

## Recent Environmental Streamlining and Risk-Informed Decision Making

### Planning CoP Webinar

November 1, 2018

#### Q&A Session

Ms. Lauren Diaz of the Office of Water Project Review (OWPR) with the support of the other OWPR environmental reviewers (Mr. Mark Matusiak, Ms. Evie Haberer, Mr. Jeff Trulick, and Ms. Julie Alcon) provided an overview of recent initiatives focused on timely environmental compliance, including Executive Order 13807, Establishing Discipline and Accountability in the Environmental Review and Permitting Process for Infrastructure Projects, and Section 1005 of WRRDA 2014, Project Acceleration. The webinar discussed these initiatives in the context of risk-informed decision making within the environmental discipline, so that environmental compliance can be conducted in a timely manner and fully integrated into a 3x3 compliant study (3 years and \$3M total study costs). Ms. Susan Conner (Norfolk District) also provided an overview of the Norfolk Coastal Storm Risk Management Study as an example how using risk-informed decision making can facilitate completing an environmental impact statement (EIS) and associated environmental compliance activities within the 3x3 framework.



The referenced guidance and other resources related to environmental compliance can be found on the Planning Community Toolbox:

- [Director's Policy Memorandum 2018-12: Implementation of Executive Order \(EO\) 13807 and One Federal Decision \(OFD\) within Civil Works Programs](#)
- [Implementation Guidance for Section 1005 of the Water Resources Reform and Development Act of 2014 \(WRRDA 2014\), Project Acceleration](#)
- [Forty Most Asked Questions Concerning the Council on Environmental Quality's National Environmental Policy Act Regulations](#)
- [Planning Community Toolbox NEPA Collection](#)

[Executive Order 13807 is also available online.](#)

This summary of the Question / Answer session of the webinar is not a transcription; questions and responses have been edited and reordered for clarity.

#### Notice of Intent (NOI) Processes & Timing

**Will moving NOI issuance "to the right" (to occur after the Alternatives Milestone Meeting) prevent early coordination?**

NOI issuance isn't required to do early coordination, which should start as soon as possible (i.e., as soon as the Federal Cost Share Agreement is signed). The intent in moving the NOI to the right is to ensure that the study team has had an opportunity to do an early iteration of the planning process and conduct the

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interagency meeting required by Section 1005 of WRRDA 2014 to better inform the decision whether to prepare an EIS or an EA for the study.

*From Question/Response #13 in the Forty Most Asked Questions Concerning CEQ's National Environmental Policy Act Regulations:*

The regulations state that the scoping process is to be preceded by a Notice of Intent (NOI) to prepare an EIS. But that is only the minimum requirement. Scoping may be initiated earlier, as long as there is appropriate public notice and enough information available on the proposal so that the public and relevant agencies can participate effectively.

However, scoping that is done before the assessment, and in aid of its preparation, cannot substitute for the normal scoping process after publication of the NOI, unless the earlier public notice stated clearly that this possibility was under consideration, and the NOI expressly provides that written comments on the scope of alternatives and impacts will still be considered.

### Working with Other Federal Agencies

**Does this Executive Order apply in a case where another federal agency refuses to initiate (Endangered Species Act) formal consultation without design information that would not be available until pre-construction engineering and design (PED)?**

Following the issuance of EO 13807, the Executive Office of the President developed a memorandum of understanding (MOU) that was signed by all federal agencies, including the Department of Commerce (under which the National Marine Fisheries Service is housed) and the Department of the Interior (which includes U.S. Fish and Wildlife Service), in which every federal agency agreed to implement the EO.

The MOU also outlined a process in which the resource agencies must accept invitations from lead agencies to discuss projects and consultations. This process also includes several check points at which the participating agencies check in on the level of information needed to move to the next step, as well as a course of action for elevating disputes.

There is also an “off ramp” option for the lead agency to pursue if it decides not to process the project; however, this option should be viewed as a last resort. If issues arise, the lead agency should remind the resource agency of the accountability provisions discussed in the MOU.

When this issue arises for the Corps, Districts should definitely engage locally first if team-to-team coordination falls short (e.g., commander-to-regional administrator), and then elevate the issue to their MSC, and to HQ, only when necessary.

**What are the practical impacts of an agency declining an invitation to be a cooperating agency?**

Amendments to [33 U.S. Code § 2348](#) in WRRDA Section 1005 outline the limited circumstances in which an agency can decline to be a cooperating agency. If an agency declines the invitation, USACE should first ensure the reason for declining is consistent with the requirements in law. If the reason for declining is

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not consistent with the law, USACE should coordinate with that agency, attempting to resolve the issue, and then elevate the issue to the MSC if necessary. If the project in question is a “major infrastructure project,” then EO 13807 applies and that agency could also be obligated to act as a cooperating agency under the recent interagency MOU.

#### Environmental Impact Statement Processes (EIS)

**By entering more detailed information in the final EIS, isn't there a risk that it will be treated as new information requiring a supplemental draft EIS?**

There is a difference between drilling down to greater detail versus supplying new information. For example, in the draft EIS, it's appropriate for the PDT to provide a range (e.g., wetland impacts are between 5 and 10 acres), and then narrow that information down in the final EIS (e.g., wetland impacts are 7.65 acres). If the information provided in the final EIS is well outside of that initial range (e.g., wetland impacts are 35 acres) or if there is completely new information such as a new alternative, there may be a need for a supplemental draft EIS to be circulated.

#### Responding to the Office of Management and Budget / Completing the Infrastructure Permitting Dashboard

**Can Headquarters use the EPA database to conduct a data pull of all NOIs across USACE to respond to the Office of Management and Budget (OMB), rather than requiring a Division-by-Division or District-by-District data call?**

This type of database would be a useful resource and may be something that could be used in the future to monitor new NOIs. For the near-term, OMB requires information beyond just project name and date (i.e., whether USACE considers it to be a major infrastructure project), which means District-by-District data calls or upward reporting will still likely be needed.