

FY 2015 Environmental Collaboration and Conflict Resolution (ECCR)¹ Policy Report to OMB-CEQ

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

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

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

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

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

Multi-issue, multi-party environmental disputes or controversies often take place in high conflict and low trust settings, where the assistance of impartial facilitators or mediators can be instrumental to reaching agreement and resolution. Such disputes range broadly from policy and regulatory disputes to administrative adjudicatory disputes, civil judicial disputes, intra- and interagency disputes, and disputes with non-Federal persons and entities.

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

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

This annual report format below is provided for the seventh year of reporting in accordance with the memo for activities in FY 2015.

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

The report deadline is February 15, 2016.

We understand that collecting this information may be challenging; however, the departments and agencies are requested to collect this data to the best of their abilities. The 2015 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 ECCR information from the agencies and other entities within the department. The information in your report will become part of an analysis of all FY 2015 ECCR reports. You may be contacted for the purpose of clarifying information in your report. For your reference, prior year synthesis reports are available at

<http://www.ecr.gov/Resources/FederalECRPolicy/AnnualECRReport.aspx>

FY 2015 ECCR Report Template

Name of Department/Agency responding:	<u>Department of the Navy</u>
Name and Title/Position of person responding:	Robert Manley, Assistant General Counsel (ADR)
Division/Office of person responding:	<u>Office of the General Counsel/ ADR Program Office</u>
Contact information (phone/email):	(202) 685-6987 robert.manley@navy.mil
Date this report is being submitted:	<u>10 February 2016</u>
Name of ECR Forum Representative:	<u>Robert Manley</u>

1. **ECCR Capacity Building Progress:** Describe steps taken by your department or agency to build programmatic and institutional capacity for environmental collaboration and conflict resolution in FY 2015, including progress made since FY 2013. Include any efforts to establish routine procedures for considering ECCR in specific situations or categories of cases. To the extent your organization wishes to report on any efforts to provide institutional support for non-assisted collaboration efforts include it here. If no steps were taken, please indicate why not.

[Please refer to the mechanisms and strategies presented in Section 5 and attachment C of the OMB-CEQ ECCR Policy Memo, including but not restricted to any efforts to a) integrate ECCR objectives into agency mission statements, Government Performance and Results Act goals, and strategic planning; b) assure that your agency's infrastructure supports ECCR; c) invest in support, programs, or trainings; and d) focus on accountable performance and achievement. You are encouraged to attach policy statements, plans and other relevant documents.]

The Department of the Navy (DON) has had a strong Alternative Dispute Resolution (ADR) Program Office for several years. Staffed with three attorneys and a program analyst, it handles a wide variety of ADR issues facing the DON, including environmental matters. The DON ADR Program Office works with appropriate DON commands responsible for environmental issues. Training materials are published on the web at:

<http://www.secnav.navy.mil/ADR/Pages/environmentaladr.aspx>, and
<http://ecr.gov/Training/Training.aspx>.

The DON has demonstrated a long standing capacity for ECR in the area of installation restoration. The DON currently participates in 41 facilitated partnering teams that oversee the restoration efforts at 788 active and 1,155 total environmental restoration sites. Within these teams, representatives from the DON, EPA, state governments, local officials, and sometimes various other groups use collaborative methods to craft creative and cost effective restoration processes designed to address as many interests as possible. The third-party partnering team facilitators are sponsored by DON.

2. ECCR Investments and Benefits

- a) Please describe any methods your agency uses to identify the (a) investments made in ECCR, and (b) benefits realized when using ECCR.

Examples of investments may include ECCR programmatic FTEs, dedicated ECCR budgets, funds spent on contracts to support ECCR cases and programs, etc.

Examples of benefits may include cost savings, environmental and natural resource results, furtherance of agency mission, improved working relationship with stakeholders, litigation avoided, timely project progression, etc.

