United States Army Corps of Engineers-Alaska District-Regional Regulatory Division-Cooperating Agency Coordination Plan

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Introduction

This document describes the roles and responsibilities of the various cooperating agencies in order to establish a protocol for communication, early identification and resolution of issues, and to resolve issues that could delay completion of the environmental impact statement (EIS) and respective records of decision (ROD) for action agencies.

Lead Agency

USACE is the lead federal agency for completion of the EIS. The responsibility of the lead agency is to ensure compliance with applicable laws and regulations (i.e. National Environmental Policy Act (NEPA), Clean Water Act, etc.) USACE is responsible for managing the EIS process and schedule and the final content of the EIS, identifying and selecting cooperating agencies, and involving the public in the process. USACE will select a third party contractor in accordance with Regulatory Guidance Letter No. 05-08 for preparation of the EIS. The CEQ regulations implementing the NEPA govern the cooperating agency relationship for all Federal agencies preparing EISs under the NEPA. The Corps' regulations and policies regarding cooperating agencies are in agreement with those of CEQ.

Determination of Eligibility for Cooperating Agency Status

State agencies, local governments, Tribal governments, and other Federal agencies may be eligible to serve as cooperating agencies. Other than its provisions for Tribes (see subsection Eligibility of Tribes), CEQ regulations recognize two criteria for CA status: jurisdiction by law and special expertise.

Defining Eligibility 40 CFR 1508.5 (CEQ)

"Cooperating agency" means any federal agency other than a lead agency, which has "jurisdiction by law" or "special expertise" with respect to any environmental impact involved in a proposal (or a reasonable alternative) for legislation or other major federal action significantly affecting the quality of the human environment

….A state or local agency of similar qualifications or, when the effects are on a reservation, an Indian tribe, may by agreement with the lead agency become a cooperating agency.

Jurisdiction by law 40 CFR 1508.15 (CEQ)

"Jurisdiction by law" means agency authority to approve, veto, or finance all or part of the proposal.

Jurisdiction by law offers a very specific basis for CA status and clearly states its statutory obligation to assist in EIS development and implementation.

Special expertise 40 CFR 1508.26 (CEQ)

"Special expertise" means statutory responsibility, agency mission, or related program experience.

Special expertise provides a broader window for CA status, emphasizing the relevant capabilities or knowledge that a Federal, Tribal, State, or local governmental entity can contribute to the EIS stemming from its statutory responsibilities or agency mission.

Eligibility of Tribes 40 CFR 1508.5 (CEQ)

The CEQ regulations specify that a Tribe is eligible for cooperating agency status "when the effects [of an undertaking] are on a reservation".

The cooperating agency relationship is not a replacement or substitution for the government to government relationship with a Tribal government. The Corps has responsibilities under other laws, regulations, and policies to consult with Tribes when privately proposed projects requiring federal authorization affect resources important to Tribes. The Corps has extended government to government consultation invitations to 35 federally recognized tribes. Additional information about the Tribal consultation process for the projects requiring DA authorization under the regulatory program can be found in the Tribal Consultation Plan.

Identifying and inviting potential Cooperating Agencies

CEQ regulations permit a lead agency to invite other eligible agencies and governments to assume a cooperating agencies role "at the earliest possible time" (40 CFR 1501.6). Project Managers are expected to make a reasonable effort to identify Federal, Tribal, State and local entities possessing *jurisdiction by law* or *special expertise* concerning the area potentially affected by the project. Conversely, when a government entity requests CA status, the request must be evaluated against CA eligibility criteria. If either of the criteria (*jurisdiction by law* or *special expertise*) is met, CA status can be granted.

USACE will identify and invite agencies in accordance with the above definitions. The proposed project is located on state owned and privately owned land. USACE has identified six federal agency with jurisdiction by law and two federal agencies with special expertise and the State of Alaska with both jurisdiction by law and special expertise.

To establish CA status, the Corps will send a Letter of Invitation to the eligible government entity. The Letter of Invitation will include a brief outline of the role(s) of the specific cooperating agency in the EIS and invite the agency to an agency scoping meeting prior to the agency providing response to the invitation. To establish the formal CA relationship, the eligible government entity will send a written response back to the Corps stating their intent to serve as a CA in the EIS along with their ability to fulfill responsibilities identified in the Corps invitation letter.

