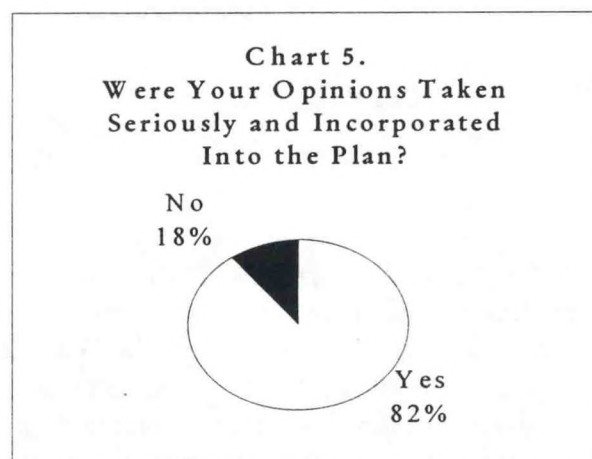
they had. This is not unusual in negotiation processes because each respondent knows what they refrained or ran out of time to say, but would not necessarily know that about other participants. The following chart illustrates these findings.



B 3. Views and Opinions Taken Seriously and Incorporated Into the Recommended Plan

The opportunity for participants to tell their story in their own words and have their viewpoint reflected in final decisions is one of the benefits of multi-party negotiation processes. The survey asked participants whether they *thought their opinions were taken seriously and incorporated into the plan*.

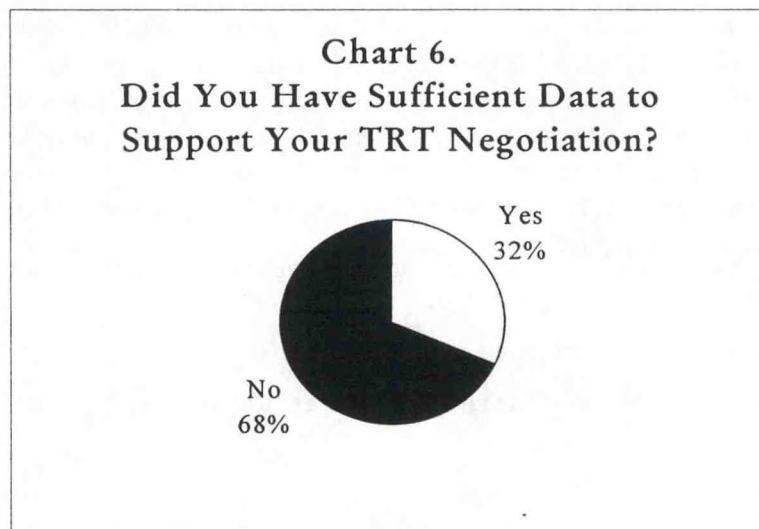
The survey found that 82% of the respondents thought their opinions were taken seriously and incorporated into the recommended plan. 18% of the respondents thought their opinions were not taken seriously or incorporated into the plan. Two respondents from the Atlantic Large Whale and the Atlantic Offshore Cetacean teams commented that while their comments were taken seriously, they were not optimistic that the plan incorporated their ideas. A respondent from the Atlantic Offshore Cetacean team thought some practical alternatives and initiatives were halted outright. One respondent from the Mid-Atlantic team thought that members from one sector were taken more seriously than those from others. The following chart illustrates these findings.



B 4. Data

In complex marine management issues, sometimes all the desired data is not available. To assess how much of an impact participants thought data availability had on the success of their negotiations, the survey asked respondents whether they thought they had *enough data in their TRT process* to support the negotiation.

Sixty-eight percent of the respondents thought there was not enough data, while 32% of the respondents thought there was enough data. Respondents from all five teams commented on the lack of data and that the data gaps and data interpretations created difficulties at their team meetings. Lack of data was particularly important for respondents from the Gulf of Maine, Atlantic Offshore Cetacean and Atlantic Large Whale teams. Some respondents from the Gulf of Maine and the Atlantic Large Whale teams noted that good data did not exist. Other respondents from the Atlantic Offshore Cetaceans and Atlantic Large Whale teams thought there was data, but NMFS presented it poorly.



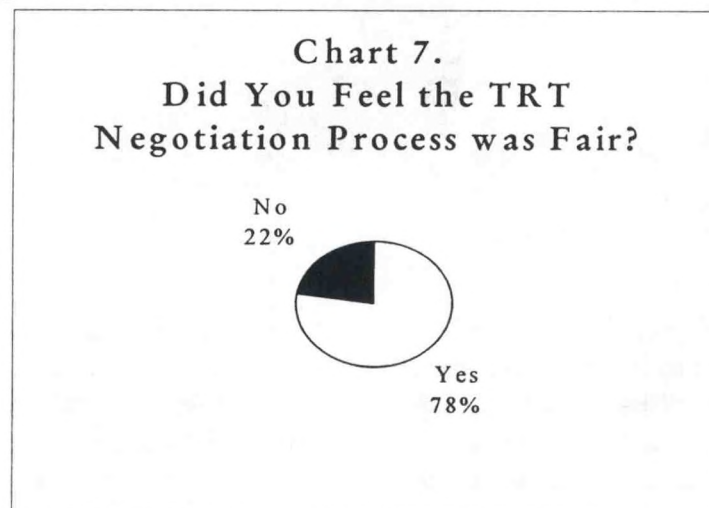
The survey also asked participants whether *they had the necessary help to interpret the data*. Eighty-four percent of the respondents thought they were given adequate help to interpret such data, while 16% thought they could have been given more help. Several respondents from all the teams commented that the NMFS scientists provided a good presentation of the data and made the data understandable. Respondents from the Atlantic Offshore Cetaceans and Mid-Atlantic teams thought the analysis and presentation of the data was uneven. Respondents from the Gulf of Maine and Pacific Offshore Cetacean team noted that the data can be interpreted in many ways and that having an independent statistician might be useful.

B 5. Fairness

The survey inquired whether participants thought *the process was fair and if they were satisfied with the outcome after the negotiations*.

Seventy-eight percent of the respondents thought the negotiations were fair. Twenty-two percent of the respondents thought the negotiations were not fair. Using statistical analyses, the data were scrutinized to see if there was any relationship or correlation between opinions of how fair the process was and: 1) TRT team, 2) sector membership, 3) own opportunity to express views, 4) others ability to present views, 5) and/or whether their opinion was taken seriously and incorporated into the plan. Respondents' evaluation of whether their opinions were taken seriously was associated with their assessment of how fair the process was. Respondents who thought their opinion was taken seriously and incorporated into the plan also thought the process was fair. On the other hand, respondents who did not think their opinions were taken seriously did not think the process was fair¹. This is not surprising, since the belief that one's opinion is being taken seriously and the need to see it reflected in decisions is one of the values of collaborative processes. This is frequently a measure of whether a process is believed to be fair. There was no statistical association between respondents assessment of the process as fair and TRT team, sector membership, own opportunity to express views, and others ability to present views.

Several respondents from the Gulf of Maine and Atlantic Large Whale teams commented that the facilitators did a good job at maintaining a fair atmosphere. One respondent thought the process was as fair as it could be given the political context of the issues. At least one respondent thought that individuals with experience in previous TRTs could exercise more control of the process than individuals who were new to the process. Another thought the overall process was fair, but thought there was a slight bias toward the industry perspective. The following chart illustrates the findings on fairness.



B 6. Satisfaction With Results/Outcome

The survey asked participants whether at the end of the last meeting they were *satisfied with the final results/outcome*.

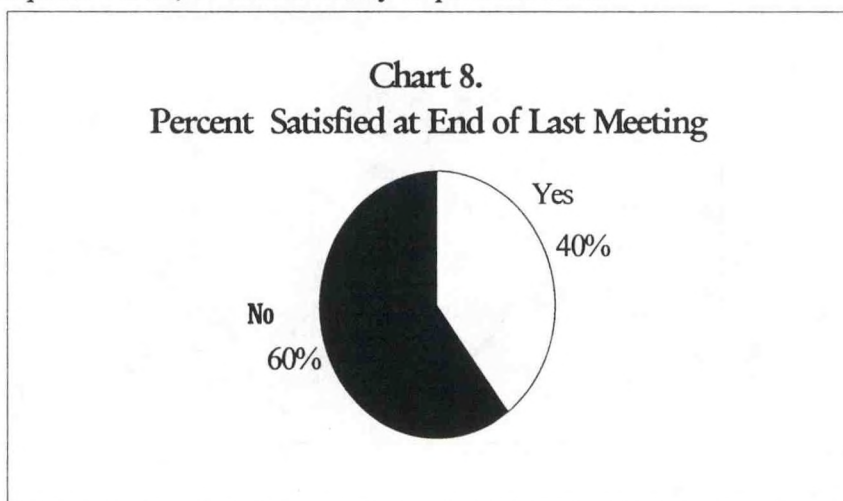
Forty percent of the respondents were satisfied with the results, while 60% were not satisfied

¹ Chi square = 7.095, df = 1, asymptotic significance = .008, Cramer's V = .347.

with the results. The data were arranged to see if there was any relationship between satisfaction with the outcomes and: 1) team, 2) sector, 3) reached agreement, 4) own opportunity to express views, 5) others ability to present views, 6) opinions taken seriously, and/or 7) adequate time for negotiations. Three factors were associated with satisfaction with the final outcome: whether the team reached agreement; whether the respondent's opinion was taken seriously and incorporated into the plan; and, whether there was adequate time for negotiations.

Respondents' evaluation of their satisfaction was definitely connected to whether or not they felt they had adequate time for negotiations². Whether the team reached agreement was also associated with satisfaction. Respondents whose teams reached agreement were satisfied with the final result and those teams that did not reach agreement were not satisfied. Finally, respondents who felt their opinions were taken seriously were also satisfied with the final results. Respondents who did not think their opinions were taken seriously and incorporated into the plan were not satisfied with the final results³.

There was no relationship between satisfaction with final result and team, sector, own opportunity to express views, or others ability to present views.



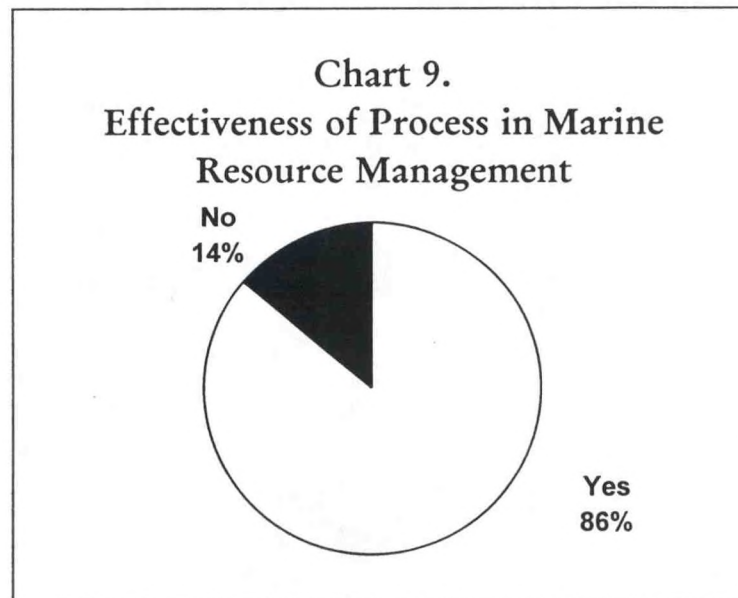
One respondent from the Atlantic Large Whale TRT summed up many of the responses saying, "There were too many people trying to address too complex an issue in too little time." A respondent from the Pacific Offshore Cetaceans TRT commented that there was so little time that there was no opportunity to discuss future or alternative strategies. Other respondents from the Atlantic Large Whale and Mid-Atlantic teams thought the process was unsuccessful because the group did not have enough time and because they did not reach consensus. A respondent from the Mid-Atlantic TRT commented they were dissatisfied because the meeting ended on a bad note, with some feeling disenchanting with the entire process. Finally, others thought it was unrealistic to bring in all interested parties to negotiate a shared or agreed upon outcome.

