

SMART Planning Policy Waiver Case Study: Unalaska (Dutch Harbor) Navigation Study

June 11, 2020

Q&A Session

This webinar provided a look at the specific challenges that were overcome by the vertical team in the Unalaska (Dutch Harbor) navigation study. The Alaska region has unique considerations related to building infrastructure, with no shortage of protected wildlife that require extensive consultation under several environmental laws. The Dutch Harbor study illustrates where the Endangered Species Act (ESA), Marine Mammal Protection Act (MMPA), and USACE planning policy requirements came into conflict, and how the Dutch Harbor Study required the exploration, development, and approval of a policy waiver by the project delivery team (PDT).



This presentation explored the weighing of risk to schedule, cost, and implementation with USACE legal and policy obligations, and highlighted the coordination and documentation required to support this specific risk-informed decision to defer completion of ESA consultation to the pre-construction engineering and design (PED) phase.

The webinar was presented by Quana Higgins (NWD-POD Regional Integration Team); Evie Haberer (Environmental Reviewer, Office of Water Project Review); Kate Bliss (POD Regulatory and Environmental Program Manager); and Mike Salyer (Alaska District Environmental Resources Section Chief). Any of the presenters can be contacted for additional information or documentation related to the Dutch Harbor study.

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

Vertical Team Coordination

Who is responsible for making the decision regarding whether the MMPA Incidental Take Authorization (ITA) can be pushed to PED? Is it the Chief of the Office of Water Project Review (OWPR) or the Headquarters Chief of Planning and Policy?

PDTs seeking a decision on pushing the MMPA ITA to PED should work with their Regional Integration Team (RIT) planner and MSC staff to coordinate with OWPR and the Chief of Planning and Policy to request a policy exemption from the Assistant Secretary of the Army for Civil Works (ASA(CW)) if an Incidental Harassment Authorization (IHA) or Letter of Authorization (LOA) is needed under the MMPA for an ESA-listed marine mammal.

For more information, see [Appendix C: Environmental Evaluation and Compliance](#) of the Planning Guidance Notebook (updated April 2019), which contains guidance coordinated with the ASA(CW) on how to handle requests for permission to defer the MMPA ITA to PED, including documentation in the Finding of No Significant Impact (FONSI) or Record of Decision (ROD) document.

Should PDTs build in additional time into their schedules to allow for ASA(CW) review and approval for an ESA policy exception prior to the Agency Decision Milestone?

PDTs should be prepared to request an extension under 3x3x3 to build in time for review and approval of an ESA policy exemption – but whether or not an extension will be needed depends on the specific

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project. For example, review and approval of the Dutch Harbor policy exception took approximately six months, but this exception request was the first of its kind and the link between the ESA, MMPA, and USACE policy requirements was only confirmed relatively late in the study process. Since then, three additional policy exceptions for Alaska District General Investigations studies have been reviewed and approved without the need for additional time or funding. This is likely because the vertical team was engaged and fully informed as a result of the Dutch Harbor study.

What strategies did the Dutch Harbor PDT employ to keep people positive and focused despite the extra work involved in requesting the policy exception?

Despite the complexities of the laws and policies, the work to develop the exemption will benefit not just Dutch Harbor, but the whole region. Ultimately, the PDT did not feel that walking away from the project was the right answer, and the support of the vertical team helped ensure that the process issues did not get in the way of the success of the study.

Resource Agency Requirements

It was mentioned that the package submitted to the ASA(CW) for the exemption request included a legal opinion that assessed the resource agencies' legal requirements. Did that assessment include any input from the resource agencies and/or their legal teams?

Alaska District biologists are generally familiar with what the resource agency requirements will be for a study since the Alaska theater is unique in its lack of existing biological information. The Alaska District also coordinated closely with the resource agencies throughout the entirety of the Dutch Harbor study, allowing the PDT to consult them about their requirements before coordinating with Office of Counsel on the legal opinion.

In general, PDTs should work with the resource agencies to ensure the agencies include their regulatory requirements and needs in their letters, which allows for PDTs to include this information in their legal opinions and risk assessments.

How did the Fish and Wildlife Coordination Act (FWCA) apply to this study? Did the species impacts not come to light under FWCA because blasting had not yet been identified as an alternative when FWCA was initiated?

In typical studies, species impact information would be made available under the FWCA. However, because of the unique geography of Alaska and constrained resources, the resource agencies frequently decline to engage with USACE on FWCA. The Alaska District is working to build a trusted relationship with the resource agencies to encourage them not to continue that practice.

Are programmatic Biological Opinions (BiOps) funded from the project that triggered the need for the BiOp or with alternative funding?

Programmatic BiOps are generally funded by the single project that triggered the need if it falls under a programmatic level program, or by several projects if they are similar in nature and the effects are known to the level of detail necessary to complete a programmatic BiOp or Biological Assessment.