



Environmental Justice
Annual Implementation Progress Report
For the period through FY2011

February 2012

SECTION 1.0 INTRODUCTION

Environmental justice (EJ) describes the commitment of the government to avoid placing disproportionately high and adverse burdens on the human health and environment of minority populations or low-income populations through its policies, programs, or activities. Executive Order 12898, *Federal Actions to Address Environmental Justice in Minority Populations and Low Income Populations* (E.O. 12898), was established in 1994 and directs federal agencies to make achieving environmental justice part of their mission. In August 2011, the Department of Homeland Security (DHS) joined a [Memorandum of Understanding on Environmental Justice and Executive Order 12898](#) (EJ MOU) with 16 other federal agencies agreeing to participate in government-wide environmental justice efforts. Pursuant to E.O. 12898 and the EJ MOU, DHS prepared this Implementation Progress Report on the agency's environmental justice-related activities undertaken in the period prior to and including FY2011. This Report establishes a baseline for subsequent annual reporting on the agency's progress in implementing its [Environmental Justice Strategy](#), approved in February 2012.

This Report summarizes the agency's progress toward achieving the goals of E.O. 12898. As called for by the EJ MOU, this Report addresses:

- (1) Implementation of the National Environmental Policy Act;
- (2) Implementation of Title VI of the Civil Rights Act of 1964, as amended;
- (3) Impacts from climate change; and
- (4) Impacts from commercial transportation and supporting infrastructure (“goods movement”).

This Report also addresses participation in interagency collaboration on environmental justice issues. Subsequent annual reports will also address DHS progress in implementing the agency's Strategy based on established performance measures, public comments received on implementation of the Strategy, and any updates or revisions to the Strategy.

In the process of developing the agency's Strategy, DHS formed an Environmental Justice Working Group (EJWG) of operational Components and headquarters support Components¹ with roles in ensuring that environmental justice is appropriately considered in securing the homeland. The EJWG is co-chaired by the Office for Civil Rights and Civil Liberties (CRCL) and the Office of Safety and Environmental Programs (OSEP) within the Management Directorate, Office of the Chief Administrative Officer (OCAO), and was responsible for preparing this Report.

¹ In DHS, the “operational Components” are U.S. Customs and Border Protection, U.S. Immigration and Customs Enforcement, U.S. Citizenship and Immigration Services, the Transportation Security Administration, the Federal Emergency Management Agency, the U.S. Secret Service, and the U.S. Coast Guard. “support Components” are other offices within the Department that support the operational Components, including, for example, the Office of the General Counsel and Science and Technology Directorate. An organizational chart depicting all Components is provided at http://www.dhs.gov/xabout/structure/editorial_0644.shtm.

SECTION 2.0 INVENTORY OF ONGOING ACTIVITY

As noted in the Department's Environmental Justice Strategy, many parts of the Department participated in environmental justice programs when they were a part of other federal departments prior to the formation of DHS. For example, the U.S. Coast Guard (USCG) had an environmental justice directive when it was within the Department of Transportation, an agency expressly covered by E.O. 12898. When the U.S. Coast Guard was transferred to DHS, it ceased to be covered by E.O. 12898, and the directive was subsequently obsolete. Other parts of the Department had never been governed by E.O. 12898 or had otherwise not had environmental justice programs. Therefore, the new DHS Environmental Justice Strategy is for some parts of the Department the first relevant guidance on environmental justice, while for others it continues or reactivates preexisting efforts.

Accordingly, the first step in measuring progress on environmental justice efforts is to establish a baseline of existing activities, which the EJWG developed through an inventory of environmental justice activities described by the operational Components and support Components in response to a department-wide data call seeking information from the formation of the Department in 2003 through the end of Fiscal Year 2011. The EJWG will make every attempt to increase reporting by DHS Components, where applicable, in subsequent annual reports. Future reports may refine the baseline should additional information on prior efforts in other parts of the Department come to the EJWG's attention.

This annual report is based on information obtained from the USCG, Federal Emergency Management Agency (FEMA), CRCL and OSEP. The following describes the core areas of responsibilities and operational missions for these DHS Components.

