

U.S. Department of Commerce, National Oceanic & Atmospheric Administration

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

Name of Department/Agency responding:	U.S. Department of Commerce, National Oceanic & Atmospheric Administration
Name and Title/Position of person responding:	Frank M. Sprtel, Attorney-Advisor
Division/Office of person responding:	NOAA Office of the General Counsel, Environmental Review & Coordination Section
Contact information (phone/email):	301-628-1641/frank.sprtel@noaa.gov
Date this report is being submitted:	February 20, 2018
Name of ECR Forum Representative	Frank M. Sprtel/Katherine Renshaw

- ECCR Capacity Building Progress:** Describe steps taken by your department or agency to build programmatic and institutional capacity for environmental collaboration and conflict resolution in FY 2017, including progress made since FY 2016. Include any efforts to establish routine procedures for considering ECCR in specific situations or categories of cases. To the extent your organization wishes to report on any efforts to provide institutional support for non-assisted collaboration efforts include it here. If no steps were taken, please indicate why not.

[Please refer to the mechanisms and strategies presented in Section 5 and attachment C of the [OMB-CEQ ECCR Policy Memo](#), including but not restricted to any efforts to a) integrate ECCR objectives into agency mission statements, Government Performance and Results Act goals, and strategic planning; b) assure that your agency's infrastructure supports ECCR; c) invest in support, programs, or

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

trainings; and d) focus on accountable performance and achievement. You are encouraged to attach policy statements, plans and other relevant documents.]

Office of the General Counsel (GC), Environmental Review & Coordination Section (ER&C)

As reported in NOAA's FY16 ECCR report, ER&C launched an initiative to develop a more robust NOAA-wide ECCR program. ER&C surveyed all of NOAA's line offices to determine the extent of NOAA's current use of ECCR. As a result of this survey, ER&C has developed an approach to leverage and support ECCR efforts already underway at NOAA to develop a NOAA-wide ECCR program. For example, ER&C supported and participated in ECCR training offered through the National Marine Fisheries Service (NMFS) and the U.S. Institute for Environmental Conflict Resolution Program to further enhance in-house expertise in ECCR techniques. Furthermore, ER&C partnered with an in-house collaboration program--the NOAA Facilitator's Network—to begin integrating ECCR principles and techniques into on-going collaboration efforts and training within NOAA. ER&C has also added a wealth of ECCR resources on its intranet website for use by all NOAA employees. Finally, ER&C partnered with NMFS to advocate for NMFS's Inter-agency agreement with the U.S. Institute for Environmental Conflict Resolution to provide third-party neutrals to NOAA line offices when such a need arises.

National Ocean Service (NOS)

NOS' Office of Ocean for Coastal Management (OCM) - OCM 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, Native American 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 FY2017, issues were informally resolved through collaborative processes.

NOS's National Centers for Coastal Ocean Science (NCCOS) does not directly conduct third-party neutral assistance during environmental collaboration and environmental conflict resolution. However, NCCOS does conduct research nationwide on coastal ecosystems and coordinates with other Federal agencies, States, Tribes, local governments, and coastal managers to provide the scientific information they need to make decisions about their coasts. This scientific information may be used in potential environmental conflict situations. Some examples of how this science is used includes: Harmful Algal Bloom assays for shellfish safety, Benthic and fauna coastal mapping for offshore wind farm siting; and Impact of pollution on fish populations (therefore fish management plans and catch limits).

Additionally, NOS Program Offices have hired full time staff for environmental compliance (Environmental Compliance Coordinators), developed environmental compliance handbooks, implemented NOS environmental compliance policy, and are routinely developing/participating in environmental compliance training.

National Marine Fisheries Service (NMFS)

Sustainable Fisheries:

While NOAA Sustainable Fisheries work does not use ECCR directly, this program area engages in multiple types of unassisted negotiations as part of the nature of their work and supports these activities institutionally. The processes used to develop fishery management plans and regulations under the Magnuson-Stevens Fishery Conservation and Management Act establishes a mechanism for interaction and negotiation through the eight regional Fishery Management Councils. The Act established the Councils to bring together Federal and state government representatives, commercial and recreational fishing interests, and others constituents to determine how to manage regional fisheries in accordance with the standards set in the Magnuson-Stevens Act. Stakeholders and fishery managers also engage and problem solve through Council Scientific and Statistical Committees and other Advisory Panels. For the Atlantic Highly Migratory Species directly managed by the Secretary of Commerce, NOAA uses a professional facilitator to assist with biannual Advisory Panel meetings. Working with the three Interstate Marine Fisheries Commissions (Commissions), NOAA Fisheries engages directly with state partners through the Commission processes, which includes discussions and negotiations by all parties. Through these mechanisms, Sustainable Fisheries has successful methods in place to reach out directly to individual states, other Federal agencies, organizations, constituents, and other groups.

