



1997 Nationwide Programmatic Agreement on Protection of Historic Properties During Emergency Response under the NCP

Regional Response Team II
November 4, 2015



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Programmatic Agreement on Protection of Historic Properties During Emergency Response Under the National Oil and Hazardous Substances Pollution Contingency Plan

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36 CFR 800.13(a)-(g)

(a) *Application*. An Agency Official may elect to fulfill an agency's section 106 responsibilities for a **particular program, a large or complex project**, or a class of **undertakings that would otherwise require numerous individual** requests for comment through a Programmatic Agreement.... (circa '97)

I.C. The purpose of this PA is to provide an ***alternative*** process to ensure appropriate consideration of historic properties...during emergency response to a release or spill....”

Emphasis added

*Caribbean Regional Response Team
Guidelines for the
Programmatic Agreement on Protection of
Historic Properties
During Emergency Response
Under the National Oil and Hazardous
Substances Pollution Contingency Plan*



Developed by the
Caribbean Regional Response Team
for Area Contingency Plan Development
Revised – May 2, 2003

National Historic Preservation Act (NHPA) 1966

- Requires (Section 106) Federal Agencies to “take into account the effects of their undertakings on historic properties...”
- Authorizes National Park Service (NPS) to maintain National Register of Historic Places (NRHP)
- Establishes Advisory Council on Historic Preservation (ACHP)
- Establish SHPOs & Certify Local Governments & THPOs
- Regulations at 36 CFR Part 800, last updated in 2004

1997 “Programmatic Agreement on Protection of Historic Properties during emergency Response under the National Oil and Hazardous Substances Pollution Contingency Plan”

PA developed in response to Exxon Valdez experience

Signatories:

- ACHP
- NCSHPO
- Coast Guard
- EPA

Trustees

- NPS
- NOAA
- DoD
- DoE
- DoA
- DoI

PA Sections I.D and E

D. In carrying out duties under the NCP, including the priorities of protecting public health and safety, the Federal On-Scene Coordinator (OSC) may have to make emergency response decisions that adversely affect historic properties. By following this PA, however, the Federal OSC will be making an informed decision that takes historic property information into account prior to authorizing actions that might affect such property.

E. The responsibility of the Federal OSC in protecting public health and safety is paramount. That mission is a difficult one involving problems that cannot be anticipated and calling for judgment on the part of the Federal OSC. Nothing in this PA changes the national response priorities, nor does it change the effect of existing law.

What does the 1997 PA *not* do?

Does not cover compliance with other preservation laws, e.g.:

- Native American Graves Protection and Repatriation Act (NAGPRA)
- Archeological Resources Protection Act
- Antiquities Act
- National Marine Sanctuaries Act
- Various state historic preservation laws

Regional PAs

- Regional PA's may be developed as an alternative to the National PA and include appropriate provisions for regional concerns.
- A regional PA should be signed by appropriate regional-level Federal officials, State agencies, tribal officials and ACHP.
- Either the national PA or a PA developed at a regional level may be adopted by the RRT and incorporated or referenced in Regional Contingency Plans (RCPs, 36 CFR Section 300.210 (b), and ACPs in the region.
- Regional plans currently exist for Alaska, California, Pacific Northwest, Region 6, CRRT, and FEMA

National Historic Preservation Act Programmatic Agreement/ FOSC Guide Comparison Chart

