

FY 2020
Environmental Collaboration and Conflict Resolution (ECCR)¹
Policy Report to OMB-CEQ

On September 7, 2012, the Director of the Office of Management and Budget (OMB), and the Chairman of the President's Council on Environmental Quality (CEQ) issued a revised policy memorandum on environmental collaboration and conflict resolution (ECCR). This joint memo builds on, reinforces, and replaces the memo on ECR issued in 2005.

The memorandum requires annual reporting by departments and agencies to OMB and CEQ on progress made each year in implementing the ECCR policy direction to increase the effective use and institutional capacity for ECCR.

ECCR is defined in Section 2 of the 2012 memorandum as:

“ . . . third-party assisted collaborative problem solving and conflict resolution in the context of environmental, public lands, or natural resources issues or conflicts, including matters related to energy, transportation, and water and land management.

The term Environmental Collaboration and Conflict Resolution encompasses a range of assisted collaboration, negotiation, and facilitated dialogue processes and applications. These processes directly engage affected interests and Federal department and agency decision makers in collaborative problem solving and conflict resolution.

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 policy and regulatory disputes to administrative adjudicatory disputes, civil judicial disputes, intra- and interagency disputes, and disputes with non-Federal persons and entities.

Environmental Collaboration and Conflict Resolution can be applied during policy development or planning in the context of a rulemaking, administrative decision making, enforcement, or litigation with appropriate attention to the particular requirements of those processes. These contexts typically involve situations where a Federal department or agency has ultimate responsibility for decision making and there may be disagreement or conflict among Federal, Tribal, State and local governments and agencies, public interest organizations, citizens groups, and business and industry groups.

Although Environmental Collaboration and Conflict Resolution refers specifically to collaborative and conflict resolution processes aided by third-party neutrals, there is a broad array of partnerships, cooperative arrangements, and unassisted negotiations that Federal agencies may pursue with non-Federal entities to plan, manage, and implement department and agency programs and activities. The Basic Principles for Agency Engagement in Environmental Conflict Resolution and Collaborative Problem Solving are presented in Attachment B. The Basic Principles provide guidance that applies to both Environmental Collaboration and Conflict Resolution and unassisted collaborative problem solving and conflict resolution. This policy recognizes the importance and value of the appropriate use of all forms collaborative problem solving and conflict resolution.”

¹ The term ‘ECCR’ includes third-party neutral assistance in environmental collaboration and environmental conflict resolution

This annual reporting template is provided in accordance with the memo for activities in FY 2020.

The report deadline is February 26, 2021.

We understand that collecting this information may be challenging; however, the departments and agencies are requested to collect this data to the best of their abilities. The FY 2020 report, along with previous reports, will establish a useful baseline for your department or agency. Departments should submit a single report that includes ECCR information from the agencies and other entities within the department. The information in your report will become part of an analysis of all FY 2020 ECCR reports. You may be contacted for the purpose of clarifying information in your report.

For your reference, synthesis reports from past fiscal years are available at <https://www.udall.gov/OurPrograms/Institute/ECRReport.aspx>.

FY 2020 ECCR Report Template

Name of Department/Agency responding: **Department of Commerce, National Oceanic and Atmospheric Administration**

Name and Title/Position of person responding: **Frank M. Sptel, Attorney-Advisor**

Division/Office of person responding: **Office of General Counsel, Environmental Review and Coordination Section (ERC)**

Contact information (phone/email): **301-628-1641; frank.sptel@noaa.gov**

Date this report is being submitted: **February 26, 2020**

Name of ECCR Forum Representative: **Frank M. Sptel**

1. ECCR Capacity Building Progress:

- a) Describe any **NEW, CHANGED, or ACTIVELY ONGOING** steps taken by your department or agency to build programmatic and institutional capacity for environmental collaboration and conflict resolution in FY 2020, including progress made since FY 2019.

Please also include any efforts to establish routine procedures for considering ECCR in specific situations or categories of cases, including any efforts to provide institutional support for non-assisted collaboration efforts.

Please refer to the mechanisms and strategies presented in Section 5 and attachment C of the [OMB-CEQ ECCR Policy Memo](#) for additional guidance on what to include here.

Examples include but are not restricted to efforts to:

- Integrate ECCR objectives into agency mission statements, Government Performance and Results Act goals, and strategic planning;
- Assure that your agency's infrastructure supports ECCR;
- Invest in support, programs, or trainings; and d) focus on accountable performance and achievement.

