

## Cooperating Agencies and Section 1005 of WRRDA 2014

August 22, 2019

Q&A Session

*This webinar provided an overview of [Section 1005 of the Water Resources Reform and Development Act \(WRRDA\) of 2014](#) and the requirements for involving cooperating agencies in a study. Cooperating agencies are required to be involved in studies per the National Environmental Policy Act (NEPA), but the enactment of Section 1005 of WRRDA 2014 provides further details. The webinar discussed tips and tools for working with Cooperating Agencies, courtesy of the Collaboration and Public Participation CX (CPCX) and was presented by Julie Alcon (Environmental Team Lead, Office of Water Project Review [OWPR]), Wes Coleman (Chief, OWPR), Hal Cardwell (CPCX Director at the USACE Institute for Water Resources), and Seth Cohen (Collaboration and Public Participation CoP lead).*



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

### **What should study teams do in situations where cooperating agencies are non-responsive?**

This issue ties back to cooperating agencies having been identified as such at the beginning of the feasibility study process, as well as USACE requirements under [Section 1001](#), [Section 1002](#), and Section 1005 of WRRDA 2014. Within the first 90 days of a study, the study team is required to sit down with identified cooperating agencies to develop a schedule for timely and coordinated public and agency review. In addition, as part of the [One Federal Decision policy \(Executive Order 13807\)](#), the Office of Management and Budget (OMB) maintains a One Federal Decision dashboard which includes a “permitting timetable” based on the feasibility study schedule (for civil works projects). This permitting timetable lays out the steps for obtaining a license or permit from cooperating agencies, and can be used as an entry point to start the issue resolution process if problems arise.

If District teams are having a difficult time getting responses or letters back from cooperating agencies, they should first elevate the issue to their MSCs to see if it can be solved at that level with regional cooperating agency representatives, before going to the Headquarters level. In particular, such issues should be raised at the Alternatives Milestone Meeting, during which the decision maker (usually the MSC Planning Chief) should be asking whether the required interagency meeting has been held and cooperating agency letters have been received. Teams should then include any agreed upon next steps for engagement in the Decision Management Plan. The ultimate goal is to coordinate and resolve issues early in order to avoid having to go to OMB or the Council on Environmental Quality late in the process because cooperating agencies haven’t gotten on board with the process.

**Under what situations would a state agency or Tribe shift from being a participating agency to a cooperating agency?**

None. In addition to being identified in Section 1005, cooperating agencies are defined in [40 CFR § 1501.6 - Cooperating agencies](#). Cooperating agencies are other federal agencies.

**What are the pros and cons of setting up a cooperating agency relationship when conducting a Continuing Authorities Program (CAP) study compared to a General Investigations (GI) study?**

It should first be noted that Section 1005 applies to all studies that have an environmental impact statement (EIS), regardless of whether the study is conducted under the Continuing Authorities Program (CAP) or General Investigations (GI). Section 1005 allows for the coordinated review process to be used on studies with environmental assessments, but does not require it. When an EIS is not involved, the District should assess whether a cooperating agency arrangement is worthwhile based on the needs of the study. For example, perhaps there is information that needs to be developed and environmental analyses that need to be prepared including portions of the NEPA document concerning areas in which the cooperating agency has special expertise.

**Do you have any advice for putting into place MOUs with cooperating agencies specifically to lay out how we will work with them through a phased NEPA process after the final EIS?**

The working arrangement and process should be discussed with the cooperating agencies and non-federal sponsor and agreed upon by all parties prior to the drafting of the MOU. The working arrangement and permitting timetable may be different for each cooperating agency since the permitting, authorization, etc. process for each cooperating agency may be different. Consider whether an MOU is necessary with an agency or if the working agreement can be documented in a letter, responded to with a concurrence letter, and documented in the final EIS.

**Do you have any advice for a situation in which the National Marine Fisheries Service (NMFS) wants to establish a specific marine mammal working group between the draft and final EIS to address concerns and data gaps?**

This can be a good way to ensure proposed surveys and studies needed for the species are not duplicative of information that already exists and can save time, money, and effort by the Corps to develop these surveys and studies. However, if the purpose of the working group is to develop information for a Corps civil works planning project, determine whether the working group should be led by the Corps with an invitation to the cooperating agencies and other agencies who are instrumental to the information needed, instead of the group being led by NMFS. Also, consider establishing this working group earlier to help develop the draft EIS. In addition, seek Office of Counsel advice to determine whether or not the working group would need to abide by any Federal Advisory Committee Act (FACA) laws.