As the Systematic Evaluation of Environment and Economic Results (SEEER) project at EPA and DOI demonstrates, it is possible to collect and analyze data pertaining to the use of ECR. However, the analysis under the SEEER Project has a significant expense of about \$10,000 to \$20,000 per case. The DON has not adopted such a system at this time.

- b) Please report any (a) quantitative or qualitative investments your agency captured during FY 2015; and (b) quantitative or qualitative results (benefits) you have captured during FY 2015.

See 2(a) response.

- c) What difficulties have you encountered in generating cost and benefit information and how do you plan to address them?

See 2(a) response.

3. **ECCR Use:** Describe the level of ECCR use within your department/agency in FY 2015 by completing the table below. [Please refer to the definition of ECCR from the OMB-CEQ memo as presented on page one of this template. An ECCR “case or project” is an instance of neutral third-party involvement to assist parties in a collaborative or conflict resolution process. In order not to double count processes, please select one category per case for decision making forums and for ECCR applications.

	Total FY 2015 ECCR Cases	Decision making forum that was addressing the issues when ECCR was initiated:				ECCR Cases or projects completed	ECCR Cases or Projects sponsored ²	Interagency ECCR Cases and Projects	
		Federal agency decision	Administrative proceedings /appeals	Judicial proceedings	Other (specify)			Federal only	Including non federal participants
<i>Context for ECCR Applications:</i>									
Policy development	_____	_____	_____	_____	_____	_____	_____	_____	_____
Planning	_____	_____	_____	_____	_____	_____	_____	_____	_____
Siting and construction	_____	_____	_____	_____	_____	_____	_____	_____	_____
Rulemaking	_____	_____	_____	_____	_____	_____	_____	_____	_____
License and permit issuance	_____	_____	_____	_____	_____	_____	_____	_____	_____
Compliance and enforcement action	_____	_____	_____	_____	_____	_____	_____	_____	_____
Implementation/monitoring agreements	41	_____	_____	_____	41	_____	41 ³	_____	_____
Other (specify): _____	_____	_____	_____	_____	_____	_____	_____	_____	_____
TOTAL	41	_____	_____	_____	41	_____	41	_____	_____
		(the sum of the Decision Making Forums should equal Total FY 2015 ECCR Cases)							

² The DON has 41 facilitated partnering teams, organized in a three-tier structure, which address installation restoration issues. Collectively, the teams work with 1,155 total and 788 active environmental restoration sites.

³ These 45 facilitated partnering teams collaborate to implement environmental restoration regulations. The third-party partnering team facilitators are sponsored by DON.

4. **ECCR Notable Cases:** Briefly describe ECCR cases in the past fiscal year. (Optional)

**Chief of Naval Operations Environmental Award Winners
Recognized**

DON Currents Magazine, 2015 Summer Edition

Fleet Logistics Center San Diego, California (Fuels Department)

“Naval Supply Systems Command (NAVSUP) Fleet Logistics Center (FLC) San Diego supports 86 home-ported ships, submarines, transient vessels and 11 over-the-horizon naval bases and air stations in California and Nevada. During the replacing of their Bulk Fuel Facility (referred to as military construction (MILCON) project no. P-401), the FLC San Diego team was able to divert over 70 percent (nearly 40,000 tons) of the associated construction waste from landfills by onsite reuse. The remaining construction waste was processed by another recycling center off site. The team was awarded the Leadership in Environmental and Engineering Design (LEED) Silver award for the project, which represented the first “green” Navy fuel terminal. Energy consumption declined by 33.2 percent.

The project consolidated the fuel terminal’s expanse by over half from 200 to 75 acres. This lessened the impact on surrounding coastal habitat and wildlife including native canary palm trees. Tainted soil was decontaminated on site and used as backfill to seal off old USTs. This resulted in a \$10 million cost avoidance by eliminating the need to import new soil. The project also replaced a 100-year old operational pier with an innovative new design that meets operational readiness requirements and environmental regulations. The updated pier’s construction includes safeguards for marine life during construction, and structural modifications per California’s seismic regulations, as well as sea level rise predictions.