Please refer to your agency's FY 2019 report to only include new, changed or actively ongoing ECCR capacity building progress. **If none, leave this section blank.**

Office of the General Counsel, Environmental Review & Coordination Section (ERC)

In 2020 ERC continued to develop its draft strategic plan to create a centralized ECCR program at NOAA. In 2020 ERC also continued to develop its expertise in ECCR by having one of its staff continue to co-chair the Environment and Public Policy Section of the Association for Conflict Resolution and represent NOAA's interests by participating in the inter-agency ECCR forum. Finally, ERC created and disseminated to NOAA staff best practice guidance for hosting virtual public meetings to ensure maximum

participation of all stakeholders, especially those from under-represented and unprivileged communities.

National Marine Fisheries Service (NMFS)

West Coast Region (WCR):

The NMFS WCR has been involved in a collaborative effort with sovereign and stakeholder partners in the Columbia River Basin in the Pacific Northwest. Over the next four years, NMFS WCR will be making a number of significant fishery management decisions in the Columbia River Basin regarding the Endangered Species Act (ESA) and recovery of ESA-listed species. These decisions must consider the broad suite of regional interests, including tribal treaty and trust responsibilities, sustainable fisheries, and other federal obligations for salmon and steelhead and the water resources in the Basin. It is our goal that these decisions reflect regional views regarding salmon and steelhead recovery in the Basin. To begin exploring those views, in 2012 the WCR commissioned two neutral, university-based institutions – the Oregon Consensus Program at Portland State University and the William D. Ruckelshaus Center at the University of Washington – to gather the views of Columbia Basin states, tribes, federal agencies, and stakeholders regarding long-term salmon recovery strategies. The Columbia Basin Situation Assessment Report, completed in 2013, captures the range of their perspectives. The many voices reflected in the Assessment Report express considerable support for addressing the complexities of salmon recovery in a more coherent, integrated, and efficient way. This effort led to the creation of the Columbia Basin Partnership Task Force (CBP Task Force) in 2016 under the NMFS Marine Fisheries Advisory Committee (MAFAC). In its first year, the CBP Task Force members collaboratively developed a shared vision for Columbia Basin salmon and steelhead. By spring 2019, the CBP Task Force reached agreement on common qualitative and provisional quantitative goals for long-term recovery of both ESA-listed and non-listed salmon and steelhead in the Columbia Basin to meet conservation needs and provide harvest opportunities in the future. These were presented to MAFAC in a Phase 1 report. Since then, through FY2020, the CBP Task Force worked on Phase 2, discussing and considering options and recommendations for how to achieve the goals. The Partnership finalized and transmitted its Phase 2 report in September 2020. That report includes recommendations and information for decision-makers in the Columbia Basin to further define and implement strategies as they consider how to achieve the goals over time and for continuing collaboration going forward. The Partnership Task Force recognized that bold actions, innovative approaches, and difficult choices will be needed in the future to achieve the aspiration goals outlined. As part of MAFAC, the CBP Task Force was governed by the Federal Advisory Committee Act and included 31 members of regional stakeholders, states and tribes. It was facilitated by a third-party, neutral facilitator. From January 2017 to March 2019, during Phase 1, the Task Force met nine times and from April 2019 to September 2020 it met 13 times. Additionally, subgroups and work teams met numerous additional times to develop content to support the process. The Task Force's in-depth work and recommendations provided necessary input for MAFAC to formalize its advice for NOAA consideration, per the Federal Advisory Committee Act processes. MAFAC completed its work and transmitted final recommendations in October 2020.

Both the Phase 1 and final Phase 2 report, *A Vision for Salmon and Steelhead: Goals to Restore Thriving Salmon and Steelhead to the Columbia River Basin*, can be found [here](#).

National Ocean Service (NOS)

Office of Ocean for Coastal Management (OCM):

OCM 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, Native American 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. In FY2020, issues were informally resolved through collaborative processes.

NOS offices do not directly conduct third-party neutral assistance during environmental collaboration and environmental conflict resolution. However, NOS offices do conduct research nationwide on coastal ecosystems and coordinate with other Federal agencies, states, tribes, local governments, and coastal managers to provide the scientific information they need to make decisions about their coasts. This scientific information may be used in potential environmental conflict situations. Some examples of how this science is used includes: Harmful Algal Bloom assays for shellfish safety, Benthic and fauna coastal mapping for offshore wind farm sighting; and Impact of pollution on fish populations (therefore fish management plans and catch limits).

