

# ESA & NHPA Webinar for State Grant Recipients

Formula Grant Award Terms 25 & 26

June 12, 2024



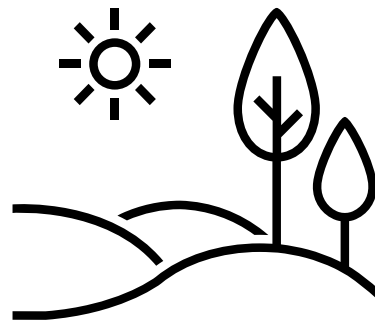
U.S. DEPARTMENT OF THE INTERIOR  
**Orphaned Wells Program Office**



# Welcome!

## Overview & Objectives

- Introductions
- Webinar Goals & Objectives
- Agenda



## Agenda

- I. Opening Remarks
  - Welcome
  - Overview & Objectives
- II. Notice of Award
  - Roles & Responsibilities
- III. Getting Started
  - Developing your Workplan
- IV. Endangered Species Act
  - Award Term #25
  - Delegated Roles and Responsibilities
  - Consultation Overview
- V. National Historic Preservation Act
  - Award Term #26
  - Delegated Roles and Responsibilities
  - Consultation Overview
- VI. Question & Answer
- VII. Closing Remarks



# Tools and Resources Tables

## Learning ESA and NHPA

ESA Tools and Resources	
The following tools and resources are available to assist states in understanding the consultation process and identifying federally listed species and critical habitats near orphaned well project areas.	
ESA	<a href="https://www.fws.gov/law/angered-species-act">https://www.fws.gov/law/angered-species-act</a>
U.S. Code of Federal Regulations	
CFR ESA§7 Process	<a href="https://www.ecfr.gov/current/title-50/chapter-IV/subchapter-A/part-402">https://www.ecfr.gov/current/title-50/chapter-IV/subchapter-A/part-402</a>
CFR Listed Species	<a href="https://www.ecfr.gov/current/title-50/chapter-I/subchapter-B/part-17/subpart-B/section-17.11">https://www.ecfr.gov/current/title-50/chapter-I/subchapter-B/part-17/subpart-B/section-17.11</a>
FWS & NMFS Joint Consultation Handbook	
ESA§7 Consultation Handbook	<a href="https://www.fws.gov/sites/default/files/documents/angered-species-consultation-handbook.pdf">https://www.fws.gov/sites/default/files/documents/angered-species-consultation-handbook.pdf</a>
	Chpt. 1.1 Introduction to ESA§7 Consultation Chpt. 2.1(F) Role of Non-Federal Representative Chpt. 3 Informal Consultation
FWS	
ESA§7 Consultation Overview	<a href="https://www.fws.gov/service/esa-section-7-consultation">https://www.fws.gov/service/esa-section-7-consultation</a>
ESA§7 Flowchart	<a href="https://www.fws.gov/media/section-7-consultation-process-flow-chart">https://www.fws.gov/media/section-7-consultation-process-flow-chart</a>
FWS Action Area	<a href="https://www.fws.gov/media/action-area-diagram">https://www.fws.gov/media/action-area-diagram</a>
IPaC	<a href="https://ipac.ecosphere.fws.gov/">https://ipac.ecosphere.fws.gov/</a> Helpful Videos and Frequently Asked Questions
Critical Habitat Map	<a href="https://fws.maps.arcgis.com/home/webmap/viewer.html">https://fws.maps.arcgis.com/home/webmap/viewer.html</a>
FWS YouTube Channel	1 Welcome to Section 7 <a href="https://www.youtube.com/watch?v=QHfBY49IAI">https://www.youtube.com/watch?v=QHfBY49IAI</a>
	2 ESA Overview <a href="https://www.youtube.com/watch?v=zWQeJTsF2Q">https://www.youtube.com/watch?v=zWQeJTsF2Q</a>
Section 7 Interagency Consultation Playlist	3 What is ESA§7 <a href="https://www.youtube.com/watch?v=hDEw9bbQv8">https://www.youtube.com/watch?v=hDEw9bbQv8</a>
	4 Incidental Take <a href="https://www.youtube.com/watch?v=Rdv5_rw8JFU">https://www.youtube.com/watch?v=Rdv5_rw8JFU</a>
	5 Introduction to the Federal Register <a href="https://www.youtube.com/watch?v=rVDtpDGx5Kc">https://www.youtube.com/watch?v=rVDtpDGx5Kc</a>
	6 Use of 50 CFR <a href="https://www.youtube.com/watch?v=bTeGn33xaFM">https://www.youtube.com/watch?v=bTeGn33xaFM</a>
	7 The Process of ESA§7 <a href="https://www.youtube.com/watch?v=pNMLVzSwgI&amp;t=3s">https://www.youtube.com/watch?v=pNMLVzSwgI&amp;t=3s</a>
	8 Definitions <a href="https://www.youtube.com/watch?v=2fAenXl05M">https://www.youtube.com/watch?v=2fAenXl05M</a>
	9 Section 7(a)(1) <a href="https://www.youtube.com/watch?v=6h9XHjx0UI&amp;list=PLZb5DyVcCk96Uq44opZaGzVBL5LmDEo&amp;index=10">https://www.youtube.com/watch?v=6h9XHjx0UI&amp;list=PLZb5DyVcCk96Uq44opZaGzVBL5LmDEo&amp;index=10</a>
	10 Deep Dive into ESA§7 <a href="https://www.youtube.com/watch?v=6h9XHjx0UI&amp;list=PLZb5DyVcCk96Uq44opZaGzVBL5LmDEo&amp;index=10">https://www.youtube.com/watch?v=6h9XHjx0UI&amp;list=PLZb5DyVcCk96Uq44opZaGzVBL5LmDEo&amp;index=10</a>
NMFS	
ESA§7 Consultation	<a href="https://www.fisheries.noaa.gov/topic/consultations/angered-species-act-consultations">https://www.fisheries.noaa.gov/topic/consultations/angered-species-act-consultations</a>
ESA§7 Implementation	<a href="https://www.fisheries.noaa.gov/topic/angered-species-conservation/angered-species-act-implementation">https://www.fisheries.noaa.gov/topic/angered-species-conservation/angered-species-act-implementation</a>
ESA§7 Sp. Directory	<a href="https://www.fisheries.noaa.gov/species-directory/threatened-angered">https://www.fisheries.noaa.gov/species-directory/threatened-angered</a>
Critical Habitat	<a href="https://www.fisheries.noaa.gov/national/angered-species-conservation/critical-habitat">https://www.fisheries.noaa.gov/national/angered-species-conservation/critical-habitat</a>
Critical Habitat Map	<a href="https://www.fisheries.noaa.gov/resource/map/national-esa-critical-habitat-mapper">https://www.fisheries.noaa.gov/resource/map/national-esa-critical-habitat-mapper</a>