	All PA's	Alaska PA	California PA	CRRT PA	Pacific NW Guidance
Identification of Historic Properties	Quote National Programmatic Agreement Section V.A.1.	Alaska Heritage Resources Survey System (AHRSS) is the statewide repository. Historic Properties should be included and prioritized in Subarea contingency plans (SCPs).	California Historical Resources Information System (CHRIS) is the statewide repository. Contact potentially affected tribes.	Information is provided by National Parks Service (NPS) and each state SHPO. Historic Properties should be included and prioritized in ACPs.	SHPO for consultation because of overriding factors to categorical exclusion or FOSC determines there are historic/cultural properties that need to be considered.
Identification of Parties to be notified	Quote National Programmatic Agreement Section V.A.2.	Lists 8 entities to be notified. Refers to contact information included in the SCPs.	Refers to notifications included in Attachment 7 (Historic Properties Specialist Checklist)	Lists 6 entities to be notified. Refers to contact information included in the ACPs.	Notify SHPO. Also notify HPS and environmental unit if there will be an adverse effect.
Identification of Emergency Response Strategies	Quote National Programmatic Agreement Section V.A.3. Response Strategies are included in Attachment 2. Refers to continued development of Geographic Response Strategies (GRS).	Requires FOSC to include Report cultural resources found during ops, FOSC HPS should inspect prior to ops, FOSC HPS should monitor ops. Requires the HPS to be included in development of response strategies.	FOSC shall include a statement on historical resource protection on the graphic depicting the response strategy or in text accompanying the strategy. FOSC shall consult with HPS to determine strategies.	FOSCs shall ensure that GRS response strategies consider the protection of Historic Properties. FOSC shall ensure that a statement of historic resource protection is included on each graphic depicting GRS.	Activate a qualified HPS and develop protective measures for historic properties or cultural resources if determined by consultation. FOSC must make an informed decision on Section 106.

(draft) REGION II COMPLIANCE GUIDE FOR NATIONAL HISTORIC PRESERVATION ACT DURING EMERGENCY RESPONSE

The purpose of this guide is to facilitate implementation of the National Programmatic Agreement (PA) on the Protection of Historic Properties during Emergency Response (ER) Under the National Oil and Hazardous Substances Pollution Contingency Plan (NCP).

- **Section 106 Steps FOSCs Must Take During an ER**
- **Important Concepts about Section 106 for the FOSC**
- **Determination of factors that may call for the presence of the Historic Properties Specialist**
- **Integrating Section 106 Obligations into ICS**
- **Provide Documentation of Actions Taken/Adverse Effects**
- **Other Relevant Authorities**
- **Attachments**

Section 106 Steps FOSCs Must Take During an ER

1. Determine if the ER is categorically excluded from Section 106. See Attachment 1.
 - o If yes, Email/fax Attachment 1 and No Further Action Is Necessary.
2. Notify each state's State Historic Preservation Officers (SHPO)/Tribal Historic Preservation Officer and the National Park Service (NPS) for consultation because of overriding factors to the Exclusions in Step 1, or if the FOSC or THPO/SHPO determine(s) there are historic properties or cultural resources that need to be considered. Additionally, if a response to Attachment 1 is received from SHPO and potentially-affected resource managers/trustees, proceed to next step
3. In accordance with the PA, activate a qualified Historic Properties Specialist (HPS) and develop protective measures for historic properties or cultural resources if determined by consultation.

See also Attachment 3, HPS Personnel Standards; Attachment 4, which contains a checklist of parties that may need to be notified and consulted with, and actions that may be taken for the purposes of historic property protection in the event of an incident in a non-excluded area; and Attachments 6 and 7 for documentation of response actions that did, or did not adversely affect historic properties. Please also refer to the PA at Section IV.C. Emergency Response Support/Coordination.

If possible, the consultation process will, if possible, be completed within the operational period that a response strategy is developed (e.g., shoreline treatment recommendation), or prior to the operational period that a strategy will need to be implemented.

ATTACHMENT 7

**DOCUMENTATION OF EMERGENCY RESPONSE DECISION
THAT ADVERSELY AFFECTS HISTORIC PROPERTIES OR
CULTURAL RESOURCE¹¹**

This form should be completed and submitted, along with any additional supporting documentation, in a reasonable and timely manner to the appropriate entities listed below:

Name of incident:	
Date/time of incident:	
Location of incident:	
Response Action, Impact, and Decision	
[Describe response action and adverse impacts to historic properties or cultural resources. Explain why protecting historic properties/cultural resources and public health/safety could not all be met concurrently. Include information that would support this as an informed decision and the date of the decision. Describe any mitigative actions taken.]	
_____ FOSC Signature and Date	_____ Printed Name and Title:
_____ SHPO Signature and Date	_____ Printed Name and Title:
_____ THPO Signature and Date	_____ Printed Name and Title:
_____ Resource Manager/Trustee Signature and Date	_____ Printed Name and Title:

Documentation – PA section VI.F.

