

ENVIRONMENTAL COLLABORATION AND CONFLICT RESOLUTION (ECCR) IN THE FEDERAL GOVERNMENT

Synthesis
of
Fiscal
Year
2020
Reports

Submitted by Federal Departments and Agencies
Pursuant to the OMB-CEQ Policy Memorandum on ECCR of September 7, 2012
Compiled by the John S. McCain III National Center for Environmental Conflict Resolution

February 22, 2022

To: Federal Departments and Agencies
From: Steph Kavanaugh, Deputy Director, John S. McCain III National Center for Environmental Conflict Resolution, Morris K. Udall and Stewart L. Udall Foundation
Subject: Fiscal Year 2020 Environmental Collaboration and Conflict Resolution in the Federal Government Synthesis Report

On behalf of the Morris K. Udall and Stewart L. Udall Foundation (Udall Foundation) and its John S. McCain III National Center for Environmental Conflict Resolution (National Center; formerly U.S. Institute), I am pleased to share with you the enclosed *Fiscal Year 2020 Environmental Collaboration and Conflict Resolution in the Federal Government Synthesis Report*.

Since 2005, the National Center has collected annual reports from Federal Departments and Agencies on their use of environmental collaboration and conflict resolution (ECCR), consistent with the requirements of the 2005 OMB-CEQ Joint Memorandum on Environmental Conflict Resolution. From 2006 onward, the National Center has produced an annual report highlighting the benefits of and trends in ECCR use across the Federal Government.

The compelling examples and case studies included in this report demonstrate how ECCR principles and practices continue to assist in solving complex environmental problems while saving money, improving relationships, minimizing litigation, and creating lasting outcomes. In Fiscal Year 2020, Federal Departments and Agencies utilized ECCR in the context of natural resource management and planning, regulatory and administrative rule actions, consultation and coordination, and implementation of environmental laws and regulations.

Current and prior year reports, along with information on National Center programming and training opportunities, are available through the link below.

<https://www.udall.gov/OurPrograms/Institute/Institute.aspx>

ENVIRONMENTAL COLLABORATION AND CONFLICT RESOLUTION (ECCR) IN THE FEDERAL GOVERNMENT

Synthesis of Fiscal Year 2020 Reports

Submitted by Federal Departments and Agencies

To the John S. McCain III National Center for Environmental Conflict Resolution

Morris K. Udall and Stewart L. Udall Foundation

Pursuant to the OMB-CEQ Policy Memorandum on ECCR of September 7, 2012

This report provides an overview and synthesis of U.S. Federal Government agency use of environmental collaboration and conflict resolution (ECCR) in fiscal year (FY) 2020. ECCR is defined 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.¹

Thirteen (13) U.S. Federal Government agencies reported on their use of ECCR in FY 2020. The total number of cases reported was 360,² down from 451 total cases reported in FY 2019. Since FY 2014, the Department of the Interior (DOI), Federal Energy Regulatory Commission (FERC), and Environmental Protection Agency (EPA) have consistently reported the highest numbers of ECCR cases. This trend continued in FY 2020 with those three agencies accounting for 312 of the 360 (86.7%) total cases reported. Also in line with previous years, the majority of FY 2020 ECCR cases reported (46%) occurred in the contexts of planning processes or siting and construction activities.

In FY 2020, agencies invested in in-house ECCR centers and programs, hired new ECCR staff, executed contracts with third-party mediators and facilitators, and developed tools and programs to support collaboration. Agencies continued to cite training as a key ECCR capacity-building effort and highlighted their efforts to develop trainings for employees or support employee participation in external training activities.

As in previous fiscal years, ECCR use by Federal agencies resulted in three key benefits: cost savings to the Federal Government, improved interagency and stakeholder relationships, and better outcomes. When using ECCR in a variety of contexts, including natural resource management and planning, regulatory and administrative rule actions, consultation and coordination, implementation of environmental laws and regulations, and broad environmental issues ([Appendix B](#)), Federal agencies reported that ECCR helped them better achieve their missions and mandates; build stronger relationships within and between agencies, with Tribes, and with stakeholders; and save time and money.

[Appendix A](#) shows the agency reporting history since formal reporting began in FY 2006, as well as brief summaries of trends in select areas of report content. Acronyms can be found in [Appendix D](#).

Background

In 2005, the White House Office of Management and Budget (OMB) and the President's Council on Environmental Quality (CEQ) issued a joint policy memorandum expressing their support for the use of environmental collaboration and conflict resolution (ECCR) in environmental, natural resources, and public lands issues or conflicts.³ The memorandum urged Federal agencies to increase their effective use of ECCR and build institutional capacity for collaborative problem solving, providing them with guidance for doing so.

On September 7, 2012, OMB and CEQ reinforced the importance of ECCR by issuing a new memorandum that directed all executive branch agencies to:

¹ Office of Management and Budget, & Council on Environmental Quality (2012). *Memorandum on Environmental Collaboration and Conflict Resolution*. Washington, D.C. The 2012 memorandum is available online here: http://www.udall.gov/documents/Institute/OMB_CEQ_Memorandum_2012.pdf.

² An ECCR case is an instance of neutral third-party involvement to assist parties in a collaborative or conflict resolution process.

³ Office of Management and Budget, & Council on Environmental Quality (2005). *Environmental Conflict Resolution Memorandum*. Washington, D.C. The 2005 memorandum is available online here: https://ceq.doe.gov/docs/ceq-regulations-and-guidance/regs/OMB_CEQ_Joint_Statement.pdf.

(I)increase the appropriate and effective use of third-party assisted environmental collaboration as well as environmental conflict resolution to resolve problems and conflicts that arise in the context of environmental, public lands, or natural resource issues, including matters related to energy, transportation, and water and land management.⁴

The memorandum also requires Federal agencies to submit an annual report to OMB and CEQ on progress made implementing the ECCR policy direction. These reports are intended to increase the effective use of and institutional capacity for ECCR by providing detailed cost savings and other benefits realized through ECCR. Specifically, Section 4(g) of the 2012 memorandum establishes the following reporting requirement:

Departments and agencies are encouraged to work toward systematic collection of relevant information that can be useful in on-going information exchange across departments and agencies as fostered by Section 4(e).

Since 2005, the Morris K. Udall and Stewart L. Udall Foundation's John S. McCain III National Center for Environmental Conflict Resolution (National Center; formerly the U.S. Institute for Environmental Conflict Resolution) has collected individual agency reports and developed an annual synthesis report of ECCR in the Federal Government.⁵

ECCR Use in FY 2020

Thirteen Federal departments and agencies submitted ECCR reports for FY 2020, up by one from FY 2019. Collectively they sponsored or convened 360 ECCR cases or projects, moderately less than the ten-year average of annual ECCR cases in the Federal Government. Approximately 25% of reported cases were completed in FY 2020.⁶ The decrease in total number of cases may be due to the COVID-19 pandemic, administration changes, decreased funding, changes in average case size and scope, or changes in agency reporting processes.

Consistent with fiscal years 2008-2019, the Department of Interior (DOI; 117 cases), Environmental Protection Agency (EPA; 106 cases), and Federal Energy Regulatory Commission (FERC; 86 cases) reported the highest number of ECCR cases in 2020 (Figure 1). The sustained, high level of ECCR engagement by these three agencies may be the result of their well-established ECCR centers and programs which provide critical infrastructure, funding mechanisms, and personnel for ECCR initiatives. These programs include:

- EPA's Conflict Prevention and Resolution Center (CPRC)
- DOI's Collaborative Action and Dispute Resolution (CADR)
- FERC's Dispute Resolution Service (DRS)

Federal Departments and Agencies that Submitted FY 2020 ECCR Reports:

