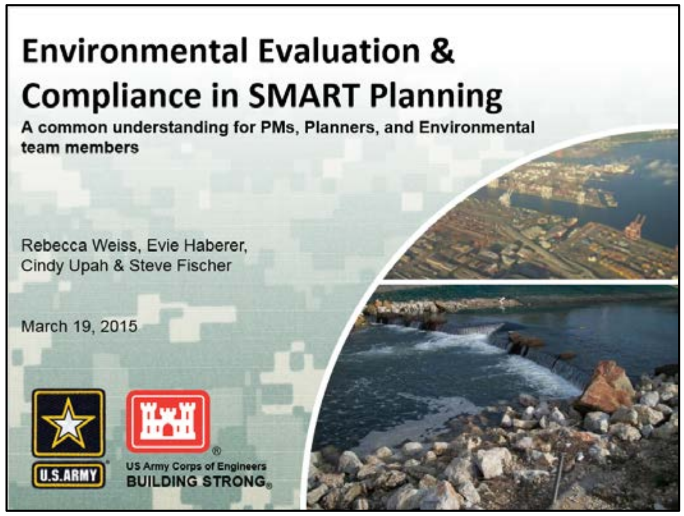
Q & A: Environmental Evaluation & Compliance in SMART Planning
March 19, 2015



The March 19th webinar, part of a series of information-sharing webinars hosted by the Planning Community of Practice, provided tips and guidance for Project Delivery Teams (PDTs) in meeting environmental evaluation and compliance requirements for feasibility studies.

Rebecca Weiss (NWD), Evie Haberer (SWF), Cindy Upah (NWO), and Steve Fischer (NWD) presented and responded to questions from the field.

This webinar builds on others in the PCoP Webinar Series available on the Planning Community Toolbox, including:

- Regional Coordination with Natural Resource Agencies: Tips & Lessons Learned, February 2015
- Endangered Species Act Biological Opinions, May 2014
- Environmental Evaluation & Compliance in SMART Planning Feasibility Studies, August 2013
- Implementing Single Phase Feasibility Studies: Getting to the Alternatives Milestone (5 March 2015
- Strategies for Scoping 3x3x3 Studies, October 2014

The questions and responses below are not a direct transcript; they have been reordered and edited for clarity. Additional questions and feedback are always welcome via email to hqplanning@usace.army.mil

Timeframes / Duration Between Milestones

Please elaborate on time frames for each milestone. In our experience, the Vertical Team has suggested that the time frame between the Agency Decision Milestone and Final Report should be significant (at least 9 months).

The timeframes for each milestone are project specific; as you're developing your scopes in the beginning of the study you'll know better where you need more time or less time. A general rule of thumb, though, is it will probably take at least 9 months to conduct the feasibility level of analysis and documentation for the final feasibility report / NEPA documentation and associated reviews.

What I've been hearing around the country that's out of synch with SMART Planning, is that some PDTs are pushing environmental elements of the alternative evaluation analysis past the Tentatively Selected Plan (TSP) milestone or Agency Decision Milestone. Prior to the TSP, the PDT must describe the environmental impacts per alternative, and include the mitigation plan (whether it's conceptual or model driven) per alternative. During screening, you must document how you're eliminating alternatives. The environmental planner should not shortchange the scoping and alternative evaluation phases, which may – depending on the study - extend up to a year and a half. That's when the alternatives/impact analysis is supposed to happen.

Fish & Wildlife Coordination Act & Documentation

The level of detail in our analysis before the Tentatively Selected Plan milestone is usually not sufficient for the U.S. Fish and Wildlife Service (USFWS) to complete the Fish and Wildlife Coordination Act Report (FWCAR). How do we reconcile this? (Slide 15, RE: "receive FWS draft CAR.")

The Fish and Wildlife Coordination Act report is going to provide you your baseline positions for your fish and wildlife resources. So if you're able to provide the Services with your project area, they should be able to provide you with a description of what's there.

As the Corps and FWS develop the Scope of Work for a FWCAR, the amount, quality and scope of data must be discussed and agreed upon. When developing the SOW, keep in mind that the amount of information/data to be collected must be consistent with the complexity of decisions for which the data will be used, the limitation in funding and time, and the significance of fish and wildlife resources involved.