Whenever the Federal OSC determines the requirements of this Section cannot be satisfied concurrently with the paramount requirement of protecting public health and safety, the determination shall be documented in a writing including the name and title of the person who made the determination; the date of determination; and a brief description of the competing values between public health and safety and carrying on the provisions of this Section. Emphasis added

Documentation - Regulations:

- 800.3(a)(1) - no potential to effect;
- 800.4(d)(1) - no historic properties;
- 800.4(d)(2) Historic Properties [*may be*] affected [notify consulting parties];
- 800.5(b) Finding of no adverse effect [proposed][documented, 800.11(e)];
- 800.5(c)(2) Disagreement with proposed Finding of No Adverse Effect;
- 800.5(d)(1) [Finding of] no adverse effect [“results of the assessment”][record/documentation required];
- 800.6(b) Resolve adverse effects.

**ATTACHMENT 1A
DOCUMENTATION OF ACTIONS TAKEN THAT DID NOT AFFECT HISTORIC
PROPERTIES/CULTURAL RESOURCE**

This form should be completed and submitted, along with any additional supporting documentation, in a reasonable and timely manner to the appropriate entities listed below:

<p>Name of incident:</p> <p>Date/time of incident:</p> <p>Location of incident:</p>
<p>Brief description of response action approved (including the date) by Federal On-Scene Coordinator (OSC) :</p> <p><input type="checkbox"/> The Exclusions listed in Attachment 1.B apply to this spill or release, and there are no known "Overriding Factors"³</p> <p>Federal OSC Name and Title:</p> <p>Federal OSC Signature:</p> <p>Date of Signature:</p> <p>Email or fax this form to the consulting parties/individuals listed below, consistent with the Checklist in Appendix 4. No further action is needed unless a response <u>response from</u> one of the listed individuals/agencies is received indicating that the spill or release may have the potential to affect a historic property.</p> <p>If a response to this statement is received indicating that a historic property is at risk, initiate the consultation process (Step 2 of the Guidelines) and activate an HPS. Note: <i>Activation of the HPS must be accomplished in a "reasonable and timely" manner.</i></p>
<p>Emailed or Faxed to:</p> <p><input type="checkbox"/> _____, State Historic Preservation Officer (____-____-____ fax)</p> <p><input type="checkbox"/> (Name and fax number of potentially-affected resource managers/trustees):</p> <p><input type="checkbox"/> (Name and fax number of potentially-affected resource managers/trustees):</p> <p><input type="checkbox"/> (Name and fax number of potentially-affected resource managers/trustees):</p>

ATTACHMENT 6

**DOCUMENTATION OF ACTIONS TAKEN THAT DID NOT RESULT IN AN
ADVERSE AFFECT ON HISTORIC PROPERTIES/CULTURAL
RESOURCES/CULTURAL RESOURCES**

This form, or other record format with similar information, can be used when the Exclusions listed in Attachment 1.B do not apply, where there are "Overriding Factors," or when, through consultation with appropriate parties, historic properties/cultural resources may be present in the area subject to Federal response actions.¹⁶

Name of incident:	Date/time of incident:
Location of incident:	
<u>Brief description of response action approved (including the date) by Federal On-Scene Coordinator (OSC):</u>	
Describe how Adverse Effects were avoided, reduced, or mitigated:	
_____ FOSC Signature and Date	_____ Printed Name and Title:
_____ SHPO Signature and Date	_____ Printed Name and Title:
_____ THPO Signature and Date	_____ Printed Name and Title:
_____ Resource Manager/Trustee Signature and Date	_____ Printed Name and Title:
_____ Resource Manager/Trustee Signature and Date	_____ Printed Name and Title:

PA Section VI.F.

Whenever the Federal OSC determines the requirements of this Section cannot be satisfied concurrently with the paramount requirement of protecting public health and safety, the determination shall be documented in a writing including the name and title of the person who made the determination; the date of determination; and a brief description of the competing values between public health and safety and carrying on the provisions of this Section.

Notwithstanding such a determination, if conditions subsequently permit, the Federal OSC shall endeavor to comply with the requirements of this Section to the extent reasonably practicable.