Additionally, NOS Offices have full time staff for environmental compliance (Environmental Compliance Coordinators), developed environmental compliance handbooks, implemented NOS environmental compliance policy, and are routinely developing/participating in environmental compliance training.

NOS Offices have created internal training, consultation guidelines and templates for staff to efficiently and accurately meet the mandates of environmental statutes pertaining to its actions.

National Weather Service (NWS)

Leadership, project managers and staff are aware of and utilize the ECCR process. The use of the ECCR is dependent on existing conditions for new site construction or renovations of existing facilities.

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.

Progress and evaluation of current and proposed projects is a topic discussed at the NWS Environmental and Safety Coordinators Bi-Monthly teleconferences. This forum allows for open discussion of potential items that may warrant use of the ECCR 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.

National Environmental Satellite, Data, and Information Service (NESDIS)

In NESDIS, ECCR is fully integrated into our work by applying an approach to environmental planning and compliance that exhibits strong risk management that starts at project inception and applied to daily operations. For example:

- NESDIS Environmental Management Program's (EMP) goal is to practice good environmental stewardship as part of its mission. To accomplish this goal, the EMP supports NESDIS Headquarters staff and Program Offices staff in program planning, project planning, and daily mission related operations. The EMP provides a complete tool for NESDIS Program Offices to help them with federal and state environmental compliance. For example, it includes support knowledge with a working list of federal and state environmental compliance laws for quick use and reference. It paves the way for starting up a formal Environmental Management System within NESDIS. The EMP is ISO 14001 compliant.
- Another goal of the EMP is to support NESDIS to accomplish reviews in accordance with the National Environmental Policy Act (NEPA), and other relevant laws, early in project planning phases to research alternatives, correspond with stakeholders, and identify potential issues of concern early on in the project and develop mitigation measures to remove perceived hurdles by collecting relevant and needed facts.
- During the NEPA process, NESDIS takes every available opportunity to provide needed information to outside agencies beyond what is minimally required to all interested groups and stakeholders that are associated with our various office locations.
- NESDIS strives to educate all staff on the importance of thorough and collaborative NEPA review and on issues related to environmental compliance. NESDIS relies on multi-media audits, inspections, and site visits to ensure environmental compliance.
- NESDIS responds quickly to enquiries pertaining to existing practices that have the perception of affecting the environment potentially adversely.
- NESDIS takes advantage of land-host invitations for developing environmental planning and compliance efforts collaboratively. For example, one large land host recently completed a Programmatic Environmental Impact Statement on land where one of our major satellite operations resides. NESDIS did need to secure approval for proposed actions from this host's environmental management office. What better way to introduce our proposed actions, and gain approval, than by accepting their invitation to participate, and to help that office reach its own environmental goals.

To date, these practices and courtesies have helped NESDIS develop good professional relationships with our stakeholders. This has prevented conflicts from arising, and hence the need for having a formal ECCR capacity within NESDIS.

- b) Please describe the trainings given in your department/agency in FY 2020. Please include a list of the trainings, if possible. If known, please provide the course names and total number of people trained. Please refer to your agency's FY 2019 report to include ONLY trainings given in FY 2020. **If none, leave this section blank.**

NWS

The NWS has developed a training module that provides guidance to the organization on how to use the NEPA process and the associated documents. This training module is facilitated through YouTube and accessible to all.

2. ECCR Investments and Benefits

- a) Please describe any **NEW or CHANGED or INNOVATIVE** investments made in ECCR in FY 2020. Examples of investments may include (but are not limited to):
- ECCR programmatic FTEs
 - Dedicated ECCR budgets
 - Funds spent on contracts to support ECCR cases and programs

Please refer to your agency's FY 2019 report to only include new, changed, or innovative investments made in ECCR. **If none, leave this section blank.**

NMFS, WCR

An improved working relationship with numerous stakeholders is evident from the work of the MAFAC Columbia Basin Partnership Task Force. As noted in part 1 above, the Phase 2 report of this effort was finalized by the Task Force in FY2020 and approved by MAFAC in October 2020. The Assistant Administrator (AA) for Fisheries, along with West Coast Region leaders, accepted the stakeholder-endorsed shared goals in the Phase 2 Recommendations Report, as transmitted by MAFAC (memo found [here](#)), and noted that they provide all partners a common and coherent path for recovery of salmon and steelhead throughout the entire Columbia Basin. Regional and state partners (such as the Northwest Power and Conservation Council and a governor's task force in Idaho) have adopted these goals, in various planning and management processes, furthering the mission of NMFS.

