

## FY 2008 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 third year of reporting in accordance with this memo for activities in FY 2008.

The report deadline is January 15, 2009.

We understand that collecting this information may be challenging; however, after compiling previous reports, the departments and agencies can collect this data to the best of their abilities. The 2008 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 2008 ECR reports. You may be contacted for the purpose of clarifying information in your report. For your reference, copies of the analysis of FY 2006 and FY 2007 ECR reports will be available at [www.ecr.gov](http://www.ecr.gov).

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Date this report is being submitted:	January 14, 2009

## Section 1: Capacity and Progress

1. Describe steps taken by your department/agency to build programmatic/institutional capacity for ECR in 2008, including progress made since 2007. 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.]

**National Weather Service (NWS)** – Leadership, project managers and staff are aware of and utilize the ECR process. The use of the ECR depends on existing conditions for new site construction or renovations of existing facilities. For example, there were two instances in FY 2008 where the ECR process was an instrumental tool in resolving conflicting interests and provided 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. The 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 regional locations. An additional member was added to the NWS Safety and Environmental staff in FY 2008, further enhancing the group's environmental capabilities.

Progress and evaluation of current and proposed projects is an agenda item 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.

**NMFS/Office of Protected Resources:** Protected Resources interacts with States and Tribes in the Northwest region in matters such as the Pacific Salmon Recovery Planning, Take Reduction Teams under the Marine Mammal Protection Act (MMPA). Stakeholder meetings have been used (especially with Fishery Management Councils) to develop alternative Reasonable and Prudent Alternatives (RPAs) under Section 7 of the Endangered Species Act (ESA). Facilitators are used at the Take Reduction Team meetings.

**DARRP** – NOAA, through its Damage Assessment, Remediation, and Restoration Program (DARRP), acts as a trustee to restore coastal and marine resources belonging to the public and that are injured by oil spills and hazardous substance releases. DARRP collaborates with co-trustees (Federal, state, and tribal), party(ies) responsible (RP) and the public at large to address restoration of injured or lost natural resources in a process

called natural resource damage assessment (NRDA). NOAA's cooperative assessment agreements encompass many implementation principles identified by the OMB/CEQ guidance.

Since 2007, DARRP continues on a pathway that utilizes ECR principals and encourages industry and trustee collaboration. NOAA's DARRP has created an ECR specific website, <http://www.darrp.noaa.gov/partner/cap/ecr.html>, specific to the Cooperative Assessment Process (CAP). Additionally, a new series of Roundtable Meetings was initiated between State, Federal and Industry representatives and their consultants to discuss settled NRDA cases in the Great Lakes. The purpose of these meetings was to discuss openly what has and has not worked with respect to the cooperative assessment process and to identify and explore future areas of collaboration within the NRDA regulatory framework.

**Office of Ocean and Coastal Resource Management (OCRM)** – OCRM is often called upon to assist with resolving conflicts between state and federal agencies, industry, and tribes regarding the use and conservation of coastal resources. These may be resolved informally through information sharing or more formal mediation processes agreed to by the parties.

**National Marine Sanctuary Program (NMSP)** -- The National Marine Sanctuary Program has a number of areas where ECR has been employed, typically using unassisted collaborative problem solving. Notable areas include the ongoing management plan reviews required under the National Marine Sanctuaries Act, development of the co-trustee partnership with the Department of the Interior and State of Hawaii to implement the Papahānaumokuākea Marine National Monument.

**The 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 (ACA), 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 Sustainable Fisheries /Regions/Science Centers. In working with the Commissions, Sustainable Fisheries /Regions/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.

**NOAA/OAR** does not have an active Environmental Conflict Resolution Program as the OAR mission has not historically shown the need. All OAR Interagency and Other

Special agreements with both federal and non-federal entities are reviewed by the Department of Commerce Office of General Council. Since 2007, each agreement is required to contain the following clause: “Disputes shall be resolved pursuant to applicable provisions of the Business Rules for Intragovernmental Transactions delineated in the Treasury Financial Manual, Vol. 1, Bulletin 2007-03, Section VII (Resolving Intragovernmental Disputes and Major Differences)”.

