

SMART Planning & USACE Feasibility Studies
Guide to Coordination and Engagement with the Services
Planning CoP Webinar: Question & Answer Session
September 8, 2015

This webinar is part of a series of information-sharing webinars hosted by the U.S. Army Corps of Engineers Planning Community of Practice. In this webinar, Sue Hughes, Deputy for Planning and Evie Haberer, Office of Water Project Review, are joined by Jason Miller from the U.S. Fish and Wildlife Service, Cathy Tortorici from the National Marine Fisheries Services and Rachel Mesko from USACE's Seattle District to discuss opportunities for collaboration between USACE and the Services in the SMART Planning Process. For more information on Planning training opportunities and options, visit the <https://planning.ercd.dren.mil/toolbox/index.cfm>.



The Questions and Responses from the webinar captured below are not a direct transcript.

Respective Agencies' Roles in SMART Planning

Should the state Fish & Game agencies be included with this planning effort since FWS will need to get concurrence from these state agencies for the Fish & Wildlife Coordination Act?

Absolutely, this hasn't changed. You must reach out to other agencies, including the state resource agencies, and get their input. Under the Fish and Wildlife Coordination Act, it's a requirement that the department or agency proposing to modify a water body shall first consult with the head of the agency exercising administration over wildlife in a particular state.

Who decides when data is out of date for a study?

It is critical to bring NMFS and FWS into that conversation as early as you can. The Services have a "best available science" standard that we use in the development of our consultation documents, so if data is old or stale, we can check if there is new information that can substitute or supplant that. We need to be aware of other data and talk about alternative data sources so to use the proper data depending on what the question is.

The discussions with the Services and the decisions made about data should be incorporated into planning tools like the Risk Register – what's the risk of using data that may be five or six years old – and the Decision Management Plan – how will you mitigate or address that risk in your study?

In circumstances where there are additional changes and additional alternatives evaluated, will the Services request more funds?

This will depend on the situation and the extent of the changes to the alternatives: are there additional measures under consideration, or a drastic change in project alignment, for example? In the case of the Seattle Harbor study, the minor change in alternatives were easily communicated with our counterparts

at the Services, and did not impact the species list or the scope of the developing the Fish and Wildlife Coordination Act (FWCA) Report. There was no additional need to provide additional funding to compensate for that change.

The Marine Mammal Protection Act & Incidental Take / Incidental Harassment Authorization

It's been a challenge to get NMFS-issued incidental take authorization and incidental harassment authorization under the Marine Mammal Protection Act (MMPA) during the feasibility phase, due to insufficient information about specific construction techniques.

While requiring Incidental Take or Incidental Harassment Authorizations under the Marine Mammal Protection Act is rare for Corps projects, it has been difficult to reconcile the level of design during the feasibility phase to the level of design required by NMFS to make a decision under the MMPA regulations.

The most important thing is continued early engagement with NMFS to understand the information they need to make that decision, and vertical team engagement within the Corps to determine when (during feasibility, during PED) that information will be available. For NMFS, the analysis is done at our headquarters office in conjunction with whatever region is working on the issue. It can be a process that can take many months, so coordination must start early.

How does a study team determine when the Marine Mammal Protection Act (MMPA) needs to be considered, if the potentially impacted marine mammals are outside of Endangered Species Act (ESA) listed species?

Early coordination with your local National Marine Fisheries Service office is key. In the case of the Seattle Harbor study, the Corps conducted a survey to see what ESA listed species are present. We do have orca whales, so we had a Section 7 (ESA) evaluation for that species. In this region, we don't have a lot of marine mammals; we have humpback whales but I queried our local NMFS Office and they said even though they're listed they're farther offshore, and unless we believe that they are in the project area we didn't need to consult on that situation under the MMPA.

In early engagement, you ask the Services for what to consider: that species list is the first thing; a continuing conversation is the next.

Developing and Using Biological Assessments (BA)

Do the Biological Assessments that are provided to the resource agencies include analysis of all alternatives or only at the tentatively selected plan?

If the FWS/NMFS has identified listed or proposed species or designated or proposed critical habitat earlier in the study (Scoping Phase), then the Corps should have a prepared Biological Assessment at the beginning of the Feasibility-Level Analysis Phase (or sooner if practicable) with a determination as to whether the Tentatively Selected Plan may affect any such species and/or critical habitat.

If the Biological Assessment determines the Recommended Plan is not likely to adversely affect endangered or threatened species or critical habitat, then the Corps may request informal consultation with FWS/NMFS. If the Biological Assessment indicates that the Recommended Plan is likely to adversely affect a listed endangered or threatened species or critical habitat, then the Corps will request formal consultation with FWS/NMFS.

The timing / focus of the BA on the Tentatively Selected Plan rather than the alternatives, however, does not preclude earlier coordination and communication with the services to discuss alternatives/measures and opportunities to avoid impacting listed species or critical habitat during plan formulation and evaluation. This engagement is highly recommended.

What level of detail is required in a project description in the Biological Assessment? The level of detail/data required by Services when they are developing their Biological Opinions seems much higher than the Biological Assessment, and usually isn't available until much later in the process.

The level of detail on the recommended plan required during formal consultation and the development of a Biological Opinion is much higher than that of a Biological Assessment. That's why it's especially critical to work with the Services throughout the process, including during the development of the Biological Assessment before the draft report / BA is released, so that if formal consultation is required, you already have an idea of the level of detail / data the Services are going to need to develop the Biological Opinion.

At NMFS, for example, we do ask for very detailed project descriptions, because a better described proposed action is and more information up front allows us to do a better effects analysis and reach a conclusion more quickly. There is less back and forth in terms of asking for additional information which can stop the consultation clock and protracts the whole process.

Is the Corps using FWS's Information Plan and Consultation (IPaC) system for ESA coordination?

IPaC is a public facing interface for project proponents to pull down digital ESA list requests, and is available online at <https://ecos.fws.gov/ipac/>. This replaces the old process of contacting field office by email or letter. The information you receive from IPaC is generated by USFWS field offices and available over the internet to anyone when they need it rather than when USFWS personnel are available.

Corps planners can use this readily-available information during the earliest planning stages. Subsequent discussions with USFWS staff regarding your specific project (scope, scale, timing, etc.) may result in modifications of IPaC-generated conservation measures or additional recommendations specific to your project.

Note, however, that IPaC does not cover NMFS species; you'll need to go to the NMFS regional office to get that information. You can go to the NMFS regional office website and you can get the species list there, or you can just you can directly contact the NMFS regional office and they can help you produce that list.