See Appendix A for cooperating agency identification and rationale for the proposed project and cooperating agency invitation letters.

Roles and Responsibilities of Lead and Cooperating Agencies

The CEQ regulations call for early and significant involvement by cooperating agencies in the preparation of an EIS. Both lead and cooperating agencies assume significant obligations in offering and accepting the CA relationship. As the lead agency, the Corps is expected to use the analysis and proposals of a CA "to the maximum extent possible consistent with its responsibility" (40 CFR 1501.6 (a) (2)).

CAs agree to contribute staff to the cooperating agency team, develop analyses for which they have particular expertise, and fund their own participation. Once becoming a CA partner, the agency remains a CA throughout the entire NEPA process, unless they withdraw due to exhausted resources or funding.

Roles of lead and cooperating agencies 40 CFR 1501.6 (CEQ)

(a) The lead agency shall:

1. Request the participation of each cooperating agency in the NEPA process at the earliest possible time.
2. Use the environmental analysis and proposals of cooperating agencies with "jurisdiction by law" or "special expertise," to the maximum extent possible consistent with its responsibility as lead agency.
3. Meet with a cooperating agency at the latter's request.

b) Each cooperating agency shall:

1. Participate in the NEPA process at the earliest possible time.
2. Participate in the scoping process.
3. Agencies with jurisdiction by law will provide agency required screening criteria for alternatives development.
4. Assume on request of the lead agency responsibility for developing information and preparing environmental analyses including portions of the environmental impact statement concerning which the cooperating agency has "special expertise.
5. Make available staff support at the lead agency's request to enhance the latter's interdisciplinary capability. Normally use its own funds.

The roles and responsibilities for each CA will be formalized when the cooperating agency team is formed, scoping is completed, and the team is aware of potential gaps in cooperating agency team knowledge.

USACE's intent is to involve cooperating agencies early and identify specific roles to be fulfilled by cooperators to allow for the agency to focus their efforts, keep relevant information familiar, and assist in timely work product and reviews.

It will be the responsibility of each cooperating agency to inform USACE in writing if their respective agency does not have adequate resources to participate in the process, produce requested analysis, and/or meet the required review periods.

General Cooperating Agency Expectations

The following information is designed to give an overview of expectations of cooperating agencies from EIS initiation through completion.

EIS Initiation. The Corps will compile all relevant scientific research and ecological models that exist, develop a preliminary scope for the EIS, draft our agency purpose and need statement and develop a set of communication tools (sharepoint, website, meeting points). At this stage of the process, informal discussions with potential cooperating agencies will occur, followed by an agency scoping meeting, and formal invitations for cooperating agency status.

Roles for CAs: Determine agency capabilities to enter into cooperating agency relationship. Appoint a member (and potentially alternate) to serve on the cooperating agency management team and coordinate all internal resource efforts specific to the agency.

See Appendix B for agency designated personnel for this project.

Define Purpose and Need & Assess the Affected Environment

This phase includes all activities required to initiate preparation and development of an EIS. It includes notifying the public of the project by publishing a Notice of Intent in the Federal Register and initiating the public scoping process; defining the project purpose, need, and objectives statements through public scoping meetings for incorporation into the draft EIS; developing a conceptual ecological model; and succinctly describing the existing environmental conditions and resource baselines in the Affected Environment Section of the draft EIS.

Roles for CAs: Action agencies identify agency purpose and need and provide comprehensive alternatives screening criteria. Participate in scoping and collaborate in assessing scoping comments. Identify data needs; provide data and technical analyses within CA's expertise. Provide information (such as local monitoring and baseline data) for affected resource modeling and draft affected environment section of the EIS and help interpret model results as appropriate.

Consider Alternatives with Scoping (Public) Input

The EIS lead and cooperating agency team will utilize public input to formulate a suite of reasonable alternatives to achieve the purpose and need of the proposed project The information gathered during this phase will be used to prepare the Alternatives Chapter of the draft EIS.

Roles for CAs: Review alternatives proposed by public and suggest potential alternatives. For agencies with jurisdiction by law, ensure proposed alternatives take into consideration agency required screening criteria.

Analyze Impacts

Cooperating Agencies will be assigned to technical teams based on special expertise and jurisdiction by law. The CA will assist in analyzing the impacts (adverse and beneficial) and the significance of impacts on the environment of the area(s) to be affected or created by the

alternatives under consideration. These impacts will be documented in the Environmental Consequences Chapter of the draft EIS.