In addition, During late FY 2006, FY 2007, and 2008, the NOAA National Environmental Policy Act (NEPA) office has been building staff and capacity for better refinement of definitions and reporting capability. The Line Offices of course rely heavily on the guidance provided by the NEPA office.

## 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	N/A
	<i>Check <u>only one</u></i>			
a) Lack of staff expertise to participate in ECR	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
b) Lack of staff availability to engage in ECR	<input checked="" type="checkbox"/>	<input 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"/>	<input type="checkbox"/>
d) Limited or no funds for facilitators and mediators	<input checked="" type="checkbox"/>	<input 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"/>	<input type="checkbox"/>
f) Lack of travel costs for non-federal parties	<input checked="" type="checkbox"/>	<input 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"/>	<input type="checkbox"/>
h) Reluctance of other federal agencies to participate	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
i) Reluctance of other non-federal parties to participate	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
j) Contracting barriers/inefficiencies	<input type="checkbox"/>	<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"/>	<input type="checkbox"/>
l) Lack of personnel incentives	<input type="checkbox"/>	<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"/>	<input type="checkbox"/>
n) Lack of access to qualified mediators and facilitators	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
o) Perception of time and resource intensive nature of ECR	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
p) Uncertainty about whether to engage in ECR	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
q) Uncertainty about the net benefits of ECR	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
r) Other(s) (please specify): _____	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
s) No barriers (please explain): _____	<input type="checkbox"/>	<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 2008 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 <sup>1</sup>	Completed Cases or projects <sup>2</sup>	Total FY 2008 ECR Cases <sup>3</sup>	Decision making forum that was addressing the issues when ECR was initiated:			
				Federal agency decision	Administrative proceedings /appeals	Judicial proceedings	Other (s)
<i>Context for ECR Applications:</i>							
Policy development	_____	_____	_____	_____	_____	_____	_____
Planning	_____	_____	_____	_____	_____	_____	_____
Siting and construction	_____	<u>  2  </u>	<u>  2  </u>	<u>  1  </u>	<u>  1  </u>	_____	_____
Rulemaking	_____	_____	_____	_____	_____	_____	_____
License and permit issuance	_____	_____	_____	_____	_____	_____	_____
Compliance and enforcement action	_____	_____	_____	_____	_____	_____	_____
Implementation/monitoring agreements	_____	_____	_____	_____	_____	_____	_____
Other (specify): _____	_____	_____	_____	_____	_____	_____	_____
<b>TOTAL</b>		<u>  2  </u>	<u>  2  </u>	<u>  1  </u>	<u>  1  </u>		
	(the sum should equal Total FY 2008 ECR Cases)			(the sum of the Decision Making Forums should equal Total FY 2008 ECR Cases)			

4. Is your department/agency using ECR in any of the substantive priority areas (i.e., NEPA, Superfund, land use, etc.) you listed in your FY 2007 ECR Report? Please also list any additional priority areas identified by your department/agency during FY 2008, and indicate if ECR is being used in any of these areas.

<sup>1</sup> A “case in progress” is an ECR case in which neutral third party involvement began prior to or during FY 2008 and did not end during FY 2008.

<sup>2</sup> A “completed case” means that neutral third party involvement in a particular matter ended during FY 2008. 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.

<sup>3</sup> “Cases in progress” and “completed cases” add up to “Total FY2008 ECR Cases”.

<sup>4</sup> 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.

<sup>5</sup> 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).





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 Weather Service** – Economic analyses are conducted for all projects and The Automated Prospectus System (TAPS) is used 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 Marine Fisheries Service (NMFS)** -- 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.

**DARRP** - As early as 1994, NOAA sought to undertake Natural Resource Damage Assessments (NRDAs) cooperatively by: (1) Meeting with stakeholders (e.g., seminars and regional discussions) in order to discuss ideas to encourage greater cooperation in future cases; and (2) Applying environmental conflict resolution and collaborative problem solving principles and mechanisms to pending cases. The Oil Pollution Act NRDA regulations served as the paradigm for more cooperative thinking and practice. To date, improved dialogue has helped move nearly a dozen adversarial cases into more cooperative models.