U.S. Coast Guard

The major areas of responsibility of the USCG are maritime safety, security, and stewardship. USCG multi-mission operations include: search and rescue; marine safety; aids to navigation; ice operations; marine environmental protection; living marine resources; drug interdiction; migrant interdiction; other maritime law enforcement; ports, waterways, and coastal security; and defense readiness. The management of USCG land, facilities, and equipment (including aircraft, vessels, buoys, light structures, etc.) can be considered mission support and asset management and is an integral and critical element of its multi-mission operations. Environmental justice has the potential to apply to all major areas of the USCG responsibilities and the multi-mission operations. For example, in order to support its primary maritime missions the USCG often needs to locate its facilities in prime current and historic locations of Native American tribes along the coastal areas and major inland waterways of the U.S.

Federal Emergency Management Agency

The major areas of responsibility for FEMA are to support our citizens and first responders to ensure that as a nation we work together to build, sustain, and improve our capability to prepare for, protect against, respond to, recover from, and mitigate all hazards. The [Robert T. Stafford Disaster Relief and Emergency Assistance Act](#), as amended, constitutes the statutory authority for most Federal disaster response activities especially as they pertain to FEMA and FEMA programs.

FEMA's multi-mission operations include:

- (1) Advising on building codes and flood plain management;
- (2) Teaching people how to get through a disaster;
- (3) Helping equip local and state emergency preparedness;
- (4) Coordinating the federal response to a disaster;
- (5) Making disaster assistance available to states, communities, businesses and individuals;
- (6) Training emergency managers;
- (7) Supporting the nation's fire service; and
- (8) Administering the national flood and crime insurance programs.

The range of FEMA's activities is broad and spans the life cycle of disasters within which exists the potential for environmental justice issues to be addressed. FEMA's Office of Environment and Historic Preservation (OHEP) sets policy and procedures for addressing compliance with the National Environmental Policy Act and includes environmental justice issues related to its operations including grant assistance programs. FEMA's Office of Equal Rights has responsibility for the Title VI Program within FEMA.

The Office for Civil Rights and Civil Liberties

CRCL supports the Department's mission to secure the nation while preserving individual liberty, fairness, and equality under the law. CRCL co-leads the Department's environmental justice efforts and co-chairs the EJWG. The Officer for CRCL has been identified under the EJ MOU as the Department's senior political official on environmental justice matters. By delegation from the Secretary and through regulations at 6 CFR Part 15, CRCL leads the Department's Title VI program.

Management, Office of Safety and Environmental Programs

The major areas of responsibility of OSEP is to support and enhance DHS mission readiness by ensuring that safety, energy, and environmental programs, as established by laws, public policies, and best practices are appropriately integrated throughout activities, operations, and programs of DHS and its stakeholders. OSEP is responsible for the DHS Directive 023-01, Environmental Planning Program, including procedures for implementing the National Environmental Policy Act, through which DHS considers environmental justice implications in the development of new programs and projects.

SECTION 3.0 DISCUSSION OF THE BASELINE

For the current reporting period, the baseline conditions for implementation of the Strategy is represented by the activities of the USCG, FEMA, CRCL, and OSEP. The following provides a synthesis of environmental justice activities provided by these Components under separate headings representing the areas of focus identified in the EJ MOU.

Focus Area 1 - Implementation of the National Environmental Policy Act (NEPA)

OSEP is responsible for establishing policy for DHS compliance with NEPA and is co-chair of the EJWG along with CRCL. The main tool that DHS employs to ensure mission compliance with environmental justice is its NEPA implementing procedures and policy as outlined in Directive and Instruction 023-01: Environmental Planning Program. The policy is applicable to all DHS actions, and is specifically intended to help officials make decisions that are made based on an understanding of the environmental consequences and take actions that protect, restore, and/or enhance the environment. The NEPA process encourages citizen involvement in the environmental assessment of DHS actions at each appropriate stage of development of the proposed action. USCG has published NEPA documents in Spanish, where necessary, to ensure that all affected publics are informed on the potential environmental impacts of proposed actions.

The NEPA process is used to address environmental justice; however, very few DHS proposed actions have triggered high adverse and disproportionate impacts on minority populations and low income populations. An example of NEPA documents that address a potential environmental justice issue are the Maritime Safety and Security Teams (MSST) Environmental Assessments (EAs). When the USCG proposed to stand up the Maritime Safety and Security Teams in reaction to security threats apparent after the attacks on the United States on 9/11, the USCG became aware of the issue that Native American tribes with treaty fishing rights on the West Coast could potentially be disproportionately affected by the operation of MSST fast boats. The West Coast tribes were concerned that MSST vessels would inadvertently pass over their fishing lines/nets and sever them potentially damaging their ability to exercise their treaty rights and harming their ability to fish. Through the NEPA process (EAs were done for MSST stand up) and consultation with the potentially affected tribes, the USCG and the tribes were able to put mitigation measures in place to resolve these issues.