Roles for CAs: Suggest models and methods for impact analyses; provide effects analysis within CA's expertise; identify direct, indirect, and cumulative effects within CA's expertise; suggest mitigation measures for adverse effects.

Write/Review/Comment/Resolve

This phase will consist of consolidating all prepared draft chapters and appendices into a complete draft EIS and release of the document to all interested parties. Public hearings will be conducted and comments will be solicited

Roles for CAs: Collaborate with lead agency in evaluating alternatives; provide information for draft EIS. Resolve agency comments within jurisdiction by law or special expertise prior to public release of draft. Participate in hearings. Work with lead agency to understand and evaluate public comments.

Consider comments and finalize EIS

This phase includes all the activities necessary to consider and respond to comments received on the draft EIS, revise (especially changes to alternatives or impact analysis conclusions) and finalize EIS, prepare the document for printing and print the required copies, prepare and publish a Notice of Availability for the final EIS.

Roles for CAs: Review comments within CA's expertise and assist in preparing responses. Suggest changes to alternatives or analysis as appropriate when comments dictate.

Please see Appendix C for specific Coordination Points, Information Requirements and Responsibilities for this project.

NOTE: There is no expectation that any cooperating agency will participate in review outside of agency jurisdiction by law or special expertize. Agencies may however choose to participate more broadly.

Abide by agreed upon schedule

The schedule will include major EIS milestones consistent with statutory and regulatory requirements, in order to encompass the full environmental review process. The Lead agency will provide details in the schedule that are applicable to cooperating agency responsibilities. The Corps will use its discretion as Lead agency in deciding the level of detail for the cooperating agency schedule with the objective of communicating clear expectations for the overall effort. A draft schedule has been provided to facilitate discussion. A final schedule will not be produced until after public scoping has occurred and the agencies have had opportunity to identify data gaps and any additional requirements identified as a result of scoping.

Agency Writing and Review Time

Agencies will be actively involved in writing and revising the Draft EIS within their respective areas of special expertise. Specific development and revision periods will be identified in the project schedule.

All public review and circulation periods will be identified in the project schedule and will be consistent with NEPA requirements.

Cooperating Agency Guidance on Project Communications

Cooperating agencies are encouraged to engage in robust discussion and debate during cooperating agency meetings and topical discussions on affected resources. These meetings ensure that all cooperating voices are heard throughout the EIS process and that multiple views can be thoroughly discussed. The Corps will not use the exchange that occurs within these meetings as a substitute for agency position or comments. The Corps requires that formal cooperating agency comments on work products of the EIS be submitted on agency letterhead, signed by the agency's designated official, within the time frames agreed upon in the approved project schedule. These letters may be submitted electronically to the designated project email address: poaspecialprojects@usace.army.mil. **All agency correspondence will be made part of the public record upon receipt.**

Appendix A. Entities identified to participate in the EIS process and Cooperating Agency Invitation Letters

ncy Name	Role	Responsibilities	Date Invited/Date Accepted or Declined
ACE	Lead Agency Jurisdiction	CWA, 103, RH10, Manage efficient environmental review process; prepare EIS; provide opportunity for public and cooperating agency involvement	N/A
e of Alaska			
	Cooperating Agency-Jurisdiction	Section 401,402, air quality permit jurisdiction P&N, ROA, water quality, air quality	
	Cooperating Agency-Jurisdiction	Fish Habitat Permitting, P&N, ROA, fisheries, wildlife	
	Cooperating Agency-Special Expertise	P&N, ROA, Cultural Resources, Historic Properties Section 106 Consultation	
	Cooperating Agency-Jurisdiction	Mine Permitting, P&N, ROA, tailings spill analysis, dam review	
	Cooperating Agency-Special Expertise	P&N, ROA, Needs and welfare of the people, health risk assessment	
EE	Cooperating Agency Jurisdiction	P&N, ROA, ROW-OCS	
PHMSA	Cooperating Agency Jurisdiction	P&N, ROA, Pipeline Safety, Diesel Spill Risk	
HP	Cooperating Agency-Special Expertise	P&N, ROA, Historic Properties, Section 106	
. Fish and Wildlife vice	Cooperating Agency-Special Expertise Jurisdiction by law	P&N. ROA, Fish, Wildlife, Endangered Species ITA, IHA	
. NOAA NMFS	Cooperating Agency-Special Expertise Jurisdiction by law	P&N, ROA, Fisheries, Marine Mammals, Endangered Species ITA, IHA	
. Environmental tection Agency	Cooperating Agency-Special Expertise Jurisdiction 404 Veto authority	P&N, ROA, Section 404(b)(1), wetlands, special aquatic sites,309	
ted States Coast	Cooperating Agency-	P&N, ROA, Port safety, navigation,	

