

FY 2009 ECR Policy Report to OMB-CEQ

On November 28, 2005, the Director of the Office of Management and Budget (OMB), and the 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 report format below is provided for the fourth year of reporting in accordance with this memo for activities in FY 2009.

The report deadline is January 15, 2010.

We understand that collecting this information may be challenging; however, after compiling previous reports, the departments and agencies can collect this data to the best of their abilities. The 2009 report, along with previous reports, will establish a useful baseline for your department or agency, and collect 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 2009 ECR reports. You may be contacted for the purpose of clarifying information in your report. For your reference, copies of prior year synthesis reports are available at www.ecr.gov.

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Date this report is being submitted:	January 22, 2010

Section 1: Capacity and Progress

1. Describe steps taken by your department/agency to build programmatic/institutional capacity for ECR in 2009, including progress made since 2008. 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.]

NOAA National Marine Fisheries Service (NMFS)

Office of Protected Resources: Protected Resources interacts with States and Tribes in the Northwest region in matters such as the Pacific Salmon Recovery Planning under the Endangered Species Act (ESA) and throughout the U.S. for Take Reduction Teams under the Marine Mammal Protection Act (MMPA). Stakeholder meetings have been used (especially with Fishery Management Councils) to develop alternative Reasonable and Prudent Alternatives (RPAs) under Section 7 of the ESA. Protected Resources has contracted with one entity to facilitate all Take Reduction Team meetings to increase national consistency and reduce time associated with preparing for meetings, thereby reducing costs.

The Office of Sustainable Fisheries: Sustainable Fisheries interacts with constituents and partners through the Magnuson-Stevens Fisheries Management and Conservation Act (MSA), the Atlantic Coastal Fisheries Cooperative Management Act (ACA), the National Environmental Policy Act (NEPA), and other relevant laws, which guide the Office in formulating and implementing regulations needed to sustain the Nation's living marine resources. Sustainable Fisheries, in conjunction with Agency Regions and Science Centers, works with other states, the 8 MSA Councils, the 3 Interstate Marine Fisheries Commissions (Commissions), professional organizations, NGOs, constituent groups, and other Federal agencies.

While Sustainable Fisheries does not use ECR directly, the processes used in development of management plans and associated regulations under MSA (and within the NEPA process) require interaction and negotiation between Councils, states, constituents, and Sustainable Fisheries /Regions/Science Centers. In working with the Commissions, Sustainable Fisheries /Regions/Science Centers participate in the Commission process, which includes discussions and negotiations by all parties. As such, Sustainable Fisheries has successful methods in place to reach out directly to individual states, other Federal agencies, NGOs, and other groups.

NOAA Aquaculture Program: The NOAA Aquaculture Program conducts outreach activities to heighten the public's understanding of aquaculture and its critical role in support of sustainable fisheries, seafood production, and U.S. coastal communities. In FY2009, policy and science experts from the NOAA Aquaculture Program participated in over 20 outreach events where they discussed aquaculture advances and challenges of interest to industry, Non-Governmental Organizations, the research community, government, and the public. Each of these events provided participants with opportunities to question experts

and engage in unfiltered discussions to help resolve controversial issues.

NOAA National Ocean Service (NOS)

In 2009, the Annual Guidance Memorandum put out by the Under Secretary directed NOAA to strengthen core competencies and direct its science, service and stewardship functions to address a focused set of strategic priorities. One of these priorities is managing ocean and coastal resources with an ecosystem-based approach. In ecosystem-based management, human and social systems are seen as integral parts of an ecosystem and management actions are designed and executed as an adaptive process to sustain the goods and services that healthy ecosystems produce. NOAA's commitment to build programmatic and institutional capacity in ecosystem-based approaches to management will foster engagement in collaborative problem solving to resolve environmental conflicts.

Office of Ocean and Coastal Resource Management (OCRM) – OCRM is often called upon to assist with resolving conflicts between state and federal agencies, industry, and tribes regarding the use and conservation of coastal and marine resources. These may be resolved informally through information sharing, informal discussions, or more formal mediation processes agreed to by the parties.