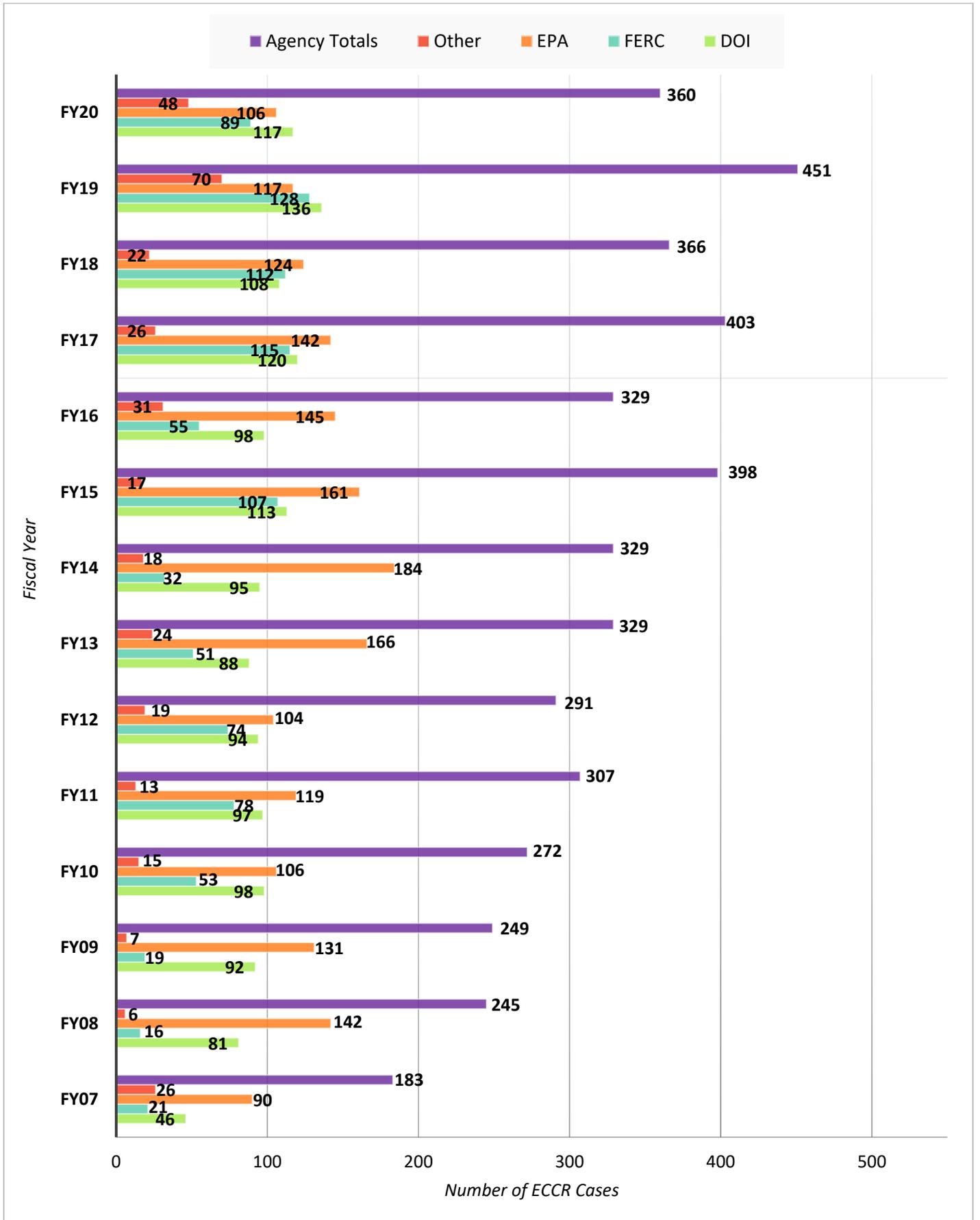
- Department of Energy (DOE)
- Department of the Interior (DOI)
- Department of Labor (DOL)
- Department of Transportation (DOT)
- Department of Veterans Affairs (VA)
- Environmental Protection Agency (EPA)
- Federal Energy Regulatory Commission (FERC)
- National Oceanic and Atmospheric Administration (NOAA)
- National Guard Bureau (NGB)
- U.S. Air Force (Air Force)
- U.S. Army (Army)
- U.S. Army Corps of Engineers (USACE)
- U.S. Forest Service (Forest Service)

⁴ Office of Management and Budget, & Council on Environmental Quality (2012). *Memorandum on Environmental Collaboration and Conflict Resolution*. Washington, D.C. The 2012 memorandum is available online here: http://www.udall.gov/documents/Institute/OMB_CEQ_Memorandum_2012.pdf.

⁵ Individual department and agency reports as well as annual synthesis reports are available online at: <https://udall.gov/OurPrograms/Institute/ECCRReport.aspx>.

⁶ FERC did not submit data indicating the completion status of its 89 cases in FY 2020.

Figure 1. Reported ECCR Cases in the Federal Government from FY 2007 to FY 2020.

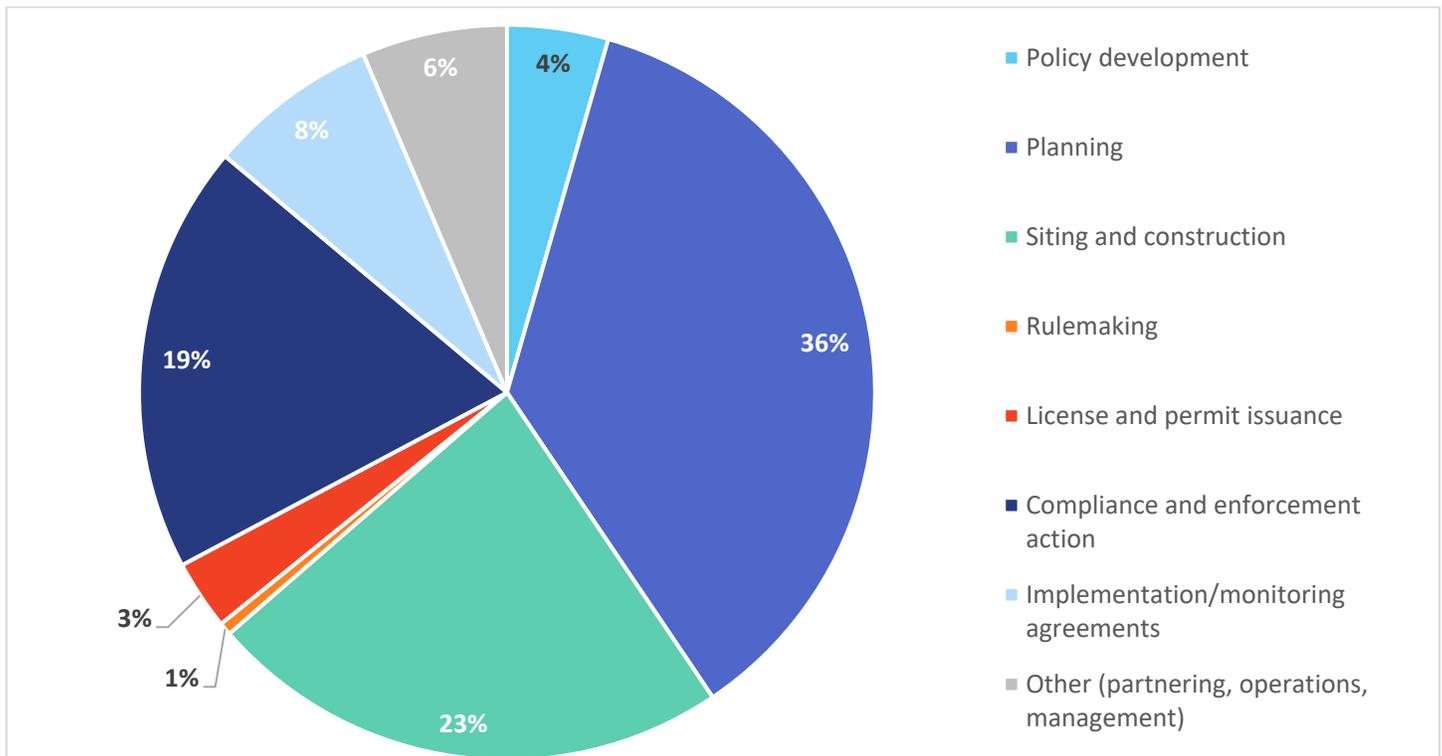


Contexts for ECCR Use

Federal departments and agencies carry out numerous activities in support of their missions including planning, rulemaking, policy development, licensing and permit issuance, siting and construction, compliance and enforcement, and implementation and monitoring. In FY 2020, Federal departments and agencies utilized ECCR in each of these contexts, most commonly reporting use of ECCR in planning processes and siting and construction activities (Figure 2).

