

FY 2010 ECR Policy Report to OMB-CEQ

On November 28, 2005, the Director of the Office of Management and Budget (OMB), and the Chairman of the President's Council on Environmental Quality (CEQ) issued a policy memorandum on environmental conflict resolution (ECR).

The memorandum requires annual reporting by departments and agencies to OMB and CEQ on progress made each year. This joint policy statement directs agencies to increase the effective use and their institutional capacity for ECR and collaborative problem solving.

ECR is defined in Section 2 of the memorandum as:

“Third-party assisted conflict resolution and collaborative problem solving in the context of environmental, public lands, or natural resources issues or conflicts, including matters related to energy, transportation, and land use. The term “ECR” encompasses a range of assisted negotiation processes and applications. These processes directly engage affected interests and agency decision makers in conflict resolution and collaborative problem solving. Multi-issue, multi-party environmental disputes or controversies often take place in high conflict and low trust settings, where the assistance of impartial facilitators or mediators can be instrumental to reaching agreement and resolution. Such disputes range broadly from administrative adjudicatory disputes, to civil judicial disputes, policy/rule disputes, intra- and interagency disputes, as well as disputes with non-federal persons/entities. ECR processes can be applied during a policy development or planning process, or in the context of rulemaking, administrative decision making, enforcement, or litigation and can include conflicts between federal, state, local, tribal, public interest organizations, citizens groups and business and industry where a federal agency has ultimate responsibility for decision-making.

While ECR refers specifically to collaborative processes aided by third-party neutrals, there is a broad array of partnerships, cooperative arrangements, and unassisted negotiations that federal agencies enter into with non-federal entities to manage and implement agency programs and activities. The Basic Principles for Agency Engagement in Environmental Conflict Resolution and Collaborative Problem Solving presented in Attachment A (of the OMB/CEQ ECR Policy Memo) and this policy apply generally to ECR and collaborative problem solving. This policy recognizes the importance and value of the appropriate use of all types of ADR and collaborative problem solving.”

The report format below is provided for the fifth year of reporting in accordance with this memo for activities in FY 2010.

The report deadline is February 15, 2011.

We understand that collecting this information may be challenging; however, after compiling previous reports, the departments and agencies are requested to collect this data to the best of their abilities. The 2010 report, along with previous reports, will establish a useful baseline for your department or agency, and collect some information that can be aggregated across agencies. Departments should submit a single report that includes ECR information from the agencies and other entities within the department. The information in your report will become part of an analysis of all FY 2010 ECR reports. You may be contacted for the purpose of clarifying information in your report. For your reference, copies of prior year synthesis reports are available at www.ecr.gov.

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Date this report is being submitted:	February 15, 2011

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.]

Office of Program Planning & Integration (PPI)

PPI is revising NOAA's policy on implementing the National Environmental Policy Act (NEPA), which establishes NOAA policy and procedures for complying with NEPA. These procedures will encourage use of environmental conflict resolution principles and strategies as described in the 2007 CEQ "Collaboration in NEPA" Handbook and from the U.S. Institute for Environmental Conflict Resolution.

National Marine Fisheries Service

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

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

While Sustainable Fisheries does not use ECR directly, the processes used in development of management plans and associated regulations under MSA (and within the NEPA process) require interaction and negotiation between Councils,

states, constituents, and NOAA Fisheries. In working with the Commissions, NOAA Fisheries participate in the Commission process, which includes discussions and negotiations by all parties. As such, Sustainable Fisheries has successful methods in place to reach out directly to individual states, other Federal agencies, NGOs, and other groups.

NOAA Aquaculture Program: The NOAA Aquaculture Program conducts outreach activities to heighten the public's understanding of aquaculture and its critical role in support of sustainable fisheries, seafood production, and U.S. coastal communities. In FY2010, policy and science experts from the NOAA Aquaculture Program participated in outreach events where they discussed aquaculture advances and challenges of interest to industry, NGOs, the research community, government, and the public. Each of these events provided participants with opportunities to question experts and engage in unfiltered discussions to help resolve controversial issues.

