

**Supplemental Information Supporting the
DoD Consolidated Responses to the
OMB/CEQ Survey Questions for 2008**

Questions for 2008 ECR Policy Reports

On November 28, 2005, Joshua Bolten, then Director of the Office of Management and Budget (OMB), and James Connaughton, Chairman of the President's Council on Environmental Quality (CEQ) issued a policy memorandum on environmental conflict resolution (ECR).

The memorandum requires annual reporting by departments and agencies to OMB and CEQ on progress made each year. This joint policy statement directs agencies to increase the effective use and their institutional capacity for ECR and collaborative problem solving.

ECR is defined in Section 2 of the memorandum as *“third-party assisted conflict resolution and collaborative problem solving in the context of environmental, public lands, or natural resources issues or conflicts, including matters related to energy, transportation, and land use. The term “ECR” encompasses a range of assisted negotiation processes and applications. These processes directly engage affected interests and agency decision makers in conflict resolution and collaborative problem solving. Multi-issue, multi-party environmental disputes or controversies often take place in high conflict and low trust settings, where the assistance of impartial facilitators or mediators can be instrumental to reaching agreement and resolution. Such disputes range broadly from administrative adjudicatory disputes, to civil judicial disputes, policy/rule disputes, intra- and interagency disputes, as well as disputes with non-federal persons/entities. ECR processes can be applied during a policy development or planning process, or in the context of rulemaking, administrative decision making, enforcement, or litigation and can include conflicts between federal, state, local, tribal, public interest organizations, citizens groups and business and industry where a federal agency has ultimate responsibility for decision-making.*

While ECR refers specifically to collaborative processes aided by third-party neutrals, there is a broad array of partnerships, cooperative arrangements, and unassisted negotiations that federal agencies enter into with non-federal entities to manage and implement agency programs and activities. The Basic Principles for Agency Engagement in Environmental Conflict Resolution and Collaborative Problem Solving presented in Attachment A (of the OMB/CEQ ECR Policy Memo) and this policy apply generally to ECR and collaborative problem solving. This policy recognizes the importance and value of the appropriate use of all types of ADR and collaborative problem solving.”

The memorandum requires annual reporting by departments and agencies to OMB and CEQ on progress made each year. The report format below is provided for the third year of reporting in accordance with this memo for activities in FY 2008.

The report deadline is January 15, 2009.

We understand that collecting this information may be challenging; few departments or agencies have collected this data in the past. We ask that you make a good faith effort to acquire the data to the best of your ability. The intention is to establish a useful baseline for your department or agency, while collecting some information that can be aggregated across agencies. Departments should submit a single report that includes ECR information from the agencies and other entities within the department. The information in your report will become part of an analysis of all FY 2008 ECR reports. You may be contacted for the purpose of clarifying information in your report. For your reference, a copy of the analysis of FY 2006 and FY 2007 ECR reports will be available at www.ecr.gov.

Name of Department/Agency responding:	Department of the Navy
Name and Title/Position of person responding:	John Dietrich, Asst. Gen. Counsel (ADR)
Division/Office of person responding:	Office of the General Counsel / ADR Program Office
Contact information (phone/email):	Robert Manley, Assoc. Counsel; (202) 685-6990; Robert.manley@navy.mil
Date this report is being submitted:	5 JANUARY 2009

Section 1: Capacity and Progress

1. Describe steps taken by your department/agency to build programmatic/institutional capacity for ECR in 2008, including progress made since 2007. If no steps were taken, please indicate why not. [Please refer to the mechanisms and strategies presented in Section 5 of the OMB-CEQ ECR Policy Memo, including but not restricted to any efforts to a) integrate ECR objectives into agency mission statements, Government Performance and Results Act goals, and strategic planning; b) assure that your agency's infrastructure supports ECR; c) invest in support or programs; and d) focus on accountable performance and achievement. You are encouraged to attach policy statements, plans and other relevant documents.]

The Department of the Navy (DON) has had a strong Alternative Dispute Resolution (ADR) Program Office for several years. Staffed with three attorneys, it handles a wide variety of ADR issue facing the DON, including environmental matters. The DON ADR Program works with appropriate commands responsible for environmental issues.

The ADR program helped Naval Facilities Engineering Command regional office develop a training program for the use of ECR during environmental consultations, such as the Section 106 process required under the National Historic Preservation Act. During 2008, this training was presented not only to the command but also at a CECOS Basic Environmental Law Course and a DoD American Indian Cultural Communications Training Course. Specific Section 106 ADR training, emphasizing the importance of ECR and highlighting ECR techniques available to improve consultations, was presented at the USIECR's National ECR Conference in the spring of 2008. Training materials have also been published on the web, at <http://adr.navy.mil/adr/sect106consult.asp>.

