



U.S. ARMY



US Army Corps
of Engineers®



THE IMPORTANCE OF EARLY COORDINATION UNDER THE FISH AND WILDLIFE COORDINATION ACT

U.S. Army Corps of Engineers Civil Works Feasibility Studies

INTRODUCTION

The U.S. Army Corps of Engineers (USACE) is committed to early coordination with the U.S. Fish and Wildlife Service and National Marine Fisheries Service (USFWS and NMFS, or collectively, the Services) during development of Civil Works feasibility studies aimed at formulating projects to solve specific water resource problems.

Civil Works feasibility studies typically result in a recommendation for authorization for a specific water resources project from the Chief of Engineers to Congress to be constructed in conjunction with a non-federal, cost-sharing partner.

EARLY COORDINATION IN A FEASIBILITY STUDY: THE SCOPING PHASE

A Civil Works feasibility study begins when the U.S. Army Corps of Engineers (USACE) and a non-federal partner sign a feasibility cost sharing agreement. The scoping phase starts immediately at the initiation of a feasibility study and sets the stage for the entire project. Therefore, input from and engagement with the U.S. Fish and Wildlife Service and National Marine Fisheries Service (USFWS and NMFS, or collectively, the Services) is critical at this step.

Decisions made during scoping form the basis for developing alternative measures and plans to address the water resources problem. During this phase, a team is determining the study area, articulating the water resources problem to be solved, and developing the study or planning objectives. The scoping phase is the best time to obtain the Services' views on anticipated impacts to fish and wildlife and their habitat, and to determine the resources that should be evaluated in the study. For example, the Services may be able to suggest fish and wildlife conservation and enhancement opportunities and planning objectives as well as ways to avoid and minimize impacts to fish and wildlife and their habitat, including endangered and threatened species, critical habitat, and essential fish habitat. This is also a time when the Services may communicate the potential for compensatory mitigation, if necessary.

The goal of engagement with the Services in the feasibility study scoping phase is to leverage early communication, planning, and coordination to develop Civil Works projects that both mitigate impacts to fish and wildlife and provide for their enhancement.

FOUR PHASES OF A USACE FEASIBILITY STUDY

SCOPING

ALTERNATIVE EVALUATION
& ANALYSIS

FEASIBILITY LEVEL ANALYSIS

CHIEF'S REPORT

Coordination with the Services begins early in the feasibility study's scoping phase.

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DURING SCOPING

- USACE informs Services of the study
- Together, discuss potential fish and wildlife resources in the study area
- USACE invites Services to participate in meetings
- Together, develop a scope of work
- USACE initiates steps for funding transfer
- Services become active study team members
- Services participate in formulation and evaluation of alternative plans
- Together, identify measures to conserve fish and wildlife and their habitat
- Together, develop early mitigation strategies (avoid/minimize/compensate)

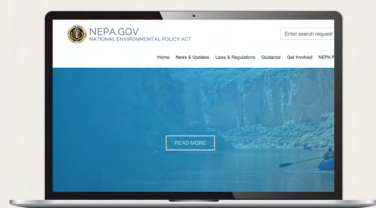
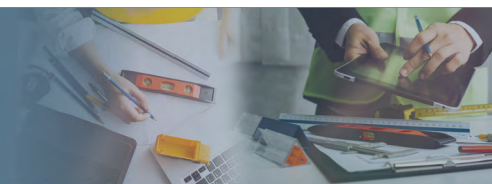
The purpose of the Fish and Wildlife Coordination Act (FWCA) is to ensure that fish and wildlife conservation receives equal consideration when developing water resource projects. To achieve this purpose, coordination with the Services must happen during study scoping.

Once the USACE and the non-federal partner sign a feasibility cost share agreement, the USACE study team must inform the Services of the study and have a preliminary discussion of potential fish and wildlife resources in the area.

The Services will be invited to participate in the study early, and any staff assigned to the study are considered members of that study team. As active study team members, the Services will participate in formulation and evaluation of alternative plans and identify measures to conserve fish and wildlife and their habitat.

