

APPENDIX 51 – COMPLIANCE GUIDE FOR NATIONAL HISTORIC PRESERVATION ACT DURING AN EMERGENCY RESPONSE

Thanks to the Region 10 Regional Response Team and North West Area Committee for development of this compliance guidance. Region 6 has modified these practices to work within Region 6 areas.

Quick Guide for Federal On-Scene Coordinators

Steps OSCs Must Take if They Respond to an ER

Step 1: Determine if the ER is categorically excluded from Section 106 (This determination may need to be made after OSC arrives on scene.)

[If Yes, No Further Action Necessary]

Step 2: Notify SHPO for consultation because of overriding factors to categorical exclusion or OSC determines there are historic properties or cultural resources that need to be considered

Step 3: Activate a qualified HPS and develop protective measures for historic properties or cultural resources if determined by consultation.

Step 4: Notify the SHPO/THPO when the emergency response has formally concluded.

Categorical Exclusions

Spills or Releases Categorically Excluded from Additional Section 106 Compliance:

- Spills/releases onto (and that stay on):
 - Gravel pads.
 - Roads (gravel or paved, not including the undeveloped right-of-way).
 - Parking areas (graded or paved)
 - Dock staging areas less than 50 years old
 - Gravel causeways
 - Artificial gravel islands.
 - Drilling mats, pads, and/or berms
 - Airport runways (improved gravel strips and/or paved ruays)
- Spills/Releases into (and that stay in):
 - Lined pits (e.g., drilling mud pits and reserve pits)
 - Water bodies where the spill/release will not (1) reach land/submerged land; and (2) include emergency response activities with land/submerged land-disturbing components.
 - Borrow pits Concrete containment areas.
- Spills/releases of:
 - Gases (e.g., chlorine gas)

Overriding Factors that may call for presence of HPS:

- uncertainty on applicability of categorical exclusion
- specifics of a spill or release change so it no longer fits into one of the categories listed above
- the spill is greater than 100,000 gallons
- SHPO/THPO believes spill or release may have the potential to affect a significant historic property

Important Concepts about Section 106 for the OSC

- The OSC may have to make an ER decision that adversely affects historic properties and cultural resources. However, the ER decision must be an informed decision.
- An informed decision is one in which the OSC has:
 - consulted (notified and taken into account professional comments) with SHPO, Federal land-managing agencies, Tribes, native Hawaiian organizations or other interested parties
 - consulted with an Historic Properties Specialist
 - consulted the GRP/Environmental Unit under ICS

- determined a categorical exclusion applies
- The OSC must conduct formal consultation with SHPO/THPO on newly discovered or unanticipated potential historic properties or cultural resources encountered and on adverse impacts due to the response on those properties or resources. This is an inherently governmental responsibility that must be done by the OSC and not the HPS.
- NHPA Section 106 obligations apply to OSC response actions and not to impacts caused by the spill or release.
- Consultation with the THPO is not intended to meet government to government consultation required by Executive Order 13175.

Integrating Section 106 Obligations into ICS

- Include in the Incident Objective (ICS-202) a statement on protection of historic properties or cultural resources as the case may be.
- The HPS serves in the Environmental Unit as the Historical/Cultural Resources Technical Specialist.
- In a unified command ICS situation with a PRP-lead cleanup, it is appropriate for the PRP to acquire the HPS. However, it should be clear among the Incident Commanders (ICs) that the relationship of the HCRTS to the OSC is unique among the command staff. The HCRTS is responsible for helping the OSC meet his or her Section 106 legal obligations which do not apply to the other ICs.
- If the SOSC has similar legal obligations under their state law, then that should be made clear in unified command and added to the list of responsibilities for the HCRTS. The OSC and SOSC should be clear with the HCRTS on any differences or deltas between their legal obligations.
- Provide to the workers any special instructions to ensure protection of historical properties and cultural resources via the Assignment List (ICS -204).
- Document in the Unit Log (ICS-214) any actions taken that resulted in adverse impacts to historic properties or cultural resources.

