

## REGION 5 COMPLIANCE GUIDE FOR NATIONAL HISTORIC PRESERVATION ACT DURING EMERGENCY RESPONSE (ER)

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).

### Recommended Section 106 Steps for FOSCs During an ER

1. Determine if the ER is categorically excluded from Section 106. See Attachment 1.
  - 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 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. The National Park Service may also be consulted for assistance with this process.

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) when necessary and develop protective measures for historic proper ties or cultural resources if determined by consultation.

See also Attachment 4, HPS Personnel Standards; Attachment 2, 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, 7 and 8 for documentation of response actions that did not affect, did not *adversely* affect, have an adverse affect on historic properties. Please also refer to the PA at Section IV.C. Emergency Response Support/Coordination.

If possible, the consultation process should 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.

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

### Important Concepts about Section 106 for the FOSC

- Information on Historic Properties available from SHPOs and the NPS National Register of Historic Properties may be included in the applicable section of each Area Contingency Plan (ACP). To expedite and strengthen response strategies, the ACPs may identify, prioritize, and develop strategies for Historic/Cultural sites. See also the PA, Section V. Pre-Incident Planning, for additional preparedness needs.
- NHPA Section 106 obligations apply to FOSC response actions and not to impacts caused by the spill or release.

- Historic properties can be adversely<sup>1</sup> impacted by all facets of cleanup and monitoring, such as access, staging, excavation, waste removal and decontamination, deployment and demobilization of equipment,
- The FOSC may have to make an ER decision that adversely affects historic properties and cultural resources. However, the ER decision must be an informed decision. This determination can be documented in Attachment 8.
- An informed decision is one in which the FOSC has:
  - o Consulted (notified and taken into account professional comments) with SHPO, Federal land-managing agencies, Tribes or other interested parties
  - o Determined if the exclusions apply
  - o If activated, consulted with an Historic Properties Specialist
  - o Consulted the GRPs or similar other sensitive environments sources
  - o If ICS is activated, consulted with the Environmental Unit
- Attachment 8 provides the required documentation of actions taken that resulted in unavoidable injury to historic properties or cultural resources to the SHPO for and potentially affected resource trustees.
- The FOSC must conduct formal consultation with SHPO/THPO and other appropriate parties 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 FOSC or his/her representative, which may include the *FOSC's* HPS.
- Consultation with the THPO is not intended to meet government to government consultation required by Executive Order 13175.

### **Factors that may call for the presence of HPS:**

- If a spill or release does not meet the characteristics of an excluded spill or release (Attachment 1)
- Uncertainty on applicability of the spill categories in Attachment 1. excluded from additional Section 106 NHPA compliance
- SHPO or resource manager/trustee responds to determination (Attachment 1) that a Historic Property or Cultural Resource is at risk

### **Integrating Section 106 Obligations into ICS**

Not all ERs will require a formal ICS structure. However, the need to recognize the protection of historic properties as a response objective, the development and communication of instructions for operational elements that may impact historic resources, and documentation outlined in the points below, remain.

- The HPS serves in the Environmental Unit as the Historical/Cultural Resources Technical Specialist (see Attachment 2).

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<sup>1</sup> Adverse effects can include destruction, damage, or alteration of the property; or isolation from, alteration of, or introduction of conditions out of character with its setting. See the PA at Section VI.D.1, or 36 CFR 800.5(a)(1).

- 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 HPS to the FOSC is unique among the command staff. The HPS is responsible for helping the FOSC meet his or her Section 106 legal obligations, which do not apply to the other ICs.
- Include in the Incident Objective (ICS-202) a statement on protection of historic properties or cultural resources as the case may be.
- Provide to the workers any special instructions to ensure protection of historical properties and cultural resources via the Assignment List (ICS -204) for each Branch involved in actions potentially disturbing ground or structures (e.g., On Water Removal, Shore Line Removal, DECON).
- Ensure that information on historic properties/cultural resources are included in the Resources at Risk Summary (ICS 232) prepared by the Environmental Unit.
- Document in the Unit Log (ICS-214) Attachment 6. for “did not affect” historic properties and/or Attachments 7 and 8 for any actions taken could have or did result in adverse impacts to historic properties or cultural resources.