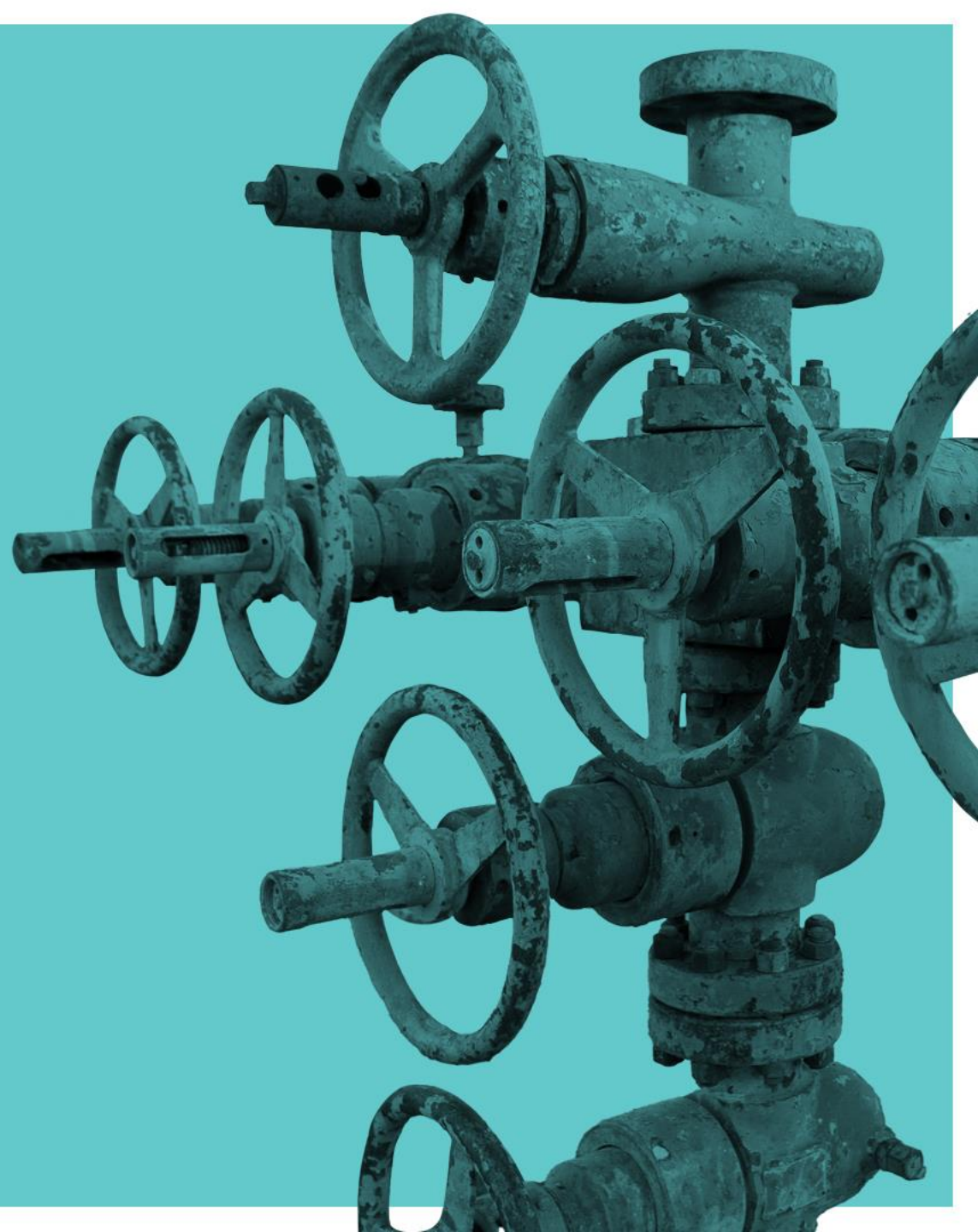
NHPA Tools and Resources	
The following tools and resources are available to assist states in understanding the consultation process and identifying historic properties near orphaned well project areas.	
NHPA	<a href="https://www.achp.gov/sites/default/files/2018-06/nhpa.pdf">https://www.achp.gov/sites/default/files/2018-06/nhpa.pdf</a>
U.S. Code of Federal Regulations	
CFR NHPA	<a href="https://www.ecfr.gov/current/title-36/chapter-VIII/part-800">https://www.ecfr.gov/current/title-36/chapter-VIII/part-800</a>
ACHP	
An Introduction to §106	<a href="https://www.achp.gov/protecting-historic-properties/section-106-process/introduction-section-106">https://www.achp.gov/protecting-historic-properties/section-106-process/introduction-section-106</a>
§106 Review Process Flowchart	<a href="https://www.achp.gov/digital-library-section-106-landing/section-106-review-process-flowchart">https://www.achp.gov/digital-library-section-106-landing/section-106-review-process-flowchart</a>
§106 Applicant Toolkit	<a href="https://www.achp.gov/digital-library-section-106-landing/section-106-applicant-toolkit">https://www.achp.gov/digital-library-section-106-landing/section-106-applicant-toolkit</a>
Q&A NHPA§106	<a href="https://www.achp.gov/digital-library-section-106-landing/section-106-regulations-section-section-questions-and-answers">https://www.achp.gov/digital-library-section-106-landing/section-106-regulations-section-section-questions-and-answers</a>
Citizen's Guide to §106 Review	<a href="https://www.achp.gov/sites/default/files/documents/2021-01/CitizenGuide2021_011321.pdf">https://www.achp.gov/sites/default/files/documents/2021-01/CitizenGuide2021_011321.pdf</a>
Reasonable & Good Faith Identification Standard §106	<a href="https://www.achp.gov/sites/default/files/guidance/2018-05/reasonable_good_faith_identification.pdf">https://www.achp.gov/sites/default/files/guidance/2018-05/reasonable_good_faith_identification.pdf</a>
NPS	
Historic Preservation: NHPA	<a href="https://www.nps.gov/subjects/historicpreservation/national-historic-preservation-act.htm">https://www.nps.gov/subjects/historicpreservation/national-historic-preservation-act.htm</a>
National Register of Historic Places (NRHP)	<a href="https://www.nps.gov/subjects/nationalregister/index.htm">https://www.nps.gov/subjects/nationalregister/index.htm</a>
NRHP Database	<a href="https://www.nps.gov/subjects/nationalregister/database-research.htm">https://www.nps.gov/subjects/nationalregister/database-research.htm</a>
SHPO/THPO	
SHPO Directory	<a href="https://ncshpo.org/directory/">https://ncshpo.org/directory/</a> Visit your SHPO website for §106 consultation package & submission requirements
ACHP Role of THPO in §106 Process	<a href="https://www.achp.gov/digital-library-section-106-landing/role-tribal-historic-preservation-officer-section-106-process">https://www.achp.gov/digital-library-section-106-landing/role-tribal-historic-preservation-officer-section-106-process</a>
National Association of THPOs	<a href="https://members.natipo.org/thpodirectory/FindStartsWith?term=2%23%21">https://members.natipo.org/thpodirectory/FindStartsWith?term=2%23%21</a>
NPS Find a THPO	<a href="https://www.nps.gov/subjects/historicpreservationfund/tribal-historic-preservation-office-program.htm">https://www.nps.gov/subjects/historicpreservationfund/tribal-historic-preservation-office-program.htm</a>
Tribal Nations	
White House Memo Standards for Tribal Consultation	<a href="https://www.whitehouse.gov/briefing-room/presidential-actions/2022/11/30/memorandum-on-uniform-standards-for-tribal-consultation/">https://www.whitehouse.gov/briefing-room/presidential-actions/2022/11/30/memorandum-on-uniform-standards-for-tribal-consultation/</a>
ACHP §106 Consultation w/ Tribes in the Review Process: The Handbook	<a href="https://www.achp.gov/sites/default/files/2021-06/ConsultationwithIndianTribesHandbook6-11-21Final_0.pdf">https://www.achp.gov/sites/default/files/2021-06/ConsultationwithIndianTribesHandbook6-11-21Final_0.pdf</a>
ACHP Limitations on Delegation of Authority by Federal Agencies to Initiate Tribal Consult §106	<a href="https://www.achp.gov/sites/default/files/guidance/2018-06/LimitationsoftheDelegationofAuthoritybyFederalAgenciesToInitiateTribalConsultationunderSection106oftheNHPA01Jul2011.pdf">https://www.achp.gov/sites/default/files/guidance/2018-06/LimitationsoftheDelegationofAuthoritybyFederalAgenciesToInitiateTribalConsultationunderSection106oftheNHPA01Jul2011.pdf</a>
BIA Tract Viewer	<a href="https://biamaps.geoplatform.gov/biatracts/">https://biamaps.geoplatform.gov/biatracts/</a>
BIA Tribal Leaders Directory	<a href="https://www.bia.gov/service/tribal-leaders-directory">https://www.bia.gov/service/tribal-leaders-directory</a>
Tribal Directory Assessment Tool	<a href="https://egis.hud.gov/tdat/">https://egis.hud.gov/tdat/</a>
National Archives: Treaties	<a href="https://www.archives.gov/research/native-americans/treaties/catalog-links">https://www.archives.gov/research/native-americans/treaties/catalog-links</a>
OK Tribal Treaties Database	<a href="https://treaties.okstate.edu/">https://treaties.okstate.edu/</a>

 **New Tools for Recipients**



# Notice of Award

You received an award, now what?