For most agencies, including the U.S. Air Force (Air Force), EPA, DOI, and U.S. Army Corps of Engineers (USACE), planning processes were the most common context for ECCR use in FY 2020 (130 cases or 36% of total cases; a 2% increase from FY 2019). The siting and construction context was the second most common context for ECCR in FY 2020 at 23% of total cases submitted (83 cases). At 94%, FERC accounted for most of the siting and construction context cases submitted in FY 2020.

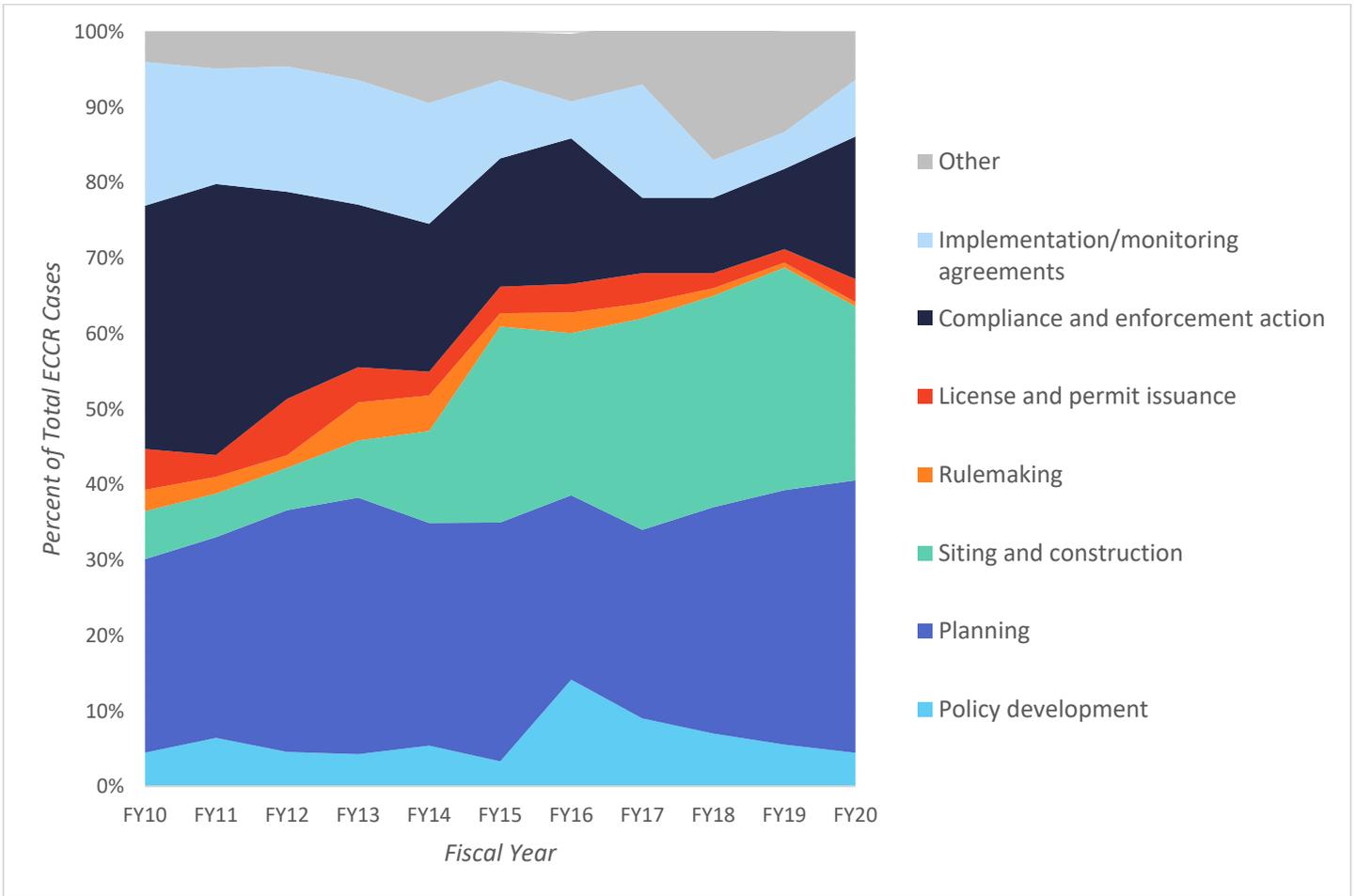
Figure 2. Contexts for ECCR Use in the Federal Government in FY 2020.



Agencies also reported using ECCR in other contexts such as litigation, comprehensive studies, public comments, facilitation, stakeholder collaboration, Tribal engagement, strategic planning, information sharing and education, and programmatic agreements.

Figure 3 shows ECCR case context by fiscal year from 2010 through 2020. Planning processes, siting and construction, and compliance and enforcement action ECCR contexts have consistently been the most utilized contexts over this period.

Figure 3: Contexts for ECCR Use in the Federal Government from FY 2010 – FY 2020.



Decision-Making Forums for ECCR Cases

ECCR decision-making forums for Federal departments and agencies include Federal agency decisions, administrative proceedings/appeals, judicial proceedings, and others. Consistent with previous years, almost two-thirds (63%) of ECCR cases were initiated in response to Federal agency decisions with administrative proceedings and appeals accounting for 27% of cases in FY 2020. Figure 4 shows the total breakdown of decision-making forums for FY 2020 cases submitted. This distribution of cases across decision-making forums is consistent with previous years, as demonstrated in Figure 6.

Figure 4: Decision-Making Forums for ECCR Cases in the Federal Government in FY 2020.

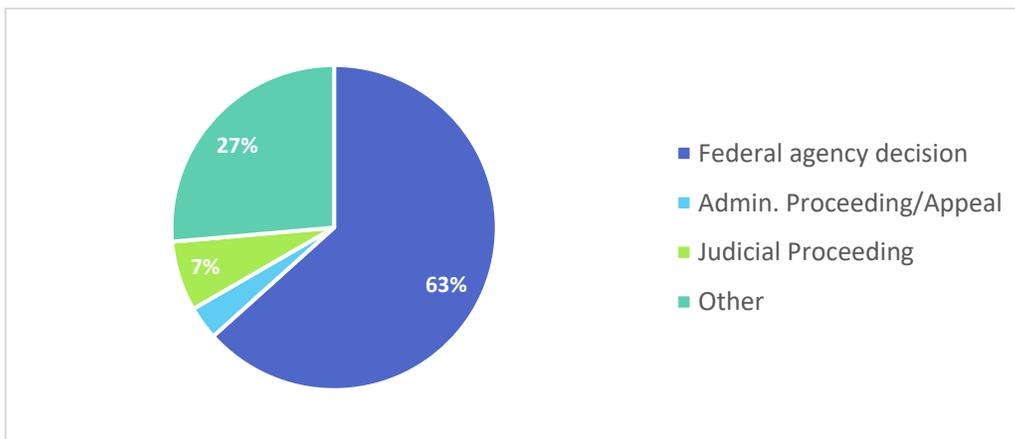
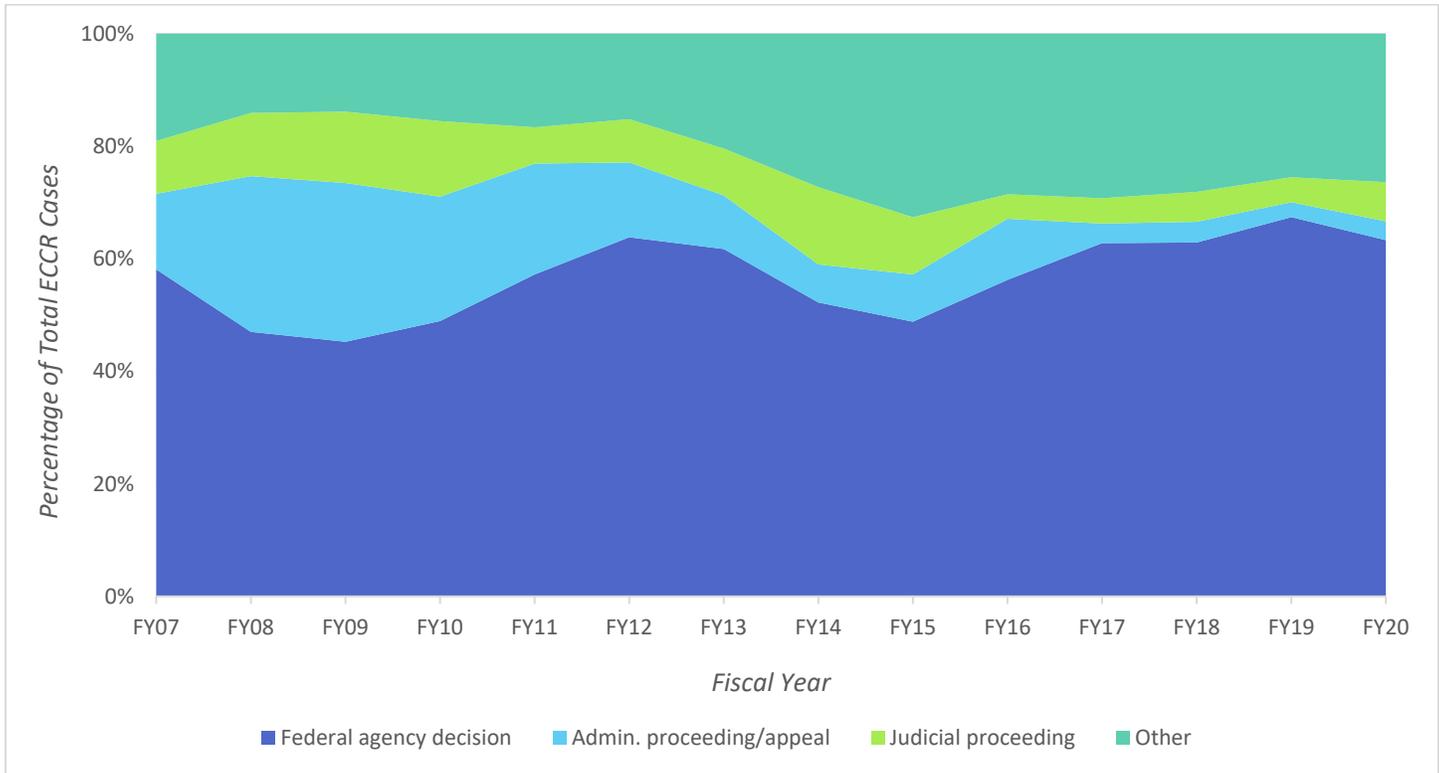