In addition to its normal actions, NOAA Fisheries initiated a review of all its regulatory actions under Executive Order 13777. This review will require the use of and continue the agency's work related to the goals of environmental collaboration and conflict resolution. Specifically, for Magnuson-Stevens Act-related regulations NOAA Fisheries will work with the Councils using the processes described above to complete this review.

Furthermore, NOAA/NMFS engages with other nations to negotiate agreements on international fisheries management matters through the U.S.'s participation in a wide variety of regional fisheries management organizations and other international agreements. NOAA/NMFS uses such negotiations to develop and implement collaborate solutions both domestically and internationally to manage fish stocks shared by a variety of nations. To help shape the U.S. positions during these negotiations, NOAA/NMFS seeks the input of Federal and state government representatives, commercial and recreational fishing interests, and other constituents.

Aquaculture:

The Aquaculture Program engages in multiple types of unassisted negotiations as part of the nature of their work and supports these activities institutionally. For example, the Program used such processes to publish regulations to implement a fishery management plan for aquaculture in the Gulf of Mexico involved interaction and negotiation between Fishery Management Councils, states, constituents, and the NMFS Service. A similar process was initiated in the Pacific Islands and is expected to be completed in 2018.

In Southern California, NOAA Fisheries has been actively engaged in negotiation with the aquaculture industry, U.S. Navy, U.S. Army Corps of Engineers and others to address issues in siting offshore aquaculture operations in the area. Additionally in the Northwest, NOAA Fisheries is engaged in discussions with the State of Washington and local landowners to address concerns related to siting aquaculture operations in Puget Sound.

Habitat Conservation:

NOAA continues to engage in cooperative partnership for large-scale shellfish habitat restoration in the Chesapeake Bay by providing funding and technical assistance. In FY17, NOAA continued to provide information on large-scale restoration, including research on the use of alternative substrate for large-scale oyster restoration projects. NOAA coordinates the Maryland interagency working group of the Sustainable Fisheries Goal Implementation Team and serves as a commissioner on the Maryland Oyster Advisory Commission. These groups are collaborative efforts between federal and state agencies, along with NGOs and the public, which set restoration goals, develop strategies for achieving them and develop the technical specifications for implementing them. NOAA is working with these groups to help set goals for the Chesapeake Bay and identify a path forward for large scale oyster restoration.

NOAA has also made significant progress with the “Envision the Choptank” effort, which is a group of conservation organizations, government agencies and local citizens working together to find collaborative solutions that support healthy and productive oyster reefs, and restore fishable, swimmable waters to the Choptank River while improving community well-being. The Envision team worked to better understand perceptions, priorities, and challenges for various groups by conducting a series of focus groups with local organizations and surveying over 700 local residents. This information is being used to develop a common Agenda to guide our work into the future.

The NMFS Pacific Islands Regional Office met regularly with the U.S. Marine Corps and the U.S. Navy as a cooperating agency in the proposed Mariana Islands Department of Defense build-up. These meetings allowed coping of

proposed activities and significantly reduced environmental impacts and resolved many potential conflicts through early collaboration.