Office of National Marine Sanctuaries (ONMS) – ONMS has a number of areas where ECR has been employed, typically using unassisted collaborative problem solving. Notable areas include the ongoing management plan reviews required under the National Marine Sanctuaries Act and the development of the co-trustee partnership with the Department of the Interior and State of Hawaii to implement the Papahānaumokuākea Marine National Monument.

National Centers for Coastal Ocean Science (NCCOS) – NCCOS laboratories and research centers conduct and support research, monitoring, assessments and technical assistance to meet NOAA's coastal stewardship and management responsibilities. Products are then used by NOAA and external stakeholders to resolve conflicts on resource use and restore natural resources.

Damage Assessment, Remediation, and Restoration Program (DARRP) – NOAA, through DARRP, acts as a trustee to restore coastal and marine resources belonging to the public and that are injured by oil spills, hazardous substance releases, and vessel groundings. DARRP works cooperatively with co-trustees (Federal, state, and tribal), party(ies) responsible (RP) for the incident, and the public at large to address restoration of injured or lost natural resources in a process called natural resource damage assessment (NRDA). DARRP continues to pursue cooperative assessments; in FY 2009 three cooperative assessment agreements were established.

NOAA's cooperative assessment agreements encompass many implementation principles identified by the OMB/CEQ guidance. NOAA's agreements frequently contain mechanisms (e.g., establishing work groups or councils) for coordinating efforts to address concerns and responsibilities under applicable law (regulations for both CERCLA and OPA require that proposals to restore injured natural resources be in accordance with applicable laws or regulations). Provisions of NOAA's agreements also specify the decision making authority of the parties, provide dispute resolution procedures, and list specific duties, objectives and

authorities for the purpose of facilitating implementation. In certain cases these agreements provide funding for scientific studies and trustee participation costs.

National Weather Service (NWS)

National Weather Service (NWS) – Leadership, project managers and staff are aware of and utilize the ECR process. The use of the ECR is dependent on existing conditions for new site construction or renovations of existing facilities. There were no specific instances to highlight in FY 2009. However, there were two instances in FY 2008 where the ECR process was an instrumental tool in resolving conflicting interests and providing for a positive outcome, and were reported last year.

The NWS routinely implements the National Environmental Policy Act (NEPA) evaluation process early in the construction/renovation planning phase to identify any potential issues. NWS consults with other experts, such as the NOAA Safety and Environmental Compliance Office (SECO), NOAA General Counsel, and other NWS internal experts located in various regional offices. An additional member was added to NWS's Safety and Environmental staff in FY 2009, further enhancing the group's environmental capabilities.

Progress and evaluation of current and proposed projects are topics discussed at the NWS Facility Management Bi-Monthly teleconferences. This forum allows for open discussion of potential items that may warrant use of the ECR process and possible mitigation measures. NWS strives to reduce, minimize, or eliminate conflicts by early identification of potential problem areas, use of the NEPA process, involvement of knowledgeable staff, and ongoing project review and analysis.

Section 2: Challenges

2. Indicate the extent to which each of 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	Not a challenge/barrier
	Check only one		
a) Lack of staff expertise to participate in ECR	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
b) Lack of staff availability to engage in ECR	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
c) Lack of party capacity to engage in ECR	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
d) Limited or no funds for facilitators and mediators	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
e) Lack of travel costs for your own or other federal agency staff	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
f) Lack of travel costs for non-federal parties	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
g) Reluctance of federal decision makers to support or participate	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
h) Reluctance of other federal agencies to participate	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
i) Reluctance of other non-federal parties to participate	<input 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 checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
l) Lack of personnel incentives	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
m) Lack of budget incentives	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
n) Lack of access to qualified mediators and facilitators	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
o) Perception of time and resource intensive nature of ECR	<input 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 type="checkbox"/>
s) No barriers (please explain): _____	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Section 3: ECR Use

3. Describe the level of ECR use within your department/agency in FY 2009 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 2009 ECR Cases ³	Decision making forum that was addressing the issues when ECR was initiated:				Of the total FY 2009 ECR cases indicate how many your agency/department	
				Federal agency decision	Administrative proceedings /appeals	Judicial proceedings	Other (specify)	Sponsored ⁴	Participated in but did not sponsor ⁵
<i>Context for ECR Applications:</i>									
Policy development	___	__1__	__1__	__1__ -	___	___	___	___	___
Planning	___	__1__	__1__	__1__ -	___	___	___	___	___
Siting and construction	___	___	___	___	___	___	___	___	___
Rulemaking	___	__3__	__3__	__3__ -	___	___	___	__3__	___
License and permit issuance	___	___	___	___	___	___	___	___	___

¹ A “case in progress” is an ECR case in which neutral third party involvement began prior to or during FY 2009 and did not end during FY 2009.