Figure 5: Decision-Making Forums for ECCR Cases in the Federal Government from FY 2010 – FY 2020.



ECCR Capacity Building and Investment

Federal departments and agencies reported a wide variety of strategies and investments to build capacity and sustain the use of ECCR in FY 2020 including: increasing the number of ECCR staff and contractors, integration of ECCR principles into agency mission agreements and strategic planning, building internal ECCR infrastructure, training and professional development opportunities for employees, internal and external information exchange about ECCR, and ECCR partnerships development. Several notable examples of ECCR capacity-building efforts in FY 2020 are listed below by agency. More detailed information can be found in [Appendix C](#).

Department of the Interior (DOI)

- DOI’s Office of Hearings and Appeals (OHA) built capacity to offer ECCR options to litigants who appear before its divisions and appeal boards. OHA is developing tools and techniques to identify which cases are best suited for ECCR or Alternative Dispute Resolution (ADR).
- DOI CADR increased their full-time employees (FTE) from 12 to 13 staff members supporting ECCR.
- The DOI Bureau of Land Management (BLM) CADR Program filled its one full-time program lead position.
- DOI bureaus and offices invested approximately \$6.7 million in ECCR in FY 2020 through the CADR (DOI) ECCR contract. This is a large increase from the \$3.9 million invested in ECCR in FY 2019 through the CADR (DOI) ECCR contract.
- Bureau of Reclamation’s WaterSMART grants provided resources for ECCR services to grantees.

U.S. Army Corps of Engineers (USACE)

- USACE’s Collaboration and Public Participation Center of Expertise (CPCX) and Tribal National Center of Expertise released the report “[Strengthening USACE Collaboration with Tribal Nations for Water Resources Management](#),” based on a multi-year study that included internal surveys and workshops with Tribal partners. The report includes various recommendations for improving USACE’s ability to collaborate with Tribal Nations to address their water resource needs.

- USACE’s Public Involvement Specialists cadre grew to 25 staff members each representing a different district office.
- USACE continued to provide financial support for ECCR through their Grand Collaboration Challenge.

Federal Transit Administration (FTA)

- FTA regional offices utilized their liaison program authorized by 23 U.S.C. §139(j) to onboard contractors to help complete the environmental review for project sponsors. This program allows for collaboration and conflict resolution during project development to expedite project delivery.

USDA Forest Service

- The Forest Service invested approximately \$48,000 to develop a public participation toolkit and developed lessons learned in collaboration for the Collaborative Forest Landscape Restoration Program

Department of Energy

- DOE’s Southeastern Power Administration (SEPA) utilizes its strategic planning efforts to promote continued negotiations and collaboration with all stakeholders and business partners. SEPA is a small Federal agency with the authority to market hydroelectric power and energy in the states of Alabama, Florida, Georgia, Illinois, Kentucky, Mississippi, North Carolina, South Carolina, Tennessee, Virginia, and West Virginia, from reservoir projects operated by USACE.
- The DOE continued to contract with neutral, third-party facilitators for ongoing projects and meetings including in retained services for monthly meetings at the Los Alamos Field Office.

Environmental Protection Agency

- EPA’s Conflict Prevention and Resolution Center (CPRC) addressed some of their most challenging cases by utilizing their \$53 million services contract to support the Diamond Alkali/Lower Passaic River Superfund Mediation, the GE-Pittsfield/Housatonic River Site, and Tijuana River Watershed Stakeholder Engagement.
- EPA reported 20 skilled ECCR Specialists in its regional and program offices.

Due to the COVID-19 pandemic and stay-at-home orders, many agencies also invested in training and technologies that allow for virtual stakeholder engagement and collaboration. Investments in virtual technology for engagement included:

- BLM purchased 100 Zoom.gov licenses for BLM State Offices and key information management hubs across the nation.
- DOI CADR and the U.S. Army trained staff in virtual engagement tools.
- DOI CADR conducted four sessions of “Facilitating Virtual Meetings” attended by 231 DOI employees and two sessions on Virtual Mediation attended by 20 DOI employees.
- The U.S. Army conducted a survey on how the people were using virtual engagement tools.
- When Forest Service shifted its focus from in-person to virtual public participation, collaboration, and conflict resolution they supported their employees by developing a technical guide to virtual engagement platforms and holding Regional-level peer learning sessions on virtual Tribal consultation and engagement.
- USACE developed and offered a series of six webinars to educate staff on virtual collaboration tools, reaching 1,140 participants; and fourteen of the USACE’s Public Involvement Specialists gained their Virtual Facilitator Trainer Certification.
- The National Center for Environmental Conflict Resolution held a webinar for Federal agencies and others, titled *How to Facilitate Engaging and Productive Virtual Meetings*, and began to adapt curricula for two trainings (Collaboration with Native Nations & Tribal Consultation and Understanding Conflict and Planning for Successful Collaboration)

Training

As in past fiscal years, agencies highlighted training as a critical tool for building institutional ECCR capacity. Agencies conducted their own internal trainings and participated in those held by other organizations. DOI CADR ECCR training reached 2,329 participants and EPA CPRC trained more than 154 staff and managers in ECCR. Agency ECCR training spanned a range of topics, including National Environmental Policy Act (NEPA), interest-based negotiation, facilitation, strategic planning, public participation, relationship management, and environmental justice.

“The negotiation training provided examples and hands-on practice of how to communicate more clearly with my colleagues, as well as how to negotiate more effectively with parties outside EPA.”