² Chi square = 17.618, df = 1, asymptotic significance = .000, Cramer's V = .537

³ Chi square = 6.711, df = 2, asymptotic significance = .035, Cramer's V = 3.29, Chi square = 8.123, df = 1, asymptotic significance = .004, Cramer's V = .365.

B 7. Effectiveness of Process in Marine Resource Management

Eighty-six percent of the respondents thought the *multi-party negotiation process was effective in marine resource management* decision making. 14% of the respondents thought the process was not effective. Many respondents commented that the multi-party negotiation process presented stakeholders with an opportunity to have input and for decision makers to gain a broader perspective. Others said that although it is an effective process, it is only as effective as NMFS allows it to be and so far NMFS has not implemented many of the plans. Several respondents commented that the process is only worthwhile if NMFS participates effectively and carries out any decisions reached. Others expressed concern that the process is biased, and it is a no-win situation for the commercial fishing industry.



B. 8. Time Management

Participants were questioned about the *structure of the meetings*, and whether *time was used efficiently*.

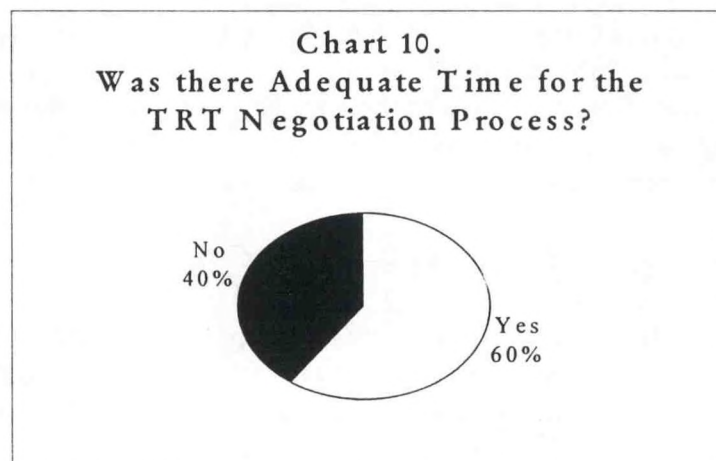
Eighty-five percent thought the process included enough time for informal negotiations. Fifteen of the respondents thought that more time could have been set aside for informal negotiations with parties that had disparate views. Some respondents commented that even though there was time for informal negotiations, some parties did not participate in those informal discussions.

Ninety percent of the respondents thought that adequate time was given to caucuses for parties with similar views. Ten percent of the respondents thought more time could have been given to such caucuses.

The survey asked participants if there was enough time for the formal negotiations. Sixty percent

of the respondents thought there was enough time for negotiations and 40% of the respondents thought there was not enough time. As noted above, the lack of time was significantly correlated with respondents' satisfaction with the results at the end of the negotiations. In particular, of the 17 respondents from the Atlantic Large Whale team, 13 respondents thought there was not enough time. Several of them commented that more flexibility on the deadline might have resulted in consensus recommendations.

Of the 29 people who answered that they would have preferred more time for negotiations, 38% thought two more months would have been enough and 21% thought three more months was needed. 41% of the respondents recommended more time in general without recommending a specific time frame. The following chart illustrates the findings about time.



B. 9 Benefits/Difficulties

Respondents thought one of the *most beneficial aspects* of the TRT negotiation process was the open-forum opportunity to exchange views. Other respondents explained that gaining a clearer and balanced perspective of the issues and other viewpoints was valuable. A respondent remarked that participants gained an education about each other and different sectors' interests that allowed for more reasoned and well developed discussions. Others commented on the opportunity to be a part of a solution process where one group did not "win". Many respondents thought the opportunity to work together on a common goal was particularly helpful.

Conversely, participants remarked that the lack of NMFS implementation after long and difficult negotiations was one of the *most difficult aspects* of the TRT process. Respondents from all five teams remarked on the difficulty of working with insufficient data, data that was perceived as biased, or the inability to absorb all of the data given such tight time constraints. Several respondents were also frustrated at the participation of NMFS staff in the meeting. They commented on the perceived lack of commitment to the process and the lack of NMFS staff in the process with adequate authority. Several respondents noted the difficulty of negotiating an agreement with so many different interests, particularly in such large groups. Two respondents remarked on the difficulty of working with participants who did not fully disclose information and interests. Finally, several respondents commented on the difficulty of working with difficult

personalities and trying to understand and embrace others' perspectives.

C. Facilitator Performance

The survey also assessed facilitator performance. The facilitators were an option for NMFS, therefore, the survey assessed performance so that NMFS could determine whether they should have facilitators in the future. Although negotiation can and does proceed successfully without a facilitator, a facilitator can often structure a fair and inclusive process leading to increased stakeholder satisfaction with the process. To evaluate facilitator performance, the survey asked questions *about communication, understanding of the issues and ability to structure a good process.*

In general, the survey found that respondents thought the facilitators were approachable, communicated effectively with participants, responded to concerns, managed the process effectively and were fair. Respondents who thought they had an opportunity to express their views and who thought their opinions were taken seriously rated their facilitator's performance as excellent. The following provides more details on facilitator performance.

C. 1. Facilitator Contact Before Meeting

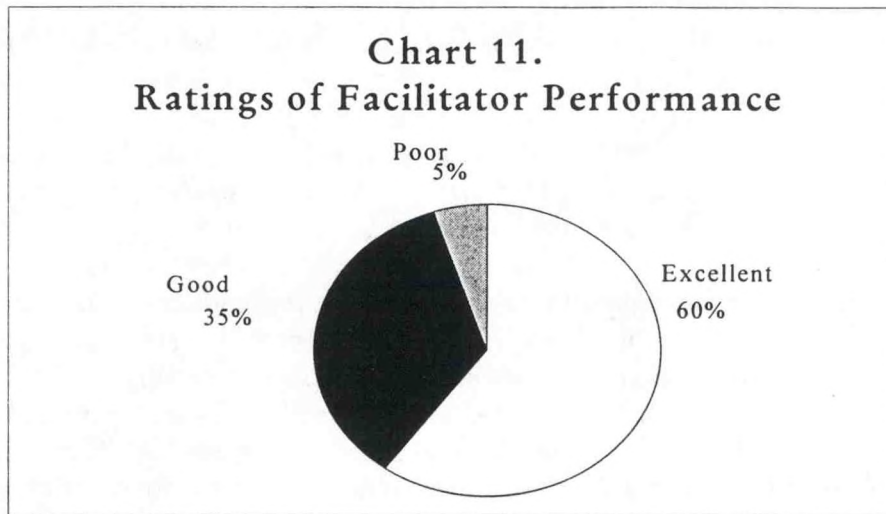
The TRT facilitator *was responsible for contacting each of the participants before the negotiations began.* Ninety-eight percent of the respondents stated the TRT facilitator had contacted them before the first meeting of the Take Reduction team. Two percent of the respondents stated the facilitator had not contacted them.

C. 2. Information About Process and Role

The facilitator *was responsible for explaining the process and each participant's role in the process to each participant.* Eighty-six percent of the respondents stated the facilitator gave them sufficient information about their role. However, 14% thought they could have been given more information about their role. Ninety-five percent of the respondents said they understood the purpose of the process after speaking with the TRT facilitator. Five percent of the respondents would have liked more explanation about the purpose of these processes. Eighty-nine percent of the respondents thought the facilitator had clearly explained the types of discussion issues the TRT process would cover. Eleven percent of the respondents would have liked more information about these discussion issues before the meeting began.

C. 3 Overall Rating of Facilitator Performance

On the *overall rating of the facilitators performance,* 60% rated the facilitator's performance as excellent. Thirty-five percent of the respondents rated the facilitator's performance as good, and only 5% rated the facilitator's performance as poor. The following chart illustrates findings about facilitator performance.



C. 4 Other Ratings

The survey also asked participants to rate other characteristics of the facilitators'. The results are summarized below:

Chart 12.			
Additional Facilitator Ratings			
<i>Please Rate the Facilitator on the Following Characteristics:</i>			
	Excellent	Good	Poor
a. Approachability	75%	23%	2%
b.1. Communication during meeting	65%	38%	6%
b.2. Communication in between meetings	56%	38%	6%
c. Responsiveness	62%	32%	6%
d. Ability to move meeting process forward	47%	45%	8%
e. Ability to break impasse	41%	48%	11%
f. Ability to capture ideas	60%	35%	5%
g. Fair with all parties	67%	24%	9%
h. Understanding of the issues	41%	56%	3%

D. Adequacy of Meeting Administration

Respondents of the five Take Reduction teams were generally satisfied with advanced notice of meetings, meeting locations, advance packet materials, length of meetings and meeting summaries.

Some respondents commented that the advance materials could have better organized and mailed out earlier. Others commented that the meeting summaries were late or flawed which caused a breakdown in the process and required further telephone conversations for final sign-off.

E. Suggested Improvements and Advice for Multi-Party Negotiation Processes

The survey examined participants' viewpoints on 1) *how to improve the process*, 2) *how the NMFS should involve the public after NMFS publishes a proposed plan* and 3) *how future negotiators and facilitators should prepare to participate in multi-party negotiation processes*.

In general, the survey found that approximately 60% of the respondents would advise the NMFS to hold another TRT meeting during the public comment period. Respondents urged NMFS to schedule more time for negotiations and to be more flexible about deadlines. There were several suggestions about how data should be gathered, analyzed and disseminated in the future to improve the use of data within the process. Respondents encouraged NMFS to organize the initial phases of the process so that there was more time and potential for creative problem solving. Finally, several respondents commented that without a firm commitment from NMFS to implement decisions within agreed upon time lines, the TRT process was not useful.

E 1. How to Involve Public When NMFS Publishes Proposed Plan

The survey asked whether *NMFS should hold a TRT Meeting while the NMFS Proposed Management Plan is out for public comment*. Sixty-one percent of the respondents thought it would be good to hold TRT meetings when the proposed plan was out for public comment. 39% of the respondents thought it was not a good idea. Of the 61% who thought the NMFS should hold TRT meetings, those who commented differed about when to hold the TRT meeting. Commenters suggested that the best time could be before the NMFS plan is printed in the Federal Register, another said during the public comment period, and another suggested immediately after the public comment period and prior to finalizing the Plans. All who commented agreed that TRT discussion and review of the NMFS plan would have been useful to assist with successful implementation of the plans.

E 2. How to Improve the Process

The survey asked respondents for suggestions on *how to improve the process*. One of the improvements suggested by many respondents of the TRT negotiation processes was to ensure that in the future there is enough time to complete the work and analyses. There were also several suggestions about the quantity and quality of data and how to handle data in future processes. Several respondents suggested not having multi-party negotiations if the data wasn't better. Respondents commented that the process could be improved by having smaller groups or fewer meetings over a longer time frame.

