

FY 2012 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 seventh year of reporting in accordance with this memo for activities in FY 2012.

The report deadline is February 15, 2013.

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 2012 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 2012 ECR reports. You may be contacted for the purpose of clarifying information in your report. For your reference, copies of prior year synthesis reports are available at www.ecr.gov.

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Date this report is being submitted:	February 15, 2013

Section 1: Capacity and Progress

1. Describe steps taken by your department/agency to build programmatic/institutional capacity for ECR in 2012, including progress made since 2011. 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 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 through FY 2012. However, there were two instances in FY 2008 where the ECR process was an instrumental tool in resolving conflicting interests and providing for a positive outcome.

The NWS routinely implements the National Environmental Policy Act (NEPA) evaluation process early in the construction/renovation planning phase to identify any potential issues. NWS consults with other experts, such as the NOAA Safety and Environmental Compliance Office (SECO), NOAA General Counsel, and other NWS internal experts located in various regional offices.

Progress and evaluation of current and proposed projects is 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 Environmental Satellite, Data, and Information Service (NESDIS)

To date, NESDIS has not been approached by outside entities in the manner required to initiate a formal Environmental Conflict Resolution (ECR) response or to develop such capacity.

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

NESDIS interacts with various stakeholders in order to comply with the National Environmental Policy Act (NEPA) and other relevant laws. These interactions guide NESDIS in formulating and implementing NEPA policy and procedures in support of the NOAA mission and are needed to ensure environmental satellite data is obtained and disseminated in support of critical needs for a wide range of federal, state, and local governments, commercial and professional organizations, NGOs, constituent groups, researchers, and other entities around the world.

NESDIS actively enforces its NEPA policy. NESDIS' goal is to accomplish an appropriate level of NEPA evaluation for all projects in an effort to identify potential conflicts early in project planning stages. To date, this proactive approach has prevented conflicts from arising. The NESDIS NEPA process melds detailed reviews by trained staff with using experienced people for research and investigation of issues as well as for writing initial drafts of NEPA documents. NESDIS also issues procedural guidance for NEPA to be used by field offices.

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 to, or otherwise associated with our field locations. This courtesy develops a good professional relationship.

National Ocean Service (NOS)

NOS/National Centers for Coastal Ocean Science (NCCOS) conducts research nationwide on coastal ecosystems. NCCOS works with other federal agencies, states, Tribes, local governments, and coastal managers to provide the scientific information they need to make decisions about their coasts.

While NCCOS does not use ECR directly, we do provide the scientific information that may be used in possible environmental conflict resolution situations. Examples of this include: Harmful algal bloom assays for seafood safety (NW Pacific Tribes), benthic and fauna coastal mapping for offshore wind farm siting (NY), and impact of pollution on fish populations (therefore fish management plans and catch limits).

NOAA Fisheries Service

Office of Aquaculture: The NOAA Aquaculture Program conducts research, regulatory, and outreach activities to inform permitting systems for marine aquaculture and improve the public's understanding of aquaculture and its critical role in support of sustainable fisheries, seafood production, and U.S. coastal communities. In FY2012, policy and science experts from the NOAA Office of Aquaculture convened and participated in workshops and meetings with federal, state, and local regulators and stakeholders to address environmental and other concerns related to sustainable development of marine aquaculture. Of note, NOAA and its partners used expert facilitations to help resolve conflicts related to its National Shellfish Initiative.

Office of Sustainable Fisheries: While Sustainable Fisheries does not use ECR directly, the processes used in development of management plans and associated regulations under the Magnuson-Stevens Fisheries Management and Conservation Act (and within the National Environmental Policy Act process) require interaction and negotiation between Fishery Management Councils, states, constituents, and the NOAA Fisheries Service. In working with the three Interstate Marine Fisheries Commissions (Commissions), NOAA Fisheries Service participates 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, organizations, constituents, and other groups.

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.

Science Centers: Environmental conflict resolution is completed at each Science Center 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.

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.

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.