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U.S. ARMY CORPS OF ENGINEERS CIVIL WORKS FEASIBILITY STUDIES



WHAT IS AN “INTEGRATED” FEASIBILITY REPORT?

Both the draft and final USACE feasibility report will include an integrated Environmental Assessment or Environmental Impact Statement as required by the National Environmental Policy Act (NEPA).

Informal exchanges of ideas during formulation of alternatives are key to achieving equal consideration of fish and wildlife conservation. In other words, the Services will help find solutions to water resources development problems that avoid and minimize impacts to fish and wildlife.

If a study team makes scoping decisions without the Services’ input, including articulating the study’s problems, opportunities, objectives and constraints, and developing project measures and alternatives, there is a risk of developing an alternative plan with unavoidable impacts and the need to compensate for those impacts. Early engagement can reduce the likelihood of developing alternatives with unavoidable impacts. If unavoidable impacts are likely, the Services will work with USACE to develop mitigation plans to compensate for the impacts.

DEVELOPING A SCOPE OF WORK FOR ACTIVITIES UNDER THE FWCA



The FWCA is unique in that it also authorizes federal construction agencies, in this case USACE, to transfer funds to the Services for FWCA activities.

Work to be conducted by the Services under the FWCA is specified, detailed, and documented in a Scope of Work (SOW). Development of the SOW is a joint effort between the USACE and the USFWS and/or NMFS.

The SOW is developed for a specific study and formally establishes timelines, mutually agreed commitments, tasks to be accomplished, reporting requirements, and funding amounts. The SOW should describe the level of engagement agreed upon by USFWS and/or NMFS throughout the study process and establish sufficient funding levels to cover their participation.

FWCA activities to be covered by the Services through transfer funding should be clearly indicated in the detailed SOW. Activities may include attending meetings, reviewing study documents, preparing correspondence and reports, conducting site visits, and performing surveys and investigations of fish and wildlife resources. If fish and wildlife surveys and investigations are necessary under the FWCA, the USACE district office and relevant USFWS and/or NMFS regional office will negotiate the details. The negotiations include a discussion of the study plan, schedule, and budget. These discussions will take place as early as possible during the scoping process.

The results of the Services’ surveys, investigations, and recommendations will be documented in a Fish and Wildlife Coordination Act Report (FWCA Report, also known as a 2(b) Report) that is provided to USACE. The Services should provide USACE the draft FWCA Report in time to include it in the study’s draft integrated feasibility report to allow the public and other agencies the opportunity to review. The final FWCA Report is included in the study’s final integrated feasibility report.

The final integrated feasibility report forms the basis of the recommendation of a project authorization transmitted to Congress by the USACE Chief of Engineers in a “Chief’s Report.”

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U.S. ARMY CORPS OF ENGINEERS CIVIL WORKS FEASIBILITY STUDIES



TYPICAL FWCA ACTIVITIES

FWCA activities conducted by the Services may include attending meetings, reviewing study documents, preparing correspondence and reports, conducting site visits, and performing surveys and investigations of fish and wildlife resources.

COMMITTED TO WORKING TOGETHER

Annually, local and regional offices of USACE and the Services meet to review the status of ongoing Civil Works studies and projects and discuss each agency's priorities and upcoming opportunities for early engagement.

MEMORANDA OF AGREEMENT

The procedures for the Services and USACE to carry out FWCA activities can be found in the 2003 Memorandum of Agreement (MOA) between USFWS and USACE for Conducting FWCA Activities and the 2020 MOA between NMFS and USACE for Conducting FWCA Activities (MOAs).

These procedures apply to all USACE districts and USFWS and NMFS regional offices. It is important that agency staff are familiar with the MOAs because they detail how the agencies should proceed under FWCA, including procedures to transfer funds. These MOAs are key documents for understanding the critical role the Services play in a USACE study and how to proceed with conducting fish and wildlife coordination activities under the FWCA.