# Notice of Award

## Understanding Roles & Responsibilities

- Award Terms & Conditions


- State Formula Grants: Phase 1
- Award Term 24: Environmental Compliance
- Award Term 25: Endangered Species Act Compliance Reviews
- Award Term 26: Historic Preservation

- Recipient Acceptance

- Roles & Responsibilities

- Use of Grant Funds

- Generally, may be used to complete TC25 and TC26
- Contact IBC Awarding Officer for additional details



**NOTICE OF AWARD**  
 AUTHORIZATION (Legislation/Regulations)  
 P.L. 117-58 The Infrastructure Investment and Jobs Act, Part Title VI,  
 Section 40601

1. DATE ISSUED MM/DD/YYYY 1a. SUPERSEDES AWARD NOTICE dated [ ] except that any additions or restrictions previously imposed remain in effect unless specifically rescinded

2. CFDA NO. 15.018 - Energy Community Revitalization Program

3. ASSISTANCE TYPE Formula Grant

4. GRANT NO. [ ] 5. TYPE OF AWARD [ ]

4a. FAIN [ ] 5a. ACTION TYPE New

6. PROJECT PERIOD From MM/DD/YYYY Through MM/DD/YYYY

7. BUDGET PERIOD From MM/DD/YYYY Through MM/DD/YYYY

8. TITLE OF PROJECT (OR PROGRAM) [ ]

9a. GRANTEE NAME AND ADDRESS [ ] 9b. GRANTEE PROJECT DIRECTOR [ ]

10a. GRANTEE AUTHORIZING OFFICIAL [ ] 10b. FEDERAL PROJECT OFFICER [ ]

**ALL AMOUNTS ARE SHOWN IN USD**

11. APPROVED BUDGET (Excludes Direct Assistance)		12. AWARD COMPUTATION	
I. Financial Assistance from the Federal Awarding Agency Only		a. Amount of Federal Financial Assistance (from Item 11i) \$	
II. Total project costs including grant funds and all other financial participation		b. Less Unobligated Balances From Prior Budget Periods \$	
a. Salaries and Wages \$		c. Less Cumulative Prior Awards (This Budget Period) \$	
b. Fringe Benefits \$		d. AMOUNT OF FINANCIAL ASSISTANCE THIS ACTION \$	
c. Total Personnel Costs \$		13. Total Federal Funds Awarded to Date for Project Period \$	
d. Equipment \$		14. RECOMMENDED FUTURE SUPPORT (Subject to the availability of funds and satisfactory progress of the project):	
e. Supplies \$		YEAR	TOTAL DIRECT COSTS
f. Travel \$		a. 2 \$	d. 5 \$
g. Construction \$		b. 3 \$	e. 6 \$
h. Other \$		c. 4 \$	f. 7 \$
i. Contractual \$		15. PROGRAM INCOME SHALL BE USED IN ACCORD WITH ONE OF THE FOLLOWING:	
j. TOTAL DIRECT COSTS \$		A. TERMINANCE	
k. INDIRECT COSTS \$		a. REDUCTION	
l. TOTAL APPROVED BUDGET \$		b. ADDITIONAL COSTS	
m. Federal Share \$		c. MATCHING	
n. Non-Federal Share \$		d. OTHER (RE-BUDGET) (Use / Direct Option)	
		e. OTHER (See REMARKS)	

16. THIS AWARD IS BASED ON AN APPLICATION SUBMITTED TO, AND AS APPROVED BY, THE FEDERAL AWARDING AGENCY ON THE ABOVE TITLED PROJECT AND IS SUBJECT TO THE TERMS AND CONDITIONS INCORPORATED EITHER DIRECTLY OR BY REFERENCE IN THE FOLLOWING:

- The grant program legislation.
- The grant program regulations.
- The award notice, including terms and conditions, if any, noted below under REMARKS.
- Federal award notice requirements, cost principles and award requirements applicable to this grant.

In the event there are conflicting or otherwise inconsistent provisions applicable to the grant, the above order of precedence shall prevail. Acceptance of the grant terms and conditions is acknowledged by the grantee when funds are drawn or otherwise obtained from the grant payment system.

REMARKS (Other Terms and Conditions Attached -  Yes  No)  
 Please refer to the Grant Continuation Document included with the Notice of Award for Specific Award Terms and Conditions and all attached Exhibits.

GRANTS MANAGEMENT OFFICIAL:  
 Ashley Rios, Grant Management Officer / Financial Assistance Officer  
 Acquisitions Services Directorate, Interior Business Center  
 381 Eldon St Suite 2000 A  
 Herndon, VA, 20170-2017  
 Phone: 571-388-3084

17. VENDOR CODE	070191281	18a. UIC	D1CZA6WQ2.85	18b. DUNS	029327880	19. CONG. DIST.	08
LINE#	FINANCIAL ACCT	AMT OF FIN ASST	START DATE	END DATE	TAS ACCT	PO LINE DESCRIPTION	
1							



# Non-Federal Representative

## Understanding Roles & Responsibilities

### Delegated Responsibilities to Grant Recipients

1. Prepare compliance documentation and consultation materials.
2. Maintain and submit documentation for the Administrative Record.
3. Initiate informal and assist with formal consultation.

### *Tip:* Recommended Qualifications

☆ This is to help recognize the minimum expertise generally necessary for performing professionally credible work within the field.

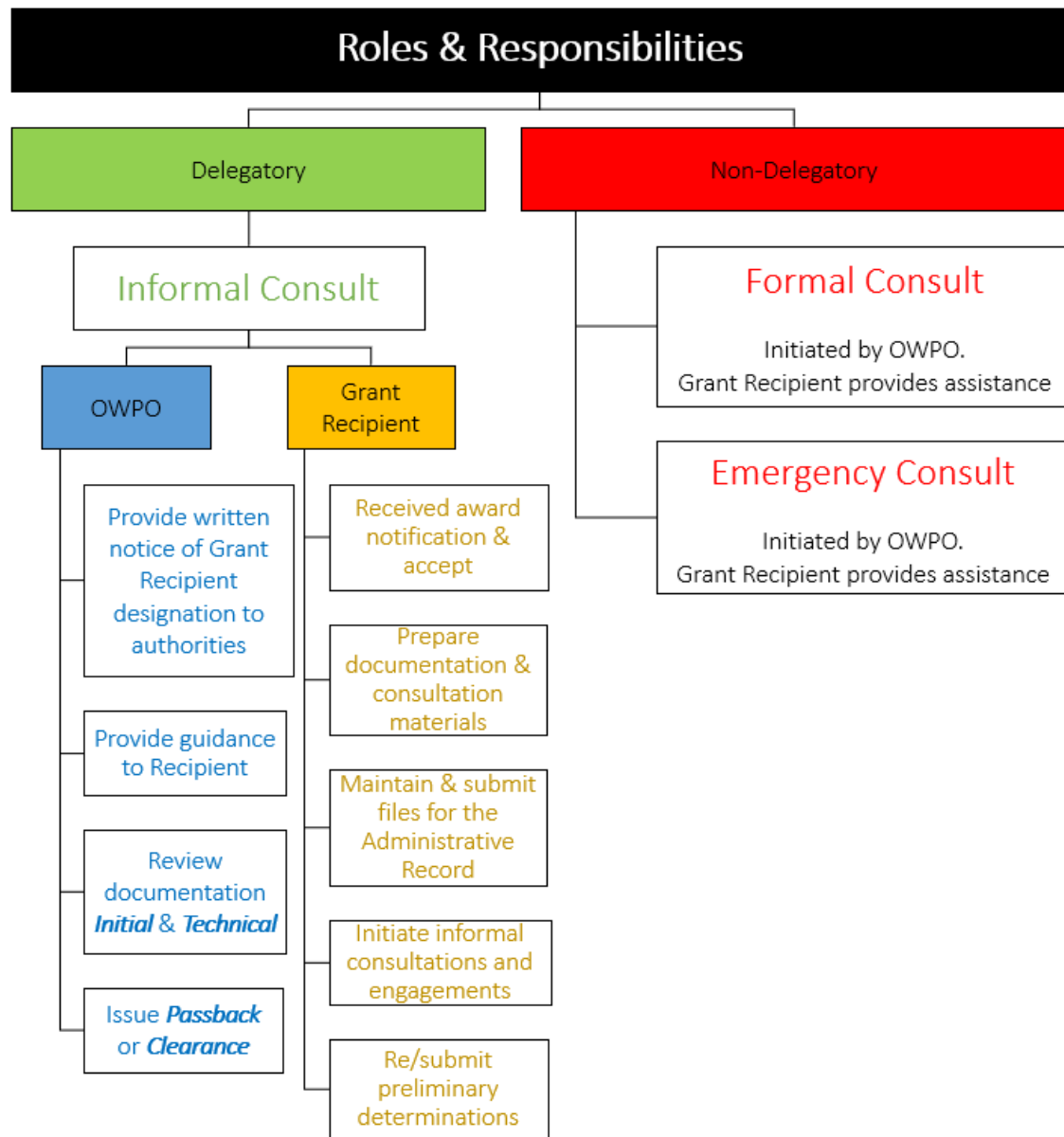
**ESA:** Degree in Biology, Natural Resources, or similar.