Section 2: Challenges

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

	Extent of challenge/barrier		
	Major	Minor	Not a challenge/barrier
	Check <u>only</u> one		
a) Lack of staff expertise to participate in ECR	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
b) Lack of staff availability to engage in ECR	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
c) Lack of party capacity to engage in ECR	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
d) Limited or no funds for facilitators and mediators	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
e) Lack of travel costs for your own or other federal agency staff	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
f) Lack of travel costs for non-federal parties	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
g) Reluctance of federal decision makers to support or participate	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
h) Reluctance of other federal agencies to participate	<input type="checkbox"/>	<input 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"/>
j) Contracting barriers/inefficiencies	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
k) Lack of resources for staff capacity building	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
l) Lack of personnel incentives	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
m) Lack of budget incentives	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
n) Lack of access to qualified mediators and facilitators	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
o) Perception of time and resource intensive nature of ECR	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
p) Uncertainty about whether to engage in ECR	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
q) Uncertainty about the net benefits of ECR	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
r) Other(s) (please specify): _____	<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 2012 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 2012 ECR Cases ³	Decision making forum that was addressing the issues when ECR was initiated:				Of the total FY 2012 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	_____	_____	_____	_____	_____	_____	_____	_____	_____
Planning	5	_____	5	5	_____	_____	_____	5	_____
Siting and construction	_____	_____	_____	_____	_____	_____	_____	_____	_____
Rulemaking	_____	_____	_____	_____	_____	_____	_____	_____	_____
License and permit issuance	1	4	5	5	_____	_____	_____	5	_____
Compliance and enforcement action	_____	_____	_____	_____	_____	_____	_____	_____	_____
Implementation/monitoring agreements	_____	4	4	4	_____	_____	_____	4	_____
Other (specify): Host-tenant relationships	_____	1	1	_____	_____	_____	1	1	_____
TOTAL	6	9	15	14	_____	_____	1	15	_____
	(the sum should equal Total FY 2012 ECR Cases)			(the sum of the Decision Making Forums should equal Total FY 2012 ECR Cases)				(the sum should equal Total FY 2012 ECR Cases)	

¹ A “case in progress” is an ECR case in which neutral third party involvement began prior to or during FY 2012 and did not end during FY 2012.

² A “completed case” means that neutral third party involvement in a particular matter ended during FY 2012. 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 FY2012 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 2012, 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 2011 can be found in the FY 2011 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
National Shellfish Initiative	✓	<input type="checkbox"/>
Marine Mammal Take Reduction Team	✓	<input type="checkbox"/>
ECR used along with NEPA process in FY 2008, which involved "Siting & Construction"	✓	<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 2012	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 Weather Service (NWS)

Economic analysis is conducted for all projects and frequently utilizes 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)

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 FY2012, 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.

NOAA Fisheries Service

Overall, the NOAA 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 Marine Mammal Protection Act Take Reduction Teams and often uses the process in difficult Endangered Species Act negotiations.

6. Describe other significant efforts your agency has taken in FY 2012 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 (NWS)

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

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

The NWS Safety and Environmental staff completed an update of the NWS Environmental Management Manual, NWSM 50-1116, in late CY12. The update included revisions to Chapter 14, National Environmental Policy Act, with references to the NOAA NAO 216-6.

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

NESDIS strives to reduce, minimize, or eliminate conflicts by using the NEPA process, involving knowledgeable staff, and inviting participation by stakeholders, such as, local governments, tribes, other federal agencies, and the public. NESDIS routinely implements NEPA reviews early in construction planning phases to research alternatives, correspond with stakeholders, and identify potential issues of concern. So critical is this posture, so strongly does NESDIS believe in the NEPA concept, that for the past year, NESDIS embarked on a voluntary audit of all sites, site operations, and programs with respect to NEPA compliance.

NESDIS regularly consults with NEPA experts in the NOAA Office of Program Planning & Integration, NOAA General Counsel, and with outside entities.

