Developing Programmatic Agreements and Consultations

*Step 7 of the Integrated Eco-Logical Framework*

**Presenters (ESA Consultation)**

Cindy Callahan, FHWA WA/OR Divisions

Marc Liverman, NOAA Fisheries West Coast Region

John Raasch, Oregon Department of Transportation

**Presenters (Army Corp LOP)**

Danny Peake, Kentucky Transportation Cabinet
Integrated Eco-Logical Framework (IEF)

- Process to guide transportation and resource specialists in the integration of transportation and ecological decisionmaking.
- Helps identify potential impacts to environmental resources very early in the planning process.
Steps of the IEF (and the Eco-Logical approach)

1. Build and strengthen collaborative partnerships
2. Integrate natural environment plans
3. Create a Regional Ecosystem Framework (REF)
4. Assess effects on conservation objectives
5. Establish and prioritize ecological actions
6. Develop crediting strategy
7. Develop programmatic consultation, biological opinion, or permit
8. Implement agreements, adaptive management, and deliver projects
9. Update REF

Partner
Share Data
Analyze Effects
Identify key sites and actions
Document
Implement
Evaluate
The Oregon Federal Aid Highway Programmatic Endangered Species Act Consultation

Cindy Callahan, Environmental Specialist/Biologist
Federal Highway Administration, Washington/Oregon Divisions

Marc Liverman, Willamette Branch Chief
NOAA Fisheries West Coast Region

John Raasch, Environmental Resources Unit Manager
Oregon Department of Transportation
Presentation Topics

• Oregon ESA Consultation Challenges
• Past Consultation Approaches
• FAHP Consultation Components
• FAHP Results
• Questions?
Numerous Listed Species/Critical Habitats

NMFS: 17 species, 16 critical habitats

USFWS: 19 species, 11 critical habitats
Oregon ESA Consultation Challenges (cont.)

- **Impact Pile Driving and Hydroacoustic Effects**: Most in-water work leads to adverse effects to fish/habitat.
- **Stormwater Runoff**:
  - Turbidity
  - Dissolved metals: Formal consultation, cumulative effects
- **Most In-water Work = Adverse Effects to Fish/Habitat**
- **Floodplain Fill/Bank Hardening**
Oregon ESA Consultation Challenges (cont.)

- Costly (BAs range $15,000.00 to $100,000+)
- Time Consuming
  - 4 to 6 months to prepare BA
  - At least 200 days in consultation
  - Redundant effects analysis for similar actions
- Terms and Conditions Variability
  - Unpredictable Requirements
  - Constructability Issues
Past Consultation Approaches

Standard Local Operating Procedures for Endangered Species (SLOPES IV)

- 2008 US Army Corps of Engineers Programmatic
- Only for Corps Nexus Projects (otherwise individual consultation)
- Roads, Culverts, Bridges, Utility Lines
- Does Not Cover Stormwater Effect-Only Projects
- FHWA was not Co-action agency
Past Consultation Approaches (cont.)

Standard Local Operating Procedures for Endangered Species (SLOPES IV)

- Maintain or Improve Environmental Baseline
- Project Notification Form
- Variance Process
- No Online Dashboard
Federal Aid Highway Programmatic (FAHP)

Approach

• 1 BA for NOAA and USFWS, Statewide
• Largely Based on SLOPES IV
• Any Project with FHWA Funds
• Either 5-year (USFWS) or Indefinite Lifespan (NMFS)
• Address all types of activities with very specific exclusions (EIS projects, new stream crossings, etc.)
FAHP (cont.)

Goals

- Facilitate Efficient ESA Compliance
- Provide Predictability to Project Teams
- Avoid and Minimize Adverse Impacts to Species/CH
- Make Contribution Towards Species Recovery (section 7(a) 1 responsibility)
- Reduce Agencies’ Workload
FAHP (cont.)