### Provide Documentation of Actions Taken/Adverse Effects

1. Did Not Affect. In accordance with the National Programmatic Agreement, the FOSC should document actions taken that did not affect Historic Properties (Attachment 6). No further action is needed unless a response back from one of the listed SHPO and potentially-affected resource managers and trustees is received indicating that the spill or release may have the potential to affect a historic property. If a response to Attachment 6. is received indicating that a historic property is at risk, initiate the consultation process (Step 2 of the Guidelines) and activate an HPS. See also Attachment 5, suggested information to be provided to the HPS upon activation.
2. Did Not Adversely Affect. See Attachment 7, for use in documenting situations where historic properties may be present or the exclusions in Attachment 1 did not apply, and the response actions undertaken did not result in an Adverse Effect.
3. Adverse Effect. If there are adverse effects to historic/cultural resources, the determination shall be documented in writing (Attachment 8) and provided to the SHPO and potentially-affected resource managers and trustees.

### Other Relevant Authorities

As with the PA (see Section II.B), these guidelines do not specifically address the Archaeological Resources Protection Act (ARPA), the Antiquities Act, the National Marine Sanctuaries Act, or the Native American Graves Protection and Repatriation Act (NAGPRA).<sup>2</sup> However, given the importance, please also see, for reference purposes, Attachment 9 for the

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<sup>2</sup> For a comparison of Section 106, NAGPRA, and ARPA, see [www.nps.gov/nagpra/TRAINING/NAGPRA-ARPA-106](http://www.nps.gov/nagpra/TRAINING/NAGPRA-ARPA-106).

NAGPRA process model used for National Park Service lands. In addition, the PA at Section II.C. recognizes the relevance of State policies.

### **Attachments:**

Attachment 1 - Spill or Release Categories Excluded from Additional Compliance with Section 106 of the National Historic Preservation Act

Attachment 2 – Historic Properties Specialist Checklist to Assess and Address Potential Affects on Historic Properties/Cultural Resources

Attachment 3 - Notice of Response Personnel of Required Actions After Discovery of Cultural Resources

Attachment 4 - Historic Property Specialists Personnel Standards

Attachment 5 - Information To Be Provided to the HPS Upon Activation

Attachment 6 - Documentation of Actions Taken that Did Not Affect Historic Properties

Attachment 7 - Documentation of Actions Taken that Did Not Result in an Adverse Effect on Historic Properties

Attachment 8 - Documentation of Actions Taken that Adversely Affect Historic Properties or Cultural Resources

Attachment 9 – NAGPRA Process Model

Attachment 10- Preparedness

**ATTACHMENT 1  
SPILLS OR RELEASES EXCLUDED  
FROM ADDITIONAL NHPA SECTION 106 COMPLIANCE**

<p><b>Threatened spills/releases:</b> Response activities related to threatened spills or releases that include the removal of fuel, and which will not include land/submerged land-disturbing activities*.</p>
<p><b>Spills/releases onto (which stay on):</b></p> <ul style="list-style-type: none"> <li>• Gravel pads</li> <li>• Roads (gravel or paved, not including the undeveloped right-of-way).</li> <li>• Parking areas (graded or paved)</li> <li>• Dock staging areas less than 50 years old</li> <li>• Gravel causeways</li> <li>• Artificial gravel islands</li> <li>• Drilling mats, pads, and/or berms</li> <li>• Airport runways (improved gravel strips and/or paved runways)</li> </ul>
<p><b>Spills/releases into (that stay in):</b></p> <ul style="list-style-type: none"> <li>• Water bodies where the spill or release: (1) <u>will not</u> reach land/submerged land; and (2) Will not include emergency response activities with land/submerged land-disturbing components</li> <li>• Water bodies where the spill or release: (1) <u>will</u> reach land/submerged land; and (2) will not include emergency response activities with land/submerged land-disturbing components.</li> <li>• Lined pits (e.g., drilling mud pits and reserve pits).</li> <li>• Borrow pits</li> <li>• Concrete containment areas.</li> <li>• Tidal shorelines exposed to aggressive wave action resulting in erosion and sediment reworking</li> <li>• Existing paths, roads, and public use areas that are improved, marked and mapped, or worn bare and have no proscription against walking, providing no soil is disturbed. Excludes concrete containment areas</li> </ul>
<p><b>Spills/releases of:</b> Gases (e.g., chlorine gas)</p>