Klamath River Basin Restoration: The NOAA Fisheries Southwest Regional Office hired a facilitator to provide facilitation assistance with a variety of tasks associated with early implementation of the Klamath Basin Restoration Agreement. The Region is working closely with other federal agencies, state agencies, counties, tribes, irrigators, conservation organizations and a variety of other stakeholders to provide assistance for early implementation of certain programs of the Agreement. The facilitator will assist the Region by: (1) organizing and administering Klamath Basin Coordinating Council, Advisory Council, and Technical Advisory Team meetings; (2) preparing detailed work plans and schedules for implementing the Agreement; (3) coordination and oversight of the Agreement; (4) facilitate implementation of the Agreement's Fisheries Program; and (5) development of the Drought Plan.

Contentious Scientific Issues in the Northeast: During FY2010, the Northeast Science Center convened a facilitated workshop to begin development of a new approach to providing scientific advice on fishery issues to the Fishery Management Councils and NOAA Fisheries managers. The facilitators were able to guide a group composed for representatives from the Northeast Science Center, Northeast Regional Office, Mid-Atlantic Fishery Management Council staff, New England Fishery Management Council, mid-Atlantic and Northeast Science and Statistical Committee, and Atlantic States Marine Fisheries Commission through a discussion that produced a clear road map for development of the new process.

Science Centers: Environmental conflict resolution is completed at each Science Center's through a Stock Assessment Review Committee (official name of Committee varies by region). This group usually meets twice annually to evaluate stock assessments for specific groups of commercial fish and shellfish stocks. The Committee is typically composed of a Chair (representing the Fishery Management Council's Scientific and Statistics Committee) and 3 independent

reviewers from NOAA's Center for Independent Experts. The Committee deliberations are open public meetings and are typically attended by industry and NGO scientists. It is the Committee's job to review the assessments, consider comments from the participants in the meetings, and present to the Center their assessment of the quality of the assessment.

National Weather Service (NWS)

Leadership, project managers and staff are aware of and utilize the ECR process. The use of the ECR is dependent on existing conditions for new site construction or renovations of existing facilities. There were no specific instances to highlight in FY 2010. However, there were two instances in FY 2008 where the ECR process was an instrumental tool in resolving conflicting interests and providing for a positive outcome.

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

National Ocean Service

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

In 2010, the NOS strategic plan was integrated into NOAA's Next Generation Strategic Plan (NGSP). The objectives and goals of a collaborative approach to problem solving and resolution of issues are incorporated into the NGSP

Section 2: Challenges

2. Indicate the extent to which each of the items below present challenges or barriers that your department/agency has encountered in advancing the appropriate and effective use of ECR.

	Extent of challenge/barrier		
	Major	Minor	Not a challenge/barrier
	Check <u>only</u> one		
a) Lack of staff expertise to participate in ECR	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
b) Lack of staff availability to engage in ECR	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
c) Lack of party capacity to engage in ECR	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
d) Limited or no funds for facilitators and mediators	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
e) Lack of travel costs for your own or other federal agency staff	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
f) Lack of travel costs for non-federal parties	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
g) Reluctance of federal decision makers to support or participate	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
h) Reluctance of other federal agencies to participate	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
i) Reluctance of other non-federal parties to participate	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
j) Contracting barriers/inefficiencies	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
k) Lack of resources for staff capacity building	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
l) Lack of personnel incentives	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
m) Lack of budget incentives	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
n) Lack of access to qualified mediators and facilitators	<input type="checkbox"/>	<input 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): ECR was effectively replaced by collaborative engagement and resolution of issues	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
s) No barriers (please explain): _____	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Section 3: ECR Use

3. Describe the level of ECR use within your department/agency in FY 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.]