Furthermore, while NESDIS has not used ECR directly, it uses a proactive posture while developing its projects, programs, and site operations for NEPA. This requires interaction and negotiation with various stakeholders mentioned above. Embracing its stakeholders, NESDIS successfully mitigates conflict at

the earliest possible time, thus obviating need for advanced ECR methods.

National Ocean Service (NOS)

NOS/NCCOS continues to provide scientific information which may be relevant in environmental conflict resolution.

NOS/ Office of Ocean and Coastal Resource Management (OCRM) – OCRM completed the approval process of the Illinois Coastal Management Program (CMP). The final environmental impact statement and program document with formal approval occurred FY2012. OCRM worked with State of Illinois' Department of Natural Resources in the development of this cooperative and voluntary program and continues to engage in an open and public manner with all approved CMPs.

NOAA Fisheries Service

NOAA Fisheries Climate Change Workshops: In July 2012, NOAA Fisheries Service held two facilitated workshops focused on climate change and its potential impact on fish and protected species. The workshops brought together experts from NOAA, academia, and other federal and state agencies, with the first workshop exploring methods to effectively integrate climate change science into protected species management activities and the second specifically investigating possible climate change impacts to river herring along the East Coast. The river herring workshop also included opportunities for public contribution. NOAA Fisheries Service will continue to implement where feasible the recommendations from the climate change science workshop on ways utilize the best available climate change data into management decisions. NOAA Fisheries Service will also use the information from the workshop on potential climate impacts on herring and follow up research results in the Endangered Species Act listing determination for river herring (to be published in 2013).

Exploring Strategies and Perspectives in the Pacific Sardine Fishery:

NOAA Fisheries Service hired a facilitator to convene a 2-day workshop in April 2012 to help stakeholders and fishery managers explore considerations for using a Rights-Based Management approach in the Pacific sardine fishery. Pacific sardine have a long history of being harvested off the California coast and, since around 2000, the fishery has expanded off Oregon and Washington. The facilitator assisted NOAA Fisheries Service by structuring the discussion to review industry's issues and objectives around the future of the sardine fishery, both coast-wide and regionally; identify how similar issues and objectives have been addressed using these approaches in other fisheries; explore key elements of these programs and discuss industry's perspectives

on them; and help organize thoughts about next steps. The results of the workshop were presented to the Pacific Fishery Management Council for consideration.

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.

NOAA Fisheries Service

NOAA is working closely with the Gulf of Mexico Fishery Management Council and interested stakeholders to develop the first permitting process for marine aquaculture in federal waters under the Magnuson Stevens Fishery Conservation and Management Act. We have made significant progress working with the Council to develop and revise regulations to implement its Aquaculture Fishery Management Plan.

NOAA Fisheries Atlantic Large Whale Take Reduction Plan

NOAA Fisheries Service convened three meetings of the Atlantic Large Whale Take Reduction Team (Team) during the 2012 fiscal year to discuss the development of a vertical line management strategy aimed at reducing entanglements of large whales in fishing gear. Two of the three meetings utilized Environmental Conflict Resolution facilitation services (one in person and two webinars). The Team 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 develop management options that will be published as a proposed rule (expected mid-2013) with an accompanying Environmental Impact Statement based on the input received from the Team during its 2012 meetings. NOAA Fisheries then intends to convene a series of public hearings for the proposed action at major commercial fishing ports along the Atlantic Coast in late summer 2013.

NESDIS, NWS and NOS

There were no notable ECR achievements associated with projects within NESDIS, NWS and NOS during the past year (FY 2012)

