

ENVIRONMENTAL COLLABORATION AND CONFLICT RESOLUTION (ECCR) IN THE FEDERAL GOVERNMENT

Synthesis of FY 2015 Reports

Submitted by Federal Departments and Agencies
Pursuant to the OMB-CEQ Policy Memorandum on ECCR of September 7, 2012

This report provides an overview and synopsis of federal department and agency use of environmental collaboration and conflict resolution (ECCR) for FY 2015. ECCR is defined as third-party assisted environmental collaboration and environmental conflict resolution used to resolve problems and conflicts that arise in the context of environmental, public lands, or natural resource issues, including matters related to energy, transportation, and water and land management. In FY 2015, agencies reported 512 active ECCR efforts, of which over half were completed and the remainder continued into FY 2016. Analysis of the FY 2015 agency reports shows that the Environmental Protection Agency (EPA), the Department of Defense (DoD), the Department of the Interior (DOI), and the Federal Energy Regulatory Commission (FERC) continue to have the highest-volume involvement in ECCR since reporting began in FY 2007.

Background

On September 7, 2012, the Office of Management and Budget (OMB) and the President's Council on Environmental Quality (CEQ) issued a joint policy memorandum on environmental collaboration and conflict resolution.¹ Building on 2005 OMB-CEQ guidance, the 2012 memo provides all executive branch agencies with the following direction:

(I)increase the appropriate and effective use of third-party assisted environmental collaboration as well as environmental conflict resolution to resolve problems and conflicts that arise in the context of environmental, public lands, or natural resource issues, including matters related to energy, transportation, and water and land management.²

Reporting Requirement and FY 2015 Participation

The 2012 joint policy memorandum on ECCR requires federal departments and agencies to report annually to OMB and CEQ on progress made each year in implementing the ECCR policy direction to increase the effective use and institutional capacity for ECCR. Specifically, Section 4(g) of the 2012 memorandum establishes the following reporting requirement:

Federal departments and agencies shall report at least every year to the Director of OMB and the Chair of CEQ on their use of Environmental Collaboration and Conflict Resolution for these purposes, and on the estimated cost savings and benefits realized through third-party assisted negotiation, mediation, or other processes designed to help parties achieve agreement. Costs savings and benefits realized should be reported using quantitative data to the extent possible. Departments and agencies are encouraged to work toward systematic collection of relevant information that can be useful in on-going information exchange across departments and agencies as fostered by Section 4(e).

¹ The 2012 memorandum is available online here: http://www.udall.gov/documents/Institute/OMB_CEQ_Memorandum_2012.pdf.

² Office of Management and Budget, & Council on Environmental Quality (2012). *Memorandum on Environmental Collaboration and Conflict Resolution*. Washington, D.C., p. 1.

The following departments and agencies submitted FY 2015 reports:

- Department of Agriculture
 - U.S. Forest Service
- Department of Defense (DoD)
 - Department of the Navy
 - U.S. Air Force
 - U.S. Army
 - U.S. Army Corps of Engineers (USACE)
 - National Guard Bureau
- Department of Energy (DOE)
- Department of the Interior (DOI)
- Department of Transportation (DOT)
- Federal Energy Regulatory Commission (FERC)
- National Oceanic and Atmospheric Administration (NOAA)
- U.S. Environmental Protection Agency (EPA)
- Udall Foundation's U.S. Institute for Environmental Conflict Resolution (USIECR)
- U.S. Nuclear Regulatory Commission (NRC)
- Department of Veterans Affairs (VA)

This synthesis summarizes the information in the FY 2015 reports. Individual department and agency reports are posted online at <http://www.udall.gov/OurPrograms/Institute/ECRReport.aspx>.