*- EPA Interest-Based
Negotiation Trainee*

Below are several examples of ECCR-related trainings that agencies conducted or participated in during FY 2020:

- The U.S. Army Judge Advocate General’s Legal Center and School’s annual General Litigation Course was conducted virtually. The course included a one-hour training block on alternative dispute resolution. One hundred thirty Army attorneys attended.
- The U.S. Air Force has institutionalized training in ECCR as a module at its week-long Negotiation and Appropriate Dispute Resolution Course conducted annually at the AF Judge Advocate General’s Corps (JAG) School at Maxwell Air Force Base, Alabama.
- The U.S. Air Force Negotiation Center (AFNC) conducted Negotiation and Dispute Resolution Workshops at Maxwell AFB. Additionally, a pilot program is underway to develop negotiation skills at separate organizational units with the goal of negotiation becoming an individual and enterprise-wide corporate capability.
- The U.S. Air Force General Counsel’s Office partnered with a contractor to host a course for the legal community, which included an environmental module. The course was attended by more than 90 members of the legal community, including members from 7 other Department of Defense (DoD) organizations.
- Federal Transit Authority (FTA) had a Regional Training Program on FTA’s Standard Operating Procedures, which included discussions on agency coordination, public involvement, and dispute resolution information.
- FTA released an online, self-paced “National Environmental Policy Act (NEPA) 101” course on the National Transit Institute (NTI) website, which includes high-level information regarding agency and public involvement.
- National Weather Service (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.
- The U.S. Forest Service held three peer learning sessions in support of environmental collaboration and, specifically, the Collaborative Forest Landscape Restoration Program. These sessions included: Collaborative Forest Landscape Restoration (CFLRP) All Hands Learning Session; First Ten Years of CFLRP Lessons Learned Session; and CFLRP Monitoring Learning Session.
- DOI CADR delivered 22 training sessions of its foundational course “Getting to the CORE of Conflict and Communication” to 712 employees from all Bureaus and offices in eight geographic regions of the U.S.
- EPA CPRC delivered its 13th annual Conflict Resolution Day program in October 2019. CPRC holds events during the third week in October to increase EPA staff and managers’ awareness of ECCR services at the EPA and improve their ECCR knowledge and skills.
- EPA Region 1 hosted two ECCR brownbag lunches, featuring both a guest mediator/conflict resolution professor and an ECCR Specialist who taught graphic facilitation.
- CPCX, in collaboration with USACE’s Hydrologic Engineering Center, the Engineering Research and Development Center, Sacramento District, and Pittsburgh District, has been developing a special class of tools to facilitate ECCR processes, called Applied Learning Environments (a.k.a. “serious games”). In FY20 training sessions on ALEs, including Multi-Hazard Tournaments, were delivered in-person at the bi-annual NFRMP training seminar as well as virtually via webinar to the USACE Planning Community of Practice, to a total of 61 individuals. The ALEs team also began development of a standard course on how to use “serious games” for ECCR and other purposes, to be offered in future through the USACE Learning Center.

- The National Center for Environmental Conflict Resolution conducted nine trainings in ECCR in FY 2020 for Federal agency partners including NOAA, the Department of Defense, the U.S. Department of Housing and Urban Development, the Federal Aviation Administration, and the West Coast Ocean Alliance.

Benefits of ECCR

Environmental collaboration and conflict resolution (ECCR) consistently produces positive benefits as reported by Federal agencies annually. Reported benefits of ECCR continue to fall within the main categories of efficiency, better outcomes, and improved relationships.

Several agencies reported ECCR use resulted in cost savings and litigation avoidance or reduction. For example, The National Forest Foundation conducted a [survey](#) in FY 2020 of the agency’s Collaborative Forest Restoration Program (CFLRP). The survey highlighted perceived reductions in conflict and litigation. About 60% of survey participants reported that the CFLRP decreased conflict over land management decisions and 45% reported that CFLRP decreased litigation. Additionally, the U.S. Army realized litigation avoidance benefits by utilizing mediation to resolve a dispute over the allocation of cleanup costs. Mediation brought the parties together, opened communications, increased trust, and generated a resolution of the issues so the cleanup can proceed. The Army avoided costs, salaries, and other resources required for formal discovery and full litigation in that one case.

Federal agencies used ECCR to build and **improve relationships** within the Federal family and between the Federal government a variety of stakeholders. DOE noted that they have integrated ECCR into DOE site and program office projects, resulting in expanded and clearer communication as well as improved relationships with regulators and the public. Their West Valley Demonstration Project (WVDP) utilized a third-party neutral, subject matter experts, and an independent scientific panel to focus on resolving areas of technical disagreement between the parties. The anticipated outcome is a mutual and timely decision as well as avoidance of lengthy an expensive litigation.

Agencies also attested to **better, more durable outcomes** for agencies and stakeholders through the ECCR process. The Forest Service assisted the Kootenai Forest Stakeholder Coalition (KFSC) and the Kootenai National Forest (KNF) to align each organization’s understanding and expectations for working with one another in the shared landscape of northwestern Montana. At the close of the joint KNF and KFSC joint work session each organization made 3-month and 12-month commitments. As a result of this work, relationships are stronger, collaborative processes are better defined, and they are jointly identifying projects to work on together.

Additional case examples from FY 2020 that illustrate the benefits of ECCR are outlined below.

Benefits of Environmental Collaboration and Conflict Resolution

EFFICIENCY	Cost savings, timely process, minimizes litigation
BETTER OUTCOMES	Better, more durable outcomes
IMPROVED RELATIONSHIPS	Good governance, increased capacity to serve citizens

Examples of FY 2020 ECCR Projects

WEST VALLEY DEMONSTRATION PROJECT (DOE)



DEPARTMENT OF ENERGY

In 2010, the West Valley Demonstration Project (WVDP) entered into a tripartite agreement with the New York State Energy Research and Development Authority (NYSERDA) and a third-party neutral in order to facilitate reaching an interagency consensus on the remaining facilities at the WVDP and the Western New York Nuclear Service Center. The Phase 1 Study process was completed in 2018. Integral to the Phase 1 Study process was the agreement between WVDP and NYSERDA to split all associated costs 50/50. WVDP and NYSERDA have now committed to making Phase 2 decisions by 2023 and the ECCR process has kept the parties on-track since the Phase 1 decision.

As part of the Phase 1 process, WVDP and NYSERDA jointly hosted multiple public meetings with a professional facilitator always present and the third-party neutral available when appropriate. The third-party neutral has retained and utilized the services of both Subject Matter Experts and an Independent Scientific Panel to assist with the overall goal toward facilitating interagency consensus. This process has generated multiple technical reports that have been shared with the Federal and state agencies as well as WVDP stakeholders. Additionally, the third-party neutral has utilized the services of a professional facilitator to moderate all public meetings as part of the associated comprehensive public participation plan. Effective use of ECCR techniques has allowed the parties to overcome 30 years of entrenched disagreement and conflict over the disposition of the WVDP and Center. The ECCR efforts are proving to be extremely useful conflict avoidance and conflict resolution tools.

SHOTCASH TIMBER SALE (DOI/BLM)

When the Bureau of Land Management - Upper Willamette Field Office started developing the Shotcash Timber Sale project and Environmental Assessment, they identified that the project could generate an unusual level of interest among the public, and possibly some conflicts among multiple resource uses.

This project entailed a timber harvest within the Shotgun Off-highway Vehicle (OHV) Trail System Extensive Recreation Management Area. Due to anticipated trail closures and, in some cases, changes in vegetation along the trails in the very popular and heavily used OHV trails, early and continuous public engagement with interested stakeholders was important to ensure broad awareness around potential trail closures and timelines. The BLM sought assistance from CADR for third party neutral support to provide communication and coordination with interested stakeholders, develop informational displays and project background materials, and to facilitate a project open house. The public left with greater understanding of the constraints provided by the Resource Management Plan (RMP), which directly resulted in more focused and targeted comments and protest points from the public rather than the more usual array of issues without merit. The interface for education of the public really made a difference in this regard.



PHOTO BY [ETIENNE GIRARDET](#) ON [UNSPASH](#)

The third-party contractor was in an ideal position to review and suggest materials that would explain things to inform a lay public, since agency personnel often don't realize what the public doesn't know or understand. The assistance was key in making more personal contacts with stakeholders to increase public involvement. And the assistance with logistics in both setting up and running the open house resulted in much higher quality presentations, a smoother-running flow through the room, and more orientation of the available content for the guests.