Over 1.8 million gallons of speculation fuel were sold as a result of fuel oil reclamation efforts, eliminating an estimated \$50 million in waste disposal fees. Despite the challenges of multiple MILCON projects requiring extensive demolition and construction, unit cohesiveness was achieved with **regular partnering sessions between all stakeholders**, allowing NAVSUP FLC San Diego to meet operational and mission demands for all of its customers.”⁴

⁴ http://greenfleet.dodlive.mil/files/2015/07/Sum15_CNO_Environmental_Awards.pdf pg. 57

5. **Non-Third-Party-assisted Collaboration Processes:** Briefly describe other significant uses of environmental collaboration that your agency has undertaken in FY 2015 to anticipate, prevent, better manage, or resolve environmental issues and conflicts that do not include a third-party neutral. *Examples may include interagency MOUs, enhanced public engagement, and structural committees with the capacity to resolve disputes, etc.*

JBHH Joins the Team to Fight Coconut Rhinoceros Beetle

DON Currents Magazine, 2015 Winter Edition

“ALMOST FROM THE moment the first coconut rhinoceros beetles (CRB) were found on a Joint Base Pearl Harbor-Hickam (JBPHH) golf course at the end of 2013, a team of local, state, and federal agencies has been working to remove the invasive insect, which feeds on palm trees. The Navy and Air Force play a major part in this work, particularly as the beetle’s breeding grounds have been

found predominantly on JBPHH. **Cooperation between the military and other government bodies is key to limiting the spread of the CRB** as well designing innovative ways to eliminate it entirely. While it is difficult to say how successful this effort will be, there is no question that collaboration has helped so far to check yet another invasive species in Hawaii.“

The state of Hawaii and the Navy are approaching this challenge as a team,” said Rear Admiral Rick Williams, Commander Navy Region Hawaii and Naval Surface Group Middle Pacific. “We realized the potential effects this pest can have on our installations and on Oahu. So we joined forces quickly and took action immediately with state and other federal agencies. We are providing manpower, resources, expertise and public awareness to stop the spread of the CRB on Oahu.” The ecology of Hawaii is fragile and the introduction of invasive species, whether accidental or otherwise, has been a major problem throughout its history. Many native organisms, having evolved in isolation from the rest of the world, cannot compete with or survive invasive species...(page 36)

.....Navy Region Hawaii, which includes JBPHH, **joined a coordinated effort to combat the CRB as part of a team, along with experts from USDA, Federal Fire Department Hawaii, and the Hawaii Department of Land and Natural Resources.** The team from JBPHH includes military and civilian personnel from both the Navy and the Air Force.

This team has been working to prevent the spread of the CRB and eventually remove it from the island of Oahu completely. Rob Curtiss, HDOA acting Plant Pest Branch control manager, says the work is being shared by all agencies

involved. “HDOA and USDA are operating in a unified command structure, with HDOA as the lead agency. The other agencies are serving a variety of functions (DLNR is acting as project liaison. UH is providing research support. OISC is providing survey support while JBPHH are playing many different roles.)” Curtiss explains. He continues, **“This level of collaboration is unique, but not unprecedented.** This is the first time that I am aware of that HDOA, JBPHH, and USDA have worked so closely to combat an invasive species problem, though there have been tabletop exercises preparing everyone for this exact thing. HDOA also has a multi-agency response to the little fire ant on Oahu and on Maui.”

Naval Facilities Engineering Command (NAVFAC), Hawaii experts have been assisting the rest of the team to remove the CRB by constructing traps to place in areas where the CRB has been observed. There are two main types of traps being used— panel traps and barrel traps. The panel traps, by far the more common type, were purchased and put together by USDA and the Animal and Plant Health Inspection Service (APHIS) and can be seen hanging from large tree limbs. Many of the barrel traps were constructed by Seabees from the Construction Battalion Maintenance Unit (CBMU) 303 Detachment at JBPHH. Barrel traps are larger than the panel traps and placed on military or state land to avoid theft.