NESDIS

NESDIS keeps on reaping benefits from our proactive, collaborative approach to natural resource management. For example, we have experienced benefits from collaborating with host land tenants to produce mutually acceptable NEPA review documents for NESDIS-sponsored projects. It is difficult to quantify these benefits, but cost avoidance both for time and funds do exist and are due to maintaining positive host-tenant relationships with our stakeholders who appreciate the NESDIS commitment to collaborative efforts. NESDIS has excellent collaborative working relationships with NASA on the Eastern Shore of Virginia where Wallops Flight Facility is located. NESDIS invests in time and resources to keep NASA management on board for all its projects that have potential to impact them in any way or need their coordination or buy in.

b) Please describe any **NEW or CHANGED** benefits realized when using ECCR in FY 2020. Examples of benefits may include (but are not limited to):

- Cost savings
- Environmental and natural resource results
- Furtherance of agency mission
- Improved working relationship with stakeholders
- Avoidance of litigation
- Timely project progression

Please refer to your agency's FY 2019 report to only include new or changed benefits of ECCR realized in FY 2020. If none, leave this section blank.

NESDIS

NESDIS sees progress through increased education of staff with respect to NEPA within our Program Offices. This relates to the NESDIS policy and continued outreach and collaborative efforts described in previous questions.

3. ECCR Use

Describe the level of ECCR use within your department/agency in FY 2020 by completing the three tables below. [Please refer to the definition of ECCR from the OMB-CEQ memo as presented on page one of this template. An ECCR “case or project” is an instance of neutral third-party involvement to assist parties in a collaborative or conflict resolution process.]

To avoid double counting processes, please select one category per case for decision making forums and for ECCR applications.

	Total FY 2020 ECCR Cases ²	Decision making forum that was addressing the issues when ECCR was initiated:			
		Federal agency decision	Administrative proceedings /appeals	Judicial proceedings	Other** (specify below)
<i>Context for ECCR Applications:</i>					
Policy development	_____	_____	_____	_____	_____
Planning	_____	_____	_____	_____	_____
Siting and construction	_____	_____	_____	_____	_____
Rulemaking	_____	_____	_____	_____	_____
License and permit issuance	_____	_____	_____	_____	_____
Compliance and enforcement action	_____	_____	_____	_____	_____
Implementation/monitoring agreements	_____	_____	_____	_____	_____
Other (specify): _____	_____	_____	_____	_____	_____
TOTAL	0	0	0	0	0
		(the sum of the Decision Making Forums should equal Total FY 2020 ECCR Cases)			

****If you indicated above that any of your ECCR cases or projects were initiated in an “other” decision making forum, please elaborate here.**

² An “ECCR case” is a case in which a third-party neutral was active in a particular matter during FY 2020.

<i>Context for ECCR Applications:</i>	Interagency ECCR Cases and Projects	
	Included Other Federal Agencies Only	Included Non-Federal Participants (e.g., states, Tribes, and nongovernmental)
Policy development	_____	_____
Planning	_____	_____
Siting and construction	_____	_____
Rulemaking	_____	_____
License and permit issuance	_____	_____
Compliance and enforcement action	_____	_____
Implementation/monitoring agreements	_____	_____
Other (specify): _____	_____	_____
TOTAL	0	0

<i>Context for ECCR Applications:</i>	ECCR Cases or projects completed ³	ECCR Cases or Projects sponsored ⁴
Policy development	_____	_____
Planning	_____	_____
Siting and construction	_____	_____
Rulemaking	_____	_____
License and permit issuance	_____	_____
Compliance and enforcement action	_____	_____
Implementation/monitoring agreements	_____	_____
Other (specify): _____	_____	_____
TOTAL	0	0

³ A “completed case” means that neutral third-party involvement in a particular ECCR case ended during FY 2020. 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.

