

**Supplemental Information Supporting the
DoD Consolidated Responses to the
OMB/CEQ Survey Questions for 2009**

Questions for 2009 ECR Policy Reports

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:	31 DECEMBER 2009

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.]

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 issues facing the DON, including environmental matters. The DON ADR Program works with appropriate commands responsible for environmental issues. During 2009 an overview of ECR techniques was provided by the ADR Program Office at the new DON attorney orientation and at the yearly DON Office of the General Counsel conference. Training materials and external links to ECR courses have also been published on the web at <http://www.adr.navy.mil/content/sect106consult.aspx> and <http://ecr.gov/Training/Training.aspx>.

The DON has demonstrated a long standing capacity for ECR in the area of installation restoration. The DON currently participates in 48 facilitated partnering teams that oversee the restoration efforts at 1,181 active and 367 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 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 <u>only</u> 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 type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
c) Lack of party capacity to engage in ECR	<input type="checkbox"/>	<input checked="" 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 type="checkbox"/>	<input checked="" 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 checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
h) Reluctance of other federal agencies to participate	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
i) Reluctance of other non-federal parties to participate	<input checked="" type="checkbox"/>	<input 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 checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
n) Lack of access to qualified mediators and facilitators	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
o) Perception of time and resource intensive nature of ECR	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
p) Uncertainty about whether to engage in ECR	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
q) Uncertainty about the net benefits of ECR	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
r) Other(s) (please specify): ECR involving other countries	<input checked="" 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	Completed Cases or projects	Total FY 2009 ECR Cases ¹	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	Participated in but did not sponsor	
<i>Context for ECR Applications:</i>										
Policy development	___	___	___	___	___	___	___	___	___	___
Planning	___	2	2	1	1	___	___	___	2	___
Siting and construction	___	___	___	___	___	___	___	___	___	___
Rulemaking	___	___	___	___	___	___	___	___	___	___
License and permit issuance	___	___	___	___	___	___	___	___	___	___
Compliance and enforcement action	___	___	___	___	___	___	___	___	___	___
Implementation/monitoring agreements	48	___	48	___	___	___	48	See 1 below	___	___
Other (specify): _____	___	___	___	___	___	___	___	___	___	___
TOTAL	48	2	50	1	1	___	___	___	2	___
	(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)	

¹ The DON has 45 facilitated partnering teams, organized in a three tier structure, which address installation restoration issues. Collectively, the teams work with 1181 active and 367 inactive sites. The concept of **initiation** is not appropriate for these matters given the long standing existence of the teams.

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
Addressing Intra-Navy and Intra-DOD conflicts that arise from different interpretations and applications of laws, regulations, and policies	X	<input 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	X	<input type="checkbox"/>
Resolving the impasse with non-governmental organizations over the Navy's use of mid-frequency active SONAR	<input 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	X	<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 type="checkbox"/>	<input type="checkbox"/>

Avoiding contentious, unproductive consultations under Section 106 of the National Historic Preservation Act	X	<input type="checkbox"/>
Addressing Coastal Zone Management Act issues, particularly problems with NOAA regulations implementing the Act	X	<input type="checkbox"/>
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 2009	Check if using ECR	
Environmental Restoration Program	X	

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]

As the Systematic Evaluation of Environment and Economic Results (SEEER) project at EPA and DOI demonstrates, it is possible to collect and analyze data pertaining to the use of ECR. However, the analysis under the SEEER Project has a significant expense of about \$10K to \$20K per case. The DON has not adopted such a system at this time.

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. For example, in the 2007 DON ECR Survey Response one geographic area of the Navy reported working directly with the parties to maintain open, transparent, and accessible methods of communication. As a result, ECR has not been required to engage the relevant stakeholders. In this particular region the Navy command sponsors an annual historic preservation conference, Navy IR personnel engage the community through Restoration Advisory Board meetings, and Navy personnel meet with Federal and State regulatory agencies on at least a quarterly basis to discuss upcoming actions and resolve issues on the front end.

One major DON Command on the East Coast reported holding Restoration Advisory Board (RAB) meetings periodically at cleanup sites to help the public understand what they're doing and why they're doing it. This command also engaged in endangered species and historic preservation consultations using an ECR-like procedure. In the NEPA world they utilized a well-tested and effective risk communication methodology to familiarize the public with a proposed action, both at the scoping and draft stage. With their more unpopular initiatives, this Command often went beyond the required hearings to brief town councils, mayoral offices, and similar organizations.

Another Command reported that when they had a project that would impact another agency staff's time and a timely response was required, they would let the other agency know about the project as soon as possible. This gave the other agency an opportunity to identify problematic issues that had arisen on similar reviews. This was a very productive approach because no one was surprised and everyone had a chance to absorb the potential project's concerns. The project wasn't sprung on the other agency at the last minute, which often triggers a defensive rather than collaborative response. This Command also encouraged collaborative conservation work so that the local community actually became an advocate for the DON.

