FY 2011 ECR Policy Report to OMB-CEQ

Name of Department/Agency responding: Department of Defense

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Section 1: Capacity and Progress

1. Describe steps taken by your department/agency to build programmatic/institutional capacity for ECR in 2011, including progress made since 2010. If no steps were taken, please indicate why not.

   [Please refer to the mechanisms and strategies presented in Section 5 of the OMB-CEQ ECR Policy Memo, including but not restricted to any efforts to a) integrate ECR objectives into agency mission statements, Government Performance and Results Act goals, and strategic planning; b) assure that your agency's infrastructure supports ECR; c) invest in support or programs; and d) focus on accountable performance and achievement. You are encouraged to attach policy statements, plans and other relevant documents.]

   Note: The Department of Defense policy encourages the consideration of and use of conflict management practices and alternative dispute resolution in all subject areas, including environmental matters. The Department's goal of building conflict management practices and ADR into how DoD Components conduct business equally values the prevention/resolution of conflicts and disputes with or without the use of a third-party neutral. The Department will continue to support the environmental community's efforts to engage with the public, other federal, state and tribal governments early and often, with or without the assistance of a third-party neutral.

   Summary: The Military Departments' ADR policies and infrastructures encourage and support the use of ECR as defined.

   See attached responses from the Air Force, Navy, Army and U.S. Army Corps of Engineers.

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.

The challenges that cross all 4 DoD respondents are h and i. **See attached responses from the Air Force, Navy, Army and U.S. Army Corps of Engineers.**

	Extent of challenge/barrier		
	Major	Minor	Not a challenge/ barrier
	Check **only** one		
a) Lack of staff expertise to participate in ECR	☐	☐	☐
b) Lack of staff availability to engage in ECR	☐	☐	☐
c) Lack of party capacity to engage in ECR	☐	☐	☐
d) Limited or no funds for facilitators and mediators	☐	☐	☐
e) Lack of travel costs for your own or other federal agency staff	☐	☐	☐
f) Lack of travel costs for non-federal parties	☐	☐	☐
g) Reluctance of federal decision makers to support or participate	☐	☐	☐
h) Reluctance of other federal agencies to participate	☐	X	☐
i) Reluctance of other non-federal parties to participate	☐	X	☐
j) Contracting barriers/inefficiencies	☐	☐	☐
k) Lack of resources for staff capacity building	☐	☐	☐
l) Lack of personnel incentives	☐	☐	☐
m) Lack of budget incentives	☐	☐	☐
n) Lack of access to qualified mediators and facilitators	☐	☐	☐
o) Perception of time and resource intensive nature of ECR	☐	☐	☐
p) Uncertainty about whether to engage in ECR	☐	☐	☐
q) Uncertainty about the net benefits of ECR	☐	☐	☐
r) Other(s) (please specify): _____	☐	☐	☐
s) No barriers (please explain): _____	☐	☐	☐

Section 3: ECR Use

3. Describe the level of ECR use within your department/agency in FY 2011 by completing the table below. [Please refer to the definition of ECR from the OMB-CEQ memo as presented on page one of this template. An ECR "case or project" is an instance of neutral third party involvement to assist parties in reaching agreement or resolving a dispute for a particular matter. In order not to double count processes, please select one category per case for decision making forums and for ECR applications.] DoD cumulative data below. **See attached responses from the Air Force, Navy, Army, and U.S. Army Corps of Engineers.**

	Cases or projects in progress[1]	Completed Cases or projects [2]	Total FY 2011 ECR Cases[3]	Decision making forum that was addressing the issues when ECR was initiated:				Of the **total FY 2011 ECR cases** indicate how many your agency/department	
				Federal agency decision	Administrative proceedings /appeals	Judicial proceedings	Other (specify)	Sponsored[4]	Participated in but did not sponsor[5]
Context for ECR Applications:									
Policy development	3	1	4	3			1	4	
Planning	5	5	10	9			1	8	2
Siting and construction	10	2	12	8	4				12
Rulemaking									
License and permit issuance	1	1	2	1	1				2
Compliance and enforcement action									
Implementation/monitoring agreements	53		53	1		1	51	51	2
Other (specify): _____	7		7	3		1	3	3	4
TOTAL	79	10	**88**	**25**	**5**	**2**	56	68	20
	(the sum should equal **Total FY 2011 ECR Cases**)			(the sum of the Decision Making Forums should equal **Total FY 2011 ECR Cases**)				(the sum should equal **Total FY 2011 ECR Cases**)	

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

[2] A "completed case" means that neutral third party involvement in a particular matter ended during FY 2011. The end of neutral third party involvement does not necessarily mean that the parties have concluded their collaboration/negotiation/dispute resolution process, that all issues are resolved, or that agreement has been reached.