Activating a Qualified HPS

A Qualified HPS:

- must meet The Secretary of the Interior's Historic Preservation Professional Qualification Standards and Guidelines, for either the disciplines of prehistoric or historical archeology found at <http://www.cr.nps.gov/local-law/gis/html/quals.html>
- should have demonstrated familiarity with the archaeology and environment of the area in question
- should be fully familiar with Federal and State laws and regulations governing historic preservation, and with the operation of the State's historic preservation office
- must have the requisite OSHA training for Hazardous Waste Operations and Emergency Response (29 CFR 1910.120) if required to work inside an exclusion zone
- should have ICS 300 level Incident Command System training
- should have familiarity with the NCP
- should have familiarity with the ACP
- should have familiarity with the Programmatic Agreement on the Protection of Historic Properties during Emergency Response under the NCP
- should have familiarity with the SCAT process

Provide the HPS the List of Duties as the HCRTS

Historical/Cultural Resources Technical Specialist (HCRTS) – The HCRTS is responsible for providing to the OSC reliable and timely expertise and support to ensure historic properties and cultural resources are taken into account in the conduct of the emergency response. The major responsibilities of the HCRTS are:

- a) Understand and be able to implement 300.202 of the ACP
- b) Coordinate with SHPO, THPO (or tribal cultural resources program), land management agency, other concern parties
- c) Determine and document presence of historical properties or cultural resources
- d) Document effect of spill or release on historic properties or cultural resources
- e) Assess whether emergency response strategies have the potential to affect historic properties or cultural resources and advise the OSC accordingly

- f) Identify, prioritize and develop strategies for protection and cleanup of impacted historic /cultural sites in order to minimize damage
- g) Participate in the testing and evaluation of cleanup techniques used on historic /cultural sites
- h) Monitor and provide guidance on the cleanup of historic /cultural sites to reduce or eliminate response-related impacts
- i) Document adverse effects on historic properties or cultural resources due to the emergency response. For intentional actions that result in adverse impacts, include information to show that the OSC made an informed decision taking into account professional comments prior to authorizing actions and any mitigative measures considered
- j) Make arrangements for suspected artifact theft to be reported to the SHPO, law enforcement officials, and the land owner/manager
- k) Arrange for disposition of records and collected materials
- l) Ensure the confidentiality of historic property site location information, consistent with applicable laws, so as to minimize opportunities for vandalism or theft
- m) Provide Special Instruction in ICS -204 to ensure protection of historical properties and cultural resources
- n) Convene an historic properties technical advisory group if needed due to size and complexity of the incident
- o) Request additional HSPs as needed
- p) Accompany SCAT teams

Attachment 1: Documentation of Emergency Response Decision that Adversely Affects Historic Properties or Cultural Resources

Use this form for deliberate or unintentional adverse impacts. Attach this form to the Unit Log (ICS-214) or include in site file. Submit in a reasonable and timely manner to the appropriate entities listed below:

Emergency Response	
Name:	
Date:	
Location:	
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.]	
OSC Name:	
OSC Signature:	
Date of Signature:	
Responsible SHPO/THPO/Resource Manager/Trustee	

Attachment 2 Releases or Spills Categorically Excluded from Additional Compliance under National Historic Preservation Act Section 106*

<ul style="list-style-type: none">• Threatened spills/releases:• Response activities related to threatened spills or releases that include the removal of fuel, and which will not include land/submerged land-disturbing activities. For the purposes of this attachment, limited manual subsurface testing (e.g., shovel tests) to assess the presence, amount, and/or extent of oil or hazardous substance contamination is not considered a ground-disturbing activity.
<ul style="list-style-type: none">• Spills/releases onto (which stay on):<ul style="list-style-type: none">○ Gravel pads○ Roads (gravel or paved, not including the undeveloped right-of-way)○ Parking areas (graded or paved)○ Dock staging areas less than 50 years old○ Gravel causeways○ Artificial gravel islands○ Drilling mats, pads, and/or berms○ Airport runways (improved gravel strips and/or paved runways).
<ul style="list-style-type: none">• Spills/releases into (that stay in):<ul style="list-style-type: none">○ Lined pits (e.g., drilling mud pits and reserve pits,○ Water bodies where the release/spill will not: (1) reach land/submerged land; and (2) include emergency response activities with land/submerged land-disturbing components.○ Borrow pits○ Concrete containment areas
<ul style="list-style-type: none">• Spills/releases of:<ul style="list-style-type: none">○ Gases (e.g., chlorine gas)