FEMA's OEHP processed 529 EAs between 2003 and 2011. All of FEMA's EAs include a section on environmental justice. No project specific action resulted in disproportionate high and adverse environmental or health effects to low-income and minority populations. In 2011, the Supplemental EA for the Extension of Hazard Mitigation Grant Program Exception included in-depth discussion on impacts to low-income and minority populations, but no disproportionate high and adverse environmental or health impacts were found.

A key part of the NEPA process is the use of categorical exclusions that can only be used if an Environmental Checklist is completed by the decision maker in consultation with an Environmental Protection Specialist. The checklist includes specific questions under an Environmental Justice heading designed to ascertain whether there will be any disproportionate high and adverse affects to low income populations and minority populations. Included among the concerns to be addressed by any DHS EA and Environmental Impact Statement (EIS) are socio-economic impacts and environmental justice, including potential effects impacting low income groups and or minority groups. The USCG and FEMA have completed thousands of categorical exclusions requiring environmental checklists and hundreds of EAs and EISs from the year DHS was formed until today.

DHS uses the NEPA process and/or government to government consultation to engage with tribal communities where such engagement is necessary. For example, over the nine years since the Department was formed, the USCG Civil Engineering Unit (CEU) Oakland environmental staff has consulted with tribes over 50 times. They estimate their costs associated with completing and monitoring such studies was probably in excess of one million dollars.

Focus Area 2 - Implementation of Title VI of the Civil Rights Act of 1964

By delegation from the Secretary and through regulations at 6 CFR Part 21, CRCL leads the Department's Title VI program. An interim Title VI regulation at 6 CFR Part 21 was published in 2003. In 2010, CRCL published [guidance to recipients of DHS financial assistance](#) on complying with obligations to limited English proficient (LEP) populations pursuant to the Title VI prohibition on national origin discrimination.

In 2011, CRCL established a compliance program to ensure that recipients of DHS financial assistance do not discriminate on the basis of race, color, and national origin as prohibited by Title VI. The Title VI Implementation Plan identifies key program components, including a robust post-award monitoring process to identify and respond to recipient programs that have disproportionate effects, including those adversely impacting human health and the environment, on protected populations. The Plan also calls for technical assistance and training to educate recipients on compliance requirements, including monitoring of sub recipients. To this end, an Intra-agency Working Group was created to guide program development and assist in identifying the implications of Department-supported programs for diverse racial and ethnic populations.

In 2011, CRCL created practical guidance for recipients on complying with Title VI and the Department's implementing regulations. This guidance was [posted on the CRCL website](#) and distributed to Department recipients through program offices.

CRCL also participates in the newly created Environmental Justice Interagency Working Group Title VI Committee to explore the intersections of Title VI and environmental justice in federal agency enforcement programs and coordinate compliance efforts.

During the period 2003 to 2011, the USCG distributed Recreational Boating Safety (RBS) grants annually to each of the U. S. States and Territories (504 overall grants totaling approximately \$839 million). Additionally, the USCG distributed 298 RBS grants (\$42.5 million total) to non-profit agencies. The grant application process mandates that requestors sign formal assurances, certifications, and/or agreements that state that the grantee will comply with all Federal statutes relating to non-discrimination, including Title VI. The Boating Safety Division within the USCG Prevention Policy Directorate (formerly the Inspections and Compliance Directorate) ensures that all grant requests have appropriate signatures, as does the Title VI Program Manager within the Civil Rights Directorate. Beginning in 2012, all grant requests are submitted through an electronic system that also requires authenticated electronic signatures on the assurances and certifications before the grant requests will be accepted. The USCG has not had any complaints of discrimination throughout the 2003 to 2011 period relating to Title VI.