Other respondents suggested that more organization in the initial phases of the process would improve the potential for creative problem solving and consensus. Several respondents thought there should be a consistent messages from NMFS to follow MMPA mandates for publishing plans and convening teams. Others suggested increased commitment of respondents in the process. Two respondents suggested more preparation and involvement in the whole process from all offices within NMFS including legal counsel, fisheries managers and decision-makers.

E 3. Advice for Future Participants and Facilitators in Multi-Party Negotiation Processes

When asked what *advice participants would offer negotiators who participate in future negotiation processes*, several respondents stressed the importance of coming prepared to the meetings, with as much knowledge of the data, issues and sides, as possible. Several respondents suggested that participants prepare themselves better by analyzing the role of NMFS and determine NMFS follow-through. Some thought that NMFS needed to be more straightforward. Others noted that respondents need to come to negotiations with an open mind, with a willingness to see others' perspectives and a willingness to compromise.

In response to what *advice participants would offer facilitators of future TRT processes*, respondents offered the following comments: At least two respondents thought that NMFS should not dismiss original suggestions on process structure and format. Others suggested that more opportunity for small group discussions involving more than one interest group would move things forward. Several respondents suggested that facilitators devise new ways to present the data and determine its validity.

IV. Discussion

In our experience participants value the process and feel that it is fair when*:

- Parties have a compelling reason to participate in the process;
- All parties with a significant interest in the issues are involved in the process;
- The parties who are affected or interested participate voluntarily;
- The parties have input into the design of the consensus process;
- The processes is flexible;
- The parties have equal access to data generation and information and have the opportunity to participate effectively throughout the process:
- The diverse interests are accepted and respected;
- The parties are accountable to their constituencies and the process;
- The time limits and deadlines are realistic;
- There is serious commitment by all parties that any agreement will be implemented and monitored.

The NMFS Take Team Reduction negotiation process differed from the ideal multi-party negotiation process in several ways. First, the process was mandated by federal law. While parties did participate voluntarily, the NMFS was required by law to convene the TRTs. Parties may have felt they had few options but to participate.

* (See Gray, B. 1989, Collaborating Finding Common Ground for Multi-Party Problems, Winer, Michael and Karen Ray, Collaboration Handbook: Creating, Sustaining and Enjoying the Journey, SPIDR, 1997, Best Practices for Government Agencies: Guidelines for Using Collaborative Agreement Seeking Processes, Canadian National Roundtable on the Environment and the Economy, Task Force on Consensus Decision Making, Guiding Principles of the Consensus Process.

Second, the parties did not have any significant input into the design of the process. In most multi-party negotiation processes the neutral conducts a convening assessment before starting any process. The neutral, in most cases, is not an agency staff person. In interviews with the parties the neutral can discover what kind of issues parties would like to discuss, who should be involved, and if, indeed a collaborative process is appropriate. Without this type of convening it is difficult to design a process that meets the parties' needs and interests.

Third, parties did not have equal understanding of or access to data. A related fact is that all parties did not accept the data used to determine that the stocks were strategic nor did they accept the methodology to determine by-catch.

Fourth, the timelines mandated by the MMPA hampered serious learning and negotiation. Negotiations take time to develop trust, to learn how the other parties view the issues and the solutions and to develop and decide on options. The time period hindered several groups from developing good negotiation relationships and certainly did not allow them enough time to fully explore options. In addition, some of the participants in the Team negotiations had prior experience with one another in other forums. This history was an asset in some cases and posed problems in others.

Finally, and most importantly, a bias was built into this evaluation survey. By the time we surveyed the TRT participants they already knew the fate of their groups' agreements. They knew if the plans were being implemented as designed or if without an agreement their recommendations and ideas were finding their way into the final plans. Participants felt that they had devoted a lot of time and energy to difficult discussions that were not reflected in either the plans or the implementation. In comparison, in an evaluation of another consensus based rulemaking process, 62% of the participants felt the final rule reflected the results of their negotiations, while 17% of the conventional rulemaking participants felt that the final rule reflected their input. (Kerwin, C. and Laura Langbein, 1995, An Evaluation of Negotiated Rulemaking at the Environmental Protection Agency.)

There are several improvements suggested by respondents' comments, survey analysis and conversations with the facilitators. The first of these improvements concerns data. The lack of data and confidence in the data was clearly a stumbling block for many of the participants.

Agreement on which data to use and how data are generated is critical to the parties' opinions about the legitimacy of the process. It is important to distinguish the types of data that are of concern with respect to the involvement of stakeholders in obtaining or reviewing data. Marine Mammal Incidental take data need to be provided in a timely fashion and need to be organized so that participants can see whether there are any statistically significant factors. The TRTs where both the NMFS statisticians and several Team members were integrally involved in massaging data and proposing correlations to review were more successful.

A second type of data is marine mammal population abundance and potential biological removal (PBR) numbers. These data are generated in a separate process before the decision to convene the TRTs is made. In some cases credibility problems existed walking into the negotiations. On

some teams even NMFS' staff and researchers earnest attempts to provide the rationale for the PBR was not accepted by some TRT members. Integrating representative parties into development of PBR calculations has appeared to alleviate mistrust on some TRTs.

The process could spend more time assessing the adequacy of the data and encouraging participants to share data. Also, if participants think the data are inadequate or biased then the TRT might agree to not try and achieve consensus. Instead they might develop bycatch reduction options targeted at different scenarios, or develop another process so that expectations are adjusted appropriately.

A second improvement could be to increase the time allowed for the negotiation processes. Six months time was clearly not appropriate for some Teams especially when working with volunteer participants. More time could be found by conducting a few workshops prior to when the TRT negotiation is formally started. The purpose of the workshops could be to focus on data justification for the strategies, stock calculations and the PBR numbers. In these workshops experts from different disciplines could informally interact with TRT participants and hopefully narrow the mistrust of the data up front and provide an opportunity to discuss perceived or real gaps or problems with the data. This model has been successfully used by RESOLVE in other resource management negotiations.

Finally, the composition of each team and the authority of the NMFS staff at the negotiation table need to be clarified. NMFS staff role at the table was not the same on all five Teams, and sometimes the roles of NMFS staff changed over the course of the six-month negotiation on a Team. NMFS needs to develop a policy regarding who sits at the table, their role, and authority to speak on behalf of the agency. If the NMFS representative at the table does not represent the NMFS Senior Management Team, NMFS can't expect other TRT participants to speak on behalf of their organization, association or agency. A significant amount of frustration with the process occurred after the conclusion of the negotiations when participants perceived that their recommendations were not being acted upon or implemented. Many agencies conduct training in negotiation and collaborative decision making for agency negotiators and agency decisionmakers before the agency participates in collaborative processes. This helps the agency learn about its role and what staff can do to participate effectively. It is particularly important to be clear about roles and expectations if the agency negotiators are not the same as the agency decisionmakers. However, it is important to note that NMFS staff at the table struggled with their role at the table and should be acknowledged for their efforts to address their role in a straight forward and honest manner.

V. Conclusion

This evaluation demonstrates the benefits and challenges of involving stakeholders in collaborative processes on highly controversial public policy issues. The survey shows that respondents thought the processes were fair and effective when they had enough time to negotiate, when they felt heard, when their opinions were incorporated into the final plans, and when there was enough data to make good decisions. However, if the negotiation process is compromised by ongoing political pressures, inconsistent guidance from federal agency

decisionmakers, and inadequate timelines and data the consensus building process can end up taking longer than the traditional rulemaking processes. Furthermore, participants can quickly lose faith in government decisionmakers if participation is not carefully thought out and followed through.

List of Appendices

Appendix 1. Survey Results from Five Take Reduction Team Process Evaluations

Appendix 2. Survey Instrument

Appendix 3. Survey Respondents' Comments



Appendix 1:

Survey Results
From Five
Take Reduction Team
Process Evaluations



Appendix 1

Survey Results of Five TRT Negotiation Process Evaluations

Survey # Category	Question	Response	Atlantic Large Whale TRT	Atlantic Offshore Cetaceans	Gulf of Maine	Mid Atlantic	Pacific Offshore Cetaceans	Total Responses
II.2.	Prior to the first meeting did you know other TRT members? II.2.a. I knew some of the TRT members: Of those, I knew:	my sector only 1-2 other sectors 3 or more other sectors	19 2 6 11 0	11 0 2 8 0	11 3 7 1	16 2 2 10 2	6 2 0 4 0	6 6 13 40 3
II.2.b.	I did not know any TRT members.							
III. During the Negotiations								
III.1.	Did the TRT membership reflected a balance of perspectives? Yes No If not, explain why not		17 1	6 5	7 2	14 4	4 1	48 13
III.2.	How many of the TRT meetings did you participate in? 1-2 meetings more than 1/2 meetings all		1 7 11		1 2 7	0 4 14	0 0 6	2 13 49
III.3.	During TRT mtgs were you given an opportunity to express your views? All the time Most of the time None of the time Comments		15 4 0	7 4 0	7 3 0	10 8 0	5 1 0	44 20 0
III.4.	During TRT meetings, were others able to present their views? Yes No If not, please explain		16 2	11 0	11 0	18 0	5 1	61 3
III.5.	During the meetings, did you feel your opinions were taken seriously and incorporated into the plan? Yes No Comments		14 2	8 2	9 2	15 0	6 0	52 6
III.6.	Did you have sufficient data in your TRT process to support negotiation? Yes No Comments		5 13	2 9	1 7	7 10	4 2	19 41
III.7.	Did you have the necessary assistance to interpret the data? Yes No Comments		17 2	9 2	4 5	17 1	5 0	52 10

Survey Results of Five TRT Negotiation Process Evaluations

Survey # Category	Question	Response	Atlantic Large Whale TRT	Atlantic Offshore Cetaceans	Gulf of Maine	Mid Atlantic	Pacific Offshore Cetaceans	Total Responses
I. Some Information About You and Your Take Reduction Team	I.1.a. Have you had previous involvement in multi-party negotiations?	Yes	10	7	11	12	3	43
		No	9	4	0	6	3	22
I.1.b. # of previous multi-party negotiations involved in?		1-2 negotiations	3	0	5	7	2	17
		3-4 negotiations	1	3	1	2	0	7
		More than 5 negotiations	6	4	5	3	1	19
I.2. How many previous TRT's have you participated in?		(1) TRT	10	5	5	10	3	33
		(2) TRT'S	6	4	3	5	1	19
		(3) TRT'S	0	0	0	0	1	1
		(4) TRT'S	3	2	3	3	1	12
I.3. Sector Representation		Academic/Scientific Comm.	3	2	1	3	0	9
		Fishing Industry	7	4	5	8	2	26
		Environmental/Conservation	4	3	2	2	1	12
		State	4	0	2	3	1	10
		Federal	1	0	0	0	0	1
		Other	0	1	0	2	0	3
II. Some Questions About Your Experience	II.1. Were you contacted by mediator/facilitator prior to first meeting?	Yes	19	11	11	17	6	64
		No	0	0	0	1	0	1
If yes, did you have enough information about:	II.1.a. Your role in the process?	Yes	16	10	11	13	6	56
		No	3	1	1	4	0	9
II.1.b. Purpose of the process?		Yes	18	10	11	15	6	60
		No	1	1	0	1	0	3
II.1.c. Types of issues to be discussed?		Yes	16	9	11	14	6	56
		No	3	2	0	2	0	7
II.1.d. How the negotiation process would be structured?		Yes	13	8	9	8	5	43
		No	6	3	2	8	0	19