**NHPA:** Degree in History, Archaeology, Architecture

DOI Secretary Professional Qualification Standards

<https://www.doi.gov/pam/asset-management/historic-preservation/pqs>





★ Note...

Retention requirements for records

3 years

from date of the submission of the final expenditure report

2 CFR 200.334



# Understanding Award Term 24

## Environmental Compliance

★ *Reminder...*

### **AWARD TERM 24**

#### **Environmental Compliance**

Recipients of financial assistance under this award must comply with all applicable federal statutes, regulations, and executive orders (EOs) and with all applicable Tribal, state, and local statutes and regulations to ensure that potential impacts to the environment are considered before undertaking any action funded with financial assistance under this award. The Recipient must ensure that documentation of compliance with all applicable statutes and regulations is included in project files and must produce this documentation upon request.





# NEPA

NEPA is the *umbrella* that facilitates project coordination by integrating compliance requirements that may otherwise proceed independently.

Clean Water Act

Clean Air Act

Noise Control Act

Executive Orders

National Historic Preservation Act

Marine Mammal Protection Act

Coastal Zone Management Act

Endangered Species Act

Occupational Safety & Health Act

Other federal, state, and local environmental laws, policies, and regulations

Resource Conservation & Recovery Act



## Common Misconceptions

1 - Use a Categorical Exclusion (CE) to exempt Recipients from ESA and NHPA requirements.

2 - Award terms and conditions 25 and 26 do not require grant recipient to prepare and submit documentation demonstrating compliance.

## Actualities

- Use of a CE is specific to NEPA procedures.
- A CE exempts from “**formal**” preparation of EA or EIS.
- A CE often requires “**informal**” documentation.
- ESA and NHPA statutory requirement still apply when a CE is used.
- “Extraordinary Circumstances” elevate NEPA level of analysis.

- Under ESA§7 and NHPA§106, the ultimate responsibility for compliance belongs to the federal action agency (OWPO).
- Recipients are the operational experts and designated to help streamline the process.

*As the designated representative all grant recipients are responsible for:*

1. preparing information, analyses, and recommendations as well as conduct informal consultations and initial engagements on behalf of OWPO.
2. providing OWPO with the information needed to properly characterize impacts as well as maintain supportive project files that substantiate the associated determinations.



## Common Misconceptions

## Actualities

3 – Efforts are restorative in nature and should not be considered destructive nor as construction.

- ESA & NHPA require **PROACTIVE** consideration of potential impacts from proposed federal “*actions*” and “*undertakings*.”
- “Actions” and “undertakings” are broadly defined to include federal authorization on projects, lands, and providing funding opportunities.

4 – The proposed action will take place in an area that is previously disturbed or near areas with high levels of human disturbance (e.g., urban areas, housing developments).

- Disturbances frequently occurred prior to passage of many environmental statutes.
- Dated and/or incomplete understanding of ancestral uses and historic properties.
- Vegetative succession changes disturbance levels and habitat quality over time.
- Urban areas occur within the biological and cultural landscapes albeit heavily modified at times.



# Understanding Award Term 25

Endangered Species Act

★ Applies to all federal  
“**Actions**”

## AWARD TERM 25

### Endangered Species Act Compliance Reviews

This grant is being awarded pursuant to Section 40601 of the Infrastructure Investment and Jobs Act (P.L 117-58), commonly known as the "Bipartisan Infrastructure Law (BIL)." Under the BIL, the Secretary of the Interior is directed to award grants to eligible States to carry out activities that address orphaned wells. Under Section 7(a)(2) of the ESA, the Department of the Interior is required to ensure that activities funded by this award are not likely to jeopardize species listed on the Federal List of Endangered and Threatened Wildlife and Plants or result in the destruction or adverse modification of critical habitat designated for Federal Endangered and Threatened Wildlife and Plants.



# Understanding Award Term 26

National Historic Preservation Act

★ Applies to all federal  
“**Undertaking**”

## AWARD TERM 26

### Historic Preservation

With the exception of those activities listed below, the activities funded under Section 40601 of the BIL are “undertakings” with the potential to affect historic properties and, as such, are subject to review under Section 106 of the National Historic Preservation Act (NHPA), 54 U.S.C. § 306108, and the implementing regulations, 36 CFR Part 800.

Section 106 applies to historic properties listed in or eligible for listing in the National Register of Historic Places. By and through this Term and Condition of award, the OWPO authorizes the Recipient to initiate NHPA, Section 106 consultation, and to assume responsibility for steps in the process consistent with 36 CFR 800.2(c)(4). As a condition for receipt of the grant, the Recipient must conduct the initial steps of the Section 106 process, which includes identifying and evaluating historic properties within the area of potential effects associated with specific projects and assessing effects (36 CFR 800.4 through 800.5)



# Streamlined Processing

Coordinating Submittals

★ Encouraging **Coordinated** submittals

- 1) Project Description
- 2) ESA§7 documentation
- 3) NHPA§106 documentation



*New eMail*



## Recipient Submittals

TO: Primary OWPO Contact assigned EPS

CC: [environmentalcompliance\\_orphanedwells@ios.doi.gov](mailto:environmentalcompliance_orphanedwells@ios.doi.gov)

- Award Term 25 “10-day” clock applies **only** to ESA “**No Effect**” determinations submitted by the Recipient.
- Resolution of any “May Affect” determinations are subject to ESA statutory timelines.
- Historic properties are subject to NHPA statutory timelines.



Orphaned Wells Program Office

# Streamlined Processing

## Coordinating Submittals



## OWPO Submittal Processing

- The 10-day clock will be counted in terms of a OWPO business day.
- An OWPO business day is defined as Monday through Friday, from 8am to 5pm Mountain, **excluding** federal holidays and events qualifying under OMB administrative leave procedures (e.g., weather and safety dismissals).
- Day 0: Recipient submission date.
- Day 1: begins at 8 am Mountain on the first OWPO business day following the submission.
- Day 10: ends at 5pm Mountain on the tenth OWPO business day following the submission.

## OWPO Submittal Prioritization

- 1<sup>st</sup> = complete packages submitted by a Grant Recipient for the first time, keep as many recipients moving forward as early as possible.
- 2<sup>nd</sup> = subsequent packages submitted by a Grant Recipient that are complete.
- 3<sup>rd</sup> = incomplete packages that only contain TC25 (ESA) documentation.
- 4<sup>th</sup> = incomplete packages that only contain TC26 (NHPA) documentation.