CERCLA RESPONSE COSTS (U.S. ARMY)



PHOTO BY U.S. ARMY

The parties are in litigation over the allocation of CERCLA response costs. Prior to moving into costly discovery, and after issuing an opinion on summary judgment motions, the judge proposed the parties participate in a mediation conference. The court provided a Magistrate to act as the mediator. The virtual mediation took place via Zoom, so no extra funding was required. The mediator introduced herself, ensured informed commitment from all parties, and then shuttled between the parties for approximately 10 hours in a balanced fashion. She ensured an informed process, protected confidentiality, and developed trust among the parties by sharing only the information each counsel was comfortable sharing with the other side. This approach ensured a sense of accountability and openness and set the stage for each counsel to speak directly during the final hour. No agreement was reached before the mediation adjourned at mid-evening, but the mediator believed settlement could be possible through continued engagement.

ECCR provided the parties the opportunity to use the mediator to communicate their key motivations for settlement and their requirements for a potential settlement. Understanding the opposing party's issues and limitations for a settlement allowed each side to make appropriate concessions and responses to concessions without compromising the essential tenets of an acceptable settlement. The mediation paved the way for continued discussions that may move the parties to an agreement on the settlement amount. Since the cost of litigating this case could approximate its value, the use of mediation at this point, prior to beginning fact and expert discovery, was wise.

MEDIATION BREAKS DEADLOCK AND SPARKS CLEANUP (EPA)

CPRC collaborated with Region 1 staff to support a successful multi-party mediation at the General Electric (GE) Pittsfield Housatonic River Site. The Housatonic River and its floodplain are heavily contaminated with polychlorinated biphenyls (PCBs) originating from the GE Facility in Pittsfield, MA. PCBs are present in large quantities in river sediment and floodplain soil; estimates range from between 100,000 to nearly 600,000 pounds of PCBs. Without cleanup, it would take decades, if not hundreds of years, before PCB concentrations in fish would decrease to a level that would permit unlimited consumption.

A mediator, provided through CPCR's contract, worked to resolve long-standing conflict surrounding the "Rest of the River" permit for the site. The complex and highly charged mediation, which included EPA, GE, the State Connecticut, the City of Pittsfield, and other organizations, concluded after two years with a settlement agreement in February 2020. The mediator improved communications between parties and offered new solutions, which satisfied the parties' interests. The agreement that the parties achieved resolved multiple issues, including a disposal approach that removes the most contaminated soils and sediment. It also contains certain economic incentives for the city and adjacent municipalities, provided by GE, that demonstrate GE's responsibility for the environmental impacts it caused.



PHOTO BY [OSPAN ALI](#) ON [UNSPASH](#)

COLUMBIA RIVER SYSTEMS OPERATIONS ENVIRONMENTAL IMPACT STATEMENT (USACE)

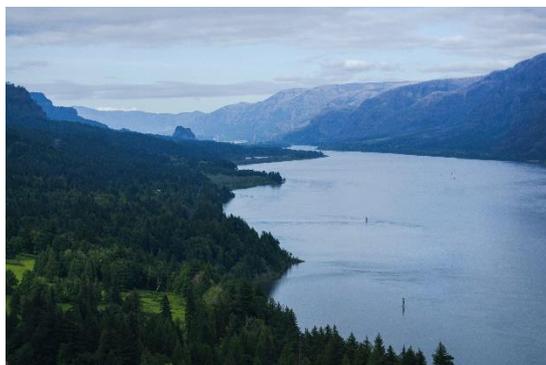


PHOTO BY [BEN VAUGHN](#) ON [UNSPASH](#)

The NEPA-required public comment period on a draft Environmental Impact Statement for operation of the Columbia River System had already begun when the COVID-19 pandemic began tearing through the Pacific Northwest in March 2020. Venue contracts had been signed; paid advertisements were already running; and media outreach was underway for multiple, in-person comment sessions. Yet, to maintain its long-standing commitment to hearing verbal comments on the draft within the originally scheduled 45-day comment period, USACE was forced to scrap its detailed plans for these sessions and pivot to alternative plans within just eight days.

A Public Involvement Specialist from USACE's Northwestern Division led the effort to organize and facilitate the transition of the public comment process to virtual. She and her team partnered with AT&T Event Conferencing Services to organize a series of 11 audio-only teleconferences accessible by any telephone. With Bonneville Power Administration, USACE hosted eleven teleconference sessions between March 17 and March 31, 2020, some uniquely organized for tribal participation and others for the general public. In total, the sessions welcomed approximately 1000 participants and nearly 300 commenters. The success of these sessions enabled the Record of Decision on the

Columbia River System Operation EIS to be signed by USACE, the Bureau of Reclamation, and the Bonneville Power Administration on September 28, 2020 and released to the public on the same day.

The use of a trained ECCR specialist ensured that the public engagement strategy could be revamped on extremely short notice while keeping promises for public engagement and keeping the project on schedule. The teleconference format allowed larger numbers of stakeholders to participate. USACE was able to manage the sessions more precisely and efficiently, allowing for substantial comments. The use of a telephone-based technology rendered the “digital divide” almost irrelevant, so that lack of access to Internet or computing technologies did not become a barrier to participation.

Impacts to Programs due to COVID-19

As noted elsewhere in this report, the overriding challenge in FY 2020 for agencies was continuing and initiating meaningful, productive collaboration within a primarily virtual context due to the COVID-19 pandemic. The COVID-19 pandemic halted in-person meetings which agencies reported very short time frames (often two weeks or less) to shift from in-person to virtual engagements. Trainings that were typically held annually in-person were cancelled. For example, the DOE environmental attorneys training and the Air Force’s Negotiation and Appropriate Dispute Resolution Course was cancelled due to the COVID-19 pandemic.

“The actions taken to address these challenges were highly successful – well beyond expectations.”

- U.S. Army Corps of Engineers (USACE)

Agencies responded to the changing work environment necessitated by the COVID-19 pandemic and invested in enhanced virtual collaborative tools. These virtual collaboration tools were used for virtual internal and external meetings, including public engagement for planning purposes. While most agencies were familiar with virtual partnering and public engagement and had virtual meeting technology prior to the pandemic, they reported in expansion in their capacities in these areas.

Agencies took the opportunity to gather lessons learned and create work groups to support the increasing virtual world. For example, the U.S. Army issued a survey to identify the format and use of non-public engagements throughout COVID-19, along with recent policy guidance and lessons learned. BLM established a Virtual Meeting Operations Team (VMOT) to share skills and knowledge on virtual engagements throughout the agency. CPCX and the Public Information Specialists collaborative technologies working group identified and catalogued a wide array of tools suitable for enabling a variety of collaborative activities, building a prototype searchable database of applications for agency staff use. Additionally, the U.S. Air Force’s General Counsel’s Office partnered with a contractor to design and deliver three guides for resolving conflict in a remote environment.

While the COVID-19 pandemic presented challenges, agencies reported great successes from virtual engagements. USACE reported that “the actions taken to address these challenges were highly successful – well beyond expectations”. Agencies reported that they had higher attendance and more engagement through collaborative technology tools especially by those who previously have not been able to attend in-person meetings due to funding and scheduling. Yet virtual engagement methods are not automatically beneficial for all stakeholders, such as those who may lack reliable Internet access or bandwidth. Some agencies reported that telephone, local access TV channels, and radio stations were used in remote areas where in-person engagement to conduct public meetings is the standard. Some agencies reported that such efforts likely strengthened the agency’s relationships with these communities.

Overall, some agencies reported that in-person meetings are typically preferred by stakeholders and in the future, blended methods will likely become the standard approach for many applications. For example, USACE reported that planning charrettes in the future will likely often be hybrid affairs, offering both in-person and virtual engagement options, thereby greatly expanding the opportunities for interested parties to participate. The result may be greater numbers of more diverse participants, as well as higher rates of active participation because participants will be able to choose their preferred means of participation.

This synthesis was developed by the Udall Foundation’s John S. McCain III National Center for Environmental Conflict Resolution on behalf of OMB and CEQ.