Important Note to Federal On-Scene Coordinators: (1) If you are not sure whether a release or spill fits into one of the categories listed above; (2) if at any time, the specifics of a release or spill change so it no longer fits into one of the categories listed above; (3) if the spill is greater than 100,000 gallons; and/or (4) if the State Historic Preservation Officer or the representative of a Federally-recognized tribe notifies you that a categorically-excluded release or spill may have the potential to affect a historic property, then an Historic Properties Specialist needs to be activated in accordance with the Nationwide Programmatic Agreement and the ACP.

* This list is from Appendix I – Categorical Exclusion List found in the Programmatic Agreement.

Attachment 3 Recommended Historic Properties Specialists Personnel Standards

Individuals contracted to provide technical services to Federal On-Scene Coordinators as Historic Properties Specialists:

1. must meet The Secretary of the Interior's Historic Preservation Professional Qualification Standards and Guidelines, for either prehistoric or historical archeology*
2. should have demonstrated familiarity with the archaeology and environment of the area in question
3. should be fully familiar with Federal and State laws and regulations governing historic preservation, and with the operation of the State's historic preservation office
4. must have training in compliance with the standards found in 29 CFR 1910 (HAZWOPER) if required to work inside an exclusion zone
5. should have ICS 300 level ICS training
6. should have familiarity with the NCP
7. should have familiarity with the ACP
8. should have familiarity with the Programmatic Agreement on the Protection of Historic Properties during Emergency Response under the NCP
9. should have familiarity with the Shoreline Cleanup Assessment Technique (SCAT) process

* In general, these require a graduate degree in anthropology (or a closely related field), with a specialization in archeology, and two and one-half years of professional experience. These standards can be found on-line at <http://www.cr.nps.gov/local-law/gis/html/quals.html>.

Attachment 4 Notice to Response Personnel

Required Actions after Discovery of Cultural Resources

The Unified Command is required to comply with State and Federal laws that protect cultural resources from injury. The Historic/Cultural Resource Specialist helps the Unified Command and Federal On-Scene Coordinator ensure that cultural resources are appropriately considered during emergency response activities.

Response personnel including contractors, sub-contractors, emergency responders, cleanup workers, and field crews play a crucial role in this process since they, by the nature of their work, are the people most likely to encounter cultural resources while in the field.

During an incident response in the Pacific Northwest it is possible that you, as a person involved in the response, may discover cultural resources. In the course of your work if you find an item that you believe or suspect is cultural or historic, you must:

1. Stop work immediately at, near, and surrounding the area where you discovered the object, item, or artifact.
2. Leave the suspected cultural item in place, undisturbed, exactly where it was discovered. Do not pick the item up, touch it, or work around it.
3. If possible, mark the location where you discovered the item but do not disturb or penetrate the soil with any object or tool. There may be other artifacts under the soil that could be damaged by your actions.
4. Inform your field supervisor of the discovery as soon as possible.

After these initial actions, your field supervisor will immediately notify the Planning Section's Environmental Unit and the Historic/Cultural Resource Specialist. Further direction on how to proceed will be provided by the Unified Command.

If you are unsure of something discovered being culturally sensitive, consider it to be sensitive and follow the steps listed above so that the Unified Command can be notified and, ultimately, make a determination on the item's historic significance and the actions needed to protect it.

Compliance with these procedures is mandatory. They must be followed by all response personnel. Failure to comply with these procedures by excavating, removing, damaging, altering, or defacing any archaeological resource is a violation of multiple State and Federal laws and may result in fines/penalties, criminal prosecution, and imprisonment.

For more information on actions related to the discovery of cultural resources, consult with your supervisor or contact the Historic/Cultural Resource Specialist.

For the purpose of this guidance, the term "cultural resource" includes but is not limited to: pottery, basketry, bottles, weapons, weapon projectiles, tools, structures or portions of structures, pit houses, rock paintings, rock carvings, intaglios, graves, human skeletal materials, or any portion or piece of any of the foregoing items.

Non-fossilized and fossilized paleontological specimens may also be considered cultural resources, depending greatly on the context in which they were discovered.