# Streamlined Processing

Coordinating Submittals



## OWPO Submittal Determinations

### ESA

- If OWPO accepts a preliminary ESA “No Effect” determination(s), the Grant Recipient is notified via email from the Environmental Compliance Inbox no later than 5pm Mountain on the 10<sup>th</sup> business day following the submission. If you have not heard from OWPO by 10<sup>th</sup> day, preliminary ESA determination has been accepted.
  - Every effort will be made to review ESA expeditiously and notify grant recipients prior to expiration of the 10-day clock provided NHPA documentation has been accepted by OWPO and is ready to distribute to NHPA Consulting Parties.
- If OWPO, does not accept the preliminary ESA “No Effect” determination, the 10-day clock stops until the grantee resolves the concerns identified – providing time for coordination between the parties – and the Grant Recipient will be notified.
- The 10-Day clock does not “reset” at any point.

### NHPA

- The 10-Day clock does not apply to preliminary NHPA determinations.
- NHPA Consulting Parties have up to 30 days to review and respond.
- Tribal Nations may voice interest/ request consult **at any time** for projects using federal funding.

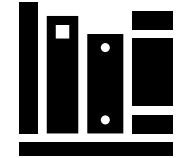
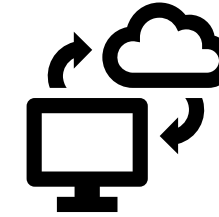
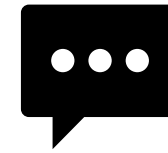




# The BIG Three

Coordinating Submittals

1. Project Scope & Description
2. ESA§7 Documentation
3. NHPA§106 Documentation



**All documentation must be received BEFORE a clearance to proceed will be issued by OWPO**

To proceed with project implementation, Grant Recipients must receive an affirmative OWPO acknowledgement that signifies agreement with preliminary ESA and NHPA determinations, denoting that all documentation has been accepted into the Administrative Record.



## ***5-minute BREAK***

- Please take this opportunity to place all questions related to this section in the chat.
- We are all learning and encourage you to share. Your thoughts will spark thoughts and ideas in others.
- Contributions to the chat will be used in the development of future FAQs, webinars, and tools.

***Return Time: 12:46***



# Getting Started

Developing your Workplan

Obtaining **Clearance** to proceed

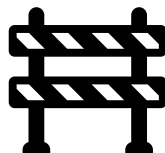


# Getting Started

## Developing Your Workplan

### 1) Strategize

- Workplan Scope
- Recommended Workplan Prioritization
- Workplan and Project Descriptions



## ★ Encouraging Workplan *Prioritization*

Priority	Infrastructure	Ground Disturbance
1	Existing No new – temporary or permanent	None
2	Existing expansion, removal, or demolition New – temporary	Minor
3	Existing expansion, removal, or demolition New – temporary and/or permanent	Major
4	Full site remediation New – temporary and/or permanent	Major

As a stand-alone action, inserting a well plug into existing infrastructure is **unlikely** to be characterized as “new” infrastructure.



# Getting Started

## Developing Your Workplan

### 2) Compile EID

- EID – Environmental Information Documentation
- Recipient submittal package:
  - General Requirement: Project Scope & Description
  - TC25: Endangered Species Compliance Reviews
  - TC:26 Historic Preservation



### **New Tool for Recipients**

- Optional Checklist: EID

#### OPTIONAL CHECKLIST: Environmental Information Documentation

Project implementation cannot be initiated by the grant recipient until OWPO notifies the organization that the processes outlined in Award Terms 25 and 26 are complete. Recipients must submit all documentation and correspondence associated with the Award Terms to obtain environmental compliance clearance.

Wherever possible, OWPO encourages the use of project files already compiled for Award Term 24 which indicates, “The Recipient must ensure that documentation of compliance with all applicable statutes and regulations is included in project files and must produce this documentation upon request.” As a general requirement to meet Award Terms 25 and 26, the Recipient must share a project description that outlines the scope and basic parameters of the proposed action.

<b>General Requirement</b>	
Project Scope & Description	<i>Per TC24, OWPO requests project plan description &amp; documentation</i>
Project Intent	<ul style="list-style-type: none"> <li>• Background, Goals, &amp; Objectives</li> </ul>
Existing Conditions	<ul style="list-style-type: none"> <li>• Oil &amp; Gas Infrastructure</li> <li>• Biological &amp; Cultural Landscapes</li> <li>• Guiding Documents &amp; Realty Permissions</li> </ul>
Project Area Mapping (implementation footprint / maximum extent / de-construction limits)	<ul style="list-style-type: none"> <li>• transportation/access routes, materials and equipment staging locations, equipment travel corridors, and de-construction areas.</li> </ul>
Project Components	<ul style="list-style-type: none"> <li>• Implementation Dates</li> <li>• Equipment &amp; Staging</li> <li>• Proposed Actions (Operational Steps)</li> <li>• Vegetation (total ground disturbance, removal &amp; revegetation)</li> </ul>

<b>Award Term 25: Endangered Species Act Compliance Reviews</b>	
Recipient ESA Point of Contact	
Action Area (AA) Mapping	
Identification of Species & Critical Habitat	<ul style="list-style-type: none"> <li>• Official FWS <a href="#">IPaC</a> List and/or</li> <li>• NMFS <a href="#">Species &amp; Critical Habitat</a> Lists</li> </ul>
Effects Determination Table	
Engagement & Consultation	<ul style="list-style-type: none"> <li>• FWS correspondence/concurrence (as required)</li> <li>• NHFS correspondence/concurrence (as required)</li> </ul>

<b>Award Term 26: Historic Preservation</b>	
Recipient NHPA Point of Contact	
Area of Potential Effect (APE) Mapping	
Identification of Historic Properties	
Assessment of Effect	
Engagement & Consultation	<ul style="list-style-type: none"> <li>• SHPO correspondence/concurrence</li> <li>• Indian tribes, Alaskan Native and Native Hawaiian Organization's ancestral interest &amp; invitation to consult.</li> <li>• Representatives of local governments</li> <li>• The public</li> <li>• Advisory Council on Historic Preservation (as required)</li> <li>• THPO correspondence/concurrence (as required)</li> <li>• Additional Consulting parties (as identified)</li> </ul>



# General Requirement

## Project Scope & Description

*Per TC24, OWPO requests project plan description & documentation*

### Project Intent

- Background, Goals, & Objectives

### Existing Conditions

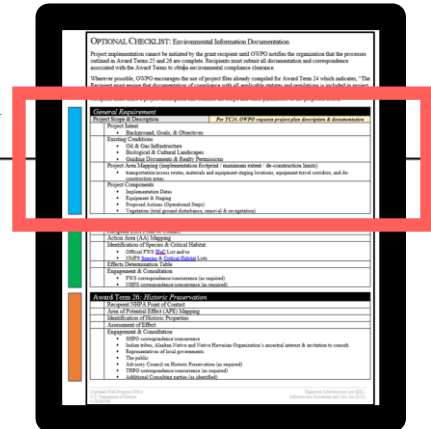
- Oil & Gas Infrastructure
- Biological & Cultural Landscapes
- Guiding Documents & Realty Permissions

### Project Area Mapping (implementation footprint / maximum extent / de-construction limits)

- transportation/access routes, materials and equipment staging locations, equipment travel corridors, and de-construction areas.

