

FY 2011 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 sixth year of reporting in accordance with this memo for activities in FY 2011.

The report deadline is February 15, 2012.

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 2011 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 2011 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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Section 1: Capacity and Progress

1. Describe steps taken by your department/agency to build programmatic/institutional capacity for ECR in 2011, including progress made since 2010. 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, interact 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.

Habitat Conservation: In FY11, the Office of Habitat Conservation led NOAA's engagement with the White House Council on Environmental Quality and other federal agencies to modernize the Principles and Requirements for Federal Investments in Water Resources (P&R), the policy that governs how agencies evaluate and develop water resources projects. As Federal water planning for major projects such as levee construction, hydropower operation and irrigation withdrawals has been guided by a process that has remained unchanged for over 25 years, the proposed new emphasis on ecosystem conservation and strong policy requirements has been controversial. The Office of Habitat Conservation facilitated many discussions among agency partners to negotiate resolution of policy disagreements as well as consulted with interested non-governmental organizations to gain insight into key issues.

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 Service. In working with the Commissions, NOAA Fisheries Service 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 Office of Aquaculture: The NOAA Aquaculture Program conducts outreach activities to improve the public's understanding of aquaculture and its critical role in support of sustainable fisheries, seafood production, and U.S. coastal communities. In FY2011, policy and science experts from the NOAA Office of Aquaculture participated in outreach events where they discussed aquaculture science and policy issues that are of interest to industry, environmental NGOs, researchers, academia, 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: Since May 2010, the NOAA Fisheries Service Southwest Regional Office has utilized a facilitator to help implement the Klamath Basin Restoration Agreement (KBRA). 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 continues to assist the Region by: (1) organizing and administering Klamath Basin Coordinating Council, Advisory Council, Technical Advisory Team, and Technical Coordinating Committee meetings; (2) preparing detailed work plans and schedules for implementing the KBRA; and (3) coordination and oversight of the KBRA.

Assessment of California Swordfish Fisheries: The NOAA Fisheries Southwest Regional Office hired a facilitator to convene a May 2011, 2-day workshop to review the current state of the California swordfish fisheries. Swordfish are taken by both harpoon and drift gillnets off California. NOAA Fisheries Service has noted a continuing decade-long decline in both fisheries especially the drift gillnets which predominates. The facilitator assisted NOAA

Fisheries Service by structuring the discussion to enlighten constituents of the situation, talk about possible gear and operational changes, and explore strategies for increasing demand for local and sustainable swordfish. The results of the workshop were presented to the Pacific Fishery Management Council for potential action.

Yuba River Conservation Implementation: The NOAA Fisheries Southwest Regional Office employed a facilitator to provide periodic, professional facilitation and conflict resolution services for the Yuba Salmon Forum (Forum). The Forum is led by NOAA Fisheries Service as a stakeholder process to resolve complex water management and species recovery issues in the Yuba River watershed. The purpose of the Forum is to identify, evaluate, recommend, and implement conservation actions in the Yuba River watershed to contribute to recovery goals for ESA-listed fish species in California's Central Valley watersheds. The Yuba watershed features one of the nation's most complex hydropower and water conveyance facilities. The facilitator has helped NOAA Fisheries Service organize and lead this 15-party stakeholder process to seek a balance of natural resource use among the competing interests of many different constituencies.

New England Multispecies Fishery Management Plan: As a continuation of the effort begun in 2009, NOAA Fisheries staff and industry representatives (sector managers) met in August 2011, guided by an in-house facilitator, to further discuss and work out implementation details for a major new fishery management program. The group discussed issues concerning catch monitoring, catch share accounting, and reporting requirements, and worked on resolving real-world problems the sector managers have been encountering since the implementation of this new program in May 2010. NOAA Fisheries continues to work closely with sector managers to resolve the issues raised during this facilitated meeting.

Atlantic Large Whale Take Reduction Plan: The Atlantic Large Whale Take Reduction Team (ALWTRT) held two sub-group meetings during the 2011 fiscal year to discuss the development of a vertical line management strategy aimed at reducing entanglements of large whales in fishing gear. The Northeast Sub-group met in November 2010 and the Southeast/Mid-Atlantic Sub-group met in April 2011. Facilitated follow-up calls for each sub-group were also held in November 2011 to discuss comments received at public hearings held over the summer on the issue and review NOAA Fisheries draft Monitoring Strategy for the ALWTRP. The Monitoring Strategy is intended to evaluate compliance with ALWTRP conservation measures and evaluate the overall effectiveness of the ALWTRP. The ALWTRT is made of staff from NOAA Fisheries, scientific institutions, environmental groups, and partner state and federal organizations, and affected members of the fishing industry. NOAA Fisheries will continue to work through the TRT process to develop management options over the next year, and intends to have a proposed rule published by mid-2013.