Reporting

- Electronic Project Notification Form
- Monitoring Forms
- Database Accessible to FHWA and Services
- Electronic Dashboard by Project
Timeline

• BA Development late 2010-October 2011
• Consultation Initiated October 2011
• Signed Biological Opinion (NMFS) Received November 2012
• Program Rollout Spring/Summer 2013
## FAHP Results

<table>
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<th>Two pathway process, NMFS review, or NMFS notification only (FHWA review)</th>
<th>50% reduction in BA prep time/cost</th>
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<td>Over 52 projects have utilized FAHP</td>
<td>85% reduction in review time (200 to 12 [FHWA] to 45 [NMFS] days)</td>
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<td>Increased conservation outcomes</td>
<td>NMFS liaison staffing reduced from 3 FTE’s to 1</td>
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<td>95% Federal Aid program covered</td>
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Kentucky’s Letter of Permission Process

Danny R. Peake
Ecology and Permitting Section
KYTC
Kentucky’s Letter Of Permission Process

KYTC began meeting in 2005 with the USACE, the PN was issued in 2007 and we have been using the LOP for the past 6 years.

It was developed to permit MOST KYTC projects that would have been previously permitted with an Individual Permit using a new streamlined process.

For example: projects that have impacts to streams that exceed 500’ of loss or wetland impacts exceeding 0.5 acre of loss.
TERMS OF THE AGREEMENT

KYTC MUST: AGREE TO PROVIDE MORE INFORMATION THAN WHAT IS REQUIRED FOR A TYPICAL INDIVIDUAL PERMIT

USACE MUST: AGREE TO PROCESS THE APPLICATION USING A STRICT TIMELINE OF 120 DAYS

GOALS: STREAMLINE THE PERMITTING PROCESS, ELIMINATE JOINT IP/NWP, ADDRESS CUMULATIVE IMPACTS, ENHANCE AGENCY COORDINATION
What challenges existed before the programmatic agreement, and how did implementing the programmatic help improve the transportation project development process?:

• **Time.**
• *Pre-LOP, Individual permits took 18 to 36 months - some even longer - to be issued (total time from submittal to issue date)*
After LOP: 4 to 9 months (total time from pre-application to issue date)
How have relationships between transportation and resource partners evolved during the development of the programmatic and its implementation?:

USACE!

USFWS!

USACE!

KYTC!

USACE!
What is the process for a transportation project receiving a permit under this programmatic?:

- a. Application Preparation
- b. Pre-Application Submittal
- c. Site Visit (all Agencies are invited)
- d. Complete Application Submittal
- e. Agency coordination/agency solicitation for comments
- f. KYTC address agency comments
- g. Permit issued
a. Application Preparation

b. Pre-Application Submittal

• Impacts may not exceed 7 cumulative acres
• No impacts to water supply sources allowed;
• Controversial projects shall not be permitted by the LOP
• Not able to use if project “may affect” a listed species, critical habitat or historic resource

Louisville Bridges project – example of a controversial project
c. Site Visit; Agencies invited:

- USACE
- KDOW
- SHPO
- EPA
- KDFWR
- USFWS
d. Complete Application Submittal (The USACOE has 120 days to process)

*Items required for a complete application:*

- Cover letter
- Permit application form
- Project Vicinity Map, alignment map, impact station maps
- Summary of Section 404/401 Impacts
- Impact Summary Table
- Photos
- Rapid Protocol Bio-assessment Sheets
- Preliminary Jurisdictional Form
- LOP Assessment of Environmental, Social and Other Factors
- LOP Checklist
- Alternatives Analysis, project description, purpose and need statement and mitigation plan
- Sec 7 and 106 Clearance
- WQC
- Roadway plans
- Waste site plans
e. Agency coordination/agency solicitation for comments (21 day PCN)

f. KYTC address agency comments

g. Permit issuance
Can you provide examples of specific projects that have benefitted from the implementation of the programmatic?:

- Not really, since every project that has been permitted using the LOP process has benefited due to the quickness of the process. It has been especially beneficial for projects that “surprisingly” pop up with quick letting dates.
What insights have you gained from your experience implementing this programmatic or from evaluation that would be useful to share with peer transportation agencies and their partners:

• **Side benefits such as re-examining our application process**
• **Relationship building w/in agency and interagency,**
• **This agreement was worth the risk of time used in implementation**
• **KYTC as an agency is more aware of the needs of what the USACE PMs need in order to issue a permit which allows us to submit a better application – which should allow for quicker application review**

Questions?

Danny.Peake@ky.gov
Environmental factors

Threatened of endangered species
Economics
Aesthetics
Special aquatic sites
Historic properties
Fish and wildlife values
Flood hazards
Flood plain values
Land use classification
Navigation
Shore erosion
Recreation
Existing and potential water supplies
Water quality
Energy needs
Safety
Food and fiber production
Mineral needs
Consideration of property ownership
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