**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.

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.

In FY2008, OCRM engaged in a major mediation effort between the Navy and the California Coastal Commission (Commission). The Navy and the Commission agreed to OCRM mediation in an attempt to resolve remaining issues related to Navy's Composite Training Unit Exercises (COMPTUEX) and Joint Task Force Exercises (JTFEX) for California, specifically regarding the use of mid-frequency active (MFA) sonar, the Commission's conditional concurrence issued for the COMPTUEX/JTFEX under the CZMA, and litigation between Navy and the Commission on CZMA consistency. Despite substantial efforts by OCRM and the parties, the parties were not able to reach resolution.

**NMSP** -- The NMSP already routinely employs informal methods of environmental conflict resolution as part of its mandated responsibilities to protect and manage national marine sanctuaries, and now the Papahānaumokuākea Marine National Monument. 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 NMSP to take, including such things as issuing guidance, issuing permits, initiating consultation, and/or issuing or amending regulations, including using marine zoning as a management tool. As many management issues cut across a variety of interests, it is essential that the NMSP ensure opportunities for different points of views 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 include 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 NMSP, there is no specific ECR performance measure. However, there are NMSP performance measures that assess components of what ECR strives to achieve. One such measure is assessing the impact of our sanctuary advisory councils: "By 2010, Sanctuary Advisory Councils will provide significant input on 150 priority projects across the NMS."

**Protected Resources-** The Office of Protected Resources always uses an ECR process for Take Reduction Teams and often uses in difficult Endangered Species Act negotiations.



6. Describe other significant efforts your agency has taken in FY 2008 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 Weather Service** – 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.

**Sustainable Fisheries**-Within the Office of Sustainable Fisheries at the NMFS, 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 SF/Regions/Science Centers. In working with the Commissions, SF/Regions/Science Centers participate in the Commission process, which includes discussions and negotiations by all parties. As such, SF has successful methods in place to reach out directly to individual states, other Federal agencies, NGOs, and other groups.

**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.

**Barrow, Alaska – Replacement of existing Weather Service Office (WSO)/Upper Air Inflation Shelter (UAIS) and Employee Housing**

NOAA/National Weather Service (NWS) leases 5.6 acre property from the Department of the Interior (DOI), Bureau of Land Management (BLM). The existing facilities are

1940's and 1950's era buildings, which are outdated. Engineering studies concluded the best engineering and cost effective solution to meet future NOAA/NWS operational needs and requirements in Barrow was to construct new facilities.

The selection and development of a site was complicated by the presence of two endangered duck species, the speckled eider and the Steller's eider.

The ECR process was implemented through negotiations with several Federal and state agencies, and private businesses, which included NOAA/NWS, U.S. Fish and Wildlife Service, Bureau of Land Management, U.S. Army Corps of Engineers (USACE), City of Barrow, Alaska Department of Transportation and Public Facilities, and the Ukpeagvik Inupiat Corporation (UIC). As a result of the successful collaboration and negotiation, a consensus was reached on a new site location. In order to reduce potential negative impacts to populations of the endangered speckled and Steller's eiders, the NOAA/NWS worked with the USFWS to identify mitigation measures and recommendations, to be implemented during construction and operation of the WSO/UAIS at the new site location. Some of these measures and others will further defined in construction and wetlands permits, designed to further minimize environmental impacts at the site. Construction of the new WSO/UAIS is anticipated to begin in Spring 2009.

#### **Sterling, Virginia – Relocation of existing Weather Forecast Office (WFO) at Dulles Airport**

The Federal Aviation Administration (FAA) approached the NOAA/NWS and requested that the existing WFO be relocated to accommodate the construction of a new airport runway, including the required runway safety zone. NOAA's General Counsel informed FAA that the location of the WFO could not be determined solely by FAA, and that the decision was by NOAA was guided by operational and weather radar coverage criteria.