The efforts described above add to the long standing capability for ECR that the DON has demonstrated in area of installation restoration. The DON currently participates in 45 facilitated partnering teams that oversee the restoration efforts at 1,570 active and inactive sites. Within these teams, representatives from the DON, EPA, state governments, local officials, and sometimes various other groups, use collaborative methods to craft creative and cost effective restoration processes designed to address as many interests as possible.

Section 2: Challenges

2. Indicate the extent to which the items below present challenges or barriers that your department/agency has encountered in advancing the appropriate and effective use of ECR.

	Extent of challenge/barrier		
	Major	Minor	N/A
a) Staff expertise to participate in ECR	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
b) Staff availability to engage in ECR	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
c) Lack of party capacity to engage in ECR	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
d) Limited or no funds for facilitators and mediators	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
e) Travel costs for your own or other federal agency staff	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
f) Travel costs for non-federal parties	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
g) Reluctance of federal decision makers to support or participate	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
h) Reluctance of other federal agencies to participate	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
i) Reluctance of other non-federal parties to participate	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
j) Contracting barriers/inefficiencies	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
k) Lack of resources for staff capacity building	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
l) Lack of personnel incentives	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
m) Lack of budget incentives	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
n) Access to qualified mediators and facilitators	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
o) Perception of time and resource intensive nature of ECR	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
p) Uncertainty about whether to engage in ECR	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
q) Uncertainty about the net benefits of ECR	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
r) Other(s) (please specify):	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
s) No barriers (please explain):	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

Note regarding this response: The DON is a widely dispersed agency with over 180,000 civilian employees. Different offices reported different experiences, resulting in checks for both major and minor responses in questions a, b, c, d, e, f, g, h, n, and o.

Section 3: ECR Use

3. Describe the level of ECR use within your department/agency in FY 2008 by completing the table below. [Please refer to the definition of ECR from the OMB-CEQ memo as presented on page one of this template. An ECR “case or project” is an instance of neutral third party involvement to assist parties in reaching agreement or resolving a dispute for a particular matter. In order not to double count processes, please select one category per case for decision making forums and for ECR applications.]

	Cases or projects in progress ¹	Completed Cases or projects ²	Total FY 2008 ECR Cases ³	Decision making forum that was addressing the issues when ECR was initiated:				Of the total FY 2008 ECR cases indicate how many your agency/department	
				Federal agency decision	Administrative proceedings /appeals	Judicial proceedings	Other (specify)	initiated:	participated in but did not initiate:
<i>Context for ECR Applications:</i>									
Policy development	___	___	___	___	___	___	___	___	___
Planning	___	___	___	___	___	___	___	___	___
Siting and construction	___	___	___	___	___	___	___	___	___
Rulemaking	___	___	___	___	___	___	___	___	___
License and permit issuance	___	___	___	___	___	___	___	___	___
Compliance and enforcement action	_1_	___	_1_	___	___	_1_	___	___	_1_
Implementation/monitoring agreements	_45_	___	_45_	___	___	___	_45_	See * below	___
Other (specify): <u>Conflict Assessment</u>	___	_1_	_1_	___	___	___	_1_	Conflict Assessment	_1_
TOTAL	46	1	47			1	46		1
	(the sum should equal Total FY 2008 ECR Cases)			(the sum of the Decision Making Forums should equal Total FY 2008 ECR Cases)				(the sum should equal Total FY 2008 ECR Cases)*	

* The DON has 45 facilitated partnering teams, organized in a three tier structure, which addresses installation restoration issues. Collectively, the teams work with 1570 active and inactive sites. The concept of **initiation** is not appropriate for these matters given the long standing existence of the teams.

¹ A “case in progress” is an ECR case in which neutral third party involvement began prior to or during FY 2008 and did not end during FY 2008.

² A “completed case” means that neutral third party involvement in a particular matter ended during FY 2008. The end of neutral third party involvement does not necessarily mean that the parties have concluded their collaboration/negotiation/dispute resolution process, that all issues are resolved, or that agreement has been reached.

³ “Cases in progress” and “completed cases” add up to “Total FY2008 ECR Cases”.

4. Is your department/agency using ECR in any of the priority areas you listed in your FY 2007 ECR Report? Please also list any additional priority areas identified by your department/agency during FY 2008, and indicate if ECR is being used in any of these areas.