² A “completed case” means that neutral third party involvement in a particular matter ended during FY 2009. 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 FY2009 ECR Cases”.

⁴ Sponsored - to be a sponsor of an ECR case means that an agency is contributing financial or in-kind resources (e.g., a staff mediator's time) to provide the neutral third party's services for that case. More than one sponsor is possible for a given ECR case.

⁵ Participated, but did not sponsor - an agency did not provide resources for the neutral third party's services for a given ECR case, but was either a party to the case or participated in some other significant way (e.g., as a technical expert advising the parties).

Compliance and enforcement action	___	___	___	___	___	___	___	___	___	___
Implementation/monitoring agreements	___	<u> 1 </u>	<u> 1 </u>	___	___	___	___	___	<u> 1 </u>	___
Other (specify): _____	___	___	___	___	___	___	___	___	___	___
TOTAL	___	<u> 6 </u>	<u> 6 </u>	<u> 5 </u>	___	___	___	___	<u> 6 </u>	___
	(the sum should equal Total FY 2009 ECR Cases)			(the sum of the Decision Making Forums should equal Total FY 2009 ECR Cases)					(the sum should equal Total FY 2009 ECR Cases)	

4. Is your department/agency using ECR in any of the substantive priority areas you listed in your prior year ECR Reports? Indicate if use has increased in these areas since they were first identified in your ECR report. Please also list any additional priority areas identified by your department/agency during FY 2009, and indicate if ECR is being used in any of these areas. Note: An overview of substantive program areas identified by departments/agencies in FY 2008 can be found in the FY 2008 synthesis report.

List of priority areas identified in your department/agency prior year ECR Reports	Check if using ECR	Check if use has increased in these areas
NWS: ECR used along with NEPA process in FY 2008, which involved " <i>Siting & Construction</i> " _____	X	<input type="checkbox"/>
_____	<input type="checkbox"/>	<input type="checkbox"/>
_____	<input type="checkbox"/>	<input type="checkbox"/>
_____	<input type="checkbox"/>	<input type="checkbox"/>
_____	<input type="checkbox"/>	<input type="checkbox"/>
_____	<input type="checkbox"/>	<input type="checkbox"/>
_____	<input type="checkbox"/>	<input type="checkbox"/>
_____	<input type="checkbox"/>	<input type="checkbox"/>
List of additional priority areas identified by your department/agency in FY 2009	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 the 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]

National Marine Fisheries Service (NMFS) – Overall, the National Marine Fisheries Service participates in ECR processes if such a process is proposed by a Federal action agency or is found to provide benefits (identified in Section 1(a) of the OMB-CEQ ECR Policy Memo) over existing appeal, elevation and referral protocols established under the aforementioned laws. For example, the Office of Protected Resources always uses an ECR process for Take Reduction Teams and often uses in difficult Endangered Species Act negotiations.

National Ocean Service (NOS)

National Ocean Service (NOS)

Office of Ocean and Coastal Resource Management (OCRM) – OCRM conducts various levels of conflict resolution and mediation as part of the Coastal Zone Management Act (CZMA) program, particularly related to CZMA “national interest” areas: Federal Consistency, Changes to State CZMA Programs, American Indian and Alaska Native activities, military activities, etc. These may be resolved through informal phone calls and emails or more formal processes agreed to by the parties.

OCRM does not provide a separate budget for ECR activities or hiring neutrals. However, mediation and conflict resolution are important components of Position Descriptions for OCRM/CPD’s Senior Policy Analyst/National Interest Team Lead and OCRM/CPD’s Federal Consistency Specialist. Both of these positions have attended mediation classes through the agency and Alternative Dispute Resolution courses during law school. At any given time, approximately .25-.75 percent of both the Senior Policy Analyst (GS-15 equivalent) and Federal Consistency Specialist’s (GS-13 equivalent) time may be spent on conflict resolution activities.