8. ECR Case Example

- a. Using the template below, provide a description of an ECR case (preferably completed in FY 2012). 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 Environmental Satellite, Data, and Information Service (NESDIS)</u> Problem: Retraction by host agency, leading to disagreement between host agency and tenant agency regarding nature and extent of effort required to ensure a state environmental office was informed about tenant NEPA review of proposed actions with respect to Coastal Zone Management.</p> <p>Timeline: June to July 2012.</p>
<p><u>NOAA Fisheries Service</u> Take Reduction Team (TRT) meetings are convened by the NOAA Fisheries Service 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>ECR was utilized for a meeting of the Pelagic Longline Take Reduction Team (PLTRT) in St. Petersburg, FL in August 2012. The PLTRT, comprised of fishermen, academics, NGOs, and industry and government representatives, under section 118 of the Marine Mammal Protection Act (MMPA), developed a take reduction plan (PLTRP), implemented in June 2009, to reduce bycatch of pilot whales and Risso's dolphins in the Atlantic pelagic longline fishery. This goals of the August 2012 meeting were to:</p> <ul style="list-style-type: none">• Update the PLTRT on pilot whale/Risso's dolphin abundance, distribution, and mortality data, as well as genetics; consider implications of trends• Review PLTRT-related research activities• Consider implications of trends in stock structure and abundance, as well as research activities, for Take Reduction Plan (TRP) implementation and fulfillment of MMPA TRP goals; brainstorm potential options for future management measures• Provide feedback on a draft PLTRP monitoring plan• Outline next steps. <p>ECR was utilized throughout the take reduction process and all meetings of the PLTRT, including the August 2012 meeting. Meetings were facilitated under a contract with Concur, Inc. funded by the NOAA Fisheries Take Reduction Program.</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 Environmental Satellite, Data, and Information Service (NESDIS)

Objective review of the situation showed expediency and less effort to provide duplicative documentation to the state environmental office, vice entering a protracted argument with the host agency.

Principle of engagement used: Informed Commitment.

No innovative approaches used.

NOAA Fisheries Service

The take reduction process is based on the principles for engagement in ECR and utilizes all of the principles outlined, including for the development of team membership and in the setting of ground rules, which are reviewed at the beginning of each meeting. Particularly important for this meeting was the informed process principle as the NOAA Fisheries Southeast Fisheries Science Center presented relevant research, stock structure, abundance, and mortality information for consideration by the team. These data were crucial for evaluating the effectiveness of the PLTRP and provided a foundation for the meeting. For the August 2012 meeting of the PLTRT the team generated consensus recommendations for the Agency regarding compliance with the PLTRP, research and research priorities, team membership, and a timeline for reconvening the PLTRT. The NOAA Fisheries PLTRT Coordinator is currently working to ensure that the Key Outcomes from the meeting are met in a timely manner.

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 Environmental Satellite, Data, and Information Service (NESDIS)

Key benefits: Avoidance of any delay for the proposed project, avoidance of excessive administrative competition in stating or presenting agency positions, and maintaining good relations between agencies.

NOAA Fisheries Service

The key beneficial outcomes of this meeting were receiving the input of diverse stakeholder groups on the PLTRP monitoring plan and updated research priorities and the consensus recommendations from the PLTRT on future directions to take for reducing pilot whale and Risso's dolphin bycatch. Outcomes were improved by having balanced, voluntary representation of the stakeholder groups and facilitators (group autonomy principle) to help keep the meeting on track and focused.

Reflections on the lessons learned from the use of ECR

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

By focusing on the end need (in this case, construction of new infrastructure) personnel should set aside personal preferences, even technical advantage, in order to obtain the end need with as little conflict as possible.

NOAA Fisheries Service

ECR principles are critical to the take reduction process. Ensuring balanced representation allowed the appropriate people to come to the table to discuss and develop management measures that could work to reduce bycatch. Openness and Informed Process laid the foundation for the meeting and provided the basis for discussion. Impartial facilitators helped guide the discussion to generate useful outcomes that were agreed to by the whole team.

- 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"/>	<input type="checkbox"/>
Unnecessarily lengthy project and resource planning processes;	<input type="checkbox"/>	✓	<input type="checkbox"/>
Costly delays in implementing needed environmental protection measures;	✓	<input type="checkbox"/>	<input type="checkbox"/>
Foregone public and private investments when decisions are not timely or are appealed;	<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	✓	<input type="checkbox"/>	<input type="checkbox"/>
Deep-seated antagonism and hostility repeatedly reinforced between stakeholders by unattended conflicts.	✓	<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 NOAA 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, 2013.

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