[3] "Cases in progress" and "completed cases" add up to "Total FY2011 ECR Cases".

[4] Sponsored - to be a sponsor of an ECR case means that an agency is contributing financial or in-kind resources (e.g., a staff mediator's time) to provide the neutral third party's services for that case. More than one sponsor is possible for a given ECR case.

[5] Participated, but did not sponsor - an agency did not provide resources for the neutral third party's services for a given ECR case, but was either a party to the case or participated in some other significant way (e.g., as a technical expert advising the parties).

4. Is your department/agency using ECR in any of the substantive priority areas you listed in your prior year ECR Reports? Indicate if use has increased in these areas since they were first identified in your ECR report. Please also list any additional priority areas identified by your department/agency during FY 2011, and indicate if ECR is being used in any of these areas. Note: An overview of substantive program areas identified by departments/agencies in FY 2010 can be found in the FY 2010 synthesis report.

The DoD respondents indicate continuing use of ECR in most priority areas identified, some increased use, and additional priority areas using ECR.

See attached responses from the Air Force, Navy, Army and U.S. Army Corps of Engineers.

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
_____	☐	☐
_____	☐	☐
_____	☐	☐
_____	☐	☐
_____	☐	☐
_____	☐	☐
_____	☐	☐
_____	☐	☐
List of additional priority areas identified by your department/agency in FY 2011	Check if using ECR	
_____	☐	
_____	☐	
_____	☐	

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]

> The DoD respondents acknowledge that engaging in ECR has avoided lengthy litigation and respective costs. Actual cost savings metrics are not in place in the Department.
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>
> **See attached responses from the Air Force, Navy, Army and U.S. Army Corps of Engineers.**

6. Describe other significant efforts your agency has taken in FY 2011 to anticipate, prevent, better manage, or resolve environmental issues and conflicts that do not fit within the Policy Memo's definition of ECR as presented on the first page of this template.

> The DoD respondents identify various processes used in FY2011 that engaged other federal, state, and tribal governments and the public without the use of a third-party neutral.
>
> **See attached responses from the Air Force, Navy, Army and U.S. Army Corps of Engineers.**

Section 4: Demonstration of ECR Use and Value

7   Briefly describe yo*ur departments'/agency's most notable achievements* or advances in using ECR in this past year.

> Each DoD respondent identifies one or more notable achievement in using ECR in FY2011.
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>
> **See attached responses from the Air Force, Navy, Army and U.S. Army Corps of Engineers**.

8. ECR Case Example

   a. Using the template below, provide a description of an ECR case (preferably <u>completed</u> in FY 2011). Please limit the length to no more than 2 pages.

Name/Identification of Problem/Conflict
Overview of problem/conflict and timeline, including reference to the nature and timing of the third-party assistance, and how the ECR effort was funded
See attached responses from the Air Force, Navy, Army and U.S. Corps of Engineers for separate ECR case descriptions.
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)
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
Reflections on the lessons learned from the use of ECR

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:

See attached responses from the Air Force, Navy, Army and U.S. Army Corps of Engineers for specific factors relevant to each case description.

	Check <u>all</u> that apply	*Check if*	
		Not Applicable	Don't Know
Protracted and costly environmental litigation;	☐	☐	☐
Unnecessarily lengthy project and resource planning processes;	☐	☐	☐
Costly delays in implementing needed environmental protection measures;	☐	☐	☐
Foregone public and private investments when decisions are not timely or are appealed;	☐	☐	☐
Lower quality outcomes and lost opportunities when environmental plans and decisions are not informed by all available information and perspectives; and	☐	☐	☐
Deep-seated antagonism and hostility repeatedly reinforced between stakeholders by unattended conflicts.	☐	☐	☐

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.

> The Department of Defense reemphasizes the importance to the Department and its Components of prevention/resolution of conflicts and disputes with or without the use of a third-party neutral.
>
> As in prior years, we strongly urge a simplified report format in the future for agencies whose core mission is not licensing, permitting, or environmental enforcement.