Protected Resources:

Take Reduction Teams

Protected Resources has contracted with one entity to facilitate all Take Reduction Team meetings to increase national consistency and to reduce time associated with preparing for meetings, thereby reducing costs. NMFS convened 2 facilitated marine mammal take reduction team meetings in 2017. Consensus recommendations were developed at each of the meetings, pursuant to MMPA requirements. For example, in FY2017 the False Killer Whale Take Reduction Team (FKWTRT) convened via webinar and teleconference for updates and discussions concerning the status, implementation, and effectiveness of the False Killer Whale Take Reduction Plan. Neutral facilitators participated in these meetings and assisted in the planning of the FY2018 FKWTRT Meeting. As a second example, neutral facilitators were also used in FY2017 for a collaborative dialogue on how to recover Main Hawaiian Islands insular false killer whales. A range of experts were convened during a webinar and a four day workshop. As a third example, the NMFS Southeast Regional Office convened the Bottlenose Dolphin Take Reduction Team (Team) during 2017. The meeting utilized Environmental Conflict Resolution facilitation services. The facilitated meeting included new information that fisheries-related mortality/serious injury exceeded acceptable levels for bottlenose dolphins and required that the Team develop consensus recommendations to achieve the desired bycatch reduction. The Team developed several consensus recommendations to reduce mortality/serious injury of dolphins in gillnet fisheries in North Carolina. The Team is made up of staff from NOAA Fisheries, scientific institutions, environmental groups, and partner state and federal organizations, and affected segments of the fishing industry. NOAA Fisheries, in consultation with the Team, will develop a proposed rule based on the Team's recommendations.

Columbia River Basin Partnership

The National Marine Fisheries Service (NMFS) West Coast Region (WCR) is involved in a collaborative effort with sovereign and stakeholder partners in the Columbia River Basin in the Pacific Northwest. Over the next five years, NMFS WCR will be making a number of significant fishery management decisions in the Columbia River Basin regarding the Endangered Species Act (ESA) and recovery of ESA-listed species. These decisions must consider the broad suite of regional interests, including tribal treaty and trust responsibilities, sustainable fisheries, and other federal obligations for salmon and steelhead and the water resources in the Basin. It is our goal that these decisions reflect regional views regarding salmon and steelhead recovery in the Basin.

To begin exploring those views, in 2012 the WCR commissioned two neutral, university-based institutions – the Oregon Consensus Program at Portland State University and the William D. Ruckelshaus Center at the University of Washington – to gather the views of Columbia Basin states, tribes, federal agencies, and stakeholders regarding long-term salmon recovery strategies. The Columbia Basin Situation Assessment Report, completed in 2013, captures the range of their perspectives. The many voices reflected in the Assessment Report express considerable support for addressing the complexities of salmon recovery in a more coherent, integrated, and efficient way.

This effort led to the creation of the Columbia Basin Partnership Task Force (CBP Task Force) in 2016 under NMFS' Marine Fisheries Advisory Committee (MAFAC). The CBP Task Force will make recommendations to MAFAC on common goals for long-term recovery of both ESA-listed and non-listed salmon and steelhead in the Columbia Basin. The CBP Task Force will recommend a shared vision for Columbia Basin salmon and steelhead, as well as qualitative and quantitative goals to meet conservation needs and provide harvest opportunities in the future.

As part of MAFAC, the CBP Task Force is governed by the Federal Advisory Committee Act and includes 28 members of regional stakeholders, states and tribes. It is facilitated by a third-party, neutral facilitator. Since being convened in January 2017, the CBP Task Force itself has met five times, while subgroups and work teams have met numerous additional times to develop content to support the process. Five additional meetings are planned for the full CBP Task Force in 2018. The CBP Task Force is scheduled to complete a report with recommendations for long-term goals in January 2019.

Central Valley Salmon Habitat Partnership:

The WCR is also helping lead a collaborative effort to protect, restore, and enhance salmon and steelhead in California's Central Valley. Once recognized as the second most productive region for salmon on the West Coast, the Central Valley has seen drastic declines in native salmon runs and steelhead populations in the past 50 years. Today, Central Valley salmon face many challenges that threaten their continued survival, including blocked access to spawning grounds, a lack of cold water at critical times of year, a dramatic reduction in a variety of habitat types such as wetlands and floodplains, climate change, and predation. This past August, NMFS joined 19 partners representing the spectrum of California fish and water interests to found the Central Valley Salmon Habitat Partnership—a broad-reaching effort to synchronize and support salmon and steelhead habitat recovery efforts in the Central Valley.

From farmers to fisherman, from water agencies to private sector conservation groups and state and federal agencies, the Partnership brings all the major stakeholders to the same table for the first time to identify, prioritize, and

implement actions that will restore habitat to support diverse and abundant salmon and steelhead populations. It is modeled after the Central Valley Joint Venture, a proven and highly successful collaborative effort which was largely responsible for the rebound of migratory bird populations in the Central Valley.