Appendix 1

Survey Results of Five TRT Negotiation Process Evaluations

Survey # Category	Question	Response	Atlantic Large Whale TRT	Atlantic Offshore Cetaceans	Gulf of Maine	Mid Atlantic	Pacific Offshore Cetaceans	Total Responses
III.8. During the Mtgs. was there adequate time for: a. Informal negotiations between parties with different views?		Yes	15	8	9	15	3	50
		No	2	2	1	2	2	9
b. Caucuses among parties with similar views?		Yes	18	10	8	17	4	57
		No	1	1	2	1	1	6
		Comments						
III.9. Was there adequate time for the overall negotiations?		Yes	4	7	8	13	5	37
		No	13	4	2	5	1	25
If not, how much time would be preferred?		2 more months	5	0	2	4	0	11
		3 more months	3	1	1	1	0	6
		more time?	4	2	1	3	2	12
III.10. Were the following items satisfactory, or not satisfactory?	a. Advance notice of meetings	Satisfactory	18	11	10	18	6	63
		Not Satisfactory	0	0	0	0	0	0
b. Meeting locations		Satisfactory	14	8	9	16	6	53
		Not Satisfactory	4	2	0	2	0	8
c. Advance packet materials		Satisfactory	16	8	9	17	5	55
		Not Satisfactory	2	1	1	1	1	6
d. Length of meetings		Satisfactory	19	10	9	17	3	58
		Not Satisfactory	0	1	1	1	3	6
e. Meeting summaries		Satisfactory	16	10	9	18	5	58
		Not Satisfactory	1	0	1	0	0	2
		Comments						
III.11. What advice would you offer negotiators who participate in future negotiation processes?		Comments						

Appendix 1

Survey Results of Five TRT Negotiation Process Evaluations

Survey # Category	Question	Response	Atlantic Large Whale TRT	Atlantic Offshore Cetaceans	Gulf of Maine	Mid Atlantic	Pacific Offshore Cetaceans	Total Responses
III.12.	Did you feel that the TRT Negotiation process was fair?	Yes No Please explain:	14 4	7 2	6 2	13 5	5 0	45 13
III.13.	At the end of the last mtg. were you satisfied with the results?	Yes, why? No, why not?	3 15	5 6	6 4	5 10	4 0	23 35
III.14.	What were the most beneficial aspects of the TRT process?	Comments						
III.15.	What were the most difficult aspects of the TRT process?	Comments						
III.16.	Would you advise NMFS to hold a TRT Mtg. during the time the NMFS Proposed Mgmt. Plan is out for public comment?	Yes No	12 6	6 2	8 2	7 10	1 2	34 22
III.17.	Is this multiparty negotiation process effective in marine resource mgmt. decision making?	Yes No Comments	11 1	7 2	6 3	14 1	6 0	44 7
III.18.	What improvements would you suggest for the TRT negotiation process for the future?	Comments						
IV.	Questions About the TRT Mediator							
IV.1.	Please rate the mediator on the following characteristics:							
a.	Approachability	Excellent Good Poor	17 2 0	6 4 1	7 4 0	13 5 0	6 0 0	49 15 1
b.1.	Communication during meeting	Excellent Good Poor	14 5 0	6 2 2	7 4 0	11 7 0	3 2 0	41 20 2

Appendix 1

Survey Results of Five TRT Negotiation Process Evaluations

Survey # Category	Question	Response	Atlantic Large Whale TRT	Atlantic Offshore Cetaceans	Gulf of Maine	Mid Atlantic	Pacific Offshore Cetaceans	Total Responses
b.2.	Communication in between meetings	Excellent Good Poor	11 7 0	6 3 1	7 3 1	7 10 1	4 1 1	35 24 4
c.	Responsiveness	Excellent Good Poor	15 4 0	5 3 3	7 4 0	9 8 1	4 2 0	40 21 4
d.	Ability to move meeting process forward	Excellent Good Poor	7 10 2	4 7 0	8 3 0	10 6 2	1 3 1	30 29 5
e.	Ability to break impasse	Excellent Good Poor	6 10 2	3 5 1	5 6 0	8 7 3	3 1 1	25 29 7
f.	Ability to capture ideas	Excellent Good Poor	12 6 1	6 3 2	8 3 0	10 8 0	3.5 2.5 0	39.5 22.5 3
g.	Fair with all parties	Excellent Good Poor	12 6 1	7 0 3	7 4 0	13 3 2	4 2 0	43 15 6
h.	Understanding of the issues	Excellent Good	9 9	2 7	4 6	8 10	3 3	26 35
IV.2.	Overall how would you rate the mediator's performance?	Excellent Good Poor Comments	11 3 2	5 5 1	7 4 0	9 7 0	4 2 0	36 21 3
IV.3.	What advice would you offer to mediators of future TRT processes?	Comments						



Appendix 2:

Survey Instrument



Please return by September 14, 1998
to Detra Stoddard, RESOLVE
1255 23rd Street, NW Suite 275
Washington, D.C. 20015

Process Evaluation Survey
National Marine Fisheries Service
Take Reduction Team Negotiation

I. Some Information About You and Your Take Reduction Team

1.a.) Prior to participating in the Take Reduction (TRT) Negotiations, had you ever been involved in other negotiation processes involving a large group of interested parties?

_____ Yes

_____ No

1.b.) If yes, please indicate how many by placing a check in the appropriate box

_____ 1-2 other negotiations

_____ 3-4

_____ More than 5

2. How many TRT negotiations did you participate in?

_____ 1 TRT; _____ 2 TRTs; _____ 3 TRTs; _____ 4 TRTs

3. I represented the following sector at the TRT negotiation table:

- Academic/Scientific Community
- Fishing industry (including processors)
- Environmental/Conservation
- State
- Federal
- Interstate Fishery Management Council
- Other; please list _____

Now Some Questions About Your Experience

II. Before the Negotiations Started

1. Prior to the first meeting, were you contacted by the mediator/facilitator?

Yes

No

If yes, did you have enough information about:

	Yes	No
a. Your role in the process?		
b. Purpose of the process?		
c. Types of issues to be discussed?		
d. How the negotiation process would be structured?		

2. Prior to the first meeting, did you know other TRT members? (*answer a. or b.*)

a) _____ I knew some of the TRT members.

_____ Of those TRT members I knew, I knew members representing

_____ my sector only

_____ 1-2 other sectors

_____ 3 or more other sectors

b) _____ I did not know any of the TRT members.

III. During The Negotiations

1. Did you think the TRT membership reflected a balance of perspectives?

_____ Yes

_____ No

If not, please explain why not

2. How many meetings of the TRT did you participate in?

_____ only 1-2 meetings

_____ more than 1/2 meetings

_____ all

3. During the TRT meetings were you given an opportunity to express your views?

_____ All the time

_____ Most of the time

_____ None of the time

Comments:

4.) During the meetings, were others able to present their views?

_____ Yes

_____ No

If not, please explain

5.) During the meetings did you feel that your opinions were taken seriously and incorporated into the recommended plan?

_____ Yes

_____ No

Comments:



6. In complex marine management issues, not all data are available. Did you have sufficient data in your TRT process to support the negotiation?

_____ Yes

_____ No

Comments:

7. Did you have the necessary assistance to interpret the data?

_____ Yes

_____ No

Comments:

8. During the meetings was there adequate time for

	Yes	No
a. Informal negotiations between parties with different views?		
b. Caucuses among parties with similar views?		

Comments:

9. Was there adequate time for the overall negotiations?

_____ Yes

_____ No

If not, how much time would be preferred?

_____ 2 more months

_____ 3 more months

_____ more time?

10. Were the following items satisfactory, or not satisfactory?

	Satisfactory	Not Satisfactory
a. Advance notice of meetings		
b. Meeting locations		
c. Advance packet materials		
d. Length of meetings		
e. Meeting summaries		

Comments:

11. What advice would you offer negotiators who participate in future negotiation processes?

12. Did you feel that the TRT negotiation process was fair?

_____ Yes

_____ No

Please explain:

13. At the end of the last meeting, were you satisfied with the results or outcome of the negotiation?

_____ Yes
Why? _____

_____ No
Why not? _____

14. What were the most beneficial aspects of the TRT process?

15. What were the most difficult aspects of the TRT process?

16. Would you advise NMFS to hold a TRT meeting during the time the NMFS Proposed Management Plan is out for public comment?

_____ Yes

_____ No

If not, what kind of public involvement process would you suggest?

17. Is this multiparty negotiation process effective in marine resource management decision making?

_____ Yes

_____ No

Comments:

18. What improvements would you suggest for the TRT negotiation process for the future?

Comments:

IV. Now Comments About the TRT Mediator

1. Please rate the mediator on the following characteristics:

	Excellent	Good	Poor
a. Approachability			
b. Communication			
• during meeting			
• in between meetings			
c. Responsiveness to my concerns			
d. Ability to move meeting process forward			
e. Ability to break impasse			
f. Ability to capture ideas suggested by the TRT			
g. Fair with all parties			
h. Understanding of the issues			

2. Overall how would you rate the mediator's performance?

_____ Excellent

_____ Good

_____ Poor

Comments:

3. What advice would you offer to mediators of future TRT processes?

V. *Information About Yourself (optional)*

1. If you are willing to identify yourself, please indicate your

Name: _____
(Please print clearly)

Organization: _____

2. Are you willing to be interviewed by telephone about the TRT process?

If yes, please list your telephone number and dates that you are *not* available in September.

Telephone number (____) _____ (day or evening)
circle one

Dates I am not available in September to talk

3. Would you prefer to be interviewed by someone other than Abby Arnold?

_____ Yes

_____ No

Thank you for filling out this survey!

Appendix 3:
Survey Respondents'
Comments

**Please return by September 14, 1998
to Detra Stoddard, RESOLVE
1255 23rd Street, NW Suite 275
Washington, D.C. 20015**

Process Evaluation Survey
National Marine Fisheries Service
Take Reduction Team Negotiation

I. **Some Information About You and Your Take Reduction Team** - (no comment sections)

II. **Before the Negotiations Started** - (no comment sections)

III. **During The Negotiations**

1. Did you think the TRT membership reflected a balance of perspectives?

Yes: (no comments)

No:

- Members from the scientific community were much less biased - in general- than the Harbor Porpoise TRT.
- Not a balance of interested and affected parties.

3. During the TRT meetings were you given an opportunity to express your views?

Comments:

- There were too many people in the plenary sessions to really explore an idea in depth. (2)
- More time could have been expended on seeking out opinions throughout the process. I believe there were many surprises when it came time to determine recommendations and consensus on actions.

4. During the meetings, were others able to present their views?

If not, please explain:

- There were too many people trying to address too complex an issue in too little time.
- Shark fishermen didn't /wouldn't come.
- Only individuals who raised their hands were recognized; other views were not sought after.
- The large size of the group made it difficult and fears about taping. Some were nervous by the fact that certain members of the public were listening.

5. During the meetings did you feel that your opinions were taken seriously and incorporated into the recommended plan?

Yes:

- Taken seriously, yes; incorporated into the plan, not always/occasionally.

No:

- We did not reach consensus

6. In complex marine management issues, not all data are available. Did you have sufficient data in your TRT process to support the negotiation?

Yes:

- Sufficient data is almost never available for natural resource management decisions, but I think we had as much data as we could reasonably expect. (2)
- Center staff was a superb resource for the Team.