Both the FAA and NOAA/NWS implemented the ECR process by consulting with the Council on Environmental Quality (CEQ). The CEQ coordinates federal environmental efforts and works closely with in the development of environmental policies and initiatives. The CEQ reviewed the case in the context of environmental law and the National Environmental Policy Act (NEPA) and concurred the FAA did not have the authority to determine where the WFO should relocate and this authority belonged to NOAA/NWS.

As a result, NOAA/NWS investigated several potential relocation sites for suitability. After extensive evaluations, NOAA/NWS decided to remain at the existing site, but constructed the new WFO several hundred yards from its existing location to accommodate the new airport runway. The new WFO was opened in September 2008.

**Protected Resources-** In 2008, NMFS worked with the firm CONCUR, Inc., who provided facilitation and agreement-focused mediation for several marine mammal take reduction teams (e.g., Atlantic Large Whale, Pelagic Longline, and Harbor

Porpoise Take Reduction Teams). The take reduction team process is highly structured in terms of goals and deadlines. Specifically, teams must develop consensus measures that reduce bycatch of marine mammals particularly in commercial fisheries. The facilitators efficiently conducted take reduction team meetings and effectively assisted NMFS in meeting statutory and management goals.

In 2008, the Atlantic Large Whale TRT was charged with further reducing serious injury and mortality (bycatch) of North Atlantic right, humpback, and fin whales to levels approaching a zero bycatch rate in various trap/pot and gillnet fisheries from Maine through Florida. The team is composed of a diverse group of stakeholders, including commercial fishermen, environmental conservationists, academics, and federal and state representatives, each with their own views on reducing bycatch. The facilitators worked with subgroups of the team and stakeholders individually to determine their position relative to the issue and how they might be willing to compromise to achieve the goal. The facilitators used this information throughout TRT meetings to shape the deliberations in such a way that all team members were comfortable with the resulting recommendations. Having facilitators manage the process was especially useful because NMFS could participate without seeming to "drive" the process or the outcome, which may have hindered deliberations or limited participation from team members. Facilitation was also key to keeping the team on track in terms of managing limited meeting time and organizing information in an easy to follow format that expedited the process.

Each year, the Office of Protected Resources convenes a meeting of constituents in Anchorage, Alaska, to review the previous Arctic oil and gas exploration activities, and makes recommendations for improved monitoring and mitigation of potential effects of these activities on marine mammals, and the ability of subsistence users in Alaska to harvest these marine mammals. The focus has been primarily on the monitoring of bowhead whales, a principal subsistence species during the summer months in the Chuckchi and eastern Beaufort Seas. However, other marine mammal species used for subsistence (seals, walrus, polar bears) are also discussed. The facilitated meeting brings together whale captains and other subsistence users, representatives from oil and gas companies, the Alaska Eskimo Whaling Commission, researchers conducting seismic and other exploratory work in the Arctic, state and Federal representatives. The objective of the meeting is to agree upon monitoring and mitigation requirements (based on previous years results and records) for upcoming seasons in the Arctic summer that will be incorporated into permits or authorizations that allow these activities to take place, while minimizing impacts on mammals and their use.

**DARRP-** DARRP uses a Cooperative Assessment Process (CAP) web site to serve as a clearing house of information for cooperative assessment frameworks, approaches, and tools: <http://www.darrp.noaa.gov/partner/cap/relate.html>. The website highlights and makes available the methods and materials available to NOAA and its partners to pursue ECR principals.

Relevant materials include information about and from Joint Assessment Teams, guidance documents, summaries of stakeholder workgroup meetings, papers on NRDA

cooperation, workshop and conference proceedings and press clippings highlighting cooperative approaches to NRDA.

Within this web site, an ECR specific web-site has been established

<http://www.darrp.noaa.gov/partner/cap/ecr.html>

**OCRM** -- OCRM relies upon the 30-member Marine Protected Areas Federal Advisory Committee, made up of diverse stakeholder representatives, to raise issues, develop recommendations and resolve conflicts related to planning and implementation of the national system of marine protected areas (MPAs). The Committee advises NOAA and the Department of the Interior on issues related to the national system of MPAs, and through its deliberations, finds common ground among members who represent environmental organizations, commercial and recreational fishermen, state and tribal resource managers, ocean industry and others. In FY2008, the Committee met twice and developed consensus recommendations on incentives for participation in the national system, regional approaches to MPA planning and management, and MPA enforcement and compliance.