⁴ Sponsored - to be a sponsor of an ECCR 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 ECCR case.

Note: If you subtract completed ECCR cases from Total FY 2020 cases it should equal total ongoing cases. If you subtract sponsored ECCR cases from Total FY 2020 ECCR cases it should equal total cases in which your agency or department participated but did not sponsor. If you subtract the combined interagency ECCR cases from Total FY 2020 cases it should equal total cases that involved only your agency or department with no other federal agency involvement.

4. ECCR Case Example

Using the template below, provide a description of an ECCR case (preferably **completed** in FY 2020). If possible, focus on an interagency ECCR case. Please limit the length to **no more than 1 page**.

Name/Identification of Problem/Conflict:
<i>[Please add case "title" here]</i>
Overview of problem/conflict and timeline, including reference to the nature and timing of the third-party assistance, and how the ECCR effort was funded.
N/A
Summary of how the problem or conflict was addressed using ECCR, including details of any innovative approaches to ECCR, and how the principles for engagement in ECCR outlined in the policy memo were used.
N/A
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 ECCR.
N/A
Please share any reflections on the lessons learned from the use of ECCR.
<p><u>NESDIS</u> In NESDIS's effort to conduct good stewardship of our nation's natural resources, we find that maintaining a proactive, collaborative perspective, which embraces other stakeholders, precludes much of the conflicts. This, in turn, saves time and effort while simultaneously building good operational relationships with local stakeholders.</p>

5. Other ECCR Notable Cases

Briefly describe any other notable ECCR cases in FY 2020. **(OPTIONAL)**

6. Priority Uses of ECCR

Please describe your agency's **NEW or CHANGED** efforts to address priority or emerging areas of conflict and cross-cutting challenges either individually or in coordination with other agencies. For example, consider the following areas: NEPA, ESA, CERCLA, energy development, energy transmission, CWA 404 permitting, tribal consultation, environmental justice, management of ocean resources, infrastructure development, National Historic Preservation Act, other priority areas.

Please refer to your agency's FY 2019 report to only include new or increased priority uses. **If none, leave this section blank.**

7. Non-Third Party-Assisted Collaboration Processes (Optional)

Briefly describe other **significant** uses of environmental collaboration that your agency has undertaken in FY 2020 to anticipate, prevent, better manage, or resolve environmental issues and conflicts that do not include a third-party neutral. *Examples may include interagency MOUs, enhanced public engagement, and structural committees with the capacity to resolve disputes, etc.* **If none, leave this section blank.**

NOS, OCM

NOS continued to collaborate on environmental compliance across its offices. For example, NOAA's Center for Operational Oceanographic Products and Services (CO-OPS) has continued partnerships with other Federal agencies on data standards and water level station requirements (USGS/ USACE/ NPS) as outlined in collaborative Agreements.

NOS continued development on NOS mapping and surveying programmatic environmental impact statement (PEIS) through collaboration with its program offices and other federal regulatory agencies.

Additionally, NOAA's National Centers for Coastal Ocean Science (NCCOS) routinely consults and collaborates with coastal decision makers, scientists, and government agencies regarding their scientific information needs. This interaction includes memoranda of understanding (MOUs) and public engagement and leads to a better understanding of the scientific information provided by NCCOS.

Both when proposing new actions and in the context of ongoing programs and operations, NOAA's Office of National Marine Sanctuaries (ONMS) works collaboratively with other agencies and stakeholders through a variety of means, including consultation with other Federal agencies, tribal entities, and state and local governments; advisory councils; and requests for public comment. ONMS develops condition reports for each national marine sanctuary on a cyclical basis, and the process for drafting these condition reports is highly collaborative with a number of research institutions and experts, including tribal consultation.

NESDIS

NESDIS actively participates in NOAA's policy and program improvement efforts, and maintains a high level of communications with NEPA counterparts of other Line Offices within NOAA. This collaboration strengthens mutual knowledge and smooths variances in application among our Line Office NEPA colleagues. It fosters communication and cooperation with the NOAA NEPA Office.

8. Comments and Suggestions on Reporting

Please comment on any **NEW or CHANGED** 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 reference your agency's FY 2019 report to identify new/increased difficulties. **If none, leave this section blank.**

Please attach any additional information as warranted.

Report due Friday, February 26, 2020.

Submit report electronically to: kavanaugh@udall.gov

**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