No:

- Sufficient data does not exist. (2)
- There are big gaps in our understanding of where whales occur and why and how they become entangled.
- In some cases the data may not have existed- in other cases, however, the data was known, but not organized or presented to the TRT members in either a timely or particularly useful way. This situation reflected badly on NMFS.
- No, we could use more data on the nature of entanglements and the origin of the gear.
- Needed data were usually provided at the next meeting.
- NMFS staff worked diligently to provide analysis of available data and they should be credited - however, other data sets were nonexistent or poorly documented; for example, historic whale entanglement data were not well documented to ascertain year types. Also for some fisheries the data were weak or dated - for example gillnet effort data were 3 years old and the industry insisted they were inadequate given the reductions in effort due to groundfish regulations. Also, the lobster trap fishing effort is not sufficiently detailed regarding locations. Finally, the whale distribution data were skewed to locations of WW boats - especially for Right whales.
- The time lag for processing of data within NMFS is unacceptable.

7. Did you have the necessary assistance to interpret the data?

Yes:

- The available data were well presented. NMFS staff in particular helped make whale sightings data understandable.
- In most cases, yes. In many cases, the interpretations of the data were quite varied.

No:

- Specifically, the PBR numbers. There was no opportunity to debate the derivation of these numbers.

10. Were the following items satisfactory, or not satisfactory?

Comments:

- I wish we had covered the early material more quickly to provide for more meetings.
- The advance materials could have been much better organized for TRT members.
- The summaries were often quite delayed, and the final approval and discussions were difficult after the passage of long periods of time.

11. What advice would you offer negotiators who participate in future negotiation processes?

Comments:

- Define process and issues better for participation before the process formally begins. (2)
- Some people at the meetings were able to make decisions on the spot, while others had to consult with superiors or constituents first. Everyone should understand which situation people are in and not expect instant decisions from people who cannot make them.
- Do your homework; work towards recommendations sooner in the schedule, allowing more time for compromise and negotiation. I felt we tackled many difficult issues in the end and then walked away with many feeling somewhat disillusioned with the experience.

NAME OF TRT: Atlantic Large Whale TRT

- Do not allow the process to be driven by a court case and do not engage in sequential phone conversations in an attempt to reach consensus.
- If you are not willing to negotiate, then don't participate. If interest groups can't participate for legitimate reasons (e.g. meetings during prime fishing season) then find ways to accommodate. (E.g., hold shark-fishing session(s) in southeast when fishermen are not fishing.
- Perhaps try to task fact finders to gather data, prior to 1st meeting, and keep a wary eye for diminishing returns in data gathering during process.
- Beware of six-month deadlines.
- Go to the source of the problem - shipping lanes.
- Be open to other's views and attempt to understand their perspective on the issues.
- The TRT showed that in some cases, fishermen are better off outside the process, so this does not color other negotiations.

12. Did you feel that the TRT negotiation process was fair?

Yes:

- As much as it could be given the outside pressures and the political press once the plan was proposed.
- I feel that the mediator did a very good job of maintaining a fair atmosphere.
- Reasonable balance of interests and perspectives.

No:

- Out-numbered by those who represented environmental interests. (2)
- Individuals who are interested in solutions to problems are at a disadvantage relative to individuals who take extreme positions in order to negotiate the outcome they prefer.
- Some folk's suggestions were written down, followed up on, and incorporated, while others were not.
- There was not an understanding of how the fishing industry works - i.e., requirements of gear by nature and minimum human needs.
- Not enough time at the end, some fishermen representatives seemed burned out by TRT's and seemed to say: "I won't agree anymore to shutting myself down or restricting myself. Let NMFS and the courts do it."

13. At the end of the last meeting, were you satisfied with the results or outcome of the negotiation?

Yes, Why?

- I felt there were sound recommendations to address the issues - despite lack of consensus.
- Best available outcome.

No, Why not?

- The group didn't have time to come to consensus on some points. (5)
- There were some negative personal dynamics that I didn't know how to mitigate. (2)
- We didn't have enough information to make good decisions.
- Not reflective of reality.
- Because we had not reached consensus.
- One principal group refused to negotiate throughout- denying that they were part of the problem and solution - and relying on political strengths to get their way.
- Consensus was not reached and this spawned spin-off meetings that were not properly run - the so-called state/industry TRT.
- No, shipping lanes are not regulated to my satisfaction.

14. What were the most beneficial aspects of the TRT process?

- Bringing together of varied stakeholders- insights into differing viewpoints regarding the problems associated with take reduction. (6)

NAME OF TRT: Atlantic Large Whale TRT

- An opportunity for stakeholders to hash through data and understand at least some points of "opponents" views. (2)
- Having a neutral facilitator was good, but there were times when we needed active mediation.
- We all kept a sense of humor and laughed during the difficult times.
- Clearer understanding of the issues and the perspectives of each interest group.
- Contact with the other members.
- To see people from different types of industry sacrificing part of their business to protect the whale.

15. What were the most difficult aspects of the TRT process?

- Trying to agree on measures that would ease a suspected problem (whale entanglements) without hindering fisherman's ability to function, affecting one's livelihood. (2)
- Making decisions on data that I thought was insufficient. (2)
- The group was too large for personal interactions that would have helped in some problem areas. (2)
- Personalities
- The differences between the viewpoints of some sectors were so great that a short process couldn't possibly achieve consensus.
- Trying to establish where members stood on the proposed recommendations as the process neared the end and if there could be agreement or compromise to address the TRT goals.
- The personal attacks and lies that occurred once the process broke down.
- The Massachusetts lawsuit; knowledge that large ships had greater impacts on right whales than fishing, yet no one could guarantee that shipping industry would do its part to reduce interactions.
- For me, it was the industry's expectation that I ally myself with their positions.
- Uncertainties as to how well the views of the "Fishing Community" were represented.
- Trying to get conservation people to understand how the fishing industry works.

16. Would you advise NMFS to hold a TRT meeting during the time the NMFS Proposed Management Plan is out for public comment?

Yes:

- It would be useful for different sectors to be able to get together again, but I wouldn't expect all differences to be resolved.

No: If not, what kind of public involvement process would you suggest?

- Hold a TRT meeting after receipt and summarization of public comments. (4)
- The time for another TRT meeting would be after the report is submitted to but before public comment - this would provide the team a chance to provide input on the team's recommendations and the service's proposed action.

17. Is this multiparty negotiation process effective in marine resource management decision making?

Yes

- Depends on how one defines "effective," I believe it does offer the opportunity for all stakeholders to have input and knowledge of the process. (2)
- Yes, it is still the best process if NMFS could get the implementation right.
- It's worth the try. (2)
- From my perspective it is the only way to reach an objectively fair resolution to complex problems.
- Depends on issues involved. Process must be well supported; halfway effort will fail.
- I am sure it gave the decision-makers a broader perspective.

No

- If one or more interest group refuses to negotiate, the group cannot reach consensus. It is also hard to find consensus when one group won't come to the meetings.

NAME OF TRT: Atlantic Large Whale TRT

- It fell apart in this case because NMFS dropped the ball (in my opinion) which resulted in political chaos.

18. What improvements would you suggest for the TRT negotiation process for the future?

Comments:

- Ensure that there is sufficient time to complete the work and analyses, either by having a smaller group or fewer meetings for longer periods of time. (4)
- With more organization of early phases of the process (more information on process, issues, roles), the negotiation phase could be reached earlier in the schedule and possibly allow for more potential for creative problem solving and consensus. (3)
- Do not try and reach consensus after everyone has left the table.
- Make sure that participants are willing to participate in good faith. It would also be helpful if fisheries participants recognized that they were part of the problem - for a good part of at least two meetings, fishing interests were in a state of denial - "Not us, we don't take whales."
- More participation from the fishing industry.
- The person who is seeking solutions to the problems is at a distinct disadvantage in a "negotiation process." There needs to be some recognition that there are those who are being paid to be at the meetings, who will not be affected in any way by regulations, and whose organizations benefit from conflict.
- High level of support for working commercial/fisherman.
- More data on interactions from ships and military vessels, also pollution.
- Be sure NMFS is willing to defer to the team rather than the Council and other parts of NMFS.
- Remember that people come first, not mammals.

IV. Now Comments About the TRT Mediator

2. Overall how would you rate the mediator's performance?

- She ran out of time.
- This was a complex issue and the mediator worked very hard to understand the issues; she and the staff were very productive before and after meetings.
- The facilitator wasn't able to control a very difficult group of people.
- I felt that the meetings were moderated, but not facilitated.
- Very good overall. I believe that in some cases the mediator should have pressed forward toward the negotiation/recommendation process sooner.
- It is hard to separate the mediator's performance from the outcome-, which was unsatisfactory due to problems beyond the mediator's control.

3. What advice would you offer to mediators of future TRT processes?

- Talk with each participant ahead of time.
- Know all sides of the issue.
- Organize NMFS presentation of data.
- If the group is as large as this one was, plan for more caucuses and small group discussions to move things ahead; involving more than one interest group.
- Use state agency representatives more; many are experienced at resolving complex issues. They know their coastal fisheries well.
- Establish upfront that you will be controlling this process; you don't want us to love you - just respect you.
- If court involvement is on going, check the flexibility of deadlines. Maybe make reports to the court.

***Please return by September 14, 1998
to Detra Stoddard, RESOLVE
1255 23rd Street, NW Suite 275
Washington, D.C. 20015***

Process Evaluation Survey

National Marine Fisheries Service

Take Reduction Team Negotiation

- I. Some Information About You and Your Take Reduction Team** (no comment sections)
- II. Before the Negotiations Started** (no comment sections)
- III. During The Negotiations**

1. Did you think the TRT membership reflected a balance of perspectives?

Yes: (No comments)

No:

- I felt there was insufficient representation by the environmental/conservation community.
- Animal activist representatives should not have a veto on actual participants in a fishery attempting to resolve their MM problems within a reasonable and practical application of relevant laws.
- NMFS, environmentalists, and longliners certainly had a pre-approved agenda and goal.
- The problem with the Atlantic Offshore Cetacean TRT, was that too many different commercial fleets were brought into a process simultaneously and they should have been separated into two distinct groups to work with the NMFS and outside interests to address each fleet's problems.

3. During the TRT meetings were you given an opportunity to express your views?

Comments:

- I felt the facilitator was biased toward the industry and did not uphold the ground rules of the negotiation. Furthermore, she didn't listen to the concerns of all of the parties.
- The facilitator did an excellent job of allowing equal opportunity to express your views in a volatile situation.
- The outcome was predetermined so my point of view, when allowed to be presented, was completely ignored.

4. During the meetings, were others able to present their views?

Yes:

- In the first meeting a representative from the North Atlantic Review Team stated that calculations - such as PBR's, etc. could not be discussed- this ended discussion of one of the primary issues.
- The facilitator was great at keeping things open and allowing everyone to voice their opinion.

No: (No comments)

NAME OF TRT: Atlantic Offshore Cetaceans TRT

5. During the meetings, did you feel that your opinions were taken seriously and incorporated into the recommended plan?

Yes: (No comments)

No:

- I cautioned about developing a plan that required making changes to fishery management practices. Almost 2 years later the plan has not been implemented because it is viewed as too complicated by NMFS.
- Animal activists outright vetoed a few practical and reasonable alternatives.
- The goal of this TRT was not to protect mammals; it was to strengthen a certain industry group's position with the "hill", NMFS, and the environmental community.

6. In complex marine management issues, not all data are available. Did you have sufficient data in your TRT process to support the negotiation?