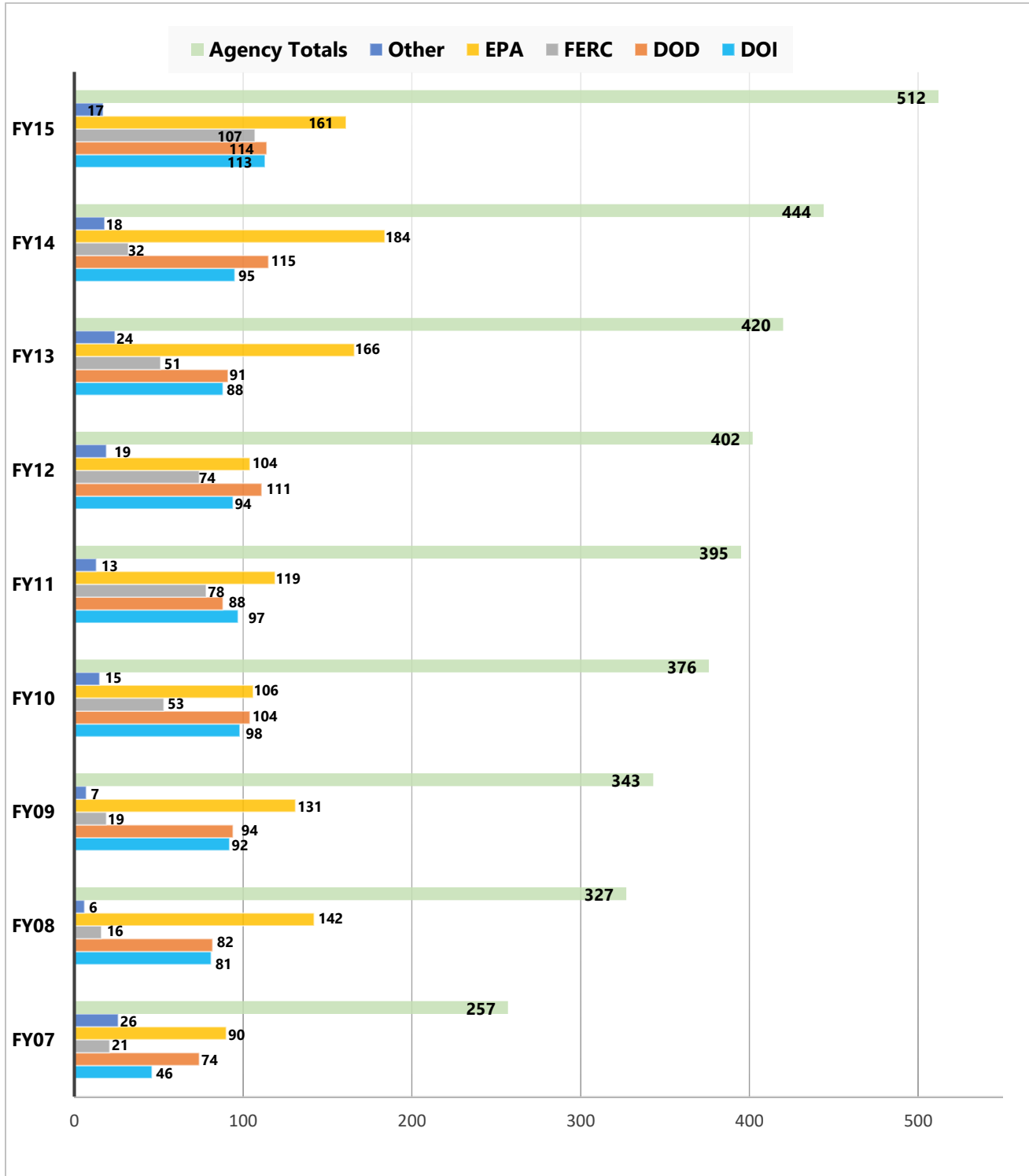
ECCR Sponsorship and Participation

In FY 2015, federal departments and agencies reported 512 ECCR cases in which they either directly sponsored an ECCR process or participated in a process sponsored or convened by another agency or entity. Of the 512 active cases, 293 (57%) were completed, and the remaining projects continued into FY 2016. EPA, DoD, DOI, and FERC have consistently reported the highest-volume involvement in ECCR since case reporting began in FY 2007, and this trend continued in FY 2015 (Figure 1).