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. Last year two installations were recognized for their use of partnering techniques. The Marine Corps Air Station Cherry Point, North Carolina, won the 2008 Secretary of the Navy Environmental Restoration - Installation Award for using innovative and effective partnering techniques to achieve cost-effective site closure. "In 2007 and 2008, restoration initiatives generated over \$400,000 in savings for the Air Station's operational account and over \$2.75 million in savings for the restoration program while meeting closure requirements at 11 sites."² The partnering team at the Naval Amphibious Base Little Creek, Virginia won the 2008 Chief of Naval Operations Environmental Restoration Award - Installation. The goal of this award is to recognize installations for their exceptional environmental stewardship. The Navy Environmental Restoration Program Partnering Team at Little Creek was specifically recognized for using a team-based approach to evaluate "site conditions, aquifer characteristics, and overall public concerns to determine the most appropriate remedy prior to implementation."³ A DON Command also reported that CERCLA partnering was particularly successful this past year, and they're experiencing good buy-in from all stakeholders. This Command's use of partnering helped it to achieve cost effective solutions to their clean-up goals. This Command has been making a concerted effort to reach out to federal and state stakeholders with quarterly partnering meetings. These meetings have improved the turnaround time for agency reviews and led to improved mitigation plans.
2. Mediation/Arbitration. DON engaged OMB as mediator for a dispute between Navy and NASA about preservation of a historic dirigible hangar at former Naval Air Station Moffett Field, CA. At Navy's suggestion, NASA agreed to binding arbitration of the issue.
3. Outreach. The Assistant General Counsel (Installations and Environment) reported successfully "educating" senior Navy leadership regarding the ECR process and how it can be used. Senior leadership has indicated a willingness to increase use of ECR tools as a means of moving disputes toward resolution.

² *Secretary of the Navy Environmental Award Winners Recognized – Awards Acknowledge the "Best of the Best"*, Currents Magazine, pp. 58-68, at 64, fall 2009, <http://www.enviro-navair.navy.mil/> (last accessed 12/18/09).

³ *Fifteenth Annual CNO Environmental Awards Recognize Exceptional Stewardship: Efforts of 2008 Winners Highlights the Range of the Navy's Commitment*, Currents Magazine, pp. 18-37, at 35, summer 2009, <http://www.enviro-navair.navy.mil/> (last accessed 12/18/09).

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>Earlier this year the citizens and local government near Naval Air Station Key West (NASKW) became very concerned about the impact of aircraft "noise" on some of the local residents. Meetings between the parties became increasingly unproductive, leading to a unanimous "cease and desist" resolution issued by the Monroe County Board of Commissioners on March 18, 2009. Shortly after this resolution was passed the DON ADR Program Office began working with NASKW on possible ADR strategies. After lengthy negotiations with the Board and the county attorney, the parties agreed to use an outside facilitator to conduct a conflict assessment, negotiate a meeting agenda, and facilitate a meeting to promote productive discussion of aircraft noise and related issues. The conflict assessment was conducted during the week of May 4 – 8, 2009 by the Associate Director of the Florida Conflict Resolution Consortium, and the facilitated meeting was held on May 12, 2009.</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>The facilitated meeting resulted in a constructive dialogue covering many of the issues in contention, allowing both sides to better understand the other's perspective. At the conclusion of the meeting the parties agreed to continue the dialogue and look at developing a process for addressing some of the issues in the future. The agenda was negotiated during the course of the conflict assessment and published prior to the meeting, insuring that the parties were fully informed in a timely manner about the meeting's general purpose and specific objectives. The agenda consisted of a facilitated discussion of issues such as aircraft noise, a Naval Audit Service Interim Report, an Environmental Assessment/Environmental Impact Study, and future land use. From NASKW's perspective the facilitator did an excellent job developing the agenda and facilitating the meeting.</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 facilitator's assistance the May 12, 2009 meeting gave the parties an opportunity to assess the current state of discussions between Monroe County and NASKW. This facilitated meeting also promoted a shared understanding of the issues and provided an effective forum to explore options for the next steps.

Reflections on the lessons learned from the use of ECR

A structured ECR process can effectively reduce tension in a high conflict/low trust setting, resulting in good faith communication and the effective balancing of all parties' interests.

- 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"/>	X	<input type="checkbox"/>
Unnecessarily lengthy project and resource planning processes;	X	<input type="checkbox"/>	<input type="checkbox"/>
Costly delays in implementing needed environmental protection measures;	X	<input type="checkbox"/>	<input type="checkbox"/>
Foregone public and private investments when decisions are not timely or are appealed;	<input type="checkbox"/>	X	<input type="checkbox"/>
Lower quality outcomes and lost opportunities when environmental plans and decisions are not informed by all available information and perspectives; and	X	<input type="checkbox"/>	<input type="checkbox"/>
Deep-seated antagonism and hostility repeatedly reinforced between stakeholders by unattended conflicts.	X	<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.

This year the DON ADR Program incorporated the questions into an online database, and worked with the Assistant General Counsel (Installations and Environment) to solicit world-wide responses from throughout the DON.

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