Office of National Marine Sanctuaries (ONMS) – The ONMS already routinely employs informal methods of environmental conflict resolution as part of its mandated responsibilities to protect and manage national marine sanctuaries and the Papahānaumokuākea Marine National Monument. Such responsibilities include working with constituents, marine users and others to identify management issues, uses, and other potential concerns regarding impacts on sanctuary resources and determining what, if any,

steps are necessary for the ONMS to take, including such things as issuing guidance, issuing permits, initiating consultation, and/or issuing or amending regulations, including using marine zoning and coastal and marine spatial planning as management tools. As many management issues cut across a variety of interests, it is essential that the ONMS ensure opportunities for different points of view to be heard, discussed and included. Management plan reviews have been a critical vehicle to raise and address important management issues and include these diverse points of view. An integral part of the decision making process includes working with the community, through scoping processes, sanctuary advisory councils, subject-specific working groups and public meetings, to help make those decisions. Since these mechanisms are so inherent to the ONMS, there is no specific ECR performance measure. However, there are ONMS performance measures that assess components of what ECR strives to achieve. One such measure is assessing the impact of sanctuary advisory councils: “By 2010, Sanctuary Advisory Councils will provide significant input on 150 priority projects across the NMS.” Since the ONMS began tracking this measure in FY06, the ONMS has received input from the sanctuary advisory councils on a cumulative number of 303 projects, a significant increase from the cumulative number of 149 projects in 2007. This high number shows the commitment of the ONMS to incorporate local knowledge of both the sanctuary resources and the community into sanctuary management. It also shows the high level of commitment and dedication of the NMS advisory council. There are more than 650 citizens actively engaged through ONMS sanctuary advisory councils; the number includes more than 400 advisory council members (and alternates), and more than 250 additional individuals serving on council working groups as interested members of the public. Collectively, these individuals contributed more than 16,000 hours of their time in FY09 to the ONMS to help guide management and protect sanctuary resources.

Damage Assessment, Remediation, and Restoration Program (DARRP) – The DARRP program tracks the costs of cooperative assessments via Cost Document packages. By tracking these assessment costs, DARRP is able to understand the costs of cooperative assessments and look for ways to improve efficiency.

National Weather Service (NWS) – Economic analyses are conducted for all projects and frequently utilize The Automated Prospectus System (TAPS) to determine the net present values for different construction options. This data can be retrieved to provide a general analysis of cost avoidance and net savings related to the implementation of the ECR process.

6. Describe other significant efforts your agency has taken in FY 2009 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.

National Marine Fisheries Service (NMFS)

Sustainable Fisheries – Within the Office of Sustainable Fisheries at the NOAA Fisheries Service, the processes used in development of management plans and associated regulations under MSA (and within the NEPA process) require interaction and negotiation between Councils, states, constituents, and SF/Regions/Science Centers. In working with the Commissions, SF/Regions/Science Centers participate in the Commission process, which includes discussions and negotiations by all parties. As such, SF has successful methods in place to reach out directly to individual states, other Federal agencies, NGOs, and other groups.

National Ocean Service (NOS)

National Centers for Coastal Ocean Science (NCCOS) – The Marine Forensics Program analyzes evidence for NOAA Fisheries' Office of Law Enforcement. NOAA Fisheries Office for Law Enforcement is dedicated primarily to the enforcement of laws that protect and regulate our nation's living marine resources and their natural habitat.

As one of the only laboratories in the country focused on forensic analysis of marine species, NOS' forensic analysis deters future misuse of natural resources, protects resources, and supports the enforcement of laws intended to protect coastal and marine resources. In 2009, NOAA scientists provided forensic analysis to aid investigations of civil and criminal violations involving protected marine mammals and commercially-important and highly migratory species including tunas, billfish and sharks. In addition, NOS trained law enforcement personnel and US Coast Guard managers in marine forensic capabilities and evidence handling procedures to ensure that scientific analyses in marine law cases increase the cost-effectiveness and efficiency of Federal wildlife and fisheries enforcement efforts and deter future misuse of natural resources. Forensic support can be critical in identifying evidence seized to serve as a future deterrent to the illegal use of marine resources and as a cost-saving measure for NOAA when defendants are exonerated, obviating the need for further investigations, prosecution and resolving environmental conflicts.