NMFS 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 Statistical 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.

Oceanic and Atmospheric Research (OAR)

NOAA's Office of Oceanic and Atmospheric Research (OAR) approach to ECCR is to integrate the policy and mandates of the National Environmental Policy Act (NEPA) into its planning and decision-making. Through the NEPA process, OAR engages with stakeholders, identifies areas of potential conflict, and evaluates alternative approaches to ensure its actions have the least practicable impacts on ecological systems and natural resources. Historically, OAR actions have not resulted in issues or concerns that would warrant development of an ECCR-specific capacity; however OAR generally embraces a collaborative approach to achieving its mission goals.

OAR frequently partners with other NOAA programs and offices, other federal agencies, and state institutions in pursuit of its mission goals. For example, the Sea Grant Program in OAR is a government-academic partnership with 33 university-based programs. These programs, which conduct research and provide extension, and other outreach and engagement services in every coastal and Great Lakes as well as in Puerto Rico, Guam and the U.S. Virgin Islands, are jointly funded by federal grants and their own state's resources.

These programs enable state and local coastal interests to develop the capacity of resource managers and community leaders to successfully resolve their own environmental conflicts. Resource managers, community leaders, and diverse audiences have obtained insights about issues, the type and magnitude of potential conflicts, appropriate communication and process strategies, and the complexities of mitigation.

To further the application of collaboration in OAR's use of NEPA, the OAR National NEPA Coordinator is participating in ECCR trainings offered by the U.S. Institute for Environmental Conflict Resolution.

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

In NESDIS, ECCR is addressed through fully embracing an approach to environmental planning and compliance that exhibits strong risk management beginning at project inception and with daily operations. For example:

- A NESDIS Environmental Management Program (EMP) goal is to practice good environmental stewardship as part of mission accomplishment. To operationalize this goal, Phase 2 of the NESDIS EMP is currently in development. The EMP will support NESDIS Headquarters staff and Program Offices staff in program planning, project planning, and daily mission related operations.
- Another NESDIS EMP goal is for NESDIS to accomplish reviews in accordance with the National Environmental Policy Act (NEPA), and other relevant laws, early in project planning phases to research alternatives, correspond with stakeholders, and identify potential issues of concern.
- During the NEPA process, NESDIS routinely provides information to outside agencies beyond the minimum required effort. This include groups such as local Indian tribes and local and state governments, near to, or otherwise associated with our various office locations.
- NESDIS strives to educate all staff on the importance of thorough and collaborative NEPA reviews and on issues related to environmental compliance. NESDIS relies on multi-media audits, inspections, and site visits to ensure environmental compliance.
- NESDIS responds quickly to enquiries pertaining to existing practices that have the perception of potentially adversely affecting the environment.

To date, these practices and courtesies helped NESDIS develop good professional relationships with our stakeholders. This has prevented conflicts from arising, and hence the need for having an ECCR capacity within NESDIS.

National Weather Service (NWS)

Leadership, project managers and staff are aware of and utilize the ECCR process. The use of the ECCR is dependent on existing conditions for new site construction or renovations of existing facilities. There were no specific instances to highlight over the past five-year period (FY 2013 through FY 2017).

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 Office of the 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 ECCR 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.

2. **ECCR Investments and Benefits**

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

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

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

Office of the General Counsel, Environmental Review & Coordination Section (ER&C)

As mentioned previously, ER&C conducted a survey of all NOAA line offices to determine whether and the extent to which NOAA is using ECCR. After completing this survey, ER&C determined that it was best to partner with and to support existing ECCR efforts already underway within NOAA in order to strengthen NOAA's use of ECCR. For example, ER&C has partnered with NMFS to support its ECCR efforts by working with the U.S. Institute for Environmental Conflict Resolution to place conflict resolution professionals in areas around NOAA where they are needed. In addition, ER&C is working with the NOAA Facilitator's Network to integrate ECCR techniques and principles into intra-agency collaborative efforts already underway in NOAA. Once this takes place, ER&C will be able to use the Network's process for tracking cases where collaboration services were used. This will also provide metrics for NOAA to use to better ascertain the benefits realized when using ECCR within NOAA.

