

c. **National Historic Preservation Act of 1966 (NHPA) (Section 106).**

- (1) Congress passed the National Historic Preservation Act of 1966 (NHPA) to protect the nation's historic resources and archaeological sites. The NHPA established federal policy for historic preservation, the National Register of Historic Places and National Landmarks Programs, the Advisory Council on Historic Preservation (ACHP), and provided for qualified State Historic Preservation Officers (SHPOs). Section 106 of the NHPA requires federal agencies to take into account the effects of their actions on historic properties, and provide the ACHP, an independent federal agency that administers NHPA Section 106, a reasonable opportunity to comment on the action. Historic properties include any prehistoric or historic district, site, building, structure, or object included in, or eligible for inclusion in, the National Register of Historic Places, including artifacts, records, remains related to those sites, and objects. Section 106 applies when: 1) there is a federal or federally licensed action, and 2) when that action has the potential to affect historic properties.
- (2) When the Coast Guard FOSC funds, directs, or oversees spill response activities during an emergency, the clean-up operations comprise a federal action. If these actions have the potential to impact any historic property (which can be as simple as taking an action that disturbs or impacts a natural area on land) the Coast Guard bears the responsibility for demonstrating how compliance with Section 106 of the NHPA was completed. However, the typical/non-emergency Section 106 consultation process takes time to incorporate different opinions and fulfill all of the procedures, which is not conducive to emergency response activities. Since neither the NCP nor Section 106 of the NHPA specifically address requirements for, or provide guidance pertaining to, consideration of historic properties during emergency response to an actual or threatened release of a hazardous substance, pollutant, or contaminant or the discharge of oil, the Coast Guard entered into an agreement that provides additional guidance on this subject. The *Programmatic Agreement on Protection of Historic Properties During Emergency Response Under the National Oil and Hazardous Substances Pollution Contingency Plan* (known as the 1997 PA) provides an alternative Section 106 process to ensure appropriate consideration of historic properties in the planning for and conduct of emergency response under the NCP. The agreement is located on the [Commandant \(CG-MER\)'s Portal](#).
- (a) **Pre-spill Consultations and Planning Activities.**

[1] FOSCs, with active support from their Area Committees and RRTs, should develop and maintain relationships with their SHPOs, Tribal Historic Preservation Officers (THPOs), and DOI Regional Environmental Officers (REOs). SHPOs, as designated by the governor, administer the NHPA program at the state level, run the state's National Register program, and maintain data about historic properties. THPOs, as designated by tribal government, may assume some or all of SHPO functions on tribal land (not all tribes have THPOs). For the purposes of this Manual, a reference to

THPOs may also include individuals representing applicable Native Hawaiian, Native Alaskans, and other indigenous peoples. REOs typically provide guidance and attend meetings at the Regional Level, but may be able to support the FOSC in larger responses with guidance pertaining to 106 consultations and tribal engagements. Meeting with SHPOs, THPOs, and REOs can be done in conjunction with or separate from Area Committee and/or RRT meetings. At a minimum, FOSCs *shall*:

[a] Determine the types of services and information SHPOs, THPOs, and REOs can provide (different states and offices have different levels of resources available; some SHPOs may maintain an electronic or GIS-based list of historic properties); and

[b] Determine contact information and notification thresholds.

[2] FOSCs, in coordination with SHPOs, THPOs, and REOs, and NOAA SSCs (as applicable), *shall* pre-identify members who can fill the role of Historic Property Specialists (HPSs) during an emergency response to a spill or release and determine contact information and notification thresholds. The HPS can assist the FOSC in mitigating impacts to historic properties during a response. Those state or federal personnel identified to fulfill the role of an HPS should meet the requirements outlined in Table 4-4.

Training and Qualifications	Familiarity/Knowledge Areas
<i>Secretary of the Interior’s Standards and Guidelines for Archeology and Historic Preservation</i>	Archaeology and environment of the AOR
FEMA Independent Study Courses (ICS 100, 200, 700, 800)	Federal and state laws and regulations governing historic preservation and operation of the state’s historic preservation office
Occupational Safety and Health Administration (OSHA) training for Hazardous Waste Operations and Emergency Response (HAZWOPER) (29 C.F.R. § 1910.120) if field work is required	NCP and applicable ACP
Shoreline Cleanup and Assessment Technique (SCAT) Course	<i>Programmatic Agreement on Protection of Historic Properties During Emergency Response Under the National Oil and Hazardous Substances Pollution Contingency Plan (1997 PA)</i>

Table 4-4: Historic Property Specialist (HPS) Requirements

[3] FOSCs *shall* work with SHPOs, THPOs, and REOs to ensure that response strategies exist to protect historic properties listed in or determined eligible

for inclusion in the National Register of Historic Places. If the information is available, FOSCs should develop response strategies for unsurveyed areas where there is a high potential for the presence of historic properties. There may be objection to including this sensitive information into ACPs. It may be necessary to agree in advance how to access sensitive information during a response.