	Cases or projects in progress ¹	Completed Cases or projects ²	Total FY 2010 ECR Cases ³	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 proceedings /appeals	Judicial proceedings	Other (specify)	Sponsored ⁴	Participated in but did not sponsor ⁵	
<i>Context for ECR Applications:</i>										
Policy development	___	1	1	1	___	___	___	___	1	___
Planning	___	1	1	1	___	___	___	___	___	1
Siting and construction	___	1	1	1	___	___	___	___	1	___
Rulemaking	___	4	4	4	___	___	___	___	4	___
License and permit issuance	___	___	___	___	___	___	___	___	___	___
Compliance and enforcement action	___	1	1	___	1	___	___	___	___	1
Implementation/monitoring agreements	___	___	___	___	___	___	___	___	___	___
Other (specify): _____	___	___	___	___	___	___	___	___	___	___
TOTAL	___	8	8	7	1	___	___	___	6	2
	(the sum should equal Total FY 2010 ECR Cases)			(the sum of the Decision Making Forums should equal Total FY 2010 ECR Cases)					(the sum should equal Total FY 2010 ECR Cases)	

¹ A “case in progress” is an ECR case in which neutral third party involvement began prior to or during FY 2010 and did not end during FY 2010.

² A “completed case” means that neutral third party involvement in a particular matter ended during FY 2010. The end of neutral third party involvement does not necessarily mean that the parties have concluded their collaboration/negotiation/dispute resolution process that all issues are resolved, or that agreement has been reached.

³ “Cases in progress” and “completed cases” add up to “Total FY2010 ECR Cases”.

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

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

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
Take Reduction Teams	X	<input type="checkbox"/>
_____	<input type="checkbox"/>	<input type="checkbox"/>
_____	<input type="checkbox"/>	<input type="checkbox"/>
_____	<input type="checkbox"/>	<input type="checkbox"/>
_____	<input type="checkbox"/>	<input type="checkbox"/>
_____	<input type="checkbox"/>	<input type="checkbox"/>
_____	<input type="checkbox"/>	<input type="checkbox"/>
_____	<input type="checkbox"/>	<input type="checkbox"/>
List of additional priority areas identified by your department/agency in FY 2010	Check if using ECR	
_____	<input type="checkbox"/>	

Please use an additional sheet if needed.

5. It is important to develop ways to demonstrate that ECR is effective and in order for ECR to propagate through the government, we need to be able to point to concrete benefits; consequently, we ask what other methods and measures are you developing in your department/agency to track the use and outcomes (performance and cost savings) of ECR as directed in Section 4 (b) of the ECR memo, which states: *Given possible savings in improved outcomes and reduced costs of administrative appeals and litigation, agency leadership should recognize and support needed upfront investments in collaborative processes and conflict resolution and demonstrate those savings and in performance and accountability measures to maintain a budget neutral environment* and Section 4 (g) which states: *Federal agencies should report at least every year to the Director of OMB and the Chairman of CEQ on their progress in the use of ECR and other collaborative problem solving approaches and on their progress in tracking cost savings and performance outcomes. Agencies are encouraged to work toward systematic collection of relevant information that can be useful in on-going information exchange across departments?* [You are encouraged to attach examples or additional data]

National Marine Fisheries Service

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

National Weather Service (NWS)

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

National Ocean Service

Office of Ocean and Coastal Resource Management (OCRM) - OCRM conducts various levels of conflict resolution and mediation as part of the Coastal Zone Management Act (CZMA) program, particularly related to CZMA "national interest" areas: Federal Consistency, Changes to State CZMA Programs, American Indian and Alaska Native activities, military activities, etc. These may be resolved through informal phone calls and emails or more formal processes agreed to by the parties. In FY2010, issues were informally resolved through collaborative processes.