National Ocean Service (NOS)

NOS' OCM does not provide a separate budget for ECCR activities or hiring neutrals. However, mediation and conflict resolution are important components of Position descriptions for OCM's Senior Policy Analyst/National Interest Team Lead and OCM'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 and Federal Consistency Specialist's time may be spent on conflict resolution activities.

NOS Program Offices have been working on improving relationships across their Line Office and others within NOAA to efficiently analyze proposed projects and how they may potentially impact NOAA Trust Resources.

Also, the science provided by NOS's NCCOS and other Program Offices may result in cost savings for information users and can improve and inform agency environmental and natural resource planning efforts.

National Marine Fisheries Service (NMFS)

Overall, the NMFS participates in ECCR 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 ECCR process for Marine Mammal Protection Act Take Reduction Teams and often uses the process during contentious Endangered Species Act-related negotiations. The MMPA requires that Marine Mammal Take Reduction Plans be developed by consensus. ECCR is critical for achieving that consensus with diverse stakeholders. The consensus recommendations from these teams form the basis for NMFS regulations to reduce marine mammal bycatch in commercial fisheries, thereby achieving the goals of the MMPA.

Oceanic and Atmospheric Research (OAR)

OAR projects have not resulted in conflicts regarding the environment, public lands, or natural resources. Thus, OAR has not needed to use ECCR and has not needed to invest in or develop a dedicated budget for using third-party assistance to resolve conflicts.

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

As described in Question 1, no situations have arisen where NESDIS would require the development of an ECCR capacity. Still, benefits do exist from our proactive, collaborative approach to natural resource management. For example, we've experienced benefits from collaborating with host land tenants to produce mutually acceptable NEPA review documents for NESDIS-sponsored projects. It is difficult to quantify these benefits, but cost avoidance (time and funds) for maintaining positive host-tenant relationships is real, and our stakeholders appreciate the NESDIS commitment to collaborative efforts.

National Weather Service (NWS)

Economic analysis is conducted for projects 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 ECCR process. There have been no instances where the ECCR process was used between FY 2013 through FY 2017.

- b) Please report any (a) quantitative or qualitative investments your agency captured during FY 2017; and (b) quantitative or qualitative results (benefits) you have captured during FY 2017.

Office of the General Counsel, Environmental Review & Coordination Section (ER&C)

None to report.

National Ocean Service (NOS)

None directly related to ECCR. However, NOS has dedicated FTE Environmental Compliance Coordinators in OCM, Office for Coast Survey (OCS), Office of National Geodetic Survey (NGS), Office of National Marine Sanctuaries (ONMS), Center for Operational Oceanographic Products and Services (CO-OPS), Office of Response and Restoration (ORR), and NCCOS. The Integrated Ocean Observing System Program (IOOS) and the NOS Assistant Administrators' Office both have full-time contracted support for environmental compliance.

National Marine Fisheries Service (NMFS)

While it is difficult to quantify investments and results from ECCR activities the agency engaged in during FY 2017, qualitative results are demonstrated by positive outcomes generated through these processes and described in the case study portions of this report. Where a positive outcome involves the eventual cessation of litigation on a particular regulatory matter, benefits are expected to accrue in reduced hours spent by staff, leadership, and counsel on litigation preparation, planning, and record production. ECCR can also be quantified through the number of times it was used during FY 2017. For instance, ECCR was used to help facilitate marine mammal take reduction teams in multiple meetings.

Oceanic and Atmospheric Research (OAR)

None to report.

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

None directly related to ECCR. However, our office sees progress through increased education of staff with respect to NEPA within our Program Offices. This relates to the NESDIS policy and continued outreach efforts described in Question 1, above.

National Weather Service (NWS)

None to report.

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

**Office of the General Counsel, Environmental Review & Coordination
Section (ER&C)**

None to report.

National Ocean Service (NOS)

There have not been any cost/benefit information difficulties encountered.

National Marine Fisheries Service (NMFS)

As it is not possible to determine whether a particular case of ECCR avoided litigation or reduced staff time needed for discussions on a particular issue, it is difficult to quantify those forms of cost savings resulting from ECCR. Rather, the agency addresses the benefits realized from ECCR through qualitative positive outcomes from its use.