When you're getting to the TSP milestone, you know you've got an alternative that you have described and that you're going to justify, so there should be enough information for USFWS to be able to have a discussion about what they would recommend if you move forward on that TSP.

Endangered Species Act/Section 7 Consultation

Is there any reason not to initiate the ESA consultation earlier than the approved draft report if the scope of the Biological Assessment and Biological Opinion encompasses the range of reasonably foreseeable alternatives? (Risk of having to revise the Biological Opinion is minimal.)

If you have the information to initiate formal consultation prior to release of draft report then do so. That reiterates the point of having that early involvement that helps to foster those types of opportunities.

Formal consultation is "initiated" on the date the Corps' request is received by FWS/NMFS, IF all relevant data are provided. If all required information/data are not initially submitted, then starting the formal consultation clock may be delayed. It is critical at this juncture of the study and ESA consultation process that the Corps and FWS/NMFS communicate often to establish timeframes leading to a final Biological Opinion.

How do you reconcile the level of design detail, which drives species impacts, prior to TSP w/ being able to initiate ESA consultation? The chronology calls for initiation of feasibility designs post-TSP, which presents a chicken-and-egg conundrum.

The consultation process itself is certainly worthy of more detailed regional seminars / discussions. In the northwest or the west, in general, we do have a lot of issues with consultation and expectations from the Services. But what we were trying to re-emphasize here is that if there is information that you need to make your decision and determine what kind of impacts or mitigation or obligations related to the Endangered Species Act, you should be getting that information before going into the TSP, not doing that type of design work later.

It does become a timing issue to ensure you have the information you need, based on the criteria you've developed, to distinguish the impacts to the species before going to your TSP. And that should be analyzed and evaluated in your report and your biological assessment would reflect that.

If there's information that you need, information that is a decision driver, then that's a conversation between your study team and how you put it in the Project Management Plan (PMP) and the risk register to get the information you need to make the decision.

National Historic Preservation Act Section 106 Compliance & Cultural Resources

Section 106 compliance for archaeology is very labor/time intensive. How much time is allocated between TSP and CWRB, and how much of the $3M can go to archaeology? Phase I survey in regions with ground cover requires shovel test pits at close intervals and when a potentially significant site is found, then Phase II level testing is necessary.

The analysis and actions that are required for Section 106 compliance (and their impact on study cost and duration) is absolutely case dependent; that's why we're using our risk register and our Decision Management Plan to help inform where are the data gaps that are important to our decision and therefore being able to allocate how much resources we can spend on that. If there is a compelling reason to exceed $3 million, then ideally the vertical team would agree on that and we'd move forward, but not all cases will require that.

Comment: The current layout of 106 compliance does not allow for integration with the NEPA process, if field testing and development of agreement documents (PA, MOA) is after the public review of the NEPA document. This limits public review of Section 106 actions and may not adequately consider impacts under NEPA.

Sue and the PCoP have been talking with Cultural sub-COP and there is an effort there underway, much like this one to develop more detailed information related to SMART planning and cultural resources. We'll follow up and schedule a Webinar for the Community like this but specific to Section 106. The next webinar, on April 2, will also focus on Tribal Engagement, presented by Chris Koeppel (MVD) from the Cultural sub-CoP.

Model Certification Status & Ecosystem Restoration Models

What is the status of the CHAP (Combined Habitat Assessment Protocols) model?

CHAP is currently undergoing an independent external peer review to determine the level to which the model could be approved for regional use in SPD. The ECO-PCX is managing the review and anticipates completion of the review by the end of the FY.

Where can I find a list of currently approved/certified models?

The ECO-PCX maintains an up-to-date list of approved and certified models on the Ecosystem Restoration Model Library at http://cw-environment.usace.army.mil/model-library.cfm?CoP=Restore&Option=Search&Type=Restore&Id=ALL.

Are there other models in the queue which will soon be approved/certified?

Yes, the ECO-PCX maintains and actively manages a diverse ecological model review portfolio to include models from across USACE at various levels of development, review, and approval/certification. To inquire about the latest model developments or reviews which may be applicable to your project and/or District you may contact Nate Richards, ECO-PCX Model Review Manager.