The FEMA Office of Equal Rights has responsibility for the Title VI Program within FEMA. This is implemented through the Civil Rights Program staff at FEMA headquarters and through 50 Equal Rights Officers deployed to presidentially-declared disasters. This program implementation includes (among other functions):

- (1) Ensuring that all FEMA programs, services, and benefits are accessible to all eligible persons without discrimination on the basis of race, color or national origin;
- (2) Providing FEMA benefits, services, access, and program information in accessible formats, alternative formats, and in languages used by impacted and eligible persons, including persons with LEP;
- (3) Ensuring inclusion of all groups in decisions regarding plans that impact the community, environment, and long term recovery projects;
- (4) Including non-discrimination assurances in all programs that use FEMA funds, including all contracts, grants, plans, and projects;
- (5) Providing Title VI guidance and training to recipients of FEMA funds;
- (6) Processing Title VI discrimination complaints;
- (7) Conducting outreach for communities impacted by disaster to ensure inclusion, access, and effectiveness of FEMA services, programs, and benefits;
- (8) Coordinating with the Office of Environmental and Historic Preservation at headquarters and at disasters to review Title VI assurances in programs, plans, and projects with environmental and historic preservation impacts;
- (9) Developing FEMA's LEP function including Agency commitment and implementation documents; and
- (10) Developing an in-house Title VI Investigation Team.

Focus Area 3 - Climate Change

The USCG Office of Standards Evaluation and Development assesses environmental justice from the perspective of NEPA, commercial transportation and supporting infrastructure, and, more recently, climate change. Their environmental analyses for regulatory development analyze impacts according to NEPA, and where applicable, transportation and climate change. With regard to climate change and its impacts on the Arctic, the melting sea ice has resulted in increased shipping and oil drilling in the Arctic. Alaska has 229 recognized tribes – nearly half of all US recognized tribes. The USCG's District 17, which covers USCG missions in Alaska, has hired a full time tribal liaison to assist them in their consultations with Native Alaskans on potential impacts from USCG actions and programs in response to increased activity in a warming Arctic. Additionally, recently D17/CEU Juneau sponsored a course on tribal communication tailored for the USCG to help educate staff.

In 2011, FEMA established a Disaster Resilience Working Group (DRWG) to assess how climate change may affect FEMA's missions and operations. The working group concluded that changes in weather patterns, extreme weather events, sea level rise, drought, mass migration, and extreme flooding could all negatively impact FEMA's mitigation, preparedness, response and recovery operations. To help address these impacts, the DRWG identified seven initial areas designed to integrate climate change adaptation planning into the Agency's programs, policies, and operations. These seven areas, listed below, were included in the Administrator's Policy Statement on Climate Change Adaptation signed on January 23, 2012.

- (1) Continue to study the impacts of climate change on the National Flood Insurance Program (NFIP) and incorporate climate change considerations in the NFIP reform effort;
- (2) Understand how climate change will impact local communities and engage them in addressing those impacts;
- (3) Establish partnerships with other agencies and organizations that possess climate science expertise;
- (4) Through partnerships with the climate science community, evaluate the potential impact climate change may have on existing risk data and the corresponding implications for Threat Hazard Identification Risk Assessment (THIRA) development and operational planning;
- (5) Evaluate how climate change considerations can be incorporated into grant investment strategies with specific focus on infrastructure and benefit/cost analysis;
- (6) Promote building standards and practices, both within DHS programs and in general, that consider the future needs of climate change; and
- (7) Continue to pursue a flexible, scalable, well equipped, and well trained workforce that is educated about the potential impacts of climate change.

FEMA is currently working to develop a Climate Change Adaptation Implementation Plan to provide more detail for how each of these actions will be completed. The Implementation Plan is scheduled to be completed in FY12.

Focus Area 4 - Commercial Transportation and Supporting Infrastructure

The USCG Guard Bridge Administration Manual (Commandant Instruction M16590.5C) specifically addresses potential environmental justice impacts of proposed bridge projects, and directs that they be identified and assessed during environmental review of proposed projects and compliance documented in compliance with E.O. 12898.

The USCG sees the most potential for environmental justice issues from operational missions related to goods movement with respect to potential new USCG facilities and equipment operations (helicopter, aircraft, vessels) in Arctic or Alaska that may be needed in the future if the USCG expands its missions into the Arctic due to melting Arctic ice and increased vessel traffic and desire for oil exploration in the region.

Additional Environmental Justice-Related Activities

The USCG is an environmental enforcement agency on the water and endeavors to become a model law enforcement agency with regard to consulting with tribes (especially those with tribal fishing rights), and with Native Alaskans/Hawaiians, and other minority populations and low income populations affected by our maritime missions. Examples of this can already be seen in initiatives in D17 to work diligently with the Native Alaskans which is a very important part of the USCG mission in that District and is mutually beneficial. As previously discussed through mission support personnel, USCG strives to partner with affected low income populations and minority populations and tribes on USCG proposed construction or other projects that might cause high adverse and disproportionate impacts.