In addition, a time lag exists between the time ECCR is used and the time benefits are realized under natural resource management regulatory cycles. The federal rulemaking process and eventual gains to the ecosystem can take several years. However, the agency frequently captures the benefits of effective regulation and management through economic studies and ecosystem valuation efforts.

Oceanic and Atmospheric Research (OAR)

None to report.

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

Costs can be tracked, but it is difficult to quantify benefits, especially intangible ones.

National Weather Service (NWS)

None to report.

3. **ECCR Use:** Describe the level of ECCR use within your department/agency in FY 2017 by completing the table below. [Please refer to the definition of ECCR from the OMB-CEQ memo as presented on page one of this template. An ECCR “case or project” is an instance of neutral third-party involvement to assist parties in a collaborative or conflict resolution process. In order not to double count processes, please select one category per case for decision making forums and for ECCR applications.

	Total FY 2017 ECCR Cases ²	Decision making forum that was addressing the issues when ECCR was initiated:				ECCR Cases or projects completed ³	ECCR Cases or Projects sponsored ⁴	Interagency ECCR Cases and Projects		
		Federal agency decision	Administrative proceedings /appeals	Judicial proceedings	Other (specify)			Federal only	Including non federal participants	
<i>Context for ECCR Applications:</i>										
Policy development	13	12	0	0	0	0	0	0	0	
Planning	1	0	0	0	0	0	0	0	0	
Siting and construction	2	2	0	0	0	0	0	0	0	
Rulemaking	4	4	0	0	0	0	0	0	0	
License and permit issuance	6	5	0	0	0	0	0	0	0	
Compliance and enforcement action	0	0	0	0	0	0	0	0	0	
Implementation/monitoring agreements	1	0	0	0	0	0	0	0	0	
Other (specify): _____	0	0	0	0	0	0	0	0	0	
TOTAL	27	23	0	0	0	0	0	0	0	
		(the sum of the Decision Making Forums should equal Total FY 2017 ECCR Cases)								

² An “ECCR case” is a case in which a third-party neutral was active in a particular matter during FY 2017.

³ A “completed case” means that neutral third party involvement in a particular ECCR case ended during FY 2017. 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.

⁴ Sponsored - to be a sponsor of an ECCR 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 ECCR case.

Note: If you subtract completed ECCR cases from Total FY 2017 cases it should equal total ongoing cases. If you subtract sponsored ECCR cases from Total FY 2017 ECCR cases it should equal total cases in which your agency or department participated but did not sponsor. If you subtract the combined interagency ECCR cases from Total FY 2017 cases it should equal total cases that involved only your agency or department with no other federal agency involvement.

4. ECCR Case Example

Using the template below, provide a description of an ECCR case (preferably completed in FY 2017). 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 ECCR effort was funded
<u>Office of the General Counsel, Environmental Review & Coordination Section (ER&C)</u>
None to report.
<u>National Ocean Service (NOS)</u>
None to report.
<u>National Marine Fisheries Service (NMFS)</u>
Please see the examples noted under Question 1.
<u>Oceanic and Atmospheric Research (OAR)</u>
None to report.
<u>National Environmental Satellite, Data, and Information Service (NESDIS)</u>
None to report.
<u>National Weather Service (NWS)</u>
None to report.
Summary of how the problem or conflict was addressed using ECCR, including details of any innovative approaches to ECCR, and how the principles for engagement in ECCR outlined in the policy memo were used
<u>Office of the General Counsel, Environmental Review & Coordination Section (ER&C)</u>
None to report.
<u>National Ocean Service (NOS)</u>
None to report.

National Marine Fisheries Service (NMFS)

None to report.

Oceanic and Atmospheric Research (OAR)

None to report.

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

None to report.

National Weather Service (NWS)

None to report.

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 ECCR

Office of the General Counsel, Environmental Review & Coordination Section (ER&C)

None to report.

National Ocean Service (NOS)

None to report.

National Marine Fisheries Service (NWS)

None to report.

Oceanic and Atmospheric Research (OAR)

None to report.

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

None to report.

National Weather Service (NWS)

None to report.

Reflections on the lessons learned from the use of ECCR

Office of the General Counsel, Environmental Review & Coordination Section (ER&C)

None to report.

National Ocean Service (NOS)

None to report.

National Marine Fisheries Service (NMFS)

None to report.