A major goal of the MOAs is to ensure the Services are invited and funded to participate early in and throughout the planning process.

While early engagement in feasibility studies is extremely important, the reality is the Services may face staffing and resource constraints limiting their availability to engage in USACE feasibility studies. When this happens, USACE and the Services should together determine which studies have the greatest potential for fish and wildlife impacts and prioritize those studies, whenever possible. One important aspect of early engagement is the agreement between the agencies that each year representatives of the local and regional offices of USACE and the Services will meet to review the status of each study or project requiring engagement.

BE INNOVATIVE ON WAYS TO ENGAGE



Resource constraints are real; however, there are innovative ways to maintain engagement. For instance, if the Services have limited staff to attend study meetings in person, the study team can arrange virtual meetings. If the Services cannot participate in meetings virtually, the district's study team should offer the Services background reading material instead. This will allow the Services an opportunity to review and respond if they choose.

Through early planning and coordination, issues can be minimized down the road.

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U.S. ARMY CORPS OF ENGINEERS CIVIL WORKS FEASIBILITY STUDIES



The Fish and Wildlife Coordination Act is just one example where there is emphasis on early engagement. Please take a moment to browse through the following documents that also highlight the importance of early engagement with the Services for USACE Civil Works feasibility studies.

FOR MORE INFORMATION

The following resources may be found on the USACE Planning Community Toolbox, a public-facing website of resources for planners and partners engaged in Civil Works feasibility studies. Explore the Toolbox and these resources online at: <https://planning.erdc.dren.mil/toolbox/processes.cfm?Id=304&Option=Fish%20and%20Wildlife%20Coordination>.

- **USACE SMART Planning Feasibility Studies – Guide to Coordination and Engagement with the Services – September 2015 (Collaboration between USFWS/NMFS/USACE)** — Developed jointly with the Services, this Guide puts key federal environmental compliance activities and requirements, including FCWA activities, within the framework of the USACE feasibility study process.
- **Water Resources Development Under the FWCA, November 2004 (USFWS Document)** — This comprehensive report was developed primarily for use by USFWS biologists working on water resource development projects under the authority of the FWCA.
- **2003 Memorandum of Agreement (MOA) between USFWS and USACE for Conducting FWCA Activities and 2020 Memorandum of Agreement (MOA) between NMFS and USACE for Conducting FWCA Activities** — These MOAs provide the framework for USACE coordination and engagement with the Services for FCWA activities, including transfer of funding from USACE to the Services to support those activities.
- **Fish and Wildlife Coordination Act, as amended, (16 U.S.C. § 661 – 666c)** — The Fish and Wildlife Coordination Act authorizes the Services, among other activities, to develop reports and recommendations for wildlife mitigation and enhancement for water resources projects.
- **Engineer Pamphlet 1105-2-61: Feasibility and Post-Authorization Study Procedures and Report Processing Requirements** — This pamphlet provides procedural guidance for USACE feasibility study procedures and integrated feasibility report processing.
- **NEPA, Section 1501.8 (40 C.F.R. 1501.8) – Cooperating Agencies** — The National Environmental Policy Act section on Cooperating Agencies outlines the roles and responsibilities of federal agencies participating in NEPA processes and the development of NEPA documents.
- **Water Resources Reform and Development Act of 2014, Section 1001 (Vertical Integration and Acceleration of Studies) and subsequent Implementation Guidance, memorandum dated 25 March 2019** — Although always a best practice, the Water Resources Reform and Development Act of 2014 legislated the early engagement between USACE and other federal agencies, requiring that federal partners be invited to a coordination meeting within ninety days of study initiation.
- **Water Resources Reform and Development Act of 2014, Section 1005 (Project Acceleration) and subsequent Implementation Guidance, memorandum dated 20 March 2018** — Aiming to increase efficiency in the multiple federal processes involved in water resources project development, this provision directs USACE and other federal agencies to develop and implement coordinated public and agency review processes.