Another example of the USCG field's commitment to integrate environmental justice concerns into USCG missions is the recently signed completed Memorandum of Agreement (MOA) between the USCG District 9 and the Grand Traverse Indian Band. The MOA states, among other things, that the USCG, through Sector Sault Ste. Marie and Air Station Traverse City, will endeavor to communicate regularly with the Grand Traverse Band to coordinate, prioritize, and execute aviation and surface support for both scheduled and emergent law enforcement operations and maritime safety missions. Scheduled missions include, but are not limited to, seasonal tribal fishery patrols and enforcement.

The USCG has provided assistance and cooperation with the Bureau of Indian Affairs and the Confederated Tribes of the Coos, Lower Umpqua, and Suislaw Indians in implementing the transfer of Cape Arago Light Station, south of Coos Bay, Oregon from the USCG to the Department of Interior to be held in trust for the Native American tribes. The transfer was mandated by the Oregon Surplus Lands Act of 2008, Pub. L. 110-364. The USCG drafted an MOA with the other interested parties, conducted Phase I and Phase II Environmental Due Diligence Audits, negotiated with the other interested parties, and have agreed to execute any

actions required to comply with applicable environmental and cultural resources laws, in order to protect the tribes' interest in what they consider to be sacred lands.

SECTION 4.0 EJ IMPLEMENTATION STRATEGIES

The DHS EJ Strategy established the following implementing strategies and basis for establishing performance measures to accomplish the goal of seamless integration of EJ principles into its operations by:

- (1) Creating a Directive and Instruction on EJ that will outline DHS roles and responsibilities for the various operational and support Components in achieving the tasks set out in this strategy. DHS now contemplates effectuating this measure through revision to existing Directive 023-01: Environmental Planning Program;
- (2) Identifying and addressing programs, policies, and activities of the Department that may have disproportionately high and adverse human health or environmental effects on minority, low-income, and tribal populations. A review of existing programs will take place through the EJWG, through the process of updating NEPA documentation, through Title VI review, and other mechanisms. New programs will consider EJ when preparing documentation required by the NEPA;
- (3) Developing compliance and review capacity to test the effectiveness of the requirements in the Directive and Instruction and to measure performance. This includes incorporating EJ into compliance reviews under Title VI.
- (4) Collaborating fully with other agencies on environmental justice related matters, as the need arises; and
- (5) Effectively communicating through active outreach efforts with the public, the academic community, other agencies, and non-federal governmental entities, including government-to-government contact with tribes, to anticipate, understand, and resolve specific issues of concern raised by our activities, including activities designed to adapt to climate change. Communication on initiatives related to EJ will implement the DHS Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons (http://www.dhs.gov/xabout/laws/gc_1277242893223.shtm along with multi-lingual summaries), and with the Department's forthcoming language access plan.

The EJWG will continue its efforts to coordinate on environmental justice related activities within DHS and will report on implementation of the agency's Strategy through an evaluation of these performance measures in the report covering FY 2012.

SECTION 5.0 INTERAGENCY COLLABORATION

DHS has participated in the Interagency Working Group on EJ since its reactivation in 2010, including the staff and principal-level committees and working committees on legal issues, the form of EJ strategies, and Title VI of the Civil Rights Act of 1964.

SECTION 6.0 PUBLIC COMMENTS

In the process of developing its EJ Strategy, DHS posted its Draft Strategy on its public website for over 30 calendar days of public review and comment and provided a webmail address for receiving public comments. In addition, the Environmental Protection Agency provided a link to the DHS website on its central environmental justice website. No public comments were received during the review period.

DHS will continue to be receptive to comments on the Strategy and annual reports, including a webmail address posted along with these documents on the DHS website.

SECTION 7.0 UPDATES AND REVISIONS TO THE EJ STRATEGY

The final Strategy was approved in February 2012 concurrently with the development of this annual report. There are no updates and/or revisions to the agency's Strategy for this reporting period.

SECTION 8.0 SUMMARY

This annual report was prepared to establish a baseline of EJ related activity information across DHS for use in subsequent annual reports on implementation of the agency's Strategy approved in February 2012. On behalf of the Department, the DHS EJWG looks forward to building stronger relationships between and across operational units in pursuit of environmental justice.