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Section 1: Capacity and Progress

1. Describe steps taken by your department/agency to build programmatic/institutional capacity for ECR in 2010, including progress made since 2009. 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 Office works with appropriate commands responsible for environmental issues. During 2010 an overview of ECR techniques was provided by the ADR Program Office at the new DON attorney orientation. 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 49 facilitated partnering teams that oversee the restoration efforts at 1,062 active environmental restoration 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		
	Not at all	Slightly	Very much
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 checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
f) Lack of travel costs for non-federal parties	<input type="checkbox"/>	<input checked="" 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 type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
j) Contracting barriers/inefficiencies	<input checked="" type="checkbox"/>	<input 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 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): The biggest barrier to use of ECR is that in many of my cases the time for ECR has past.	<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 2010 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.]

Context for ECR Applications:	Cases in completed projects, programs, or projects	Total FY 2010 ECR Cases	Decision making forum that was addressing the issues when ECR was initiated:				Of the total FY 2010 ECR cases, indicate how many your agency/department	
			Federal Agency Decision	Administrative Process/Regulatory Appeal	Judicial	Out-of-Court	Sponsored	Participated in but did not sponsor
Policy development								
Planning								
Siting and construction								
Rulemaking								
License and permit issuance								
Compliance and enforcement action								
Implementation/monitoring agreements	49	49			49		49	
Other (specify):								
TOTAL	49 (the sum should equal Total FY 2010 ECR Cases)	49	(the sum of the decision making forums should equal Total FY 2010 ECR Cases)				49 (the sum should equal Total FY 2010 ECR Cases)	

¹ The DON has 49 facilitated partnering teams, organized in a three tier structure, which address installation restoration issues. Collectively, the teams work with 1,062 active environmental restoration 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 2010, 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 2009 can be found in the FY 2009 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	X
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	X	X
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	X
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	X	X

consultations under Section 106 of the National Historic Preservation Act		
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"/>
Environmental Restoration Program	X	X
List of additional priority areas identified by your department/agency in FY 2010	Check if using ECR	
None Identified		

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 2010 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.

DON was able to resolve CVN (nuclear aircraft carrier) NEPA site determination issues for the Guam Build-Up Environmental Impact Statement that allowed DON to move forward in the process and publish a Final Environmental Impact Statement on time.

Also in the NEPA context a major DON Command on the East Coast reported that they often made the effort to interact with stakeholders directly, and at their NEPA scoping and draft document hearings they successfully used the risk communication techniques taught by the Navy Marine Corps Public Health Center. This Command reported that these risk communication techniques were extremely effective, helping the Command optimize direct interaction with stakeholders and resolve and defuse potential conflicts.

Dispute resolution provisions of a Memorandum of Understanding were successfully used by the United States Marine Corps to resolve a disagreement between federal agencies.

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.

One major DON Command on the East Coast reported that the ongoing installation restoration teams throughout the Command (and the rest of DON as well) successfully used facilitated partnering to interact directly

with other stakeholders in shaping upcoming cleanup goals and developing specific response actions. Occasionally, this Command found that the regulatory community stalled for various reasons, which then required higher-level intervention to resolve.

Another Command reported that they continued productive ECR and partnering relationships with the Florida Department of Environmental Protection to prevent encroachment of Naval Air Station operations and Naval training over state submerged lands in the state of Florida.

Last year the Alameda Point Environmental Restoration Team was recognized with a team award at the Chief of Naval Operations annual awards ceremony. Naval Air Station Alameda was one of the military installations selected for closure in the 1993 Defense Base Closure and Realignment Commission report, and operations at NAS Alameda ceased in April 1997. The Alameda team successfully employed partnering techniques with federal, state, and local agencies to select the first containment remedy for a radiological contaminated landfill transferred out of federal ownership in California. Using partnering techniques the Environmental Restoration Team also successfully gained Restoration Advisory Board acceptance, and realized "cost savings of over \$80 million as a result of garnered community support for the selected remedy, and utilization of a competitive fixed price contract."²

2. Outreach.

The DON ADR Program Office applied for and was granted tabletop exhibit space at the U.S. Institute for Environmental Conflict Resolution's May 25-27, 2010 environmental conflict resolution conference (ECR2010) to promote the ECR techniques used by DON. The DON ADR Program Office prepared a 75" x 45" Velcro tabletop display with 11" x 14" photo enlargements and text panels showing different DON ECR techniques and success stories. As an exhibitor at ECR2010 the DON ADR Program used the tabletop display, ADR Program Office pamphlets, copies of Currents Magazine,³ and "Protecting the Seas Through Science" marine mammal research brochures⁴ to provide representatives of other federal agencies and non-governmental organizations with an overview of collaborative environmental opportunities available at DON.

² CNO Environmental Awards Recognize Exceptional Stewardship - Efforts of Fiscal Year 2009 Winners Highlight the Range of the Navy's Commitment, Currents Magazine, pp. 60-70, at 68, summer 2010, http://www.enviro-navair.navy.mil/currents/summer2010/Sum10_CNO_Environmental_Awards.pdf (last accessed 1/20/11).

³ Published quarterly, Currents Magazine is the official environmental magazine of the U.S. Navy, Chief of Naval Operations Environmental Readiness division (N45).

⁴ Published by the Chief of Naval Operations Environmental Readiness division (N45), additional material available at <http://greenfleet.dodlive.mil/environment/marine-mammals-ocean-resources/>, (last accessed 1/20/11).

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

Please attach any additional information as warranted.

Report due February 15, 2011.

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