### Project Components

- Implementation Dates
- Equipment & Staging
- Proposed Actions (Operational Steps)
- Vegetation (total ground disturbance, removal & revegetation)



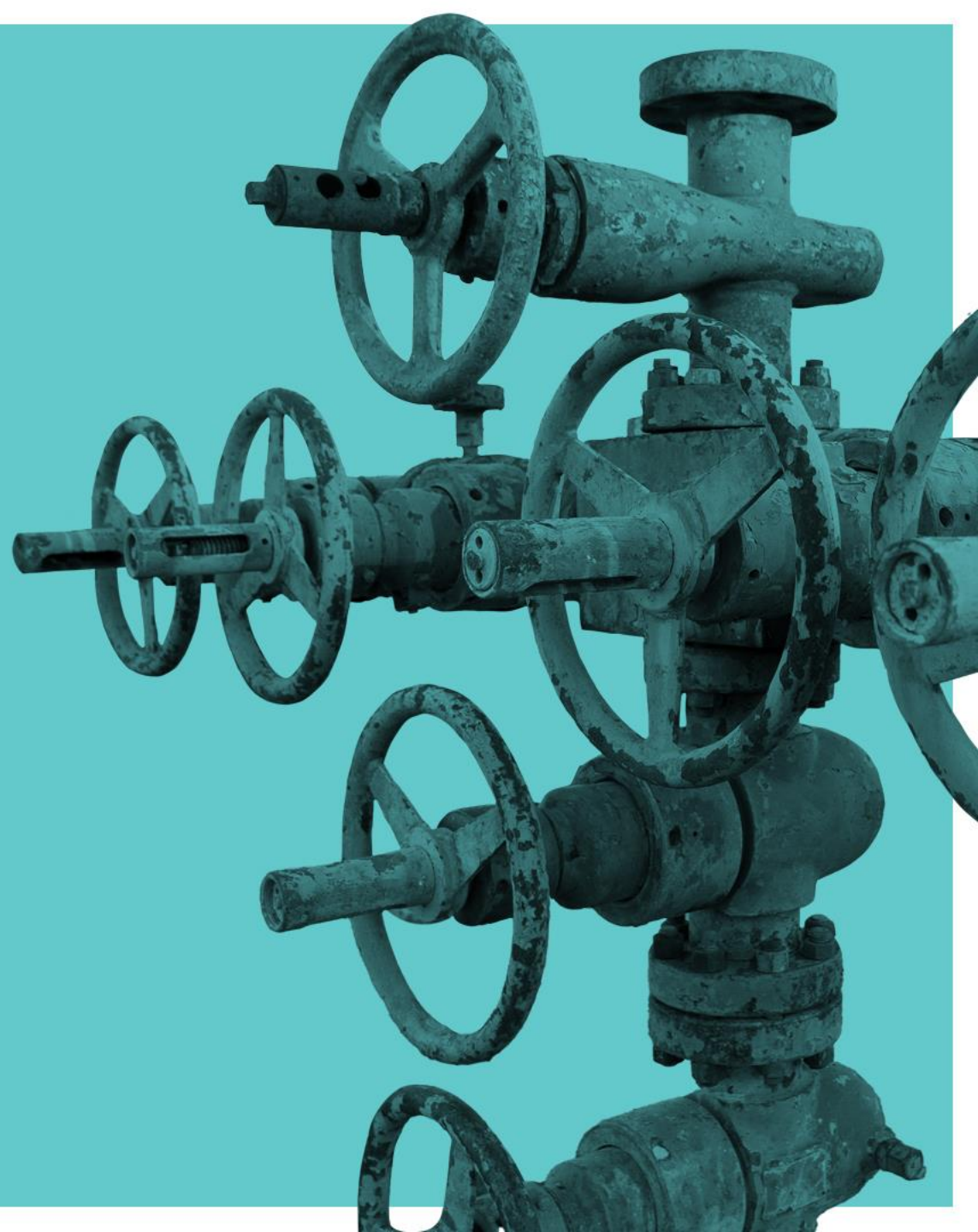
*Tip:*

Coordinating early and often with sister agencies and integrating existing state resources is key.



# Award Term 25

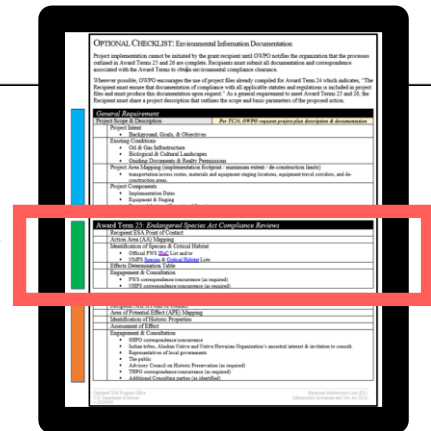
Endangered Species Act



## Award Term 25: *Endangered Species Act Compliance Reviews*

	Recipient ESA Point of Contact
	Action Area (AA) Mapping
	Identification of Species & Critical Habitat <ul style="list-style-type: none"> <li>• Official FWS <a href="#">IPaC</a> List and/or</li> <li>• NMFS <a href="#">Species</a> &amp; <a href="#">Critical Habitat</a> Lists</li> </ul>
	Effects Determination Table
	Engagement & Consultation <ul style="list-style-type: none"> <li>• FWS correspondence/concurrence (as required)</li> <li>• NMFS correspondence/concurrence (as required)</li> </ul>

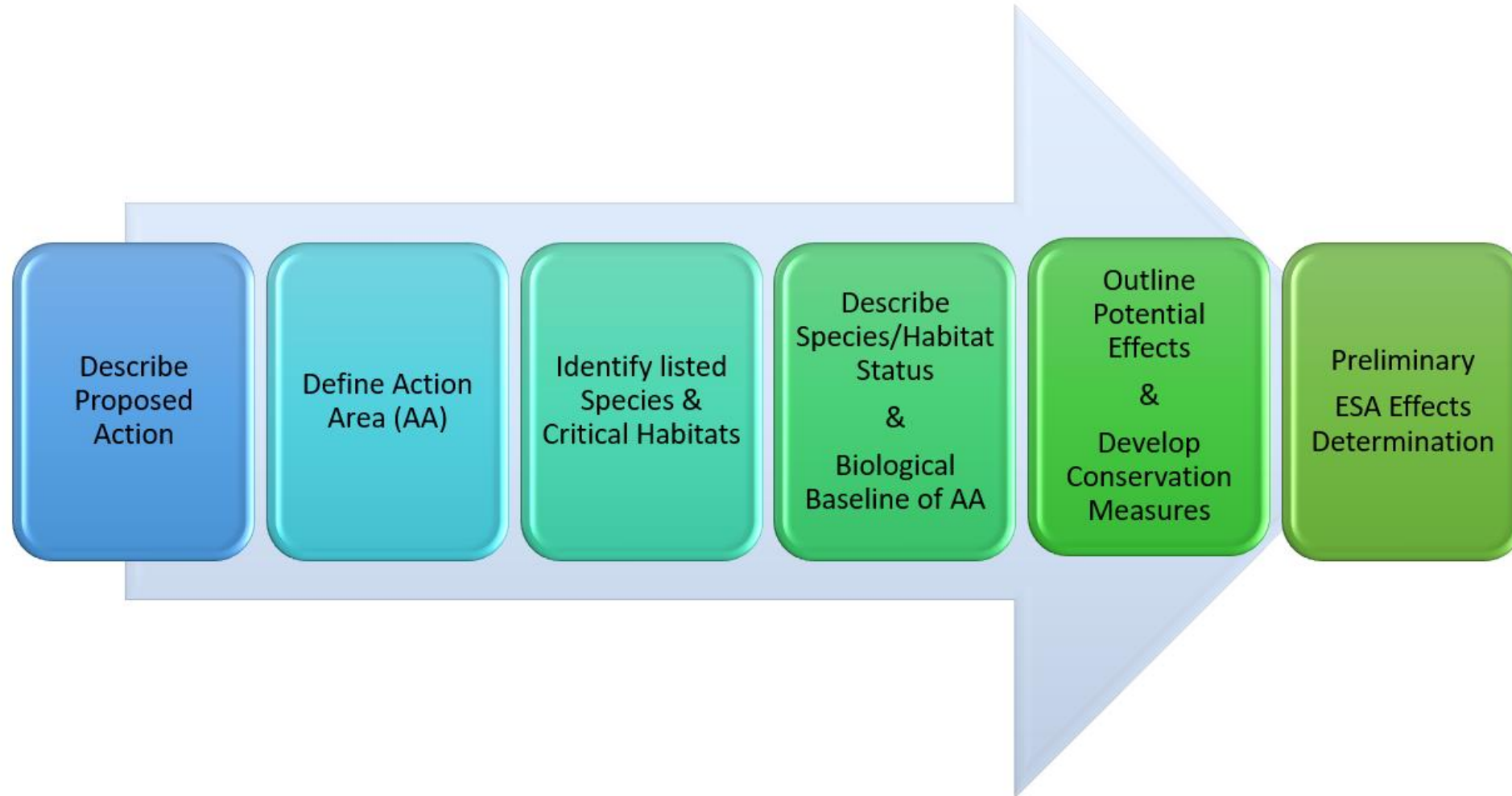
**TIP:** Engage with your State wildlife agencies and local FWS Ecological Services Office to better understand the range and occurrence of species and critical habitats.