Damage Assessment, Remediation, and Restoration Program (DARRP) – In order to ensure injuries to natural resources are restored, DARRP is preparing for the possibility of litigation in cases where it appears Responsible Parties may be unable to resolve their liability through the cooperative process. The DARRP program is also evaluating and assessing the different levels that cooperative assessments may be used. As the result of some experiences with cooperative assessments, the program is consistently working on clarifying what cooperative assessments are in the effort to help improve the process.

National Weather Service (NWS) – The NEPA evaluation process is used for all projects. This process assists management in identifying potential conflicts early in the project planning stages. Where potential conflicts arise, early identification allows the NWS to develop strategies to minimize or eliminate the conflicts.

The NWS Safety & Environmental staff is participating in the revision of the NOAA Administrative Order (NAO) 216-6, "Environmental Policy Review Procedures for Implementing the National Environmental Policy Act (NEPA)" and Companion Manual. This Manual addresses collaborative negotiation and conflict resolution. Training on the revised policy and manual will be provided NOAA-wide to NEPA practitioners, project managers, safety and environmental focal points.

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.

National Marine Fisheries Service (NMFS)

Bottlenose Dolphin Take Reduction Team: NOAA Fisheries Service contracted with The Keystone Center to professionally facilitate the September 9-11, 2009, Bottlenose Dolphin Take Reduction Team meeting. The meeting was productive, resulting in several consensus recommendations from the Take Reduction Team to NOAA Fisheries Service regarding implementation of the Bottlenose Dolphin Take Reduction Plan. The goal of the Take Reduction Plan is to reduce serious injuries and deaths, or bycatch, of the Western North Atlantic coastal bottlenose dolphin stock (*Tursiops truncatus*) due to accidental entanglement in nine U.S. commercial fisheries. The Take Reduction Team includes 45 members representing commercial fisheries, state and federal agencies, regional fishery management councils, interstate commissions, environmental groups and academia.

Marine Mammal/Gear Conflicts: In FY09, the NOAA Fisheries Service Northeast Regional Office continued to use ECR to address marine mammal/gear conflicts. This year, only the Atlantic Large Whale TRT was convened, but that was a facilitated meeting and NMFS believes the outcome was enhanced by the use of outside facilitators.

New England Groundfish Fishery Management Plan: In the process of developing sectors, NMFS used a team of facilitators to help work with the fishing industry to develop the concepts and procedures for managing sectors. In FY09 NMFS convened three facilitated meetings with fishermen and sector representatives. (A fourth meeting was held in October, i.e., early in FY10). The three meetings were used first to explain what NMFS was considering as criteria for becoming a sector, to work out the details of how a sector should apply (including how to conduct NEPA analysis and address other rule making requirements), and how a dockside monitoring program would work. The October meeting focused on how NMFS and sectors would share information, which needs to be done weekly. The facilitators were provided by a company called "Touchstone". NOAA Fisheries Service is continuing to work with the facilitators of the sector meetings to plan for the implementation of sectors.

California Forest Practice Rules: NOAA Fisheries Service's Southwest Region has been long engaged with the California State Board of Forestry and others to develop standard practices for forest harvest techniques that avoid or minimize impacts to salmon and steelhead that use the streams and rivers of California's privately owned forests.

In October 2009, the Board of Forestry enacted a new set of forest harvest rules specifically designed to protect salmon and steelhead and their habitats. The rulemaking

was the culmination of three years of literature reviews, formulation and use of a Technical Advisory Committee and discussions among the Board, NOAA Fisheries Service, the forest industry, environmental groups, and others regarding the important role of watersheds in providing water, wood and gravel to downstream fish-bearing streams.

Among the accomplishments of the extended discussions and negotiations to resolve conflicts between forest management practices and the needs of anadromous fish, was the addition of a no cut zone along critical watersheds and which represented a substantial improvement over previous rules. NOAA Fisheries Service views the rules as establishing the base for further discussions and agreements regarding completion of a watershed analysis and adaptive management process, as well as furthering discussions on the possibility of developing a statewide forest habitat conservation plan.