Overall, reported federal government involvement in ECCR has been increasing over time. Between FY 2008 and FY 2015, a steady increase in the total of reported ECCR cases occurred year-to-year, ranging from 2%-15%. At the same time, agencies have reported increased efforts to build ECCR capacity within their own agencies, within other federal agencies, or among stakeholders. This increased capacity appears to allow more frequent resolution of challenging situations before they rise to a level where a neutral third party would be useful.

Federal departments and agencies also reported on the context in which ECCR was used most commonly in FY 2015 and/or provided narratives stating the area or topic in which ECCR was used. A list combining these two information sources appears in Figure 2.

Figure 1. Distribution of ECCR cases in the federal government, FY 2007 to FY 2015³



³ Agency totals include multi-agency cases that are reported individually by each of the departments and agencies involved, thus cases may be double-counted. USIECR's ECCR cases are not included as they are assumed to be reported by other federal departments and agencies.

Figure 2. Five most commonly cited contexts for ECCR use, in both assisted and unassisted collaborative activities in FY 2015 (shown with example topics)

Acts & Laws	Natural Resource Planning & Management	Regulatory & Administrative Rule Actions	Consultation & Coordination	Broad Environmental & Social Issues
<ul style="list-style-type: none"> •National Environmental Policy Act (NEPA) •Endangered Species Act (ESA) •Clean Water Act (CWA) •National Historic Preservation Act (NHPA) •Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) •Magnuson-Stevens Act (MSA) •National Forest Management Act 	<ul style="list-style-type: none"> •Forest Planning •Large Landscape Conservation and Collaboration •Regional Infrastructure Development •Water Resources (e.g., groundwater permitting; water releases, quality, and security; flood risk assessment and recovery) 	<ul style="list-style-type: none"> •Energy Development and Transmission, including Renewable Energy; Offshore Development •Negotiated Rulemaking •Compliance and Enforcement Actions •Permitting Review 	<ul style="list-style-type: none"> •Tribal Consultation •Joint Fact-Finding in Planning and Development •Multi-Agency, Multi-Scope Issues •Multi-Agency Programmatic Agreements •Stakeholder & Community Engagement •Public Involvement 	<ul style="list-style-type: none"> •Environmental Justice •Climate Change •Water Security •Energy Development

Contexts for ECCR

Federal departments and agencies carry out many activities in support of their missions. These activities include planning; rulemaking; policy development; licensing and permit issuance; siting and construction; compliance and enforcement; and implementation and monitoring. Some examples of specific agency activities in which ECCR was applied frequently include the following:

- site remediation, decontamination, and decommissioning under CERCLA and the Resource Conservation and Recovery Act [RCRA] (DOE);
- statutory requirements under CWA, NEPA, and ESA, including water resource protection (USACE);
- planning and implementation under NEPA, resource protection under ESA, and landscape-scale conservation strategies (DOI);
- expanded use of programmatic agreements with resource agencies (DOT);
- marine resource management and offshore energy development (NOAA);
- natural gas and hydroelectric licensing and permitting (FERC);

- licensing and rulemaking (NRC);
- environmental justice and Superfund site cleanup and remediation (EPA);
- public involvement and community engagement to increase communication and reduce conflict (Army);
- identifying emerging areas of conflict and use of technology (Navy);
- public outreach compliant with NEPA for construction and other projects that have an impact on the environment (VA);
- increased interagency cooperation and collaboration (multiple); and
- expanded efforts in tribal consultation and engagement (multiple).

Table 1 shows specific contexts and agency decision-making forums in which federal departments and agencies used ECCR as a tool in FY 2015.