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

Office of National Marine Sanctuaries (ONMS) -- The ONMS already routinely employs informal methods of environmental conflict resolution as part of its mandated responsibilities to protect and manage both national marine sanctuaries and monuments. Such responsibilities include working with constituents, marine users and others to identify management issues, uses, and other potential concerns regarding impacts on sanctuary resources and determining what, if any, steps are necessary for the ONMS to take, including such things as NEPA analysis, issuing guidance, issuing permits, initiating consultation, and/or issuing or amending regulations, including using marine zoning and coastal and marine spatial planning as management tools. As many management issues cut across a variety of interests, it is essential that the ONMS ensure opportunities for different points of view to be heard, discussed and included. Management plan reviews have been a critical vehicle to raise and address important management issues and include these diverse points of view. An integral part of the decision making process includes working with the community, through scoping processes, sanctuary advisory councils, subject-specific working groups and public meetings, to help make those decisions. Since these mechanisms are so inherent to the ONMS, there is no specific ECR performance measure.

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

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.

National Marine Fisheries Service

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

National Weather Service (NWS)

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

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

National Ocean Service

Office of Ocean and Coastal Resource Management (OCRM) – The OCRM continued to use open public and collaborative processes in FY2010 for the development of the Lake Superior National Estuarine Research Reserve (NERR), along with the final environmental impact statement and management plan with formal establishment in FY2011. OCRM worked with multiple entities including the State of Wisconsin, The Conservation Fund, City of Superior, Douglas and Superior Counties, and local Native American tribes and communities toward this end. Similarly in FY2010, OCRM was involved in the processes that led to the FY2011 acquisition of the 820 acre addition to the Weeks Bay NERR in southeastern Alabama, working with such entities as the State of Alabama, The Weeks Bay Foundation, The Conservation Fund, Alabama's Forever Wild Program and Baldwin County.

Office of National Marine Sanctuaries (ONMS)

The ONMS continued to use open public and collaborative processes toward maturation of the Mariana Trench Marine National Monument, working with the respective governments of Saipan and Guam, local communities and other federal agencies and military services. Similarly, ONMS continued the assessment of the potential expansion of the Fagatele Bay National Marine Sanctuary (FBNMS), in conjunction with the FBNMS management plan and integrated environmental impact statement review. ONMS worked with the Government of American Samoa, The American Samoa Coral Reef Advisory Group, The FBNMS Sanctuary Advisory Group, and other federal agencies. ONMS worked with the National Park Service regarding the nomination of the FBNMS as one of the four natural sites to be added to the U.S. World Heritage Tentative List with the National Park Service.

Damage Assessment, Remediation, and Restoration Program (DARRP)

In order to ensure injuries to natural resources are restored, DARRP is preparing for the possibility of litigation in cases where it appears Responsible Parties may be unable to resolve their liability through the cooperative process.

The DARRP program is also evaluating and assessing the different levels that cooperative assessments may be used. As the result of some experiences with cooperative assessments, the program is consistently working on clarifying what cooperative assessments are in the effort to help improve the process.

Section 4: Demonstration of ECR Use and Value

- 7 Briefly describe *your departments'/agency's most notable achievements* or advances in using ECR in this past year.

National Marine Fisheries Service

False Killer Whale Take Reduction Team: In FY10, the NOAA Fisheries Service Pacific Islands Regional Office used ECR in the take reduction process, as required by the Marine Mammal Protection Act, to address the bycatch of false killer whales (*Pseudorca crassidens*) in Hawaii-based commercial long line fisheries. NOAA Fisheries Service contracted with CONCUR, Inc. to provide facilitation services for four meetings of the newly-established False Killer Whale Take Reduction Team (Team). This firm is also contracted to facilitate meetings of several take reduction teams in other regions. The Take Reduction Team process is highly structured in terms of goals and deadlines, and the issues discussed are often highly contentious. Teams must develop consensus measures that reduce bycatch of marine mammals in commercial fisheries. NOAA Fisheries Service has found that using neutral, third-party facilitators adds to the credibility of and fosters stakeholder trust in the process. The Team includes 19 appointed members representing commercial fisheries, state and federal agencies, the regional fishery management council, environmental groups, and academia. These organizations have diverse and sometimes conflicting interests. Several have been involved previously in litigation on protected species management in Hawaii's long line fisheries. Over the course of four meetings, facilitators efficiently managed and mediated difficult discussions and effectively aided the Team in reaching consensus agreement. In FY11, NOAA Fisheries Service will issue proposed and final rules to implement the recommended bycatch reduction measures. Because the multi-stakeholder Team reached consensus on these measures, the resulting rules will likely be less controversial and have a reduced risk of litigation.