The decisions resulting from this process of conflict resolution will also act in concert with others working towards salmonid recovery in California across both freshwater and marine environments. That is important because no single entity can recover salmon and steelhead in California and the actions of all concerned must be unified and strategic.

An appointed Task Force worked with a facilitator and presented recommendations to NMFS on whether or not to approve a request from the states of Washington, Oregon, and Idaho to lethally remove California Sea Lions to address the conflict between healthy sea lion populations and at-risk salmon populations at the Bonneville dam.

In 2009, NOAA Fisheries Service worked with the firm CONCUR, Inc., who provided facilitation and agreement-focused mediation for several marine mammal take reduction teams (e.g., Atlantic Large Whale, Pelagic Longline, and Harbor Porpoise Take Reduction Teams). The take reduction team process is highly structured in terms of goals and deadlines, as well as highly contentious. Specifically, teams must develop consensus measures that reduce bycatch of marine mammals in particular commercial fisheries. The facilitators efficiently conducted take reduction team meetings and effectively assisted NMFS in meeting statutory and management goals, thereby reducing threat of litigation for not meeting goals and deadlines.

NOAA Fisheries Service Northwest Region: NOAA Fisheries has worked with Portland State University to develop their Executive Seminar Program which is a part of their Executive Leadership Institute within their Center for Public Service. This program is designed for senior managers in public, private, tribal and non-profit organizations and uses real case studies of controversial natural resource issues in the Pacific Northwest as the focus for leadership development and to build skill sets for conflict resolution. NOAA Fisheries sends 2 or 3 employees per year to this course. In addition, a member of the NW Region's senior leadership team sits on the Executive Board of Directors and helps develop the case studies each year.

From Portland State:

“Each seminar reconstructs a natural resource policy controversy by visiting the site of the issue, reviewing background materials and meeting the decisive players in the conflict.

Through study of these cases, participants come to understand the complex social, legal and political context of today's environmental and natural resource problems. They can then identify improved approaches, learn effective techniques, and develop greater ability to lead in the policy context natural resource managers face. The purpose of the program is to develop a cadre of consensus managers who understand the need to evaluate social values as well as economic ones in natural resource public policy development, all in the context of a complex political system that needs to be understood and managed in the process of decision-making.”

National Ocean Service (NOS)

Office of Ocean and Coastal Resource Management (OCRM) – OCRM relies upon the 30-member Marine Protected Areas Federal Advisory Committee, made up of diverse stakeholder representatives, to raise issues, develop recommendations and resolve conflicts related to planning and implementation of the national system of marine protected areas (MPAs). The Committee advises NOAA and the Department of the Interior on issues related to the national system of MPAs, and through its deliberations, finds common ground among members who represent environmental organizations, commercial and recreational fishermen, state and tribal resource managers, ocean industry and others. In FY2009, the Committee met twice and developed consensus recommendations on considerations for evaluation of the national system’s performance, and how to incorporate consideration of ecological resilience in the conduct of national system gap analysis to identify existing MPAs requiring strengthening and areas for consideration as new MPAs.

National Centers for Coastal Ocean Science (NCCOS) – NOAA’s National Centers for Coastal Ocean Science (NCCOS) characterizations of benthic habitats and evaluations of habitat use are supporting the conservation and restoration of Vieques Island, Puerto Rico. Specifically, an evaluation of seagrass recovery rates is enabling the calibration of a recovery model for tropical seagrasses, in collaboration with the Damage Assessment Center and NOAA’s Office of National Marine Sanctuaries. The model is being used in damage assessment and restoration of NOAA Trustee Resources in the Florida Keys National Marine Sanctuary and assists NOAA’s Office of Response and Restoration and the Navy in their cleanup and restoration efforts in Vieques.