Table 1. FY 2015 contexts and agency decision-making forums for ECCR application

Contexts for ECCR Applications	Number and percent of cases by category	Agency Decision-Making Forums			
		Federal Agency Decision	Admin. Proceeding/ Appeal	Judicial Proceeding	Other
Planning	162 (32%)	69		2	91
Siting and construction	133 (26%)	98	2	32	1
Compliance and enforcement	87 (17%)	40	33	11	3
Implementation and monitoring	53 (10%)	6	1	1	45
Other	33 (6%)	9		3	21
License and permit issuance	18 (4%)	10	7		1
Policy development	17 (3%)	12			5
Rulemaking	9 (2%)	6		3	
Total	512 (100%)	250	43	52	167

Investment in ECCR

Departments and agencies have invested in ECCR and reinforced those investments with ECCR-related policy changes. Many of these investments build overall ECCR capacity by leveraging federal dollars and employees with non-federal and non-governmental partnerships, including those with American Indian Tribes; local communities; states; academic institutions; and non-governmental, private-sector individuals and organizations. For FY 2015, departments and agencies reported the following investments in ECCR:

- **ECCR policy improvement** through
 - integrating and institutionalizing ECCR principles into department and agency mission statements, operating principles, performance goals, strategic planning, and policy implementation;
 - emphasizing agency leaderships' commitment to and support of ECCR use;
 - continuing to develop internal agency ECCR support mechanisms and guidance, drawing on lessons learned from past ECCR use;

- incorporating procedures for the appropriate application of ECCR into department and agency regulations;
- dedicating specific budget allocations for ECCR services, including contracting with third-party ECCR professionals; and
- routinely encouraging parties to consider ECCR as an alternative to traditional dispute resolution mechanisms (e.g., hearings, appeals, litigation).
- **ECCR personnel and staff capacity** through
 - supporting ECCR through the creation of positions with specific mandates to promote ECCR principles, either exclusively or as part of their duties;
 - establishing programs to support public involvement and collaborative activities;
 - encouraging and supporting developmental assignments; and
 - appointing ECCR coordinators with collateral duty positions in the field.
- **Inter-agency and intra-agency ECCR coordination** through
 - fostering inter-agency ECCR partnerships, agreements, and communities of practice;
 - funding inter-agency liaison positions to facilitate consultation and communication; and
 - developing ECCR leadership and networks within departments and agencies, including peer-to-peer learning opportunities, webinars, and regular calls to identify ECCR needs.
- **ECCR skill-building efforts** through
 - investing in federal ECCR personnel through training and professional development;
 - offering in-house and external ECCR training and capacity building in the form of classes, workshops, and “clinics” in subject areas including conflict assessment, facilitation, negotiation, conflict management, collaboration, communication, public involvement, collaborative leadership, and dealing with difficult people;
 - institutionalizing ECCR education through integration into regular agency curricula, certification programs, and career development training; and
 - expanding ECCR capacity throughout agencies, including districts and regional offices.
- **ECCR capacity building and leveraging efforts** through
 - expanding and promoting rosters and IDIQ contracts for non-governmental ECCR professionals (DOI, EPA, DOT, USIECR);
 - investing in federal in-house rosters of facilitators and ECCR professionals;
 - supporting collaborative decision making with technical and scientific information and expertise;
 - developing local, state, regional, and national teams promoting collaborative planning to anticipate problems and identify alternative solutions early so as to reduce the likelihood and severity of environmental conflict (USACE); and
 - investing in internal programs and assistance centers that support ECCR and deliver a suite of ECCR-related services, including consultation, conflict assessment, process design, mediation, facilitation, training, centralized procurement of contracted ECCR services, and support for communities of practice. The following programs and centers are examples of these investments:
 - Public Involvement Specialists Program (USACE-CPCX);
 - Collaboration and Public Participation Community of Practice (USACE);
 - Tribal Nations Technical Center of Expertise (USACE-TNTCX);
 - Conflict Prevention and Resolution Center (EPA);
 - Collaborative Action and Dispute Resolution (DOI & BLM); and
 - Dispute Resolution Division (FERC).

- **ECCR partnership support** through
 - committing in an ongoing way to developing effective working relationships with federal, local, tribal, and community partners;
 - building capacity and incentives for stakeholders and partners to effectively engage in ECCR, including through outreach to stakeholders, joint training opportunities, assistance in acquiring third-party neutral services, and partner recognition programs;
 - building ECCR capacity among international partners (EPA); and
 - launching a stakeholder helpline service to offer early response to dispute-related calls (FERC).
- **Evaluation of ECCR processes** through
 - developing and improving methods and metrics for tracking and evaluating the use of ECCR processes; and
 - documenting the performance of ECCR processes through case studies and lessons learned.