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 2009, FY 2010, or FY 2011. 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) review 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, NOAA General Counsel, and other NWS internal experts located in various regional offices.

Progress and evaluation of current and proposed projects is a topic discussed at the NWS 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 (NOS)

In 2011, NOS continued to strengthen its 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 designed and executed as an adaptive process to sustain the good and services that healthy ecosystems produce. NOS' 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 2011, 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.

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

While no formal steps were taken to develop capacity in ECR, NESDIS Management Operations and Analysis Branch (MOAB) took steps in support of the overall concept of ECR. These steps consisted of improving management of, developing policy and procedures for, and improving execution per existing guidance for National Environmental Protection Act (NEPA) procedures and for other areas of environmental compliance. NESDIS' NEPA process includes detailed review by trained staff combined with using experienced people for research and investigation of issues pertaining to NEPA and for writing initial drafts of NEPA documents.

To date, NESDIS has not been approached by outside entities in the manner required to initiate a formal ECR response.

Office of Oceanic and Atmospheric Research (OAR)

OAR serves as NOAA's centralized research organization, supporting all of NOAA and producing preeminent research and technology innovation that advances NOAA's mission. During 2011, OAR conducted long term research and developed technology to make new discoveries that were useful to NOAA's operations, and strengthen technology across NOAA and with partners. Progress has been accomplished toward building programmatic/institutional capacity for ECR in 2011.

OAR has established a new policy that integrates ECR within the requirements and procedures for complying with NEPA under NOAA Administrative Order 216-6. OAR will use adaptive management principles (e.g., Environmental Management Systems) in its decision-making processes including monitoring and mitigation measures. Environmental monitoring will be used in circumstances where long-term impacts may be certain, and measures needed to ensure environmental consideration of subsequent actions. Also OAR coordinates with the strategic planning unit to ensure that environmental reviews are included in their plans and environmental policy objectives are fully incorporated.

OAR's initiatives to build capacity for ECR will require the continued strengthening and integration of enterprise-wide science and technology, stronger partnerships and stakeholder engagement, and effective organizational/administrative functions.

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"/>	X	<input type="checkbox"/>
b) Lack of staff availability to engage in ECR	X	<input type="checkbox"/>	<input type="checkbox"/>
c) Lack of party capacity to engage in ECR	<input type="checkbox"/>	X	<input type="checkbox"/>
d) Limited or no funds for facilitators and mediators	X	<input type="checkbox"/>	<input type="checkbox"/>
e) Lack of travel costs for your own or other federal agency staff	<input type="checkbox"/>	X	<input type="checkbox"/>
f) Lack of travel costs for non-federal parties	X	<input type="checkbox"/>	<input type="checkbox"/>
g) Reluctance of federal decision makers to support or participate	<input type="checkbox"/>	<input type="checkbox"/>	X
h) Reluctance of other federal agencies to participate	<input type="checkbox"/>	X	<input type="checkbox"/>
i) Reluctance of other non-federal parties to participate	<input type="checkbox"/>	X	<input type="checkbox"/>
j) Contracting barriers/inefficiencies	X	<input type="checkbox"/>	<input type="checkbox"/>
k) Lack of resources for staff capacity building	X	<input type="checkbox"/>	<input type="checkbox"/>
l) Lack of personnel incentives	<input type="checkbox"/>	<input type="checkbox"/>	X
m) Lack of budget incentives	X	<input type="checkbox"/>	<input type="checkbox"/>
n) Lack of access to qualified mediators and facilitators	<input type="checkbox"/>	X	<input type="checkbox"/>
o) Perception of time and resource intensive nature of ECR	<input type="checkbox"/>	X	<input type="checkbox"/>
p) Uncertainty about whether to engage in ECR	<input type="checkbox"/>	X	<input type="checkbox"/>
q) Uncertainty about the net benefits of ECR	<input type="checkbox"/>	X	<input type="checkbox"/>
r) Other(s) (please specify): _____	<input 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 2011 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 2011 ECR Cases ³	Decision making forum that was addressing the issues when ECR was initiated:				Of the total FY 2011 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	_____	7	7	7	_____	_____	_____	7	_____
Siting and construction	_____	_____	_____	_____	_____	_____	_____	_____	_____
Rulemaking	_____	1	1	1	_____	_____	_____	1	_____
License and permit issuance	_____	_____	_____	_____	_____	_____	_____	_____	_____
Compliance and enforcement action	_____	_____	_____	_____	_____	_____	_____	_____	_____
Implementation/monitoring agreements	_____	_____	_____	_____	_____	_____	_____	_____	_____
Other (specify): _____	_____	_____	_____	_____	_____	_____	_____	_____	_____
TOTAL		9	9					9	
		(the sum should equal Total FY 2011 ECR Cases)		(the sum of the Decision Making Forums should equal Total FY 2011 ECR Cases)					(the sum should equal Total FY 2011 ECR Cases)

¹ A “case in progress” is an ECR case in which neutral third party involvement began prior to or during FY 2011 and did not end during FY 2011.