Essential Fish Habitat Consultations for Guam: NOAA Fisheries Service has been refining the methodology to gather coral reef assessments to improve the determination of replacement of lost ecosystem function to fulfill mandates under the Clean Water Act and complete Essential Fish Habitat Consultations. During FY10 NOAA Fisheries Service along with U.S. Fish and Wildlife Service and the Environmental Protection Agency elevated a conflict with the Department of Defense (DOD) concerning a proposed Conventional Weapons Carrier Berthing project on Guam that proposed to dredge and impact more than 70 acres of coral reefs. The conflict stemmed from a basic disagreement between the resource agencies and DOD in determining the necessary metrics to quantify and characterize the natural resource impacts. After vetting this issue through mid-management, regional heads, and agency heads, agreement could not be reached. Prior to the completion of the Draft

Environmental Impact Statement the resource agencies sought the Council of Environmental Quality (CEQ) participation to help resolve this conflict. After many meetings and individual input across multiple agencies, CEQ determined that additional assessment were needed to be completed by DOD to meet mandates to fulfill the compensatory mitigation requirements. The proposal was deferred until adequate assessments could be completed. NOAA Fisheries Service also conducted consultant training for DOD to ensure metrics and surveyor calibration prior to the assessments.

New England Multispecies Fishery Management Plan: As a continuation of the effort begun in 2009, NOAA staff and industry representatives (sector managers) met, guided by a team of facilitators, to work out implementation details for a major new fishery management program. The group convened the group twice with facilitators, once before the effective date of the changes and once after, and several times without facilitator support. The first meeting in January 2010 refined details of monitoring, catch share accounting, and reporting requirements. The second meeting, in August, revisited the same topics in light of several months of fishing operations and worked on resolving real-world problems the sector managers had encountered. NOAA Fisheries Service is continuing to work closely with sector managers through a variety of methods suggested by the facilitators and developed independently.

National Weather Service

There were no notable ECR instances associated with new Construction or facility rehabilitation projects in the past year (FY 2010).

National Ocean Service

DARRP participated in an ECR action with 75 other parties, called by the responsible parties, in which the allocation of liability amongst the multiple responsible parties was resolved for the Commencement Bay Near shore/Tide flats Superfund site (Tacoma, Washington).

8. ECR Case Example

- a. Using the template below, provide a description of an ECR case (preferably completed in FY 2010). Please limit the length to no more than 2 pages.

Name/Identification of Problem/Conflict
Overview of problem/conflict and timeline, including reference to the nature and timing of the third-party assistance, and how the ECR effort was funded
<p><u>National Marine Fisheries Service</u> Conflicts over water and other natural resources in the Klamath Basin between conservationists, tribes, farmers, fishermen, and State and Federal agencies have existed for decades. Developing strategies to restore fisheries and provide assurances of a viable agricultural community required effective and trustworthy facilitation. Ed Sheets Consulting provided this key element of the negotiation process. Efforts culminated in the landmark signing of the Klamath Hydroelectric Settlement and Klamath Basin Restorations Agreements (KHS/KBRA) on February 18, 2010. In an effort to effectively accelerate the development of key plans required under the KBRA, NOAA Fisheries contracted Ed Sheets Consulting in 2010 to facilitate plan development.</p> <p><u>National weather Service</u> There were no instances of Construction or rehabilitation projects in FY 2010 (or FY 2009) that required the use of the ECR process.</p> <p><u>National Ocean Service</u> NOAA, U.S. Fish and Wildlife Service (USFWS), Bureau of Indian Affairs (BIA), Puyallup Tribe of Indians, Muckleshoot Indian Tribe, State of Washington: Departments of Ecology (lead state trustee), Fish and Wildlife, and Natural Resources, as the natural resources trustees (Trustees), work with the multiple responsible parties (RPs) to restore habitats that were injured by fill, excavation, point and non-point contaminant releases into the Commencement Bay Near shore and Tide flats (CB/NT) Superfund site. Through an open public process, the trustees developed a bay wide restoration plan, which included designing and building a series of habitat restoration projects using funds, property, and in-kind services obtained through damage claim settlements. The trustees entered into partial or full settlement of claims with several RPs, and habitat restoration projects have been initiated, completed with more pending. The RPs wanted to ensure they were paying their fair share amongst themselves and the assessed damages were equitable. The RPs obtained the services of a neutral, independent third party facilitator and requested the trustees meet with them. NOAA was represented by the DARRP.</p>