List of priority areas identified in your department/agency FY07 ECR Report	Check if using ECR	Check if use has increased since FY 2007
Addressing Intra-Navy and Intra-DOD conflicts that arise from different interpretations and applications of laws, regulations, and policies	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
Using formal dispute resolution between lead and cooperating agencies throughout the NEPA process, but particularly prior to the publication of the DEIS and FEIS	<input type="checkbox"/>	<input type="checkbox"/>
Resolving the impasse with non-governmental organizations over the Navy's use of mid-frequency active SONAR	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Resolving storm water toxicity standards in NPDES permits	<input type="checkbox"/>	<input type="checkbox"/>
Streamlining the Natural Resource Damage Assessment process_	<input type="checkbox"/>	<input type="checkbox"/>
Expediting the NEPA and permitting process for the proposed move of Marine Corps / CVN to Guam	<input type="checkbox"/>	<input type="checkbox"/>
Expediting the MILCON P-502 Kilo Wharf Extension if its environmental mitigation measures are not resolved in the near future_	<input type="checkbox"/>	<input type="checkbox"/>
Concluding a current formal consultation with the U.S. Fish and Wildlife Service, where a disagreement has exceeded the statutory time limit for such consultations	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
Avoiding contentious, unproductive consultations under Section 106 of the National Historic Preservation Act	<input type="checkbox"/>	<input type="checkbox"/>
Addressing Coastal Zone Management Act	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>

issues, particularly problems with NOAA regulations implementing the Act		
Resolving takings claims generated by AICUZ noise issues	<input type="checkbox"/>	<input type="checkbox"/>
List of additional priority areas identified by your department/agency in FY 2008	Check if using ECR	
_____	<input type="checkbox"/>	

Please use an additional sheet if needed.

5. It is important to develop ways to demonstrate that ECR is effective and in order for ECR to propagate through government, we need to be able to point to concrete benefits; consequently, we ask what other methods and measures are you developing in your department/agency to track the use and outcomes (performance and cost savings) of ECR as directed in Section 4 (b) of the ECR memo, which states: *Given possible savings in improved outcomes and reduced costs of administrative appeals and litigation, agency leadership should recognize and support needed upfront investments in collaborative processes and conflict resolution and demonstrate those savings and in performance and accountability measures to maintain a budget neutral environment* and Section 4 (g) which states: *Federal agencies should report at least every year to the Director of OMB and the Chairman of CEQ on their progress in the use of ECR and other collaborative problem solving approaches and on their progress in tracking cost savings and performance outcomes. Agencies are encouraged to work toward systematic collection of relevant information that can be useful in on-going information exchange across departments?* [You are encouraged to attach examples or additional data]

The DON ADR Program has advocated a different model of collection based on similar efforts in the ADR industry to gain impressions from participants regarding cost savings, time savings, and other benefits. The plan is to incorporate survey questions into event tracking databases so that upon closing of a case, the relevant action officer or attorney can respond as appropriate.

6. Describe other significant efforts your agency has taken in FY 2008 to anticipate, prevent, better manage, or resolve environmental issues and conflicts that do not fit within the Policy Memo's definition of ECR as presented on the first page of this template.

1. The *USS George Washington* (CVN 73) team won the 2007 Navy Community Service Award, Large Sea, for partnering with six local organizations and receiving letters of appreciation from the local community for their exemplary environmental stewardship efforts.⁴ Three Guam commands won the 2007 Navy Community Service Award (Small, Medium and Large Overseas) for successfully partnering with the Villages of Inarajan, Sinajana and the Guam National Wildlife Ritidian Restoration Project.⁵

2. One office reported using periodic meetings with non-governmental organizations (NGOs), local governments, and community leaders to review regional plans, actions, and programs. These meetings have successfully reduced opposition and challenges to Navy activities by engaging in candid, open discussions with the regulators and the local NGOs and by including them in the DON community. This office invested the time to form relationships with members of environmental groups and conduct quarterly meetings with both state and federal regulators to advise them of upcoming projects.

3. DON lowered potential barriers to communication with NGOs and likely litigants by inviting them to participate in an annual Earth Day Fair held at the world's largest Navy Exchange (store), with a focus on children and educational outreach. Numerous NGOs put up booths at this fair, and the NGOs included the Exchange in their sale of CFCs and other green products. The Federal Fire Department provided a truck and fire safety education, and the Coast Guard gave a presentation on oil/water and oil spill response. It's hard for someone to sue an actor, when you know that the actor is doing their best to do the right thing.

Section 4: Demonstration of ECR Use and Value

7. Briefly describe your departments'/agency's most notable achievements or advances in using ECR in this past year.

Some recent achievements include:

1. Facilitated Partnering. The Cecil Field Base Realignment and Closure

⁴ 2007 Navy Community Service Award Winners Named: Environmental Stewardship Among Program's Flagship Projects, Currents Magazine, 38, 40-41, spring 2008, <http://www.enviro-navair.navy.mil/index.cfm>, (last accessed 12/19/08).