Yes: (No comments)

No:

- The Mid-Atlantic TRT had much better data and better staff support.
- Longline data were sparse and outdated; population information a bit more shaky than for marine coastal species. No data at that time on travel data.
- NMFS bycatch data is often a year out of date, and in this instance there was insufficient data from longline fishery to really develop effective bycatch reduction measures.
- Example - 3 different sets of "Observer" data for 1 fishery were never reconciled. Marine mammal takes never discussed during meetings were added for another fishery in FINAL draft.
- Most importantly was to determine PBR levels, which are formulated using stock assessments. The stock assessments for marine mammals were conducted at the wrong time of year and outdated. A full, comprehensive assessment needs to be conducted. Our livelihoods are at stake and we are using flawed and incomprehensive data - very frustrating.
- Plenty of data but it was poorly prepared and when convenient it was ignored - the longliners were the dirtiest fishery at the table, yet they left the table unscathed.
- The time lag for processing data within NMFS is unacceptable.

7. Did you have the necessary assistance to interpret the data?

Yes:

- I obtained it myself; it was not part of the data per se.
- NMFS science staff are always helpful.

No:

- Very little NMFS assistance in this manner. We were lucky to have our own scientific consultant even though he had major problems acquiring NMFS data.
- Not all the time, certain individuals think they are better than everyone else is because only they understand the nonsense they prepare.

8. During the meetings was there adequate time for informal negotiations and caucuses among parties.

Comments:

- Little dialogue outside of meetings between fishermen and conservationists, except pair trawl fisherman who sought our sympathy in their battle with the longliners.
 - Of course the environmentalists could caucus anytime but others did not get treated the same way.
-
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NAME OF TRT: Atlantic Offshore Cetaceans TRT

10. Were the following items satisfactory, or not satisfactory (advance notice of meetings, meeting location, advance materials, meeting summaries, etc.?)

Comments:

- Hotels good; central location - but meetings in Boston, Warwick tend to encourage participants to separate into interest groups and dine/drink separately, so informal negotiation does not happen.
- As long as drafts were circulated and revised to reflect comments - it worked ok, but many times it required a prolonged back and forth process.
- Final summary of strategies was flawed which caused further phone conversations to sign off on changes that impacted everyone. This caused some minor breakdown in strategies and I believe the groups that felt not all their conditions were met orchestrated it.
- The facilitator did a good job of organizing, but NMFS made sure that a true negotiation was impossible.
- Advance materials sometimes came at the last minute.
- Downtown Boston traffic is unbearable.

11. What advice would you offer negotiators who participate in future negotiation processes?

Comments:

- NMFS needs to have better data available.
- Remote meetings, be wary of NMFS commitment to follow through.
- Take time to work with one another outside of the formal process. Do not wait until the end to address the tough issues.
- Be honest, try to see the problems from other perspectives and be willing to compromise.
- Take original formats and structure suggestions more seriously. Hook and line fisheries should not have been directly included with driftnet and pair trawl then when pair trawl was banned they should not have been allowed at the table.
- That the agency already (before) has an agenda and is just going through the formalities. Thus, minimizing the bias and demand on time and complete data prior to negotiations.
- Do not trust anyone from NMFS, the environmentalists and/or the academic side.
- Be prepared to compromise; do homework - know the issues/sides.
- NMFS needs to be more straightforward - NMFS lawyers need to be on the team.
- Get the data first, then start on the process.

12. Did you feel that the TRT negotiation process was fair?

Yes:

- Good process, but de-authorizing one fishery in mid-negotiation was tough on the moods. Swordfish squabbles colored the argument process.
- Process was fair; the facilitator was not prepared and was biased. NMFS did not honor the process.
- Must admit the TRT negotiations itself were conducted somewhat fairly. The breakdown came 24 hours after its completion, with several participating groups developing strategies to stymie TRT strategies.

No:

- NMFS never engaged. If NMFS had, and some of industry's practical suggestions been allowed a full discussion - some better alternatives could have been developed.
- NMFS nonsense to keep the "hill" happy and a few environmentalists.

13. At the end of the last meeting, were you satisfied with the results or outcome of the negotiation?

Yes, Why?

- It was a decent plan that NMFS needs to implement. (2)
 - I felt that it was as fair as possible for the first step of the plan.
 - Yes, but only partially because there were several loose ends that were left.
-
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NAME OF TRT: Atlantic Offshore Cetaceans TRT

- It appeared we had reached consensus on what looked at the outset like an impossible situation.

No, Why not?

- I agreed, under pressure, to something I should never have supported (set allocation).
- No, because I felt the regime was focused on fishery management rather than marine mammal take reduction.
- Practical alternatives were buried. Never received complete/accurate data.
- The TRT agreed to try some ideas that had little likelihood of working, without clearly identifying next steps if the idea(s) failed.
- Did not thoroughly complete agreed upon telephone conversations, which created a few implicit changes. Not the proper procedure; either stay and finish or set-up for another meeting.
- The cleanest fishery (pair trawl) was not given a second look.

14. What were the most beneficial aspects of the TRT process?

Comments:

- Solution of difficult problem with no one really "winning."
- To hear everyone's side and get a different viewpoint you may not have had. To gain a more balanced perspective. (3)
- Reality check, NMFS officials are more concerned about their jobs and political futures, than mammal or fishery resources.
- Professionally, the exchange between NMFS marine mammal and university and private sources was the most beneficial in terms of learning more about the nature of the problem and the perceptions of the biological impact.

15. What were the most difficult aspects of the TRT process?

Comments:

- NMFS - nearly 2 year delay in implementation of any rule.
- Longliners went to congressional representatives and tried to influence process.
- NMFS's message to TRT as to what was an acceptable goal for reduction or reduction strategy changed constantly.
- Insufficient data. (2)
- NMFS staff that cannot commit the agency to the plan. Lack of lawyer's (NOAA) willing to participate in the plan/TRT process to help legally guide the plan development.
- Dealing with people with a fixed agenda.
- Placing gillnets and pair trawl at the same table with hook and line was absurd. Dealing with animal activists precludes attempts towards practical and reasonable alternatives. Ignoring the international component of marine mammal interactions, especially for HMS fisheries is a fundamental flaw as is ignoring recreational marine mammal takes and serious injuries.
- Closed-minded point of views by environmentalists and others on the extremely fast track process on difficult concerns that did not happen overnight and were not to be remedied overnight without severe economic hardship. All or nothing attitude.
- Working with inadequate data; inability of NOAA council to provide straight answers.

16. Would you advise NMFS to hold a TRT meeting during the time the NMFS Proposed Management Plan is out for public comment?

Yes:

- Public can observe and be in audience as has always been the case.
 - TRT should be given an opportunity to review public comment.
 - The TRT's should meet to evaluate take rates, plan effectiveness, etc.
 - Aid in responding to comments and the possibility of tweaking the strategies further. Also to assure that they implement these strategies in a timely fashion.
 - Why bother - NMFS does not care about what is right or wrong.
-
-

No:

- I think it depends on how different NMFS' plan is from what the TRT recommended.

17. Is this multiparty negotiation process effective in marine resource management decision making?

Yes:

- Sometimes. If you don't have a formal "Council" type system to involve public this is probably next best.
- Good process could work but in this case, the swordfish battle is so political, it affected the process.
- It is very helpful so long as the agency implements it -- which they have not! (2)
- It is very important for the scientific and management communities to come together with user groups to solve problems. Management cannot alone make decisions on an industry that they have no prior experience in. They should all be on an equal footing.
- Especially on Pelagic - HMS and PR of Office of Sustainable Fisheries mandates - fisheries management with little peer review. Not like the council system where you have an opportunity to participate. Industry input in pelagic is lacking tremendously.
- If you did not have too many parties, otherwise its more like a regional council which is a much longer process which the MM TRT process is designed to speed up.
- Assuming participants are willing to negotiate and that they reasonably represent their constituency.

No:

- NMFS has never published the plan, which does not support success or good faith. (2)
- Not under the parameters and representation set by this TRT.

18. What improvements would you suggest for the TRT negotiation process for the future?

Comments:

- NMFS needs to bring better analyses of data to the table.
- Consistent messages from NMFS- follow MMPA mandates for publishing plans and convening teams.
- This group needs a strong facilitator.
- The facilitators prepare themselves better and try to get a better grasp of the political issues.
- It was evident that a professional ran TRT process and it would be hard to improve on that. The only improvement I see would be for the government to make every effort to implement the TRT recommendations.
- NMFS should engage during the process to work through what would be reasonable and practical instead of rejecting a consensus outcome.
- NMFS scientists must be given ample opportunity and resources to have completed and requested data available plus provide explanatory assistance along the way.
- The ability of the facilitator to call one more meeting to polish and fine-tune the recommendations. Often, the final agreements are made in the final minutes before people have to leave to catch their flights. A firm deadline drives these decisions. The polishing meeting could be announced after the final agreement meeting.
- Better data and a better understanding of where the agency is going. Fairer and more industry representatives on the teams, for they are being adversely impacted the most.
- Do not waste my time and other taxpayer money.
- My biggest concern is that the TRT process will fail due to a timely lack of follow-through by NMFS.
- Make sure the data has been thoroughly peer reviewed.

IV. Now Comments about the TRT Mediator?

2. Overall, how would you rate the mediator's performance?

NAME OF TRT: Atlantic Offshore Cetaceans TRT

Comments:

- She was caught in a political maelstrom; she could have been more assertive.
 - I am always impressed working with a professional; the process goes smoother and saves a lot of wasted time.
 - Allowed animal activists and certain academic individuals to veto important discussions and options.
 - Her hands were tied.
3. What advice would you offer to mediators of future TRT processes?
- Make sure people from NMFS are empowered to make decisions (as opposed to reflecting on them.)
 - Don't allow NMFS to discuss original suggestions or structure and format.
 - Allow time for small group caucuses involving different interests; these groups could discuss issue in detail and hammer out a draft to present to the whole group.
 - Insist on valid and up to date data and the agency's agenda.
 - Pass on the job - let NMFS Leadership do it.
-
-

*Please return by September 14, 1998
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1255 23rd Street, NW Suite 275
Washington, D.C. 20015*

*Process Evaluation Survey
National Marine Fisheries Service
Take Reduction Team Negotiation*

I. Some Information About You and Your Take Reduction Team (no comment sections)

II. Before the Negotiations Started (no comment sections)

III. During The Negotiations

1. Did you think the TRT membership reflected a balance of perspectives?

Yes: (No comments)

No:

- Most of the scientists were strongly biased toward the environmentalists' position - not a resource for objective information.
- The environmental extremist will never be satisfied, never and the feds are right with them.
- I think "Balance of Perspectives" would be better suited to "advocacy."

3. During the TRT meetings were you given an opportunity to express your views?

- Solving the HP and the RW issue is simple but it will go on and on an on. Money and politics is the name of the game. It would only take 2 meetings each to solve it.

4. During the meetings, were others able to present their views? (No comments)

5. During the meetings, did you feel that your opinions were taken seriously and incorporated into the recommended plan?

Yes:

- When I advocated strongly enough for them.

No:

- Information about poor data collection and fleet size is yet to be improved by NMFS.
 - The environmentalists have an agenda - end of story.
-

6. In complex marine management issues, not all data are available. Did you have sufficient data in your TRT process to support the negotiation?

Yes:

- With the caveat that the data on porpoise "takes" was an extrapolation from a very small sample of observations. This fueled heated debates as to its accuracy.
- Information on porpoises was pretty good.

No:

- By-catch data and pattern information was old. More recent data would have been helpful.
- Effort data was lacking; NMFS must get a more accurate and "real-time" estimate of fishing effort to obtain a bycatch estimate.
- Too much data, it is not complex but the environmentalist and the feds make it so.
- I don't think that in Fisheries Management then will we be sufficient data. There are too many variables.