**Overriding Factors:** (1) If you are not sure whether a spill or release fits into one of the categories listed above; (2) if at any time, the specifics of a spill or release 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 spill or release may have the potential to affect a historic property, then an Historic Properties Specialist should be activated in accordance with the Nationwide Programmatic Agreement.<sup>3</sup>

<sup>3</sup> See the National Programmatic Agreement Sections VI.A.1 and VI.A.2.

**ATTACHMENT 2**  
**HISTORIC PROPERTIES SPECIALIST CHECKLIST TO**  
**ASSESS AND ADDRESS POTENTIAL AFFECTS**  
**ON HISTORIC PROPERTIES/CULTURAL RESOURCES\*<sup>4</sup>**

<b>THE FOLLOWING ACTIONS SHOULD BE CONSIDERED AS APPROPRIATE BY THE FEDERAL ON-SCENE COORDINATOR'S HISTORIC PROPERTIES SPECIALIST FOLLOWING ACTIVATION:</b>	
<input type="checkbox"/>	Understand and implement the Area Contingency Plan. If the spill/release occurs in an area where Geographic Response Strategies or Plans (GRS or GRP) have been developed, check the historic properties note on the GRS/GRP and discuss appropriate actions with the Federal OSC.
<input type="checkbox"/>	Identify the (1) location(s) of known historic properties affected or potentially-affected by the spill or release; and/or, (2) potential for undocumented historic properties to be affected or potentially-affected by the spill or release.
<input type="checkbox"/>	<i>Notify/consult with the _____ State Historic Preservation Office.</i>
<input type="checkbox"/>	<i>Notify/consult with the Bureau of Indian Affairs.</i>
<input type="checkbox"/>	<i>Notify/consult with all appropriate Federal, State, local, and/or private landowner(s)</i>
<input type="checkbox"/>	<i>Notify/consult with appropriate Federally-recognized Tribes:</i> <ul style="list-style-type: none"> <li>• _____</li> <li>• _____</li> <li>• _____</li> </ul>
<input type="checkbox"/>	<i>Consult with archaeologists/historians/local residents knowledgeable about the area.</i>
<input type="checkbox"/>	<i>Consult with Responsible Party's Historic Properties Specialist (if identified).</i>
<input type="checkbox"/>	<i>Review (if available) aerial photos or other documentation of the area affected or potentially-affected by the spill or release (this could include digital photographs/videos).</i>
<input type="checkbox"/>	<i>If necessary, conduct on-site inspection to determine presence of historic properties and prioritize.</i>
<input type="checkbox"/>	Document effect of spill or release on historic properties or cultural resources.
<input type="checkbox"/>	Assess whether emergency response strategies have the potential to affect historic properties.
<input type="checkbox"/>	Establish an historic properties policy for all spill-related field personnel.
<input type="checkbox"/>	If ICS is in place, implement policy through the Unified Command (e.g., Federal OSC, Safety Officer, or other appropriate individuals). Provide specific instructions on the ICS -204 to ensure protection of historic properties and cultural resources. Additionally, provide input to the ICS-232 Resources at risk summary on Historic Properties/cultural resources.
<input type="checkbox"/>	Help identify, prioritize, and develop strategies to protect historic properties.
<input type="checkbox"/>	Provide information on response activities that have the potential to negatively affect historic properties.

<sup>4</sup> Reference the National Programmatic Agreement.

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\*It should be noted that additional steps may be required in more complex incident.