**NMSP** – The National Marine Sanctuaries advisory councils have significant input to in priority projects for the sanctuaries in our system. As described above, the target measure of 150 is the cumulative number of significant inputs on priority projects. The individual sanctuaries’ annual numbers are combined for a program-wide annual number, and annual numbers will be cumulatively added until FY2010, which is the last target year. In 2008, the target of 150 by 2010 was surpassed by over 50%, a full two years ahead of the projection.

	<b>Projected Annual Target Measures</b>	<b>Actual Annual Target Measures</b>
2006	Baseline	67
2007	40	149
2008	80	229
2009	120	
2010	150	

Notable in 2008 has been the start of a coordinated effort to engage advisory councils and communities in a NMSP initiative titled “Blue Seas, Green Communities.” The initiative, among other actions, involves working with sanctuaries to engage their advisory councils to identify and help implement projects that will contribute to the greening of sanctuary communities. “Greening” involves adopting or aligning practices related to protecting the natural environment from destruction or pollution. Stated another way, greening is the act of incorporating environmental considerations into our professional and personal activities.

**NOAA Aquaculture Program-** The NOAA Aquaculture Program conducts outreach to stakeholders concerned about the potential environmental impacts of marine aquaculture by providing opportunities for discussions among industry, Non-Governmental Organizations, the research community, government, and the public. In FY2008, the NOAA Aquaculture Program collaborated with USDA to convene a stakeholder panel to discuss issues associated with feeds used in aquaculture production, co-hosted with the NOAA Habitat Program a National Symposium on Shellfish and the Environment, provided grant funding for a workshop on Offshore Aquaculture in the Pacific Northwest, and co-hosted the first annual public stakeholders meeting of the interagency Joint Subcommittee on Aquaculture. Each of these forums provided participants with opportunities to question experts and engage in unfiltered discussions to help resolve controversial issues.





## 8. ECR Case Example

- a. Using the template below, provide a description of an ECR case (preferably completed in FY 2008). 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
<p><b>National Weather Service Barrow WSO/UAIS &amp; Housing</b> – Analyses indicated that building the WSO/UAIS &amp; housing on a new site was more cost efficient and beneficial to the government and NWS than redeveloping the existing site. The NEPA audit identified the presence of two endangered (threatened) duck species. The U.S. Bureau of Land Management preferred that the NWS relocate to a new site, while the U.S. Fish and Wildlife Service preferred that the NWS redevelop the existing site.</p> <p>The ECR process was implemented shortly after the NEPA Draft Environmental Assessment report was issued in November 2007. Comments were accepted on the Draft until December 2007. The NWS began negotiations with the U.S. Fish and Wildlife Service in mid-December, with other federal and state agencies, and private businesses, entering the negotiations in early 2008. Stakeholders involved included NOAA/NWS, U.S. Fish and Wildlife Service, Bureau of Land Management, U.S. Army Corps of Engineers (USACE), City of Barrow, Alaska Department of Transportation and Public Facilities, and the Ukpeagvik Inupiat Corporation (UIC).</p> <p><b>DARRP - Chevron (Port Arthur) Site Cooperative Assessment, Integrated Remediation and Restoration (CAIRR) Project</b></p> <p>NOAA, Department of Commerce, along with other Federal agencies, faces the challenge of balancing competing interests in order to carry out its congressional mandate to protect and restore the public’s trust resources in the oceans and on the coasts of the United States. NOAA regularly undertakes Cooperative Conservation by following principles for engaging in collaborative problem solving and Environmental Conflict Resolution (ECR) in its interactions with stakeholders. NOAA uses these principles in order to avoid litigation, achieve quality and timely outcomes, reduce transaction costs, and engender trust among stakeholders when controversies arise.</p> <p>With NOAA leading the way, our collaborative partnership with EPA, federal and state co-trustees, industry, and local communities successfully integrated Remedial Investigation and Risk Assessment (RI/RA), natural resource restoration planning and project construction into a seamless solution to restore a portion of the Neches River basin.</p> <p>Partners: Texas Commission on Environmental Quality, Texas Parks and Wildlife Department, Texas General Land Office, National Oceanic and Atmospheric Administration, The U.S. Fish and Wildlife Service, USEPA, Cities of Port Arthur and Bridge City, Orange Co.</p>