Oceanic and Atmospheric Research (OAR)

None to report.

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

In the NESDIS effort to conduct good stewardship of our nation's natural resources, we find that maintaining a proactive, collaborative perspective--which embraces other stakeholders--precludes much conflict. This, in turn, saves much effort while simultaneously building good operational relationships with local stakeholders.

National Weather Service (NWS)

None to report.

5. **Other ECCR Notable Cases:** Briefly describe any other notable ECCR cases in the past fiscal year. (Optional)

Office of the General Counsel, Environmental Review & Coordination Section (ER&C)

None to report.

National Ocean Service (NOS)

None to report.

National Marine Fisheries Service (NMFS)

None to report.

Oceanic and Atmospheric Research (OAR)

None to report.

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

None to report.

National Weather Service (NWS)

None to report.

6. Priority Uses of ECCR:

Please describe your agency's efforts to address priority or emerging areas of conflict and cross-cutting challenges either individually or in coordination with other agencies. For example, consider the following areas: NEPA, ESA, CERCLA, energy development, energy transmission, CWA 404 permitting, tribal consultation, environmental justice, management of ocean resources, infrastructure development, National Historic Preservation Act, other priority areas.

Office of the General Counsel, Environmental Review and Coordination Section (ER&C)

ER&C is working closely with NOAA's Federal Preservation Officer to bolster NOAA's National Historic Preservation Program, including leveraging existing NOAA resources to either avoid or to resolve environmental conflicts involving historic resources both within and external to NOAA. For example, ER&C is working to establish an inter-agency working group comprised of historic preservation professionals in agencies that NOAA routinely interacts with in the ocean environment to share historic information as well as to resolve emerging conflicts involving historic resources.

National Ocean Service (NOS)

NOS utilizes the NEPA evaluation process for scientific research projects and mission activities. This process assists management in identifying and addressing potential conflicts and with prioritizing research needs prior to making a final decision. This process includes an evaluation of applicability compliance requirements and consultation with regulatory authorities. For example ESA, MMPA, National Marine Sanctuary Act (NMSA), and MSA. Additionally, NOS holds monthly environmental

compliance workgroup meetings and attends cross-line office meeting as needed.

National Marine Fisheries Service (NMFS)

NMFS engages in multiple types of negotiations as part of our regulatory program under the Magnuson-Stevens Act. Our collaboration with the regional Fishery Management Councils is a key part of our work in the conservation and management of the nation's marine resources. The agency frequently interacts with the Councils (who are composed of representatives of states, the commercial and recreational fishing sectors, and environmental, academic, and federal government interests) and conducts public hearings with stakeholders.

In addition, the agency frequently addresses cross-cutting challenges -- for instance in the offshore energy development arena -- by acting as a cooperating agency for the development of Environmental Impact Statements and through consistent staff and leadership meetings on issues of concern.

Oceanic and Atmospheric Research (OAR)

There are no priority or emerging areas of conflict or cross-cutting challenges for OAR projects or programs. OAR uses the NEPA process to proactively identify potential conflicts, and integrates compliance with other environmental laws into that process.

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

National Historic Preservation Act (NHPA):

In 2004, the Alaska State Historic Preservation Office (AK SHPO) designated our Fairbanks Command Data Acquisition Station (FCDAS) as eligible to be a historic district. NOAA and NESDIS offices had no documentation on file showing how this determination came about, save for one email from a NESDIS employee voicing opposition to the determination.

The NESDIS Facility Management Branch (FMB) is responsible for asset management on behalf of FCDAS. The FMP had concerns with the determination, because the determination threatened to stall progress on already-funded asset management activities.

These activities included the demolition of two, small, dilapidated facilities. In order to proceed with the demolitions, approval from the AK SHPO was needed. The FMB evaluated pros, cons, and timelines for our potential actions, reducing the decision into three options:

1. Request a re-evaluation of the determination to get the eligibility determination removed, though this might be viewed negatively by the AK SHPO.
2. Conduct Section 106 actions to obtain AK SHPO approval of demolishing the two buildings, and reconsider the determination of the entire site at a later date.
3. Conduct Section 106 actions of the entire site.

As stated in Question 1, above, certain practices and courtesies have helped NESDIS develop good professional relationships with our stakeholders, including the AK SHPO, which has prevented conflicts from arising. During the evaluation of the above options, in FY17 the FMB contracted a NHPA consultant to accomplish Section 106 actions for the two small buildings.