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**ATTACHMENT 2, HISTORIC PROPERTIES SPECIALIST  
CHECKLIST, CONT.**

<b>CONSIDERATION OF ONE OR MORE OF THE FOLLOWING ACTIONS MAY BE RECOMMENDED BY THE HISTORIC PROPERTIES SPECIALIST PENDING APPROVAL BY THE FEDERAL ON-SCENE COORDINATOR:</b>	
<input type="checkbox"/>	Travel to the spill or release site to inspect or monitor on-site activities to minimize or eliminate potential historic properties impacts resulting from response-related activities.
<input type="checkbox"/>	Provide information on response activities that have the potential to negatively affect historic properties.
<input type="checkbox"/>	Conduct field survey(s) to provide recommendations to the Federal OSC on areas that need protection.
<input type="checkbox"/>	Participate in assessment teams that survey oiled shorelines and adjacent lands.
<input type="checkbox"/>	Create a Historic Properties Technical Advisory Group to review proposed cleanup strategies for shorelines and adjacent lands.
<input type="checkbox"/>	Provide on-site monitoring of cleanup crews.
<input type="checkbox"/>	Conduct archeological and/or historic recovery at an oiled site.
<input type="checkbox"/>	Arrange for appropriate permits.
<input type="checkbox"/>	Arrange for disposition of records and collected materials.
<input type="checkbox"/>	Ensure the confidentiality of site location information for all activities identified above. <sup>5</sup>
<input type="checkbox"/>	Report any actual or suspected artifact theft to the Federal OSC, State Historic Preservation Officer, appropriate law enforcement officials and the landowner and/or land manager.
<input type="checkbox"/>	Ensure compliance with applicable Federal/state regulations.

<sup>5</sup> See PA at section VI.E.4., and the Section 106 regulations at 36 CFR 800.11(c)(1)

## ATTACHMENT 3

### 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 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 items 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.<sup>6</sup>

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<sup>6</sup> Reference the National Programmatic Agreement Section II.F.1

## ATTACHMENT 4

### HISTORIC PROPERTIES SPECIALISTS PERSONNEL STANDARDS

These standards apply to individuals contracted to provide technical services to Federal On-Scene Coordinators as Historic Properties Specialists. Standards for individuals performing field Historic Properties duties in a spill response (such as Shoreline Cleanup Assessment Team [SCAT] Archaeologists), either for the responsible party or for the government, may be different.<sup>7</sup>

1. The individual must meet the Secretary of Interior's Historic Preservation Professional Qualification Standards for either Prehistoric or Historical Archeology. 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>.
2. The individual must have demonstrated familiarity with the archaeology and environment of the area in question.
3. The individual must be fully familiar with Federal and State laws and regulations governing historic preservation, and with the operation of the State Historic Preservation Officer/Office (SHPO).
4. The individual must have, or must acquire training in compliance with the standards found in 29 CFR 1910, and should be familiar with the basic principles of the Incident Command System. Additionally, the individual should have familiarity with the *National Oil and Hazardous Substances Pollution Contingency Plan (NCP)*; the applicable Area Contingency Plan (ACP); the *Programmatic Agreement on the Protection of Historic Properties during Emergency Response under the NCP (Programmatic Agreement)* and the Region 1 Implementation Guidelines for Federal On-Scene Coordinators; and specific procedures such as the SCAT process.

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<sup>7</sup> Reference the National Programmatic Agreement Sections C.2.a

**ATTACHMENT5**

**SUGGESTED INFORMATION TO BE PROVIDED TO THE HISTORIC PROPERTIES SPECIALISTS UPON ACTIVATION**

**Activation of the Federal On-Scene Coordinator’s Historic Properties Specialist (HPS) in Accordance with the National Programmatic Agreement<sup>8</sup>**

*NOTE: Activation of the HPS must be accomplished in a “reasonable and timely” manner.*

Suggested information to be provided to HPS upon activation.