Scientists from NCCOS and managers from the Office of National Marine Sanctuaries, in collaboration with counterparts from the Territory of American Samoa, compiled and analyzed data to complete a biogeographic assessment defining a potential network(s) of marine protected areas in American Samoa. This work is directly linked to the Fagatele Bay National Marine Sanctuary management plan review and the Territory’s efforts to develop a network of marine protected areas. The NOAA team met with key American Samoa natural resource management agencies to exchange data and conduct dive surveys with the U.S. National Park Service. Key ecological attributes of candidate areas under consideration were quantified and presented to interest groups including the Governor of American Samoa, Fagatele Bay Sanctuary Advisory Council, Office of Samoan Affairs, American Samoa Legislature and Coral Reef Advisory Council.

An ongoing NCCOS project in the Bermuda Platform is helping resource managers protect juvenile green sea turtles that feed on critical, but declining, seagrass habitats. To document effects of green turtle grazing on seagrass beds, NCCOS completed a third year of permanent site sampling, and installed a field experiment in September 2009. The collaborative long-term survey of underwater resources could reconcile the potentially conflicting objectives of protecting endangered turtles and important seagrass habitats. NCCOS is working with the Bermuda Ministry of the Environment and Florida International University, as part of Bermuda's Biodiversity Strategy and Action Plan to monitor natural and human-caused damage to critical marine habitats.

NCCOS and the U.S. Virgin Islands (USVI) Marine Advisory Service have been working together to provide maps of coral reef ecosystems to local groups in the U.S. Virgin Islands to support community-based management. The St. Thomas East End Reserve Community-based Management Planning group used NOAA benthic habitat and watershed maps during stakeholder meetings to show the location of marine resources and to identify hurricane mooring sites and sewage and nutrient loading sites around the perimeter of the protected area. The group consists of representatives from the USVI Department of Planning and Natural Resources, The Nature Conservancy, and University of the Virgin Islands. NOAA's benthic habitat maps have also been used to help community groups and the Magen's Bay Management Authority design a management plan for the proposed Smith Bay Marine Park on St. Thomas. NCCOS's benthic habitat maps enhance resource stewardship at the community level, ultimately legitimizing, leveraging resources, and securing support for the management actions developed in cooperation with community members in the U.S. Virgin Islands.

Damage Assessment, Remediation, and Restoration Program (DARRP)

NOAA and the U.S. Fish & Wildlife Service have signed agreements with 23 companies to cooperatively assess the lower 17 miles of the Passaic River (NJ) and develop and implement a restoration plan to restore damaged habitat.

Through a cooperative assessment process in Texas, NOAA and co-trustees restored over 2,000 acres of wetland.

With two more cooperative settlements for Commencement Bay WA, NOAA has achieved the last of 12 separate settlements entered into as a result of the Hylebos Waterway settlement negotiations program. NOAA will have concluded settlements with all willing parties on the Hylebos Waterway portion of the complex Commencement Bay Superfund Site.

NOAA has settled nine natural resource damage assessment cases in FY09 via the cooperative assessment process and has entered into three new natural resource damage cooperative assessments.

National Weather Service (NWS) – There were no notable ECR instances associated with new Construction or facility rehabilitation projects in the past year.



8. ECR Case Example

- a. Using the template below, provide a description of an ECR case (preferably completed in FY 2009). Please limit the length to no more than 2 pages.

Name/Identification of Problem/Conflict
Overview of problem/conflict and timeline, including reference to the nature and timing of the third-party assistance
<p>National Ocean Service (NOS)</p> <p>Commencement Bay is the harbor for Tacoma, Washington, located at the southern end of Puget Sound. Beginning in the early 1900s, intertidal areas and tideflats of the Puyallup River Delta were filled in and meandering streams were channelized, resulting in the eight waterways (Hylebos, Blair, Sitcum, Milwaukee, St. Paul, Middle, Thea Foss, and Wheeler-Osgood) that presently lead into the bay.</p> <p>Industrial and commercial activities are located on or adjacent to each of the waterways. They include pulp and lumber mills, shipbuilding and ship repair facilities, shipping docks, marinas, chlorine and chemical production facilities, concrete production facilities, aluminum smelting facilities, oil refineries, food processing plants, automotive repair shops, railroad operations, and numerous other storage, transportation, and chemical manufacturing companies. Contaminants originate from both point and nonpoint sources</p> <p>In October 1991, the trustees formally initiated the damage assessment and restoration planning process.</p>
Summary of how the problem or conflict was addressed using ECR, including details of how the principles for engagement in ECR were used (See Appendix A of the Policy Memo, attached)
<p>In 2009, two settlements, the last of 12 separate natural resources damage settlements entered into as a result of the Hylebos Waterway settlement negotiations program, became final. The program, developed by the NOAA case team, employed a sophisticated state-of-the-art cross-habitat habitat equivalency analysis (HEA); the first trustee-led formal liability allocation created for a multi-party NRD site; and the first instance of restoration credits trading as a settlement incentive. The entire package was made available for public review and comment.</p> <p>Although no third party was used, this case used party-to-party negotiation among adverse parties to reach agreements. Rather than litigation, NOAA and Co- Trustees pursued a path of negotiation in the attempt to help ensure injured resources would be restored in a timely fashion.</p>