Drainage District, and Chevron USA.

The Old Gulf Refinery site has been an active refinery since the discovery of oil at ‘Spindletop’ in 1902. NOAA and the Texas Trustees worked to achieve remedial goals at the site to address releases of hazardous substances including aromatic hydrocarbons and metals. Work was initiated in 1993 to control potential sources of contamination and ensure that human and environmental health would be protected from further risk. Simultaneously, the Trustees worked with Chevron to negotiate a cooperative Natural Resource Damage Assessment (NRDA) claim related to the site. NOAA and the Texas Natural Resource Trustees (Texas Commission on Environmental Quality, Texas Parks & Wildlife, Texas General Land Office and US Fish & Wildlife Service) finalized the Restoration Plan/Environmental Assessment (RP/EA) for the Old Gulf Refinery Site, Port Arthur, Texas in 2004.

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

**National Weather Service** The NWS was responsible for the planned renovation and construction activities. The results of the NEPA environmental audit were shared with the interested stakeholders, including perceived environmental impacts. The NWS and other interested parties entered into the negotiations, due to the presence of wetlands in and near the proposed project area. The above agencies voluntarily entered into negotiations and the interests of all stakeholders represented a balanced approach to resolving interagency differences.

The entire process was open and additional stakeholders (City of Barrow, Alaska Department of Transportation and Public Facilities, and the Ukpėagvik Inupiat Corporation (UIC)) joined the negotiations. As a result of stakeholder input, NWS moved forward with construction activities in FY 2008. Certain mitigation measures were implemented to reduce potential impacts on the endangered eider duck population and habitat. Examples of measures implemented included construction during non-migratory and non-nesting seasons (1 October to 31 May), preventing predator bird species (e.g., ravens) from nesting on radar towers, and the installation of bird flight diverters on tower guy wires.

The construction site will be accessible to various stakeholder representatives during the construction phase and once completed, the operational phase of the WFO/U AIS, to verify compliance with mitigation measures and permit conditions.

**DARRP** NOAA’s vision of a collaborative process catalyzed the team’s adoption of the integrated paradigm (CAIRR). The partners’ cooperation led to the rapid completion of remedial actions and restoration construction at the Site. Empowered by the shared fundamental goal “betterment of the environment and natural resources”, the team of diverse partners overcame all

challenges presented and delivered results to the Public. This is an exemplar of the CAIRR partnership approach.

The Trustees and Chevron recognized that it would be possible to use the information gathered in the Remedial Investigation/Feasibility Study (RI/FS) and Risk Assessments to assess natural resource damages due to the similarity of the data requirements. Simultaneous investigations of risk and injury were conducted, effectively combining remediation with restoration planning. The entire team, working collegially, drew from the “communicative planning” approach to complete the RI/FS, Risk Assessments and NRDA. The benefits of this approach were numerous, and included: development of a Conceptual Site Model (CSM) that reflects a common understanding of the site, application of a logical framework for Ecological Risk Assessment (ERA) to NRDA, ensuring that assessment endpoints address trust resources, development of measurement endpoints that support or complement NRDA needs, gathering data cost effectively during the Remedial Investigation, strengthen ERA through input from Trustees and Resource Managers, application of consistent approaches and tools in both processes, determining NRD liability associated with various remedial options (for Chevron as the Potentially Responsible Party), reduction of the overall costs associated with ERA and NRDA, global settlement of liability for hazardous substance release and damages, expedient protection and restoration of public natural resources.