Benefits of ECCR

In FY 2015, the majority of departments and agencies reported on the benefits of ECCR based on observations and recorded qualitative outcomes, while a select number of agencies tracked this data through formal methods that included both quantitative and qualitative data. Those agencies that tracked benefits quantitatively (EPA, FERC) reported that ECCR processes saved staff time and travel costs compared to alternative processes, such as litigation and unassisted negotiation.

In the cases it surveyed, EPA's Conflict Prevention and Resolution Center (CPRC) reported 44% fewer lead staff hours per case, or a median of 30 work hours for EPA lead staff during active periods of the process versus a median of 56 hours for likely comparison processes. CPRC's results also indicate a reduction in time to reach a decision, with ECCR cases lasting a median of 8 weeks compared to a median of 15 weeks for likely alternative processes. Survey respondents indicated their belief that ECCR processes were significantly or somewhat less expensive than likely alternative processes would have been. Most respondents to FERC's survey question on the costs of ECCR also indicated that ECCR processes saved money, with 40% estimating the savings at \$500,000 or more.

The suite of qualitative ECCR benefits identified by departments and agencies in FY 2015 included the following:

- **better relationships:** increased trust and improved long-term working relationships among agencies and stakeholders;
- **more efficient operations:** efficiencies in process and reduction in process time in activity areas such as planning, permitting, licensing, and remediation;
- **resource savings:** resource savings from better coordination, streamlined processes, and more timely dispute resolution, particularly in the area of enforcement actions;
- **increased communication:** more frequent, effective communication between multiple government entities and with the public;
- **better understanding:** improved communication of all parties' interests, goals, and concerns, resulting in more focused outcomes, better understanding of issues and roles, and narrowing of the range of disagreement;

- **enhanced skills and planning:** increased ECCR skills among staff, such as insights into the decision-making process and the needs of stakeholders, leading to improved planning for future processes; and
- **better and more durable outcomes:** more creative and durable solutions to disagreements, even those that are long-term or entrenched; improvements in environmental and socio-economic conditions; improved community resilience; advancement of the agency’s mission; and increased stakeholder buy-in and ownership of solutions.

In addition to identifying general categories of ECCR benefits, the departments and agencies provided examples of cases and projects highlighting the benefits of ECCR. A selection of these cases is reported in Table 2.

Table 2. Examples of FY 2015 ECCR projects

Waste Reduction for the First “Green” Navy Fuel Terminal (Department of the Navy)

When the Department of the Navy’s Fleet Logistics Center in San Diego replaced its Bulk Fuel Facility, the Department found that the use of ECCR helped it generate less waste as well as reduce energy consumption. Regular partnering sessions between all stakeholders enabled the Department to successfully meet its mission and consolidate the fuel terminal’s expanse by over half. This lessened the impact on surrounding coastal habitat and wildlife, including native canary palm trees. Tainted soil was decontaminated onsite and used as backfill, resulting in a \$10 million cost avoidance by eliminating the need to import new soil. The project also replaced a one hundred-year-old operational pier with an innovative new design that met operational readiness requirements and environmental regulations. The updated pier’s construction included safeguards for marine life during construction and structural modifications per California’s seismic regulations, as well as provisions to accommodate sea level rise predictions. Partnering helped the Navy achieve its goals while meeting the needs of multiple stakeholders and various interests.

National Historic Preservation Act (NHPA) Section 106 Consultation for Aerial Electric Transmission Lines (USACE)

The Norfolk District is reviewing a regulatory action requested by Dominion Virginia Power to place an aerial electric transmission line across the James River east of Jamestown Island. The line, if constructed as proposed, would be visible from several important cultural resources, including Jamestown Island, Colonial Parkway, and Carters Grove, a national historic landmark. Enlisting a third party facilitator helped the parties move forward in a productive and cooperative way. By inviting stakeholders to engage in the process, USACE better understands the interests of the various stakeholders, creating better relationships and allowing the process to move forward in a way that meets multiple needs.