² A “completed case” means that neutral third party involvement in a particular matter ended during FY 2011. 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 FY2011 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 2011, 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 2010 can be found in the FY 2010 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
Marine Mammal Take Reduction Planning	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"/>
_____	<input type="checkbox"/>	<input type="checkbox"/>
List of additional priority areas identified by your department/agency in FY 2011	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 analysis is conducted for all projects and frequently utilized. 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 (NOS)

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 FY2011, 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 Oceanic and Atmospheric Research (OAR)

OAR's new environmental policy stipulates the use of adaptive management principles (e. g., Environmental Management Systems) in its decision-making process including monitoring and mitigation measures. Environmental monitoring will be used in circumstances where long-term impacts may be certain, and measures needed to ensure environmental consideration of subsequent actions.

OAR staff is participating in the revision of the NOAA Administrative Order (NAO) 216-6 for NEPA, which encourages collaborative negotiation and conflict resolution that our organization will adhere. OAR's Office Policy, Planning and Evaluation will assist in FY 2012 with the establishment of performance outcome and cost data.

6. Describe other significant efforts your agency has taken in FY 2011 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

Habitat Conservation- Within the Office of Habitat Conservation at the NOAA Fisheries Service, staff engaged in building coalitions of federal and non-federal partners to establish joint habitat conservation goals and priority actions for a priority watershed are receiving professional facilitation training to improve their skills in negotiation and consensus-based decision making.

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.

Interest-based Problem Solving Workshops: NOAA Fisheries personnel are engaged in environmental conflict resolution as part of their normal duties. As a result, in 2011 the Southwest Regional Office hired a consultant to provide Interest-based Problem Solving training to 40 personnel in the Protected Resources Division in an effort to provide experience in how to effectively engage in these situations.

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 Review Procedures for Implementing the National Environmental Policy Act (NEPA)". This revision addresses collaborative negotiation and conflict resolution. Training on the revised procedures will be provided NOAA-wide to NEPA practitioners, project managers, and safety and environmental focal points.

National Ocean Service (NOS)

Office of Ocean and Coastal Resource Management (OCRM); The OCRM continued to use open public and collaborative processes in FY2011 for the development of the Illinois Coastal Management Program (CMP). The draft environmental impact statement and program document was published in FY2011. The final environmental impact statement and program document with formal approval will occur in FY2012. OCRM worked with State of Illinois' Department of Natural Resources in the development of this cooperative and voluntary program.

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

1. NESDIS approach to ECR is to practice excellent risk management from project inception and with daily operations.

2. NESDIS actively enforces its NEPA policy.

An appropriate level of NEPA evaluation is accomplished for all projects, and this allows management to identify potential conflicts early in project planning stages. To date, this proactive approach has prevented conflicts from arising. NESDIS also began developing procedural guidance for NEPA to be used by field offices. The NESDIS NEPA process includes a detailed review by trained staff combined with using experienced people for research and investigation of issues pertaining to NEPA as well as for writing initial drafts of NEPA documents.

3. During our NEPA process, and even with cases where NEPA is not the driver, NESDIS provides information to outside agencies, such as local Indian tribes and local and state governments, near or otherwise associated with our field locations. When this courtesy is extended to these agencies, it develops a good professional relationship.

4. The NESDIS NEPA Coordinator has been an active participant in the ongoing revision of the NOAA Administrative Order 216-6 for implementing NEPA, which addresses collaborative negotiation and conflict resolution.

Office of Oceanic and Atmospheric Research (OAR)

OAR staff coordinates two of the three NOAA oversight boards (NOAA Research Council and NOAA Science Advisory Board) designed to integrate

and review the agency's research and development activities. These boards ensure NOAA research enterprise maximizes its relevance to NOAA Mission Goals to include environmental research and management and resolve research conflicts. Plans have been prepared for environmental presentations and discussion for these board meetings during FY2012.