Summary of how the problem or conflict was addressed using ECR, including details of any innovative approaches to ECR, and how the principles for engagement in ECR were used (See Appendix A of the Policy Memo, attached)

National Marine Fisheries Service

The development of complex integrated restoration and monitoring plans require effective facilitation. Due to Ed Sheets' long-standing participation on the KHSA/KBRA plan development, Ed was uniquely qualified to progress the plan developments in a timely and effective manner. The consultant created an open, trusting environment for team members. This facilitation helped team members develop a common sense of mission, to express their views in a constructive manner and to listen to others without feeling threatened. Expectations were clear, and timelines and commitments were clearly articulated. As a result, team members have worked effectively together to complete early milestones.

National Ocean Service

The Trustees participated with the RPs in resolving allocation of liability amongst the multiple parties and assessed damages. The facilitator specialized in damage assessment, cost estimation and the economics of environmental liability, and kept all parties involved in the discussions.

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

National Marine Fisheries Service

ECR facilitation has aided the development of plans to implement the Klamath Basin Restoration Agreement by improving collaboration among key Klamath Basin parties, including tribes, state and federal agencies, and non-governmental organizations. Plans have been developed more quickly and effectively than would have otherwise occurred had the effort been facilitated only by federal agency representatives. As a result of facilitated negotiations there is an agreement to remove four dams along the Klamath River, and the continued use of a neutral third party will help keep all parties working together. The proposed dam removal action will provide threatened salmon access to over 50 miles of additional habitat, and access to over 300 miles of habitat to other important salmon species. At the same time, the Agreement increases the reliability of water supplies and provides water rights assurances to Tribes along the river. Water rights issues will become more difficult to resolve during the 21st century. This agreement establishes a positive precedent for water rights negotiations in the west, not only in terms of outcomes but also in the process of conducting negotiations.

National Ocean Service

As a result of this cooperative process, the Trustees and RPs could move forward with the design, implementation and monitoring of additional habitat restoration actions.

National Marine Fisheries Service

The use of a neutral facilitator has allowed the many parties to articulate their needs in an open, constructive forum. The facilitator helped the parties to examine each other's perspectives methodically rather than arguing every point. As a result, the parties could identify common interests, leading to a precedent-setting agreement. This approach should be considered when environmental conflicts are ongoing, especially when there are multiple views and interests involved.

National Ocean Service

This case demonstrates the benefits of the cooperative assessment and allocation process. This process offers industry, states, municipalities and other property owners a greater voice and more control over the timing and funding of restoration actions without undermining the natural resource trustee responsibilities. The process strengthens partnerships with RPs and stakeholders. Partners may also benefit from reduced damage assessment costs and reduced risk of litigation.

- b. Section I of the ECR Policy identifies key governance challenges faced by departments/agencies while working to accomplish national environmental protection and management goals. Consider your departments'/agency's ECR case, and indicate if it represents an example of where ECR was or is being used to avoid or minimize the occurrence of the following:

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

9. Please comment on any difficulties you encountered in collecting these data and if and how you overcame them. Please provide suggestions for improving these questions in the future.

Information was collected by contacting NWS, NMFS, & NOS project managers and review of project files. No specific difficulties were encountered. Records were well kept and managed.

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