Mediation Regarding Cleanup of a Contaminated Waste Site (DOE)

In a dispute concerning a contaminated waste site, both internal and external neutrals spoke with the agencies involved and found that both sides wanted to avoid further litigation and litigation risk. ECCR techniques helped move them past positioning and rhetoric to achieve a successful agreement. The matter was resolved sooner than would have been possible if ECCR was not used and resulted in savings in time and money, as well as in improved stakeholder relationships.

Solutions for Grazing During Drought Seasons (DOI)

Due to drought conditions, the Bureau of Land Management (BLM) temporarily closed down a number of land use areas, which became a subject of controversy throughout the grazing season. An independent mediator, along with BLM conflict resolution specialists, assisted the parties in reaching a settlement agreement on several issues, including land use around proposed riparian wetland enclosures; riparian/upland monitoring methods; and a cooperative monitoring approach. The ECCR process contributed to a more transparent and civil working environment and to building trust among all parties. The neutral third party was essential to identifying the issues and enabling the process of resolution to move forward. The case highlighted how experienced and skilled facilitators, conflict resolution specialists, and technical subject matter experts are important when intervening in high-intensity conflicts.

Memorandum of Agreement to Mitigate Adverse Effects to Historic Properties (DOT)

A third-party facilitated tribal engagement process led to better understanding among federal, state, and local transportation agencies about cultural differences and improved working relationships with the tribes. The parties involved are experiencing beneficial outcomes on other projects because of this ECCR facilitation.

Intergovernmental Cooperation and Public Engagement for Artillery Disposal (EPA)

An uncontrolled explosion at Camp Minden, a former defense facility, prompted community members to request that EPA establish a dialogue around the disposal of former artillery munitions. The overall goal of the dialogue process was to involve local stakeholders in identifying and evaluating alternative technologies to the open-burn process. Although the dialogue was intended to address communication with the public, it also resulted in improved communication between government agencies. The dialogue process achieved in one month what generally takes one to two years to accomplish: a stakeholder group was established and engaged in joint learning, evaluating options, and offering informed and thoughtful input on proposed solutions. The group also helped to build better relationships among the parties.

Resolution of a Natural Gas Pipeline Dispute (FERC)

In response to a complex dispute between a natural gas pipeline company and its customers that involved numerous parties – including towns, prisons, utilities, trade associations, industrial customers, and two state public utility commissions – FERC introduced the ECCR techniques of multiparty mediation, dialogue, and joint sessions. The use of ECCR allowed the parties to reach a creative solution to a problem that satisfied both the safety and environmental interests of the parties.

Agreement to Protect Endangered Indiana Bat (USIECR)

In 2010, the Ohio Department of Transportation (ODOT), the U.S. Fish and Wildlife Service (USFWS), and the U.S. Federal Highway Administration (FHWA) formed an interagency team to develop a new programmatic agreement to determine potential impacts and establish strategies to protect the federally endangered Indiana bat and the federally threatened northern long-eared bat with respect to activities of the federal-aid highway program implemented under ODOT's federal construction program. The primary outcome of the Indiana bat and northern long-eared bat facilitated process was a programmatic agreement, memorialized in a biological assessment and biological opinion, which satisfied the needs and interests of each agency. A secondary outcome of the process was improved relationships among agency staff members, as well as improved collaborative skills that will benefit future interactions among the agencies. Another outcome is the development of a replicable process that may be applied to similar issues between FHWA, USFWS, and state departments of transportation in Ohio and elsewhere.

Analyzing ECCR Costs and Benefits

The departments and agencies that tend to make greater use of ECCR (EPA, DoD, DOI, and FERC) reported having more formal and quantifiable methods to track their investments in ECCR processes. Those with fewer ECCR cases tended to report on the costs and benefits through more qualitative methods, such as case studies.