Name of incident: \_\_\_\_\_

Date/time of incident: \_\_\_\_\_

Spill/release location: land \_\_\_; water \_\_\_; land/water \_\_\_ If on land, estimate number of acres contaminated: \_\_\_\_\_

Spill/release coordinates: \_\_\_\_\_ latitude; \_\_\_\_\_ longitude  
If on land, \_\_\_\_\_ township; \_\_\_\_\_ range; \_\_\_\_\_ section

Distance to nearest water body, if on land: \_\_\_\_\_ km/mi

Distance to nearest land, if in water: \_\_\_\_\_ km/mi

Product released: Gasoline \_\_\_; Diesel #2 \_\_\_; Light or Heavy Crude \_\_\_; #6 Oil/Bunkers \_\_\_; JP4 \_\_\_; Other \_\_\_\_\_

Estimated volume of product released: \_\_\_\_\_ gals/bbls

Release status: Stopped \_\_\_; Continuing \_\_\_; Unknown \_\_\_

Is spill/release: Contained \_\_\_; Spreading \_\_\_; Unknown \_\_\_

Estimated volume of product potentially released: \_\_\_\_\_ gals/bbls/other measure

Have Geographic Response Strategies been approved for the area affected or potentially-affected by the spill/release? Yes \_\_\_; No \_\_\_

Describe any response actions proposed or taken that include ground- or structure-disturbing activities:

<sup>8</sup> Reference the National Programmatic Agreement Section III.B.1

**ATTACHMENT 6.**  
**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:*

Name of incident:
Date/time of incident:
Location of incident:
Brief description of response action approved (including the date) by Federal On-Scene Coordinator (OSC) :
<input type="checkbox"/> The Exclusions listed in Attachment 1 apply to this spill or release, and there are no known "OverridingFactors" <sup>9</sup>
Federal OSC Name and Title:
Federal OSC Signature:
Date of Signature:
Email or fax this form to the consulting parties/individuals listed below. No further action is needed unless a response from one of the listed individuals/agencies is received indicating that the spill or release may have the potential to affect a historicproperty.
If a response to this statement is received indicating <u>that a historic property is at risk</u> , consider initiating the consultation process and activating an HPS. <b>Note:</b> <i>Activation of the HPS must be accomplished in a "reasonable and timely" manner.</i>

<sup>9</sup> Reference the National Programmatic Agreement Sections VI.A.1 and VI.A.2.

Emailed or Faxed to:

- \_\_\_\_\_, State Historic Preservation Officer (\_\_\_\_ - \_\_\_\_ - \_\_\_\_ fax)
- (Name and fax number of potentially-affected resource managers/trustees):
- (Name and fax number of potentially-affected resource managers/trustees):
- (Name and fax number of potentially-affected resource managers/trustees):

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ATTACHMENT 7

**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 I.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.<sup>10</sup>*

Name of incident:	Date/time of incident:
Location of incident:	
<a href="#"><u>Brief description of response action approved (including the date) by Federal On-Scene Coordinator (OSC):</u></a>	
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:

<sup>10</sup> This may include any facet of the response actions, from access and staging, to deployment of equipment, demobilization, decontamination, or monitoring, where the action may impact historic properties/cultural resources.

**ATTACHMENT 8**

**DOCUMENTATION OF EMERGENCY RESPONSE DECISION  
THAT ADVERSELY AFFECTS HISTORIC PROPERTIES OR  
CULTURAL RESOURCE<sup>11</sup>**

*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:	
<b>Response Action, Impact, and Decision</b> [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:

<sup>11</sup> Reference the National Programmatic Agreement Section III.F.1

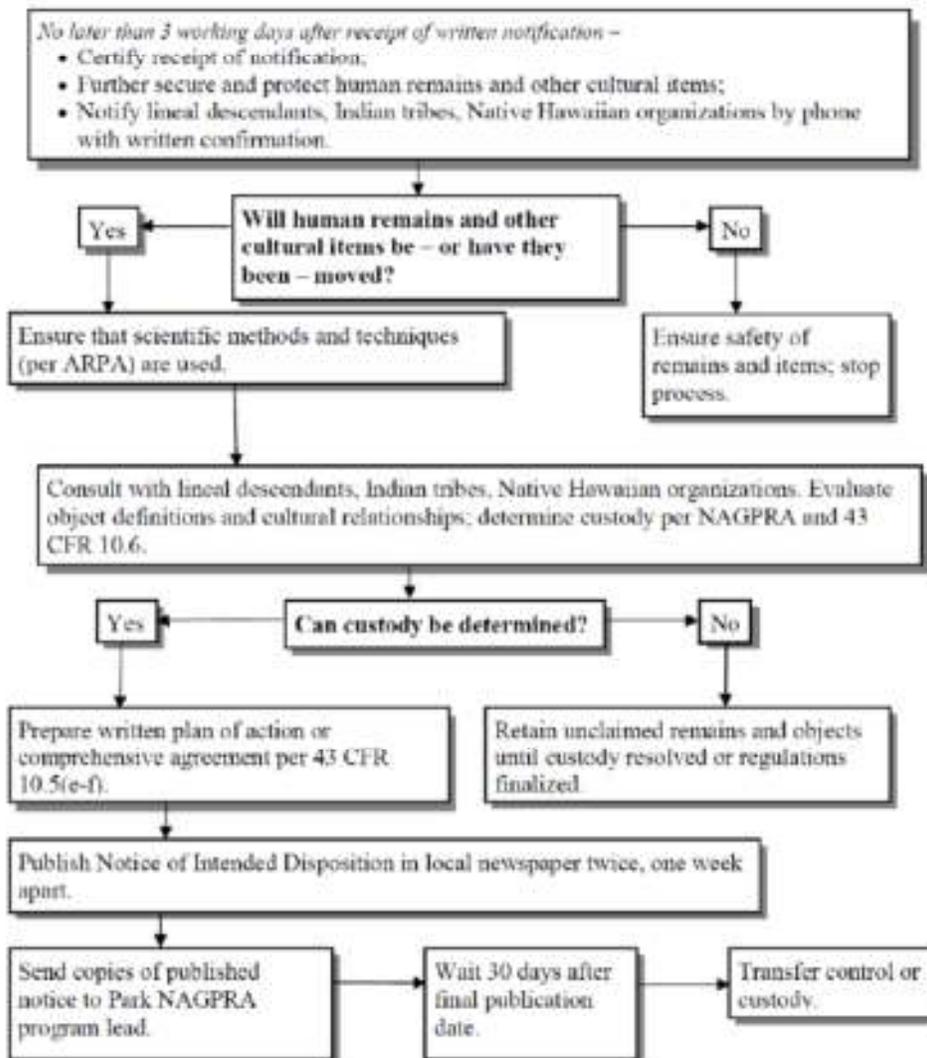
## ATTACHMENT 9

### EXAMPLE FEDERAL LANDS NAGPRA PROCESS MODEL

**Figure 1. NAGPRA Process Model**

NOTE: The first step is to determine whether discovered human remains are Native American. If the remains are not Native American or if it is unclear whether the remains are Native American, law enforcement should be notified. If the remains are Native American, follow the process below.

- Notify land manager immediately by phone with written confirmation.
- Cease ongoing activity. (May resume after 30 days or when binding agreement executed.)
- Make reasonable effort to protect human remains and other cultural items.



## ATTACHMENT 10 PREPAREDNESS

The PA states that the FOSC is responsible for ensuring that historic properties are appropriately considered in planning and during emergency response. During *pre-spill planning* activities, the PA calls for the development of an "agreed-upon mechanism" or response process that includes the following elements:

- Identification of historic properties listed in or determined eligible for listing in the National Register of Historic Properties that might be affected by the *response* to a release or spill **and** areas not yet surveyed where there is a high potential for the presence of historic properties;
- Identification of geographic areas or types of areas where historic properties are unlikely to be affected;
- Identification of parties that are to be notified and consulted in the event of a spill in a non-excluded area;
- Development of emergency response strategies to help protect historic properties;
- Assessment of potential effects of the emergency response on the historic property;
- Documentation, if applicable, of actions resulting in unavoidable injury to historic properties when the FOSC has determined that the requirements of the PA cannot be satisfied concurrently with the paramount requirement of protecting public health and the environment; and,
- Identification of the Historic Properties Specialist responsible for providing expertise on historic properties to the FOSC during emergency response; e.g., through agreements between the involved Federal response agency and State or other Federal agencies having historic properties specialists on staff; contracts between the Federal response agency and expert(s) identified in the ACP; or historic properties specialist(s) on the Federal response agencies' staff. The PA specifies the professional qualifications and standards that the Historic Properties Specialist must meet.