

**FISH AND WILDLIFE SERVICE
NATURAL AND CULTURAL RESOURCES MANAGEMENT**

Natural and Cultural Resources Management

Part 614 Cultural Resources Management

Chapter 3 Compliance with Section 106 of the National Historic Preservation Act

614 FW 3

3.1 What is the purpose of this chapter?

A. This chapter provides general direction to Project Leaders/Field Station Managers and program staff for compliance with Section 106 of the National Historic Preservation Act (NHPA) (also see 36 CFR 800) as it applies to identifying, evaluating, and categorizing cultural resources. The term “Project Leaders/Field Station Managers or program staff” throughout this chapter refers to National Wildlife Refuge System Project Leaders and their designees, National Fish Hatchery System Managers and their designees, and other, non-Refuge or Hatchery program managers or staff.

B. The Regional Historic Preservation Officers (RHPO) are the Service’s subject matter experts for all aspects of this chapter. Subject matter experts must meet the Secretary of the Interior’s (Secretary) standards for the appropriate emphasis area, which include, but aren’t limited to:

- (1) Historic preservation,
- (2) Archaeology, and
- (3) Architectural history.

3.2 What are the authorities, definitions of terms, and responsibilities for this chapter?

See 614 FW 1 for information about the authorities, terms used, and responsibilities for all the chapters in Part 614.

3.3 What is the overall NHPA review process? When an activity or project we are performing, managing, licensing, permitting, or providing Federal assistance for meets the NHPA’s definition of an undertaking, then the Service must initiate a review under Section 106 of NHPA. Initiating this review process is a Federal responsibility and is designed to consider the project’s effects on historic properties. The Federal agency manages the process and determines other parties with whom it will consult under the Section 106 review. Managing the process includes leading the following steps of that process:

A. Determining the Area of Potential Effect: The area of potential effect (APE) is the geographic area where the undertaking will take place. Within the APE, projects can have both direct and indirect impacts (e.g., ground disturbance = direct; changes to the view = indirect).

B. Identifying historic properties: We identify historic properties as those that have the qualities that meet the definition of a historic property under NHPA (see 36 CFR 800). We use different methods to identify historic properties, such as general inventories, literature reviews, and comprehensive field investigations. Regardless of the method, only a subject matter expert may identify a property as historic.

C. Assessing effect:

- (1) If no historic properties are identified, Service staff document that finding and conclude the Section 106 process.

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(2) If a historic property is identified, Service staff must assess the effect of the undertaking on the property. This may result in consultation with pertinent State Historic Preservation Officers (SHPO) and Tribal Historic Preservation Officers (THPO) for affected federally recognized tribes, Native Hawaiian, and Alaska natives to comply with NHPA.

(3) If there is an effect, but it will not alter the historic character of any historic properties identified (e.g., it will not diminish the property's eligibility for listing to the National Register of Historic Places), Service staff document that finding and conclude the Section 106 process.

D. Resolving effects: If a Service project will adversely affect a historic property (e.g., result in the property no longer being eligible for listing to the National Register of Historic Places), then we must resolve the effect.

(1) Resolution can take many forms, and we encourage innovation.

(2) Acceptable forms of resolution may include moving the project or recording, interpreting, and removing the historic property.

(3) The Project Leader/Field Station Manager or program staff must document the resolution in a Memorandum of Agreement (MOA) between the Service, the parties with whom we consulted (e.g., the SHPO or THPO), and any other interested parties. Only the Regional Director or his/her designee may sign the MOA.

E. Addressing Recurring Management Activities and Alternative Procedures:

(1) The NHPA allows agencies to address certain kinds of undertakings under the Section 106 compliance process through the use of programmatic agreements or alternative procedures. Examples of projects that we can address through these measures are those that occur on a regular basis, occur in similar areas, affect resources in a similar way, and are known to have no effect on historic properties. A timber sale is an example of a recurring activity that takes place in similar locales and affects similar kinds of resources, either of which we can use as a reason to develop a more streamlined compliance approach.

(2) While appropriate for certain programs or categories of projects that reoccur over an extended period of time, negotiating alternative procedures or programmatic agreements requires an investment of staff time to ensure that the roles, responsibilities, and consultation requirements under the NHPA are clearly defined.

(3) Project Leaders/Field Station Managers, and program staff must develop alternative procedures or programmatic agreements in consultation with the RHPO, who can provide advice about what streamlining approach is the most appropriate for the types of projects being considered. In consultation with the Project Leader/Field Station Manager/program staff, the RHPO must also work with the appropriate SHPO, THPO (if applicable), and the Advisory Council for Historic Preservation to meet consultation requirements under the NHPA.

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3.4 What do Project Leaders/Field Station Managers or program staff need to remember when planning projects that may meet the definition of an undertaking under NHPA?

A. As early as possible during the planning of a particular activity, the Project Leader/Field Station Manager or program staff must contact the servicing RHPO to determine what steps are required to comply with Section 106 of NHPA.

B. The Project Leader/Field Station Manager or program staff may need to consult with the SHPO or THPO for any federally recognized tribe(s), Native Hawaiians, or Alaska natives, and other interested parties.

C. The Project Leader/Field Station Manager or program staff member drives the process and should involve the RHPO in developing the Service's 'reasonable and good faith effort' to comply with the NHPA. A reasonable and good faith effort means the Service is engaging in a process to determine what historic properties are at risk and working or consulting with interested parties to mitigate those risks.