Guard	Jurisdiction-	Section 9	

Appendix B. Agency Cooperating Agency Team Member Contact Information

Contacts for agencies that have replied in the affirmative.

Agency	Contact Person/Title	Phone	E-mail
State of Alaska	Kyle Moselle		Kyle.moselle@alaska.gov
BSEE	John McCall		John.mccall@bsee.gov
USDOT-PHMSA	Linda Daugherty		linda.daugherty@dot.gov
ACHP	John Eddins		jeddins@achp.gov
USFWS	Doug Cooper		Douglas_Cooper@fws.gov
NOAA-NMFS	Greg Balough Doug Limpinsel		Greg.balough@noaa.gov Doug.Limpinsel@noaa.gov
USEPA	Patty McGrath		Mcgrath.patricia@epa.gov
USCG	David Seris		David.M.Seris@uscg.mil

Appendix C. Coordination Points, Information Requirements and Responsibilities

The following coordination points are key meeting collaboration points to ensure an efficient process.

Coordination Point	Meeting Purpose	Deliverables	Agency Involvement
Notice of Intent EIS	Send cooperating agencies a copy of the NOI; Invite agencies to agency scoping meeting		USACE
Agency Scoping Meeting	Overview of project, Draft P&N, and applicant prepared alternatives, Coop Agency Coordination Plan	Agencies Respond to Cooperating Request within specified timeframe	Each invited Agency to provide response
Conduct Public Scoping	Solicit public input on Project, Alternatives, socio and environmental concerns	Any Agency Scoping Comments due at same time as public comments	All Agency
Post Scoping Collaboration			
	Purpose and Need	Agency Purpose and Need Statement	Action Agencies
	Develop Alternatives Screening Criteria	Criteria for Reasonable Criteria for Practicable	All Agencies
	Breadth of Environmental Resources to be analyzed	List of environmental resources. Finalize EIS outline	All Agencies
Collaboration on impact assessment methodologies	Technical expertise by topic to determine the appropriate context and method for evaluating impacts to specific environmental resources	Report out from each group	Agencies as assigned based on jurisdiction and special expertise
Review of Environmental Baseline and Consequences	Review comments by agencies with technical experts	Resolve agency Comments on document sections	Agencies as assigned based on jurisdiction and special expertise
Post Circulation of DEIS	Review public comments within assigned areas	Address/Resolve Public Comments	Agencies as assigned based on jurisdiction and special expertise
I.D. the Applicant's Preferred Alternative iaw AppB	Agencies with Federal actions – id preferred alt. and identify differences based on program	USACE in accordance with Appendix B, PHMSA as fits their agency.	Action Agencies

	authorities		
I.D. LEDPA	Review all relevant information to LEDPA determination	Preliminary LEDPA	USACE/USEPA
Circulation of FEIS	Agency involvement closeout	Document	USACE

References

1. Council on Environmental Quality NEPA regulations
http://www.nepa.gov/nepa/regs/ceq/toc_ceq.htm

2. Forty Most Asked Questions Concerning CEQ's NEPA Regulations
http://www.eh.doe.gov/nepa/tools/guidance/volume1/4-1-40_questions.html

3. The Corps Environmental Quality Procedures for Implementing NEPA
http://www.usace.army.mil/publications/eng-regs/er200-2-2/entire.pdf

4. Regulatory Guidance Letter 05-08. Subject: Environmental Impact Statements-Third Party Contracting
http://www.usace.army.mil/Portals/2/docs/civilworks/RGLS/rgl05-08.pdf

5. Appendix B to Part 325-NEPA Implementation Procedures for the Regulatory Program
http://www.gpo.gov/fdsys/pkg/CFR-2011-title33-vol3/pdf/CFR-2011-title33-vol3-part325.pdf