⁵ *Id.* at 41.

Cleanup Partnering Team won the 2007 Chief of Naval Operations Environmental Award, Individual or Team, for using innovative environmental cleanup solutions and technologies while “adhering to its vision of partnering.”⁶ The Marine Corps Air Station Cherry Point Partnering Team won the 2007 SECNAV Environmental Award, Environmental Restoration, for achieving their team goals of meeting regulatory requirements and deadlines, sharing successful cleanup strategies across regulatory programs, and improving “relations with the community and the regulators by fostering an atmosphere of openness and trust.”⁷

2. Conflict Assessment and Facilitation. In FY 2008 the DON ADR Program Office conducted a conflict assessment and facilitation with a regional DON office and several Indian tribes. This process is ongoing, with multiple facilitated meetings scheduled for FY 2009.

3. Mediation. In FY 2008 the mediation period began in a CERCLA contribution action involving DON as one of the PRPs.

8. ECR Case Example

a. Using the template below, provide a description of an ECR case (preferably completed in FY 2008). Please limit the length to no more than 2 pages.

b. Section I of the ECR Policy identifies key governance challenges faced by departments/agencies while working to accomplish national environmental protection and management goals. Consider your departments’/agency’s ECR case, and indicate if it represents an example of where ECR was or is being used to avoid or minimize the occurrence of the following: protracted and costly environmental litigation; unnecessarily lengthy project and resource planning processes, costly delays in implementing needed environmental protection measures; foregone public and private investments when decisions are not timely or are appealed; lower quality outcomes and lost opportunities when environmental plans and decisions are not informed by all available information and perspectives; and deep-seated antagonism and hostility repeatedly reinforced between stakeholders by unattended conflicts.

See online Facilitated Partnering Team descriptions⁸ provided in response to question eight, above.

⁶ *Presenting the 2007 CNO Environmental Awards: Competition Recognizes Exceptional Navy Environmental Stewardship*, Currents Magazine, 50, 64-65, summer 2008, <http://www.enviro-navair.navy.mil/index.cfm>, (last accessed 12/19/08).

⁷ *SECNAV Environmental Award: Winners Recognized*, Currents Magazine, 64, 74, fall 2008, <http://www.enviro-navair.navy.mil/index.cfm>, (last accessed 12/19/08).

⁸ See *Presenting the 2007 CNO Environmental Awards: Competition Recognizes Exceptional Navy Environmental Stewardship*, (Cecil Field Partnering Team), Currents Magazine, 50, 64-65, summer 2008,

9. Please comment on any difficulties you encountered in collecting these data and if and how you overcame them. Please provide suggestions for improving these questions in the future.

This year the DON ADR Program incorporated the questions into an online database, and worked with the Office of the Assistant Secretary of the Navy (Installations and Environment) to solicit responses from throughout the DON.

Please attach any additional information as warranted.

Report due January 15, 2009.

Submit report electronically to: ECRReports@omb.eop.gov

<http://www.enviro-navair.navy.mil/index.cfm>, (last accessed 12/19/08); and *SECNAV Environmental Award: Winners Recognized*, (Cherry Point Partnering Team), Currents Magazine, 64, 74, fall 2008, <http://www.enviro-navair.navy.mil/index.cfm>, (last accessed 12/19/08).

Basic Principles for Agency Engagement in Environmental Conflict Resolution and Collaborative Problem Solving

Informed Commitment	Confirm willingness and availability of appropriate agency leadership and staff at all levels to commit to principles of engagement; ensure commitment to participate in good faith with open mindset to new perspectives
Balanced, Voluntary Representation	Ensure balanced inclusion of affected/concerned interests; all parties should be willing and able to participate and select their own representatives
Group Autonomy	Engage with all participants in developing and governing process; including choice of consensus-based decision rules; seek assistance as needed from impartial facilitator/mediator selected by and accountable to all parties
Informed Process	Seek agreement on how to share, test and apply relevant information (scientific, cultural, technical, etc.) among participants; ensure relevant information is accessible and understandable by all participants
Accountability	Participate in the process directly, fully, and in good faith; be accountable to all participants, as well as agency representatives and the public
Openness	Ensure all participants and public are fully informed in a timely manner of the purpose and objectives of process; communicate agency authorities, requirements and constraints; uphold confidentiality rules and agreements as required for particular proceedings
Timeliness	Ensure timely decisions and outcomes
Implementation	Ensure decisions are implementable consistent with federal law and policy; parties should commit to identify roles and responsibilities necessary to implement agreement; parties should agree in advance on the consequences of a party being unable to provide necessary resources or implement agreement; ensure parties will take steps to implement and obtain resources necessary to agreement