- [4] FOSCs *shall* update ACPs to include locations where spills or releases are categorically excluded from NHPA Section 106 compliance. Appendix 1 of the 1997 PA provides a categorical exclusion list. Incidents in areas on this list (or similar lists developed in consultation with SHPOs, THPOs, and REOs) would not require further consideration. Incidents in areas not on the list require notification to the SHPO, or other parties as pre-identified, to determine if further consideration is warranted.
- [5] FOSCs *shall* consider historic/cultural properties in decisions related to areas with pre-approved use of alternative response technologies.

(b) **Discharge or Release Notifications.**

When a discharge or release occurs, the FOSC *shall* determine if the location is categorically excluded (meaning there are no impacted historic properties) per the ACP. If the spill location is excluded, no further actions are required by the FOSC with respect to the NHPA. The FOSC *shall* contact the SHPO, and other parties pre-identified in the ACP, if:

- [1] The spill is not in a categorically excluded location (or if it is unknown);
- [2] The location of the spill changes from excluded to non-excluded location;
- [3] The spill is more than 100,000 gallons; or
- [4] Previously unidentified historic properties are discovered during emergency response.

(c) **Emergency Consultations.**

The FOSC *shall* consider potential impacts to historic and cultural properties from response activities occurring on land or submerged land in a non-excluded area within the Coastal Zone. The FOSC may have to make emergency response decisions that adversely affect historic properties due to public health and safety priorities. The FOSC *shall* follow the provisions of the 1997 PA to ensure informed decisions are made. The consideration of historic and cultural properties *shall* be facilitated through the following activities:

- [1] Make reasonable and timely efforts to notify and consult with the SHPO, THPO, and federal land managing agencies, as applicable. This is separate from the initial notification of a discharge or release. The focus of this

**notification is on assessing the potential effects of the response actions taking place in specified areas, as opposed to the impacts of the discharge or release. Examples include: the excavation of trenches to stop the spread of oil, establishing staging areas, or the construction of a new path or access area for equipment transfer. If NHPA Section 106 consultations are required, the FOSC *shall* contact ACHP as well. When conducting notifications, utilize Section VI Federal Lead Emergency Response of the 1997 PA and agreed upon emergency response measures.**

- [2] Develop and incorporate BMPs into response activities during consultation with the SHPO and ACHP (and others as appropriate) in order to minimize impact to historic and cultural resources.**
- [3] Discuss with the SHPO, REO, SSC, and other applicable parties, the activation of an HPS into the response. Reasons to activate an HPS include: identifying historic and cultural resources that may be affected, assessing and reviewing the potential effects of the response actions, developing and implementing BMPs for the emergency response, and arranging for the disposition of records or collected materials. HPSs are typically included within the Environmental Unit or as a Technical Specialist within an Incident or Unified Command.**
- [4] Contract applicable personnel (HPS or other members assisting with protection of historic or cultural properties) as needed via a PRFA or other Coast Guard contracting means. The Responsible Party may also provide their own specialists, but it is important for the Coast Guard to supervise the contracting of any personnel tasked with providing advice and guidance to the FOSC on historic and cultural resources. If any questions arise regarding the requirements for a HPS, or who to contract with, the FOSC should contact Commandant (CG-MER) and the Office of Environmental Management, Commandant (CG-47) for additional guidance. The HPS should follow the ICS Historic Properties Specialist Job Aid, which can be found on the [Commandant \(CG-MER\)'s Portal](#).**
- [5] If a historic or cultural object, item, or artifact (such as pottery, bottles, weapons, rock carvings, or remains) is found while conducting response activities, responders should stop work in the immediate area as soon as practical, leave the item in place, and inform the field supervisor. The field supervisor *shall* immediately notify the Environmental Unit or HPS, who can then coordinate future actions and contact with the SHPO and/or other appropriate representatives.**
- [6] Ensure the confidentiality of the historic property location information in order to minimize opportunities for vandalism or theft.**