# Developing a Preliminary “Effects Determination”

Endangered Species Act



# What is an Action Area?

Endangered Species Act

## **Definition** 50 CFR §402.2

- All areas affected directly or indirectly by the Federal action and not merely the immediate area involved in the action.
- Not limited to the “footprint of the action nor is it limited by the Federal action agency’s authority.
- A biological determination of the reach of the proposed action on listed species based on the subsequent analyses of the environmental baseline, effects of the action, and levels of incidental take are based upon the action area.

**FWS &/or NMFS can only consult when an action area is properly defined.**

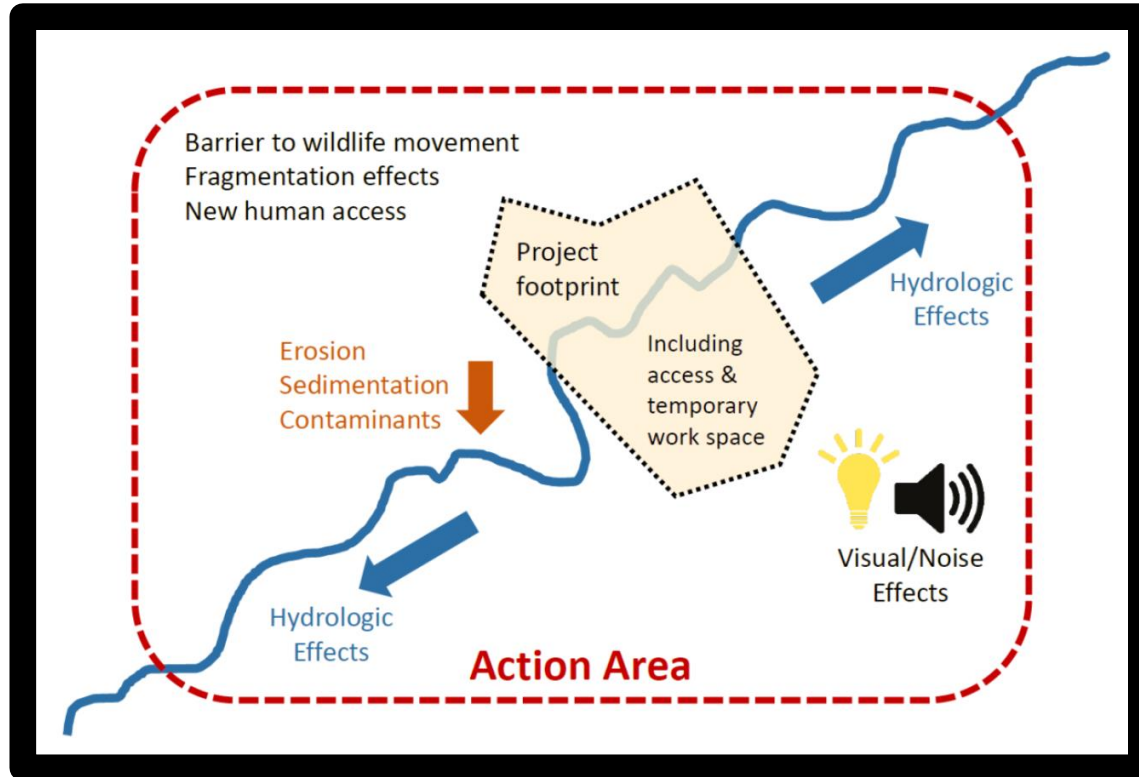
Federal Action Agency documentation must contain a description of the action area.