7. Did you have the necessary assistance to interpret the data?

Yes:

- Center staff was a great asset.

No:

- Again, the scientists who should have filled this role were strongly biased.
- Got it for myself, it was not provided automatically.
- The interpretations of the data are so politically tainted.

8. During the meetings was there adequate time for informal negotiations and caucuses among parties.

Yes:

- Having a meeting in an out of the way place where the group was forced to co-exist helped to encourage the exchange of ideas in an informal setting in which there was less posturing. (2)

No:

- The industry people haven't learned how and where to caucus and they don't know how to negotiate among themselves.

10. Were the following items satisfactory, or not satisfactory (advance notice of mtgs., mtg. location, advance materials, lgth. of mtgs., and mtg. summaries)

- If anything, there was too much paper.
- The location was not that great but it did force us to interact more with all segments of the TRT.

11. What advice would you offer negotiators who participate in future negotiation processes?

- Do your homework and discuss issues formally with other segments/representatives of the negotiations. (2)
 - Hope that NMFS does something meaningful with the results.
 - The ability to negotiate was difficult because there were stakeholders with nothing to lose (i.e. conservation industry) and all the other stakeholders (i.e. fishing industry) were to ones provided the sacrifice.
 - Never give up trying to reach consensus.
-
-

12. Did you feel that the TRT negotiation process was fair?

Yes:

- Special praise to the facilitator for her tough minded but even handed job of facilitating a bunch of very difficult people.
- All parties in this TRT negotiated in good faith, though I felt a slight bias in the process toward sympathy with industry perspective.

No:

- Some did not feel they could speak for their group.

13. At the end of the last meeting, were you satisfied with the results or outcome of the negotiation?

Yes, Why?

- Best we could get under the circumstances. (3)
- I felt we had a plan that might work.

No, Why not?

- There came a point where groups dug in their heels and resisted.
- I have little confidence in the final results.
- TRT process was bypassed.

14. What were the most beneficial aspects of the TRT process?

- Working on joint solution with mandated goal (PBR) and mandated timeline (problem with porpoise working group; no definite goal or endpoint. (2)
- Reached a fair consensus.
- Educated participants arguments on both sides now more reasoned and better developed. (2)
- That there was the ability to discuss a controversial issue to see the real agendas of some groups.

15. What were the most difficult aspects of the TRT process?

- Working with difficult personalities, having to be left out of negotiations while individuals worked on with those difficult members. (2)
- Resulted in a much better balanced plan than if NMFS had done it unilaterally.
- We now know that NMFS does not necessarily act on recommendations.
- Interpreting data NMFS made more difficult to evaluate than needed.
- NMFS having too much say at the table.
- The inability to see that some groups had none or very little comprehensive ability to understand the concerns of another.
- Dealing with people's lack of knowledge about what, when, and how we fish.

16. Would you advise NMFS to hold a TRT meeting during the time the NMFS Proposed Management Plan is out for public comment?

Yes:

No:

- No, the public does not have a clue.
-

17. Is this multiparty negotiation process effective in marine resource management decision making?

Yes:

- It can be. If the factions are too far apart, then consensus will not be reached.
- Yes, however, not for all issues. There is a great deal of information that has to be assimilated before one can successfully step into the role of negotiation/manager. Poorly informed participants and crudely skilled negotiators really gum-up the process and yield less than a good product.

No:

- Seemed to be a good idea, but NMFS does not publish plans without court involvement. (2)
- Not if NMFS picks and chooses what it wants from the results.
- In some respects, due to the fact that it must be ongoing & dynamic. Its complete effect is still not known.

18. What improvements would you suggest for the TRT negotiation process for the future?

- Longer meetings - 3,4,5 days. Momentous builds but is lost and must be reestablished with only 2-day meetings.
- NMFS needs to do what the MMPA says regarding timelines.
- Try to get firm agreement before leaving the table at the last meeting-- conference calls are a difficult way to come to consensus.
- Longer commitment by participants to the process.
- As long as we have more and more regulation like the Extreme ESA, Extreme MMPA, and the Extreme SFA (Sustainable Fisheries Act) - these laws will mandate, and what choice does the working person have? The TRT's cover the law, it is a mandate, and they do not solve anything!
- Not sure I support the process.
- It should be binding.
- Include only the stakeholders that have something to offer. The environmental industry as a stakeholder doesn't bring anything to the discussion but demands and this doesn't meld well with the industry that is offering the conditions of change.
- Involve discussion makers so we know the outcome of our decisions.

IV. Now Comments About the TRT Mediator

2. Overall, how would you rate the mediator's performance?

- Sometimes the facilitator could have handled certain Team members in a more positive manner than she did; also I think she may have given too much deference certain Team members.
- The facilitator did a great job of learning about a complicated topic where most everyone else was years into the process.
- Both the facilitator for this Team as well as the facilitator for the Atlantic Large Whale Take Reduction Team were excellent.

3. What advice would you offer to mediators of future TRT processes?

- Try to address some of the more difficult issues a bit earlier, and if there are small group negotiations, please try to provide the large group with something to work on.
 - Don't rely on NMFS so heavily to identify the "players." Bigger up-front investment in identifying the 'structure' of the playing field.
 - Tell the truth.
-
-

NAME OF TRT: Gulf of Maine TRT

- Be patient.
- Learn their subject prior to assembling the TRT.

**Please return by September 14, 1998
to Detra Stoddard, RESOLVE
1255 23rd Street, NW Suite 275
Washington, D.C. 20015**

*Process Evaluation Survey
National Marine Fisheries Service
Take Reduction Team Negotiation*

- I. Some Information About You and Your Take Reduction Team** (no comment sections)
- II. Before the Negotiations Started** (no comment sections)
- III. During The Negotiations**

1. Did you think the TRT membership reflected a balance of perspectives?

Yes:

- Yes, however the focus was entirely directed at the fishing community. There appears to be minimal interest/effort regarding other sources of mortality.

No:

- Still insufficient representation by the environmental/conservation community.
- I think there was an amazing lack of NMFS backbone - especially to back NMFS data presentations and stop discussions of PBR, which took a large chunk of time. If those topics were presented and strongly supported by NMFS, we might not have spent as much time.
- The fishermen were ignorant of the situation and the scientific and environmentalists came with data and their minds made up.

3. During the TRT meetings were you given an opportunity to express your views?

Comments:

- This TRT group was too large to allow for everyone to express their views.
- I occasionally felt that our facilitator let an argument go on too long between 1 or 2 participants then cut everyone else off, sighting a lack of time. Our facilitator also seemed to play favorites once in a while.
- I understand the need for "recognizing tent cards to speak" but it quite often slowed down the process and required backtracking on many of the covered points.
- I was fortunate to be able to sit in on the process and to make comments for the commercial, environmental, and academic groups.

4. During the meetings, were others able to present their views?

Yes:

- Most of the time.

- Several alternates (one in particular) were acknowledged as if he were at the table when his partner was participating as well. This seemed to skew the argument.
- Time constraints occasionally affected this.

No: (no comments)

5. During the meetings did you feel that your opinions were taken seriously and incorporated into the recommended plan?

Yes:

- Most of the time; I felt that the fishing industry was taken more seriously than those from the academic and conservation industry.

No: (no comments)

6. In complex marine management issues, not all data are available. Did you have sufficient data in your TRT process to support the negotiation?

Yes:

- NMFS employees were extremely helpful providing and analyzing data. (2)
- While not good, it was the best data available.
- Yes, but the data could have been translated into laymen's terms.
- Huge improvement in timeliness of data over NE harbor porpoise team.

No:

- A great deal of the requested information could and should have been anticipated (due to prior work on TRT's) and available in advance.
- Never seem to have enough data.
- Little data on bottlenose dolphins from small boat fisheries.
- More data is always preferable, but Center staff did an outstanding job helping us develop a plan with the available data. Nonetheless NMFS should place more observers on vessels in the Mid-Atlantic.
- We probably had more data than other TRT's but it was still minimal. A lack of reliable scientific information breeds overly conservative, risk averse, decision-making - this is a perfect example.
- Had to frequently identify needed data, most of which was provided at the next meeting. Some data on gear configuration and fishing effort had not been collected.
- Obviously we did not as we dropped bottlenose dolphins due to lack of information.
- All the data was one-sided, custom data.

7. Did you have the necessary assistance to interpret the data?

Yes:

- For the most part- NMFS staff was very helpful. On certain points I felt as though other groups around the table had NMFS information long before I did - this was troubling.
- The data was well represented - for NMFS- with all of the potential problems.
- Yes, but it took much longer due to the complexity.
- Center staff was terrific.

No: (no comments)

8. During the meetings was there adequate time for informal negotiations between parties and caucuses among parties.

Comments:

- Some groups may have used caucuses a bit too much. (2)
- Yes, although the number of actual meetings and meeting duration's were limited.
- Most of the time, yes, however some parties were adamant on their position and resisted informal discussion.
- As obvious leaders emerge, it would be useful to set aside time after meeting #13 for them to meet formally with the mediator.
- Philadelphia meeting (where we got stuck in the hotel) helped us get to know one another and promoted talks. There was less opportunity for this at the D.C. meeting because we were in fragmented groups in separate eating/drinking caucuses.

10. Were the following items satisfactory, or not satisfactory (notice of meetings, meeting location, advance materials, length of meeting, meeting summaries)?

Comments:

- It would have been useful to have one more meeting outside of Washington, DC.
- One meeting in North Carolina would have been appropriate.

11. What advice would you offer negotiators who participate in future negotiation processes?

- This group was too large to be effective.
- Keep the same people involved so you do not go back over the same topics.
- Bring in the right mix of individuals and do not use antagonistic behavior as a negotiating strategy.
- Speak-up.
- Read everything twice and try to find areas of agreement.
- Greater emphasis on bringing non-technical members up to speed on technical issues. Difficulty in negotiations due to members being in different learning curves regarding the issues.
- When an argument cannot be resolved by the group (i.e., allocation of PBR) don't continue to discuss it - maybe suspend meetings until NMFS makes a decision.
- Be cautious of stakeholders who have participated in a number of negotiations as they may deliberately torque or bias the negotiation.
- Define process and issues better before the process formally begins.
- Support development of moderate leaders on all sides.
- Don't come to a consensus unless you know you can live with the results.
- The first 4 meetings are a lot of posturing, and the last 2 meetings are very serious.
- Review advance materials prior to the meeting.
- All parties should have an open mind and realize that man cannot live on earth without having an impact on nature.
- Be prepared to compromise.
- Do homework; know the issues - all sides.
- NMFS lawyers should have been on the team.

12. Did you feel that the TRT negotiation process was fair?

Yes:

- In a general I would say it was fair. (2)

No:

- In the overall context of the MMPA, available data, and focus only on commercial fishing - NO.
- Persons with experience in previous TRT's were able to exercise more control of the process than individuals

who were new to the process.

- Fishermen went in open-minded, opponents had a design.
- NMFS dropped the bottlenose dolphin discussion after the meeting.

13. At the end of the last meeting, were you satisfied with the results or outcome of the negotiation?

Yes, Why?

- Yes, best available outcome. (2)
- Yes, however not satisfied with the prepared rule that will hit the street on Sept. 11th
- Yes, the agreement was fair and seemed like it would work in reducing takes.
- Yes, but only if the plan comes to fruition; is monitored and acted on - otherwise it will have been a waste of time.