(d) **Documentation.**

If known or unknown historic or cultural properties are, or may be, disturbed during federally led response activities, the FOSC, and/or those acting in support of the FOSC, *shall* document to file the following:

- [1] All calls, written, or electronic communications regarding consultations with the SHPO, THPO, ACHP, and other applicable parties.
- [2] Response strategies developed for protection and cleanup of impacted historic or cultural properties along with any BMPs to reduce the response activity's impact. This information may be included on the Assignment List (ICS Form 204) in the development of Incident Action Plans.
- [3] Adverse effects on historic or cultural properties due to emergency response activities. For any intentional actions that result in adverse impacts, describe why protecting historic or cultural resources was not possible and include information to show that the FOSC made an informed decision.
- [4] A record of any artifacts or collected materials discovered while conducting response activities (this may be considered confidential information).
- [5] Any suspected artifact theft.
- [6] When the FOSC prioritizes protecting public safety and health over historic or cultural properties. This documentation should be completed via standard memo to the SHPO and ACHP, and *shall* include the name and title of the person who made the decision, the date, and a brief description of the competing values between public health and safety and historic and cultural properties.

d. **Tribal Consultation.**

In addition to the requirements stated in Section D.4.c. of this Chapter, there are additional laws and Executive Orders that pertain to consultation with tribal governments before taking certain actions that may affect tribes or their trust resources. An example of an action that may affect one or more federally recognized tribes would be exclusion of native fishing craft from areas they have been granted access to by treaty. If it appears that a given action may affect tribal interest, FOSCs *shall* contact the tribes as soon as practicable. As noted in *Commanding Officer's Environmental Guide, COMDTPUB P5090.1 (series)*, the Coast Guard recognizes the sovereign authority of tribal governments and is committed to working with them on a government-to-government basis. *Executive Order 13175 – Consultation and Coordination With Indian Tribal Governments* and the [Department of Homeland Security Tribal Consultation Policy](#) provide additional guidance on tribal consultation. FOSCs, as the acting official, *shall*:

- (1) Consult, to the greatest extent practicable, with tribal governments prior to taking actions that affect federally recognized tribes. During the consultation, the Coast Guard will need to assess the impact of their plans, projects, programs, and activities on tribal trust resources;**
- (2) Engage with or reach out to the assigned Coast Guard Tribal Relations Officer, if applicable;**
- (3) Create and maintain effective relationships with tribes in their AOR;**
- (4) Establish meaningful and timely opportunities for government-to-government consultation; and**
- (5) Be responsive to requests from federally recognized tribes to engage in consultation prior to, during, or following response actions.**

E. Ecological Risk Assessments (ERA).

1. Area Committees and RRTs should strongly consider use of ERA Workshops as a tool to support FOSCs in the development or re-evaluation of response strategies across one or more COTP Zones. The ERA provides an organized, facilitated process that allows regional and local stakeholders to present the best available scientific data to determine what response options are most likely to minimize the environmental consequences and maximize recovery potential in a particular area. These workshops provide a more complete understanding of interests and equities among federal, state, and local officials, and they serve as an ideal forum to improve consensus and decision-making among RRTs and Area Committees.
2. ERAs place special emphasis on use of NCP Subpart J (40 C.F.R. § 300.910) countermeasures that require preauthorization or case-by-case authorization and they can directly inform these decision-making processes at the RRT level. ERAs can help determine levels of consultation needed based on impacts to listed species or critical habitat because of various response options. Furthermore, information and material developed during ERA workshops can provide valuable data to inform the ESA and EFH consultations.
3. FOSCs and Area Committees should consult the guidebook, *Developing Consensus Ecological Risk Assessments: Environmental Protection in Oil Spill Response Planning*, to find guidance on how to incorporate ERA workshops into the Area Committee planning process. FOSCs and Area Committees should direct specific questions regarding the guidebook or ERAs to the Commandant (CG-MER) ACP Program Manager.

F. Places of Refuge.

1. Introduction.

This section provides policy and guidance for Sector Commanders, MSU Commanding Officers, Area Committees, and RRTs to prepare for and respond to a vessel requesting a place of refuge as described in the *International Maritime Organization (IMO) Resolution A.949(23), Guidelines*