While most respondents pointed to the difficulties in quantifying the benefits of ECCR processes, some agencies are working together to develop an evaluation instrument to measure the impacts of ECCR cases. For the past several years, EPA has collected data on investments on ECCR cases and comparisons to likely alternative scenarios, which has allowed the agency to generate quantitative benefits information. Other specific examples of department and agency efforts to formally track ECCR costs and benefits include the following:

- capture of data relating to investments in FTEs, hours spent on a case or project, and human resource investments tracked through performance plans;
- attendance at ECCR trainings and webinars;
- funds spent on public involvement programs and collaborative activities;

- funds spent on contracts with third-party neutrals or interagency agreements to support and draw on rosters of third-party neutrals; and
- tracking ECCR cases through a case tracking system (FERC) or case docket system in formal administrative or judicial forums (DOI).

Table 3 lists methods for assessing use of ECCR processes and associated costs and benefits.

Table 3. Methods for assessing ECCR use, costs, and benefits

Qualitative Methods
• Annual agency ECCR reports
• Qualitative survey questions on perceived benefits
• Documentation of lessons learned and case studies
• Evaluations of ECCR meetings and process outcomes
Quantitative Methods
• Dedicated evaluation programs to assess use, costs, and benefits of ECCR
• Tracking labor hours and travel costs for staff supporting ECCR activities
• Funds spent on ECCR contracts, the use of third-party neutrals, and ECCR programs
• Tracking ECCR cases and/or hours in environmental project databases and case docket systems
• Tracking attendance at meetings, trainings, and webinars

Data Collection and Reporting Challenges

Several respondents noted challenges with gathering the data required for the annual report and in particular with generating cost/benefit information associated with ECCR. Many pointed to the difficulty in engaging staff in the time- and resource-intensive exercise of collecting ECCR data on an annual basis. The effort can be hindered by a lack of internal resources to conduct the survey, as well as by staff turnover. To aid in future data collection efforts, respondents made the following suggestions:

- create a collection system to monitor ECCR efforts throughout the year rather than at the end of the year, given the difficulty and unreliability of retrospective reporting⁴;
- simplify the report format for agencies whose mission focus is not licensing, permitting, or environmental enforcement; and
- consistently provide definitions for terms used in the survey instrument.

Similar to previous years, in FY 2015 agencies continued to point to the difficulties in tracking ECCR usage and quantifying costs and benefits as their greatest reporting challenges. The following are examples of reported challenges for departments and agencies with no formal methods of tracking and analyzing the costs and benefits/savings of ECCR processes:

⁴ Some agencies already track this information throughout the year.

- ECCR is often integrated into department and agency programs, resulting in challenges with separating ECCR investments from general project costs.
- It is difficult to compare the resource costs of ECCR vs. non-ECCR processes due to the nature and complexity of different disputes.
- Without clear standards and criteria, reporting of benefits and costs is subjective and varies among respondents.
- Given that ECCR benefits are often intangible, indirect, or subjective, they can be difficult to track and quantify.
- Development of formal mechanisms to collect and report on quantifiable benefits and/or costs savings of ECCR may require significant investments of agency time and resources.
- In the absence of a centralized data collection system for ECCR cases, ECCR usage may be significantly underreported.

As noted above, EPA has been working to develop a formal method of assessing the costs and benefits of ECCR processes. In its FY 2015 report, the agency highlighted methodological challenges with developing such a system. First, as others have noted, it can be difficult to establish a fair baseline for comparison at the individual case level, especially where ECCR runs parallel to and is influenced by other decision-making processes for the same matter. For example, should ECCR be compared to litigation, unassisted negotiation, or something else? Once a baseline scenario has been established, what is the appropriate source of data for the relative costs and benefits of the alternative decision-making process? For example, ECCR cases can be matched to non-ECCR cases, but a failure to match on important variables can produce invalid results. Finally, EPA noted the challenge of measuring the benefits of ECCR cases; environmental impacts in particular can be long term and difficult to quantify.

Despite these challenges, agencies recognize the importance of tracking and reporting ECCR usage and outcomes. Accordingly, several participating agencies have been working to develop an improved evaluation instrument that seeks to respond to the data collection challenges and provide users with a more reliable method of capturing the costs and benefits of ECCR processes, with the ultimate goal of better demonstrating the value of ECCR to federal agencies.

This synthesis was developed by the Udall Foundation's U.S. Institute for Environmental Conflict Resolution on behalf of OMB and CEQ.