Appendix A: Trends in Federal Government Reporting on Use of Environmental Collaboration and Conflict Resolution (ECCR)

The number of Federal departments and agencies submitting environmental collaboration and conflict resolution (ECCR) reports each year has declined from 23 in FY 2007 to 13 in FY 2020 (Table 1). Nine departments or agencies have submitted reports annually since reporting began in 2006 (Table 2), including:

- Department of Energy (DOE)
- Department of the Interior (DOI)
- Department of Veterans Affairs (VA)
- Federal Energy Regulatory Commission (FERC)
- National Oceanic and Atmospheric Administration (NOAA)
- U.S. Air Force (AF)
- U.S. Army (Army)
- U.S. Army Corps of Engineers (USACE)
- U.S. Environmental Protection Agency (EPA)

Table 1: Number of Federal ECCR Reports Submitted Annually.

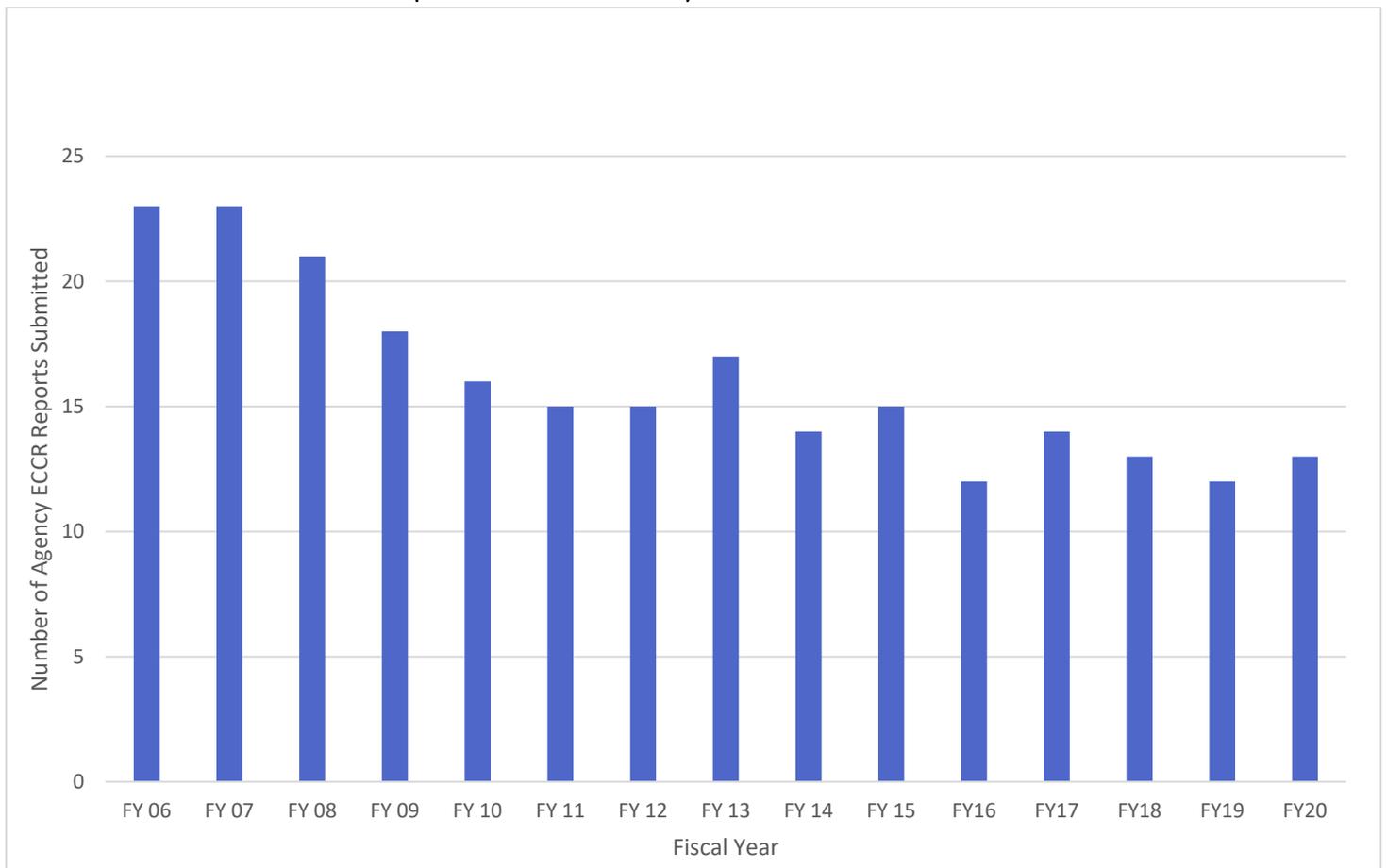


Table 2: Federal Department and Agency Submissions of Annual ECCR Reports, FY 2006 – FY 2020.

Agency	Fiscal Year														
	06	07	08	09	10	11	12	13	14	15	16	17	18	19	20
Department of Agriculture; Forest Service															
Department of Commerce; National Oceanic and Atmospheric Administration (NOAA)															
Department of Defense (DoD)															
Department of the Navy (Navy)															
Air Force (AF)															
Army Corps of Engineers (USACE)															
Army (Army)															
Corpus Christi Army Depot (CCAD)															
Office of Staff Judge Advocate (OSJA)															
Environmental Law Division															
National Guard Bureau (NGB)															
U.S. Army Reserve (USAR)															
Missile Defense Agency															
Department of Energy (DOE)															
Department of Health and Human Services (HHS)															
Department of Homeland Security (DHS)															
Department of the Interior (DOI)															
Department of Justice (DOJ)															
Department of Labor (DOL)															
Department of Transportation (DOT)															
Department of Veterans Affairs (VA)															
Environmental Protection Agency (EPA)															
Federal Energy Regulatory Commission (FERC)															
General Services Administration (GSA)															
National Aeronautics and Space Administration (NASA)															
National Capital Planning Commission (NCPC)															
National Center for Environmental Conflict Resolution (NCECR)															
National Indian Gaming Commission (NIGC)															
Nuclear Regulatory Commission (NRC)															
Tennessee Valley Authority															

Appendix B: Environmental Collaboration and Conflict Resolution (ECCR) Use in the Federal Government

Below are the five most commonly cited contexts for environmental collaboration and conflict resolution (ECCR) use, in both assisted and unassisted collaborative activities (with example topics):

Laws	Natural Resource Planning & Management	Regulatory & Administrative Rule Actions	Consultation & Coordination	Broad Environmental Issues
<ul style="list-style-type: none"> •National Environmental Policy Act (NEPA) •Endangered Species Act (ESA) •Clean Water Act (CWA) •National Historic Preservation Act (NHPA) •Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) •Resource Conservation and Recovery Act (RCRA) 	<ul style="list-style-type: none"> •Forest Planning •Conservation and Collaboration •Regional Infrastructure Development •Water Resources (e.g., storm water, groundwater permitting; water releases, quality, and security; flood risk assessment and recovery) 	<ul style="list-style-type: none"> •Energy Development and Transmission, including Renewable Energy; Offshore Development •Negotiated Rulemaking •Compliance and Enforcement Actions •Permitting Review •Site Permits 	<ul style="list-style-type: none"> •Tribal Consultation •Joint Fact-Finding in Planning and Development •Multi-Party, Multi-Scope Issues •Multi-Agency Programmatic Agreements •Stakeholder & Community Engagement •Public Involvement •Collaborative discussion with Federal and non-Federal partners 	<ul style="list-style-type: none"> •Environmental Justice •Climate Change •Watershed-level Resource Planning •Socially and Culturally Important Species Management

Appendix C: Capacity-Building and Investments in Environmental Collaboration and Conflict Resolution (ECCR)