Identify the key beneficial outcomes of this case, including references to likely alternative decision making forums and how the outcomes differed as a result of ECR

With the approval of these two settlements in FY09, Petroleum Reclaiming Services and the Occidental Chemical Corp., the Commencement Bay Natural Resource Trustees, under the leadership of the NOAA case team, have concluded settlements with all willing parties on the Hylebos Waterway portion of the complex Commencement Bay Superfund Site. Petroleum Reclaiming Services has agreed to pay \$638,391.06 in natural resource damages and to reimburse \$111,608.94 in damage assessment costs. The damages will be deposited in the Trustees' restoration account to be applied to one or more habitat restoration projects the Trustees are constructing. Occidental has agreed to develop the 18.5 acre Sound Refining mudflats restoration project on the Hylebos Waterway. The project will consist of the cessation of log rafting (floating log storage) on the site; the removal from the site of injurious concentrations of wood waste, derelict vessel remains, and other debris; and the placement of a thin layer of clean sand/silt to promote the recolonization of the benthic community. The project will be completed with the placement of a system of pilings and floating booms – essentially fencing the site off from the waterway – to prevent future log rafting or vessel abandonment on the site. Occidental has also agreed to pay \$50,000 in Trustee project oversight costs and to reimburse \$1.6M in damage assessment costs. The Commencement Bay Trustees have now reached settlements with 52 individual parties, recovered \$14,540,137.17 in natural resource damages, \$5,414,399.83 in damage assessment costs, \$250,000.00 in project oversight costs, and generated the restoration of 94.77 acres of estuarine and riparian habitat.

The party negotiations used to reach settlements in this case potentially saved NOAA time and money that would have been used if litigation had that been the course of action pursued. NOAA risked higher costs in litigation, and injured resources may not have been restored.

Reflections on the lessons learned from the use of ECR

While the settlement negotiations with the responsible parties did not employ third-party neutrals, the inter-trustee negotiations that were part of the process were greatly aided by the formal Trustee Council organizational structure and decision-making procedures. The Trustee Council process adheres to the Basic Principles in Attachment A in that it reflects informed agency commitment to the damage assessment process, consists of balanced representation of all affected trustees through self-selected representatives, employs consensus-based decision-making based on fully shared information, requires full, direct and good-faith participation, ensures all participants are fully informed and arrives at timely decisions, and ensures that decisions are legally and practically implementable.

- 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:

	Check <u>all</u> that apply	Check if	
		Not Applicable	Don't Know
Protracted and costly environmental litigation;	✗	<input type="checkbox"/>	<input type="checkbox"/>
Unnecessarily lengthy project and resource planning processes;	✗	<input type="checkbox"/>	<input type="checkbox"/>
Costly delays in implementing needed environmental protection measures;	✗	<input type="checkbox"/>	<input type="checkbox"/>
Foregone public and private investments when decisions are not timely or are appealed;	✗	<input type="checkbox"/>	<input type="checkbox"/>
Lower quality outcomes and lost opportunities when environmental plans and decisions are not informed by all available information and perspectives; and	✗	<input type="checkbox"/>	<input type="checkbox"/>
Deep-seated antagonism and hostility repeatedly reinforced between stakeholders by unattended conflicts.	✗	<input type="checkbox"/>	<input type="checkbox"/>

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.

Please attach any additional information as warranted.

Report due January 15, 2010.

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

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

**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