The remedial and restoration actions, i.e. appropriate compensation for all resource losses attributable to Site releases (including due to all remedial actions), were set forth in the universal settlement to resolve both cleanup and NRD liabilities under CERCLA.

The CAIRR paradigm permitted comprehensive coverage of all CERCLA issues associated with the Site, fostered good working relationships among the trustees, Chevron, and the local community, and resulted in nearly universal support for these restoration actions within the local community.

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 Weather Service** Funds were allocated for FY 2008 to begin construction (\$3.6 M). As a result of the negotiations, the conflicts were resolved and construction is scheduled to begin in Spring 2009. If construction had been delayed, the funding would have been impacted. Any delays into the next fiscal year would have increased construction costs.

Additionally, there was an estimated \$6M cost avoidance by building the new housing on Federal property versus building on leased privately owned property. There is another estimated \$200,000 to \$800,000 cost avoidance on rental and lease payments for housing,

should the employee's and their families needed to be relocated during redevelopment of the existing site.

A key beneficial outcome of the case was habitat protection for the endangered duck species. The NOAA/NWS worked with the USFWS to identify mitigation measures and recommendations to be implemented during construction and operation of the WSO/UAIS at the new site location. These measures will reduce potential negative impacts to populations of the endangered speckled and Steller's eiders.

Without all parties participating in and following the principles of the ECR process, it is probable that construction would have been delayed, resulting in increased construction and rental costs, and delays in operational improvements to the WSO/UAIS and housing. Also, mitigation measures to protect the eider duck habitat may not have been as thoroughly evaluated without the expertise and input from the various agencies.

**DARRP** On March 30, 2005, the final response and restoration legal agreements (consent decrees) were 'simultaneously' entered by U. S. District Court for the Eastern District of Texas. Chevron voluntarily began to implement source control, in-situ stabilization and capping of identified wastes, excavation, etc., to address potential site-related human health and ecological risks prior to execution of an Agreed Order with the state of Texas. The final remedy also included waste consolidation; grading and capping within the Site's waste areas; installation of controls to manage and treat storm water run-off from inactive and completed areas; and adjustments to dike elevations and slopes necessary to construct caps, monitor to prevent areas of excessive settlement and protect against future erosion. All on-site corrective action (remedial) construction activities were completed in 2005. Restoration implementation was delayed by complications arising from Hurricane Rita in fall 2005. Construction was initiated on restoration projects in fall of 2006 and completed by 2008.

Chevron constructed and planted at least 85 acres of estuarine marsh and approximately 30 acres of wet prairie and constructed water control structures to enhance nearly 1600 acres of coastal wet prairie near Port Arthur, Texas.

#### Reflections on the lessons learned from the use of ECR

**National Weather Service** The ECR process worked well in the above example. Through open negotiations with the USFWS and other interested stakeholders, the NWS was granted permission to construct a new WFO/UAIS and employee housing on the new sites versus the existing site.

The mitigation measures NWS implemented were reasonable and should provide no undue burden. The negotiations resulted in an estimated cost avoidance of approximately \$1.4 M to \$6 M to the NWS and government.

All parties communicated and interacted in good faith resulting in a positive outcome for the City of Barrow and residents of the North Slope, the NWS, and the endangered eider duck population.

- 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;	<input type="checkbox"/>	X	<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	X	<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	X	<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.

**National Weather Service** Information was collected by contacting NWS 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 January 15, 2009.  
Submit report electronically to: [ECRReports@omb.eop.gov](mailto: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**

<b>Informed Commitment</b>	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
<b>Balanced, Voluntary Representation</b>	Ensure balanced inclusion of affected/concerned interests; all parties should be willing and able to participate and select their own representatives
<b>Group Autonomy</b>	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
<b>Informed Process</b>	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
<b>Accountability</b>	Participate in the process directly, fully, and in good faith; be accountable to all participants, as well as agency representatives and the public
<b>Openness</b>	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
<b>Timeliness</b>	Ensure timely decisions and outcomes
<b>Implementation</b>	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