The initial feedback from the NHPA consultant is the AK SHPO has approved our draft Section 106 compliance plan. Through our collaborative working relationship with AK SHPO, we will continue with our planned asset management plan without any mission impacts.

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 completed an update of the NWS Environmental Management Manual, NWSM 50-1116, and dated May 23, 2016. The update included review of Procedure 14, *National Environmental Protection Act*, with references to the NOAA NAO 216-6A.

The NWS Safety and Environmental staff was also involved in the revisions to NAO 216-6A, development of the Companion Manual, and revisions to the Categorical Exclusions (CE). The NWS NEPA Coordinator regularly participates in the Line Office (LO) NEPA Coordinators meetings, which provides a mechanism for the LO to stay informed of emerging NEPA issues and the agency's strategy for addressing compliance.

7. **Non-Third-Party-assisted Collaboration Processes:** Briefly describe other significant uses of environmental collaboration that your agency has undertaken in FY 2017 to anticipate, prevent, better manage, or resolve environmental issues and conflicts that do not include a third-party neutral. *Examples may include interagency MOUs, enhanced public engagement, and structural committees with the capacity to resolve disputes, etc.*

Office of the General Counsel, Environmental Review and Coordination Section (ER&C)

See answer to question #6.

National Ocean Service (NOS)

OCM initiated the use of programmatic agreements for Endangered Species Act consultations at two national estuarine research reserves to improve the consultation timelines for long-term programs, including research and monitoring program conducted at all reserves. Written concurrence is expected in 2018.

NOS continued to collaborate on environmental compliance across its Program Offices. For example, CO-OPS has continued partnerships with other Federal agencies on data standards and water level station requirements (USGS/USACE/ NPS) as outlined in collaborative Agreements.

Additionally, NCCOS routinely consults and collaborates with coastal decision makers, scientists, and government agencies regarding their scientific information needs. This interaction includes MOUs and public engagement and leads to a better understanding of the scientific information provided by NCCOS.

National Marine Fisheries Service (NMFS)

NMFS Habitat Conservation:

The Damage Assessment, Remediation, and Restoration Program (DARRP) engages in multiple types of negotiations without a formal facilitator. Post disaster, trustee implementation groups come together to assess damages and create restoration plans, which are shared with the public for comment. This is a multi-stakeholder process, with trustees composed of other Federal agencies, tribes, and state governments who have authority over the damaged resources. Benefits of this process include enhanced restoration planning, assurance that damages are fully compensated, and public transparency.

Oceanic and Atmospheric Research (OAR)

None to report.

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

NESDIS actively participates in NOAA policy and program improvement efforts, and maintains a high level of communications with NEPA counterparts of other Line Offices within NOAA. This collaboration strengthens mutual knowledge and smooths variances in application among our Line Office NEPA colleagues. It fosters communication and cooperation with the NOAA NEPA Office.

National Weather Service (NWS)

None to report.

8. **Comments and Suggestions re: Reporting:** Please comment on any difficulties you encountered in collecting these data and if and how you overcame them. Please provide suggestions for improving these questions in the future.

Office of the General Counsel, Environmental Review & Coordination Section (ER&C)

None to report.

National Ocean Service (NOS)

None to report. NOS Program Office Environmental Compliance Coordinators provided input for the report.

National Marine Fisheries Service (NMFS)

NMFS finds it challenging to fill out this reporting document. As noted earlier, many of the uses and results of ECCR are difficult to quantify, and as such, a comprehensive analysis of the number of instances and costs of using ECCR is not possible. Rather than compiling this report, it would be helpful if OMB to pursued other methods of encouraging use of ECCR across the federal government. For example, distribution of resources on use of ECCR, connections to ECCR third-party neutral providers, or trainings on when and how to use ECCR, would be valuable.

Oceanic and Atmospheric Research (OAR)

None to report.

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

None to report.

National Weather Service (NWS)

None to report. Information was collected by contacting NWS project managers, Regional and Staff Office Environmental/Safety Coordinators, and review of project files.

Please attach any additional information as warranted.

Report due February 23, 2018.

Submit report electronically to: owen@udall.gov

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

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