No, Why not?

- Bringing in all interested/affected parties to negotiate shared/agreed upon outcome. (9)
- No consensus. (2)
- I feel we could have reached consensus if some members of the scientific community and the environmental community had been more willing to negotiate on the issue of pingers. (2)
- Some dishonesty by few members.
- Too much pressure to meet PBR when no one really knew what it should be.
- I thought we could reach consensus and improve the level of scientific information available for future TRT's - we were not successful in this regard.
- No, I felt that the meeting ended on a bad note with many members disenchanted by the outcome and the entire process.
- We could have reached consensus, but industry always held a trump, and decided to use it on the very last day.
- There was no follow-up at all from either RESOLVE or NMFS after the TRT was done.

14. What were the most beneficial aspects of the TRT process?

- Open forum- chance to express views, ask questions, talk with other parties, and learn new issues and ideas. (2)
- Education- getting to know the breadth of data on gear interactions. (2)
- Solution of difficult problem with no one really "winning."

15. What were the most difficult aspects of the TRT process?

- I would say that it does not matter because NMFS has not acted on the findings of four of the five past TRT's.
- NMFS - year plus delay in implementing the prepared rule.
- NMFS staff at the table and contradicted themselves. They would not make a decision or a statement when the situation clearly called for it.
- Long hours and late nights.
- Negotiating an agreement with so many different interests; only to have NMFS fail to implement it.
- Understanding all the data given the time constraints we had.
- New England vs. Mid-Atlantic PBR issues.
- Lack of good science.
- Full disclosure by all participants.
- Living with the overly conservative MMPA structure.
- Bringing everyone up to speed so all could operate from an even playing field.
- Refusal to truly negotiate on the part of some of the environmentalists.
- Knowing those on the other side were being paid while you were not.
- Reading the data.
- Assessing the potential value of alternative management measures.
- Realizing there are people with such harsh views on environmental matters.

16. Would you advise NMFS to hold a TRT meeting during the time the NMFS Proposed Management Plan is out for public comment?

Yes:

- Public can observe and be in the audience as has always been the case.
- Seems to be a good idea.

No: If not, what kind of public involvement process would you suggest?

- Hold a TRT meeting after comment period ends in order to provide the TRT an opportunity to work with NMFS after comments are taken. (5)
- Most of the public I have talked to don't have much interest in this process nor even have the knowledge as to what a harbor porpoise is.
- The TRT's should meet to evaluate take rates, plan effectiveness, etc. "Lets make it work."
- Do it like everything else, tell us: "this is the way it is, live with it. "

17. Is this multiparty negotiation process effective in marine resource management decision making?

Yes:

- Yes, however, it is only as effective as NMFS allows it to be; and so far NMFS has not implemented many of the take reduction plans. (4)
- It is the only way marine resource management can really work successfully. (2)
- Sometimes. If you don't have a formal "Council" type system for public involvement then this is probably next best.
- Yes, but only if parties are willing to negotiate.
- More effective than having it one-sided.

No:

- It's biased.
- It is a no win situation for the commercial fishing industry.

18. What improvements would you suggest for the TRT negotiation process for the future?

- Add more time for the process. (2)
- Have NMFS send staff and legal council so they can both better advise and commit to the process.
- The NMFS staff who make the final decisions should be participating in the process, which they don't always do.
- Have NMFS staff at the table who can give clear, concise, definitive answers to questions and problems.
- There was a general "skepticism " from the majority of previous TRT (2,3,4,5) participants that they could predict the outcome of this TRT; in this sense the process appeared stacked from the beginning.
- My greatest concern is that the TRT process will fail due to lack of timely follow-through by NMFS, and all sides will have invested so much time for nothing. The credibility of the process will suffer, as well as fisheries management in general.
- More mail outs to the industry members while negotiations are on going.
- Don't start a TRT process without the best scientific information in hand.
- Government scientists should provide data assistance - not advocate.
- Ensure that all stakeholders are represented. The Mid-Atlantic TRT did not have representation by all stakeholders in the first few meetings.
- Better up-front information on process and roles.
- Encourage leadership development, especially among working commercial fishermen.

- A solid base of what are the laws we are dealing with and what are the boundaries to the MMPA, PBR, stock assessment, and ESA. Lots of time was spent on these issues which are already covered by law.
- More input into the draft of legislation instead of afterwards.
- Critical for each side to understand the issues and data behind the other side's position.
- Minimize wasted time.

IV. Now Comments About the TRT Mediator

2. Overall how would you rate the mediator's performance?

- Overall the mediator was good; however I get the sense that at times she gets impatient with some of the personalities. This trait can potentially impede a facilitator's ability to break an impasse.
- I think the mediator could have moved forward during the discussions of PBR; we were not in this TRT to discuss PBR- it is law.
- For someone who probably has never been on a fishing boat, she seemed to have knowledge of the business.

3. What advice would you offer to mediators of future TRT processes?

- The mediator has to be willing to step in during an agreement to move the meeting along; as ours was.
- Act as facilitators, when a conversation hits a dead-end - move on!
- Use state agency representatives more; many of them have negotiation (informal) experience and know the coastal fisheries very well.
- In general, I do not think the TRT process works, mainly because NMFS does not act on their plans. Also, very polarized from the beginning.

NAME OF TRT: Pacific Offshore Cetaceans TRT

***Please return by September 14, 1998
to Detra Stoddard, RESOLVE
1255 23rd Street, NW Suite 275
Washington, D.C. 20015***

***Process Evaluation Survey
National Marine Fisheries Service
Take Reduction Team Negotiation***

I. Some Information About You and Your Take Reduction Team (no comment sections)

II. Before the Negotiations Started (no comment sections)

III. During The Negotiations

1. Did you think the TRT membership reflected a balance of perspectives?

Yes:

- The intended composition was balanced, however, some members of the "scientific community" seemed to be "environmentalists" rather than scientists. Conversely, some environmentalists tried to play the scientist role.

No: (no comments)

3. During the TRT meetings were you given an opportunity to express your views. (no comments).

4. During the meetings, were others able to present their views?

Yes: (no comments)

No:

- We had a designated time for public opinion, however, many times we ran off-schedule and consequently may have eliminated, or cut short the public comment period.

5. During the meetings, did you feel that your opinions were taken seriously and incorporated into the recommended plan?

Yes:

(no comments for either)

No:

6. In complex marine management issues, not all data are available. Did you have sufficient data in your TRT process to support the negotiation?

NAME OF TRT: Pacific Offshore Cetaceans TRT

Yes:

- We had the best data of any of the TRT's.
- I believe we had the best data available considering timing and constraints NMFS did a good job.

No:

- Lots of data but lack of current data and doubly conservative formula and estimates keeping the fishing membership under a burdened perspective from some constituents.
- We had to request additional analysis; the data had been summarized too much.

7. Did you have the necessary assistance to interpret the data?

Yes: (no comments)

No:

- Not always, statistical data can be manipulated many ways. Perhaps an independent statistician would be a useful asset.

8. During the meetings was there adequate time for (informal negotiations and caucuses among parties)

Comments:

- If anything there was too much time spent on the issues.
- Personnel did well given the time constraints of the agenda.
- In general, we were behind schedule most of the time.
- The 1998 meetings were rushed. Additional time was necessary. There was no opportunity to discuss future or alternative strategies.

10. Were the following items satisfactory or not satisfactory (meeting location, notice, and advance materials, length of meeting, meeting summaries)?

Comments:

- Meetings may have been a bit shorter, but our results were good so very hard to say.
- Data should be current, and should be received at least one week prior to the meetings.
- We need summaries of what we have agreed to posted on the wall (on flip charts) during the meeting. The statements should be in different colored inks to enhance legibility. This is a standard facilitation technique, which improves the speed of wrap-ups and lets participants see that they are heard.

11. What advice would you offer negotiators who participate in future negotiation processes?

- Experience with fishermen and their issues as well as the issues to be negotiated makes a difference.
- A bit more intervention from the mediators to prevent dominant voices from dominating. For example, asking more often to hear from those who haven't spoken on an issue.
- Do your homework - understand the data prior to the meeting to the maximum extent possible.
- For new members - obtain a good background in past TRT meetings so time spent re-hashing old ideas is not eliminated.
- Don't hesitate to consider new ideas to minimize bycatch.

12. Did you feel that the TRT negotiation process was fair?

NAME OF TRT: Pacific Offshore Cetaceans TRT

Yes:

- Yes, for those who participated. However, those voices not at the table, the ones on either side of the issue whose perspectives weren't fully represented (the fringe?) are important. We need to offer a forum for each of these extremes to voice their concerns; perhaps separately from each other.
- Overall yes, everyone is given a chance to express his or her views. Consensus is more "fair" than voting.

No: (no comments)

13. At the end of the last meeting, were you satisfied with the results or outcome of the negotiation?

Yes, Why?

- Experiments yielded good results.
- Although data was somewhat flawed, the parties worked hard to achieve consensus on a plan and to reach a starting point.
- Everyone had their say, and agreed by consensus to a TRP.
- The group dynamics are always challenging, yet managed fairly well.
- Satisfied, because the kill rate was down, and we didn't have to discuss alternative measures.

No, Why not?

- The public participation was mishandled and the ZMRG issue a major problem.
- I believe we just "stalled" since the catch rates were low. No new ideas for reducing bycatch were developed.

14. What were the most beneficial aspects of the TRT process?

- Engaged and educated participants on complexity of the issue; making compromise easier.
- Having all the data and all the perspectives on the table; interested parties creating solutions to problems presented.
- Bringing people together to promote a common goal - reducing the takes of marine mammals.
- Allowed a balanced position to be presented to NMFS. Harder for people not to listen to other's perspectives when face to face.

15. What were the most difficult aspects of the TRT process?

- Time consuming.
- Setting aside preconceived ideas and trying to understand other people's concepts.
- Frustrations generated by divergent views or approaches.
- ZMRG issues.
- Dealing with people who were single-minded and refused to listen to others. Dealing and having to listen to a rude public.

16. Would you advise NMFS to hold a TRT meeting during the time the NMFS Proposed Management Plan is out for public comment?

Yes: (no comments)

No, If not, what kind of public involvement process would you suggest?

NAME OF TRT: Pacific Offshore Cetaceans TRT

- Usual comment process by written response.
- What benefit would that have? Why not after the comment period so the public comments can be discussed.

17. Is this multiparty negotiation process effective in marine resource management decision making?

Yes:

- To me, this TRT process (apart from implementation issues) is the most farsighted and positive action NMFS has ever taken to effectively promote resource management. (2)
- It worked very well in our case, but may be cases where NMFS must make its own decision.

No: (No comments)

18. What improvements would you suggest for the TRT negotiation process for the future?

- Two annual meetings with current data available one week before the meetings. For our TRT- one meeting at the end of February and one will all prior year's data at the end of May.
- NMFS should give more deference to consensus TRP's. (e.g. AOCTRT)
- Allow more time for informed "mixers" of all parties.

IV. Now Comments About the TRT Mediator

2. Overall how would you rate the mediator's performance?

- Excellent but could benefit from a few facilitation techniques.
- The meetings were repetitive on some of the issues; could have moved the process along faster, giving us more time at the end of the meeting.

3. What advice would you offer to mediators of future TRT processes?

Comments:

- Be sure the members of the TRT are committed to the process not just giving lip service to fair negotiation.
- Make sure that ground rules are clearly established on the first day-, which our mediators did.
- Be sure to listen carefully. Try to understand the motivation behind what is said it may be more important that what is said.