D. Project Leaders/Field Station Managers or program staff invest in the Section 106 process by:

(1) Reaching out to the RHPO (with funding, if warranted) to get their help and input into the Section 106 process, and

(2) Building in enough time in the project schedule to meaningfully engage with Section 106 interested parties.

E. The RHPO assists with the 106 review process by:

(1) Conducting and managing the steps of the Section 106 process as the subject matter expert;

(2) Reviewing the APE, identifying any historic properties, preparing Section 106 determinations of effect, and preparing or reviewing appropriate correspondence;

(3) Assisting with and completing literature reviews and developing or reviewing scopes of work for contractors to prepare inventories;

(4) Reviewing, in consultation with Section 106 interested parties, historic properties to determine whether they are eligible for the National Register of Historic Places (National Register);

(5) Reviewing the technical sufficiency of any field work;

(6) Maintaining the NHPA administrative record for the project, and incorporating new information generated from inventories and studies into cultural resource overviews and applicable planning documents;

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(7) Assessing the needs of any collections (e.g., artifacts) or records generated during the Section 106 process, and determining if any may require review under other cultural resources laws (e.g., the Native American Graves Protection and Repatriation Act); and

(8) Assisting in the development of planning documents that are specific to management of cultural resources, if applicable. Such plans should be consistent with resource management objectives addressed in other approved Service plans and with the cultural resource overview, if available. At a minimum, cultural resource management plans should identify:

- (a)** Problems affecting particular resource(s) and protective measures, such as surveys, testing, stabilization, and patrolling, that can alleviate or minimize impacts;
- (b)** Necessary funding needs to accomplish the proposed work; and
- (c)** A timetable for completing and monitoring the success of the prescribed measures.

3.5 How does the Service protect historic properties on Service lands that are eligible for listing on the National Register?

A. A component of the Section 106 review is the determination of eligibility of identified historic properties for inclusion on the National Register of Historic Places. The Service is also responsible under Section 110 of the NHPA to adequately protect and manage listed and eligible properties.

B. Project Leaders/Field Station Managers:

(1) Must be careful not to inadvertently alter or destroy any qualities of an eligible or potentially eligible National Register property, and

(2) Should be aware that ineligible properties might become eligible depending on changing historical character or the importance to the local community of the lands or properties. They may also warrant protection or maintenance for other research, socio-cultural values, or management uses under the Archaeological Resources Protection Act, the Native American Graves Protection and Repatriation Act, and other statutes.

3.6 How does the Service prepare National Register nominations?

A. The NHPA requires that we have a program in place to nominate eligible cultural resources for inclusion on the National Register.

B. The Project Leader/Field Station Manager may prepare a nomination or hire someone else to prepare it in accordance with 36 CFR 60 and 63.

(1) The preparer sends the nomination to the RHPO for review. If the RHPO agrees with the nomination, he/she sends it to the Regional Director.

(2) The Regional Director must approve the nomination before the RHPO prepares a package for the relevant SHPO's concurrence.

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(3) After receiving SHPO concurrence, the RHPO sends the package to the Service Federal Preservation Officer in Headquarters for review.

(4) Consult your RHPO or see the National Park Service's [Web site](#) for more information.

3.7 What has to happen when personnel discover cultural resources inadvertently when performing work for the Service? For chance discoveries, field staff must notify their Project Leader, Field Station Manager, or direct supervisor.

A. The Project Leader/Field Station Manager must:

(1) Immediately direct personnel to suspend work on any part of the project that would impact the cultural resource and take steps necessary to secure the discovery from loss or damage, and

(2) Notify the RHPO either by telephone with a follow-up email or by writing a memorandum documenting the discovery, as appropriate.

B. The RHPO will advise the Project Leader/Field Station Manager on the necessary steps to have the cultural resource evaluated and further protected.

3.8 How does the NHPA intersect with the requirements of the National Environmental Policy Act (NEPA)?

A. NHPA and NEPA are two separate and distinct laws that require Federal agencies to consider the effects of their decisions on natural and cultural resources.

B. Compliance with NEPA **does not** exempt us from the processes we must take to ensure compliance with the NHPA.

C. Staff must complete NHPA Section 106 requirements prior to, or concurrently with, NEPA requirements to adequately assess the effects to important cultural resources in the NEPA document.

D. NEPA requires staff to consult with the relevant federally recognized tribes (through a THPO), Native Hawaiian or Alaska native organizations, and SHPOs during its scoping and Environmental Assessment/Environmental Impact Statement (EA/EIS) preparation process.

E. NHPA requires staff to consult with the SHPO or THPO for federally recognized tribes and Native Hawaiian or Alaska native organizations, or both, to develop measures to avoid, minimize, or mitigate any adverse effects to historic properties from the undertaking.

F. Project Leaders/Field Station Managers must involve the RHPO as early as possible in the planning process to ensure compliance with NHPA and NEPA in a timely and efficient manner.

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3.9 How does the Service report on its cultural resources program?

A. The Service must report on cultural resource activities through the following documents:

(1) The National Park Service's "Report to Congress on Archaeological Activities," and

(2) The Service's "Cultural Resources Program Annual Report."

B. The RHPO manages Regional data and responds to data calls for these reports, as well as for any other internal requests for information. The Regional Director or his/her designee should verify official RHPO reporting submissions.

/sgd/ Stephen Guertin
DEPUTY DIRECTOR

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