OAR currently uses a number of formal external research resolution mechanisms through which it engages universities: Cooperative Institutes, partnership labs, the Sea Grant College Program, and targeted extramural grants programs. For further external review, OAR utilizes the expertise of review bodies such as the National Academy of Sciences which the National Academy of Science's members are chosen from academic institutions, national laboratories, industry, and non-governmental organizations on the basis of outstanding professional qualifications.

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 longline 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 longline 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 a proposed rule 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.

National Weather Service (NWS)

There were no notable ECR instances associated with new Construction or facility rehabilitation projects in the past year (FY 2011).

Office of Oceanic and Atmospheric Research (OAR)

There were no notable ECR instances associated with research projects in the past year (FY 2011).

8. ECR Case Example

- a. Using the template below, provide a description of an ECR case (preferably completed in FY 2011). 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></p> <p>Take Reduction Team (TRT) meetings are convened by the NOAA Fisheries Protected Resource Division. TRT meetings are necessary to develop, revise, update and monitor Take Reduction Plans (TRPs) developed under the authority of the Marine Mammal Protection Act (MMPA) to ensure their effectiveness is meeting the MMPA's goal of reducing the serious injury and mortality of marine mammals in commercial fisheries. The MMPA stipulates that, to the maximum extent practicable, TRTs consist of an equitable balance among representatives of resource user interests and nonuser interests. The MMPA also stipulates that TRTs are to develop take reduction plans through consensus. If teams cannot reach consensus, then they submit a report to NOAA Fisheries identifying areas of agreement and disagreement.</p> <p>Since the 1994 amendments to the MMPA established the requirement to convene TRTs, NOAA Fisheries has utilized professional third-party facilitation to develop consensus-based TRPs. Given the diverse composition of TRTs and the often contentious and controversial nature of team deliberation, the facilitation of these multi-party negotiations has proven vital and integral to the accomplishment of the MMPA's mandate to develop consensus-based recommendations. Facilitation helps to ensure a fair and inclusive multi-party negotiation process, leading to increased stakeholder satisfaction with the process and successful team deliberations.</p> <p>Atlantic Large Whale Take Reduction Team (ALWTRT) was established in 1996 to develop a TRP to reduce the incidental serious injury and mortality of right, humpback, fin, and minke whales in the South Atlantic shark gillnet fishery, the Gulf of Maine and Mid-Atlantic lobster trap/pot fishery, the Mid-Atlantic gillnet fishery, and the Gulf of Maine sink gillnet fishery. The current ALWTRT is comprised of approximately 60 individuals. The Atlantic Large Whale Take Reduction Plan (ALWTRP) was published in July 1997, as an interim final rule. A final rule was published in February 1999. Funding for this endeavor is provided through the right whale and other marine mammal funding allocations.</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 ALWTRP was ultimately developed using ECR. The ALWTRT submitted a report to NOAA Fisheries on February 1, 1997, but did not reach consensus on all aspects of the plan. Subsequently, the facilitator, in consultation with the ALWTRT and NOAA Fisheries, developed a final TRP and implementing regulations that incorporated considerable public input and that used specific negotiating techniques. As a result, a final rule was developed and implemented. Since the initial TRP was implemented, NOAA Fisheries has made numerous changes to the plan. In January 2012, NOAA Fisheries convened a meeting of the ALWTRT to discuss strategies for reducing the risk of large whale entanglement with buoy lines from fixed gear fisheries. Although the team did not reach a consensus recommendation, through the efforts of the facilitator NOAA Fisheries was able to reach general consensus on many key areas that will ultimately lead to significant risk reduction measures that will provide valuable protection to endangered right, humpback and fin whales.

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

In 2011, ECR facilitation services were used by NOAA Fisheries as part of the multi-party negotiation on the take reduction planning process for the ALWTRP; including take reduction plan development, implementation, revision and updates as well as logistical and administrative duties incidental to the take reduction planning process. ECR facilitation services greatly assisted NOAA Fisheries in implementing the requirements of the MMPA with respect to marine mammal take reduction teams, and helped reduce the serious injury and bycatch of marine mammals consistent with the requirements of the MMPA.

Reflections on the lessons learned from the use of ECR

National Marine Fisheries Service

By utilizing ECR facilitation services, NOAA Fisheries was able to provide the services required to accomplish the various take reduction planning, program implementation, and tasks described herein, particularly those related to ALWTRP. The facilitator allowed the many parties to articulate their needs in an open constructive forum. The facilitator also helped the parties understand each point of view and identified common interests that lead to agreement.

- 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 NMFS, NOS, NWS, NESDIS and OAR 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, 2012.

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