Dr. Cory Campora, a natural resources specialist at NAVFAC Hawaii, has been a part of this team from the start.....(pages 38 to 39)

..... On April 4, 2014, the USDA devoted \$2.4 million from the Agricultural Act of 2014 for the CRB program in Hawaii. The Hawaii Invasive Species Council received \$500,000 for Fiscal Year 2015 to support the program. **Additionally, the Navy has contributed \$190,000 for monitoring the CRB. In May 2014, the Navy approved a two million dollar supplement for the CRB program.**

The organizations working together have apparently managed to prevent the beetle from nesting beyond the borders of federal property. The Navy and Air Force have been major players on the CRB team and their contribution has facilitated the state and federal agencies to perform their pest management work, in addition to the manpower and resources the military has provided.

The Navy, Air Force and the state of Hawaii have been working to raise public awareness of the CRB issue since it first arose. New nests are frequently discovered on military land, but the people of Hawaii are encouraged to check their own properties for potential nesting sites.

“We are still in the discovery phase, so it is too early to measure true success,” Curtiss said. “We have placed 1,358 traps, and surveyed 66,311 palm trees. We need to continue to survey and destroy breeding sites, and we need

everyone's help. A breeding site could be as simple as someone's backyard compost pile with grass clippings and other decaying organic material." While the effort is ongoing to prevent the CRB from establishing a permanent presence in Hawaii, the outlook is positive. "We are optimistic that we can eradicate CRB 1 from Hawaii, but it will require all of our effort and expertise," said Curtiss.

New ideas to remove the infestation are being proposed and tested, while those in place have been effective in clearing nests of the later life stages of the beetle. An invasive species is nothing new to the islands of Hawaii, but it is hopeful that the work of the CRB team will result in the complete eradication of the latest pest on the island."⁵ (page 41)

⁵ http://greenfleet.dodlive.mil/files/2015/03/Win15_JBPHH_Coconut_Rhinoceros_Beetle.pdf
pgs. 36, 38 - 39, and 41

6. **Comments and Suggestions re: Reporting:** 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.

The DON ADR Program Office incorporated the 2015 survey questions into an online database, and worked with the Assistant General Counsel (Energy, Installations and Environment) to solicit world-wide responses from throughout the DON.

Please attach any additional information as warranted.

Report due February 15, 2016.

Submit report electronically to: ECRReports@omb.eop.gov

**Basic Principles for Agency Engagement in
Environmental Conflict Resolution and Collaborative Problem Solving**

Informed Commitment	Confirm willingness and availability of appropriate agency leadership and staff at all levels to commit to principles of engagement; ensure commitment to participate in good faith with open mindset to new perspectives
Balanced, Voluntary Representation	Ensure balanced inclusion of affected/concerned interests; all parties should be willing and able to participate and select their own representatives
Group Autonomy	Engage with all participants in developing and governing process; including choice of consensus-based decision rules; seek assistance as needed from impartial facilitator/mediator selected by and accountable to all parties
Informed Process	Seek agreement on how to share, test and apply relevant information (scientific, cultural, technical, etc.) among participants; ensure relevant information is accessible and understandable by all participants
Accountability	Participate in the process directly, fully, and in good faith; be accountable to all participants, as well as agency representatives and the public
Openness	Ensure all participants and public are fully informed in a timely manner of the purpose and objectives of process; communicate agency authorities, requirements and constraints; uphold confidentiality rules and agreements as required for particular proceedings
Timeliness	Ensure timely decisions and outcomes
Implementation	Ensure decisions are implementable consistent with federal law and policy; parties should commit to identify roles and responsibilities necessary to implement agreement; parties should agree in advance on the consequences of a party being unable to provide necessary resources or implement agreement; ensure parties will take steps to implement and obtain resources necessary to agreement