Capacity-Building Initiatives		Agency Examples from FY 2020
Integrating ECCR objectives into agency mission statements, goals, and strategic planning	Integrating ECCR principles into department and agency agreements	Federal Highway Administration (FHWA) contracted with NCECR to provide a facilitator to convene Puerto Rico Department of Transportation (DOT) and State Historic Preservation Officer (SHPO) in developing a new Section 106 Programmatic Agreement. Revising the agreement creates an opportunity for Federal and State governments to build a common understanding and mitigate future disagreements.
	Integrating ECCR principles into strategic planning	National Oceanic and Atmospheric Administration (NOAA)'s Office of the General Counsel, Environmental Review and Coordination Section (ERC) continued to develop its draft strategic plan to create a centralized ECCR program at NOAA.
Building and investing in internal ECCR infrastructure	Setting internal expectations that leadership use ECCR to preclude, manage, or resolve conflict	U.S. Air Force (Air Force) Policy Directive 51-12 makes negotiation a critical leadership skill and requires Air Force programs, including those resolving environmental disputes, to use negotiation and dispute resolution processes, as appropriate.
	Emphasizing leadership's commitment to and support of ECCR	NOAA's 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.
	Updating internal work processes and structures to promote ECCR programs and processes	NOAA's National Weather Service (NWS) progress on 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.
	Developing guidelines and criteria to support ECCR use	NOAA's Office of the General Counsel, Environmental Review and Coordination Section (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.
	Incorporating procedures for the appropriate application of ECCR into policies and practices	Federal Energy Regulatory Commission (FERC)'s Office of the General Counsel Dispute Resolution Service (DRS) distributed ECCR Application definitions to ensure staff within the office are consistently tracking their ECCR projects.
	Budgeting for ECCR services, including contracting with third-party neutrals	FHWA's Office of Project Development and Environmental Review renewed the interagency agreement (IAA) with the National Center for Environmental Conflict Resolution (NCECR) for another 5-year term in February 2020. The

		IAA’s funding ceiling is at \$505,000, subject to FHWA’s business needs and incremental funding over the performance period.
	Encouraging use of ECCR and building awareness of internal programs and opportunities through regular outreach and marketing activities	Department of Energy (DOE) sites and program offices maintained and enhanced their awareness of ECCR methods and opportunities through monthly environmental attorneys’ calls. On average, 12 participants join the monthly calls.
	Providing and promoting ECCR technical assistance and support programs and opportunities	U.S. Army Corps of Engineers (USACE)’s Grand Collaboration Challenge provided an opportunity for USACE project teams to receive hands-on assistance from ECCR experts to address complex collaboration challenges.
	Investing in internal programs and centers that support ECCR and deliver ECCR-related services, including consultation, conflict assessment, process design, mediation, and facilitation	Several departments and agencies funded and operated internal ECCR programs and centers, including: <ul style="list-style-type: none"> • Federal Energy Regulatory Commission (FERC) Dispute Resolution Service (DRS) • Environmental Protection Agency (EPA) Conflict Prevention and Resolution Center (CPRC) • U.S. Army Corps of Engineers (USACE) Collaboration and Public Participation Center of Expertise (CPCX) • Department of the Interior (DOI) Collaborative Action and Dispute Resolution (CADR)
	Developing in-house facilitators and ECCR professionals	The U.S. Forest Service continued to support the National Collaboration Cadre (Cadre), a group of employees, academics, and consultants who work with national forests, collaborative groups, and interested stakeholders to build capacity and help them engage in effective collaboration. <p>Across the Bureau, there are 31 Bureau of Land Management (BLM) CADR Coordinators located in each BLM State office, including Eastern States. These collateral duty coordinators serve as the point of contact for the field in each State office and provide input and feedback for national policy and guidance and are responsible to the Associate State Director. In addition, they connect field and district offices to ECCR resources such as the DOI Facilitation roster, the CADR ECCR contract, incentives funding, and training; the CADR coordinators participate in a monthly call to share information and issues and discuss future activities.</p>
Promoting and supporting training and professional development opportunities for staff and ECCR personnel	Building expert knowledge, skills, and capacity in ECCR with trainings, workshops, and other learning opportunities	The U.S. Forest Service launched an effort with the Participation Company to develop a public participation toolkit. The toolkit will be an information and training resource for agency employees to improve their knowledge and capacity in how to undertake effective public participation and collaboration.

		Also see “Training” on page 7 for additional examples.
	Encouraging and supporting the pursuit of professional certificates in ECCR	DOI Office of Hearings and Appeals (OHA) attorney advisor completed training to become a collateral duty mediator through the DOI’s CORE PLUS program.
	Providing training and mentorship opportunities	The U.S. Forest Service continued to invest in its agency-wide membership with the International Association for Public Participation (IAP2). Membership in this organization provides agency employees with access to webinars, resources, and discounted trainings. Currently, 310 employees have registered under this membership. In FY20, 115 employees registered for webinars and 15 registered for the 2019 IAP2 virtual conference.
Fostering internal and external information exchange about ECCR	Promoting staff participation in professional networks or organizations	NOAA’s Office of the General Counsel, Environmental Review and Coordination Section (ERC) 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.
	Engaging in interagency groups to advance ECCR efforts and facilitate information sharing across the Federal family	DOI CADR staff represented DOI on several interagency groups and participated in a variety of interagency efforts to build common understanding and jointly advance collaboration and ECCR (e.g., Interagency ADR Working Group, ECCR Forum).
	Participating in intra-agency work groups to build ECCR capacity within the organization	DOI CADR continued its work convening an ECCR community of practice with representatives from Bureau of Land Management (BLM), Bureau of Ocean Energy Management (BOEM), Bureau of Reclamation (REC), Fish and Wildlife Service (FWS), National Park Service (NPS), and United States Geological Survey (USGS). This group collaboratively developed and hosted a webinar to orient other DOI employees about the use of ECCR in general and in various bureaus.
Building ECCR partnerships	Cultivating strong working relationships with local, state, and Federal governments, Tribes, private entities, and non-governmental organizations	NOAA National Environmental Satellite, Data, and Information Service (NESDIS) has excellent collaborative working relationships with National Aeronautics and Space Administration (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.
	Committing to engaging stakeholders early in ECCR projects and cases	DOE’s Environmental Management Nevada program (EM-NV) successfully used regular meetings with environmental regulators and a site-specific advisory board and committees to engage stakeholders in the early stages of decision-making processes.

Appendix D: Acronyms

ADOT	Arizona Department of Transportation
ADR	Alternative Dispute Resolution
AF	U.S. Air Force (Air Force)
AFNC	Air Force Negotiation Center
AFR	Air Force Range
Army	U.S. Army (Army)
BIA	Bureau of Indian Affairs
BLM	Bureau of Land Management
BOEM	Bureau of Ocean Energy Management
CADR	Collaborative Action and Dispute Resolution (DOI)
CBP	Columbia Basin Partnership
CERCLA	Comprehensive Environmental Response, Compensation, and Liability Act
CEQ	Council on Environmental Quality
CWA	Clean Water Act
CPCX	Collaboration and Public Participation Center of Expertise (USACE)
CPRC	Conflict Prevention and Resolution Center (EPA)
DoD	Department of Defense
DOE	Department of Energy
DOI	Department of the Interior
DOL	Department of Labor
DOT	Department of Transportation
DRS	Dispute Resolution Service (FERC)
ECCR	Environmental collaboration and conflict resolution
ELD	Environmental Law Division (Army)
EIS	Environmental Impact Statement
EPA	U.S. Environmental Protection Agency
ERC	Office of the General Counsel, Environmental Review & Coordination Section (ERC)
ESA	Endangered Species Act
FACA	Federal Advisory Committee Act
FERC	Federal Energy Regulatory Commission
FHWA	Federal Highway Administration
FTA	Federal Transit Administration (DOT)
FTE	Full-time employee
FY	Fiscal year
GCC	Grand Collaboration Challenge
JAG	Judge Advocate General's Corps (AF)
MAFAC	Marine Fisheries Advisory Committee (NMFS)
NASA	National Aeronautics and Space Administration
NCECR	National Center for Environmental Conflict Resolution
NESDIS	National Environmental Satellite, Data, and Information Service (NOAA)
NEPA	National Environmental Policy Act
NGB	National Guard Bureau
NHPA	National Historic Preservation Act
NMFS	National Marine Fisheries Service (NOAA)
NOAA	National Oceanic and Atmospheric Administration
NPS	National Park Service
OHA	Office of Hearings and Appeals (DOI)
OMB	Office of Management and Budget

RACA	Office of Regulatory Affairs and Collaborative Action (BIA)
RCRA	Resource Conservation and Recovery Act
REC	Bureau of Reclamation
SHPO	State Historic Preservation Officer
USACE	U.S. Army Corps of Engineers
USFWS	U.S. Fish and Wildlife Service
USGS	United States Geological Survey
VA	Department of Veterans Affairs
WCR	NMFS' West Coast Region