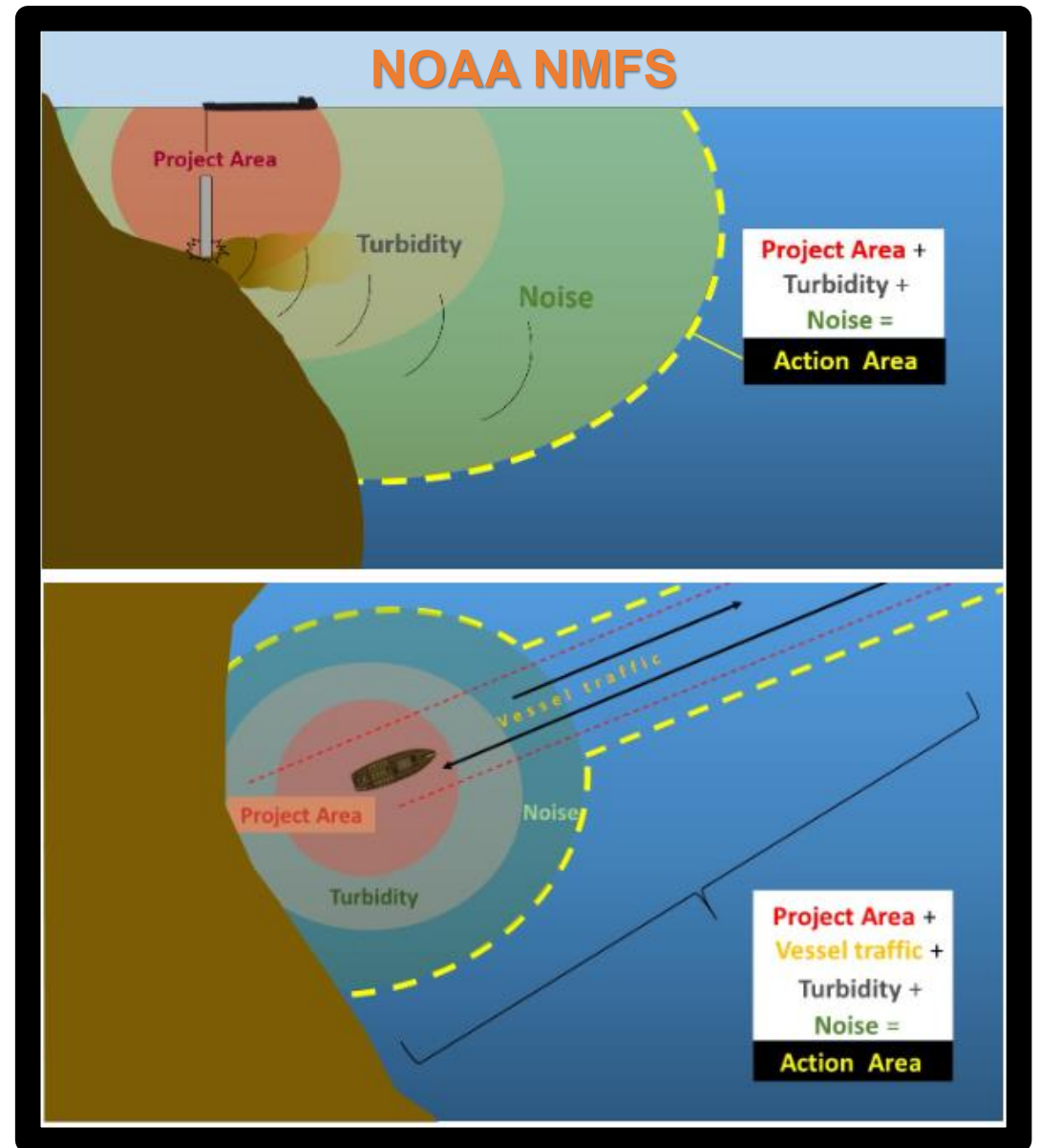
# Define Action Area

Endangered Species Act

FWS



NOAA NMFS





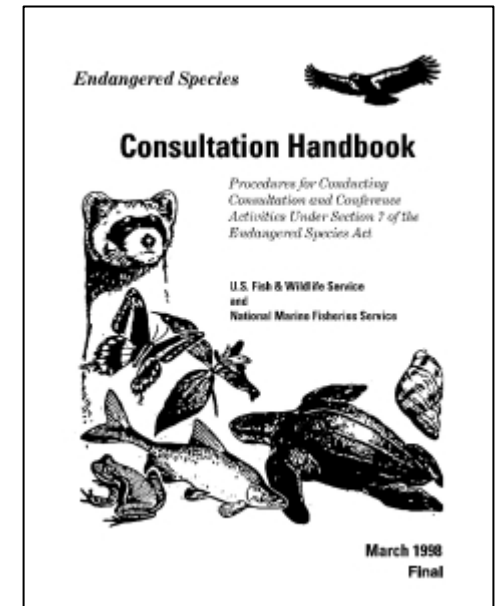
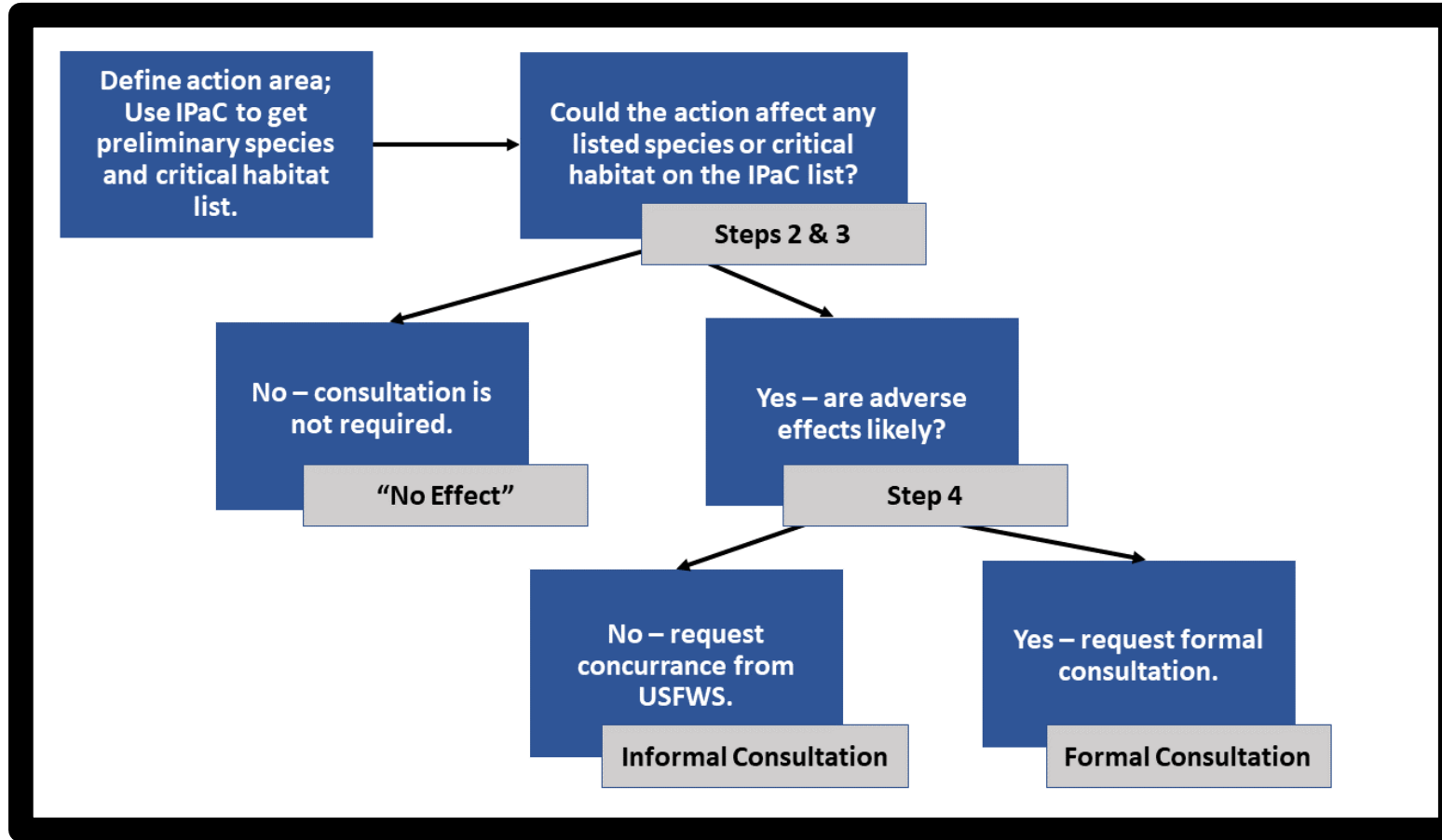
# TC25: ESA Effects Determination Table

Effects Determination Table											
Identified Species and Critical Habitats with Potential to Occur within the Action Area											
Species Common & Scientific Names	Taxon	Status	Critical Habitat	Potential Occurrence	Season of Occurrence	Exclusion Rationale	Habitat Description & Determination - Discuss sp. life stage, potential occurrence, foraging, shelter, protection, & mates - Describe habitat quality and presence of essential physical biological features. - Substantiate rationale for exclusion to dismiss from further analysis. - Cite all references used (Author Year) and provide in bibliography	Conservation Measures	Effect Determination(s)		
									Species	Habitat	
		Choose an item.	Choose an item.	Choose an item.	Choose an item.	Choose an item.			Choose an item.	Choose an item.	Choose an item.
		Choose an item.	Choose an item.	Choose an item.	Choose an item.	Choose an item.			Choose an item.	Choose an item.	Choose an item.
		Choose an item.	Choose an item.	Choose an item.	Choose an item.	Choose an item.			Choose an item.	Choose an item.	Choose an item.

Key												
Status		Critical Habitat		Potential Occurrence	Exclusion Rationale		Effect Determination(s)					
							Species			Habitat		
<b>C</b>	Candidate	<b>None</b>	No critical habitat	<b>Presence Likely</b>	<b>ELE</b>	Outside of elevational range of species	<b>NE</b>	No Effect. Rationale fully supports exclusion from Biological Assessment.	<b>NLJE</b>	<b>NOT</b> likely to jeopardize the continued existence	<b>NDAM</b>	Will <b>NOT</b> destroy or adversely modify
<b>CS</b>	Species under Conservation Agreement	<b>OP</b>	Proposed critical habitat; overlaps with action area	<b>Presence Confirmed</b>	<b>HAB</b>	No habitat (or critical habitat) present in action area	<b>NLAA</b>	May affect, <b>NOT</b> Likely to Adversely Affect.	<b>LJE</b>	<b>LIKELY</b> to jeopardize the continued existence	<b>WDAM</b>	<b>WILL</b> destroy or adversely modify
<b>DL</b>	Delisted	<b>NOP</b>	Proposed critical habitat; no overlap with action area	<b>Unknown</b>	<b>ODR</b>	Outside of known distributional range of the species.	<b>LAA</b>	May affect, <b>LIKELY</b> to Adversely Affect.	<b>N/A</b>	Not Applicable	<b>N/A</b>	Not Applicable
<b>E</b>	Endangered	<b>OF</b>	Final critical habitat; overlap with action area		<b>PBF</b>	No essential Physical Biological Features of critical habitat present in action area.	<b>N/A</b>	Not Applicable				
<b>EP</b>	Endangered, Proposed	<b>NOF</b>	Final critical habitat; no overlap with action area		<b>SEA</b>	Species not expected to occur during the season of use/impact						
<b>EX</b>	Experimental Population; Non-essential				<b>Other</b>	If other, exclusion rationale is used provide reasoning and justification in Habitat Description &						
<b>T</b>	Threatened				<b>Retain</b>	Retain for further consideration to identify conservation measures resulting in No Effect or in preparation of a Biological Assessment						
<b>TP</b>	Threatened, Proposed											



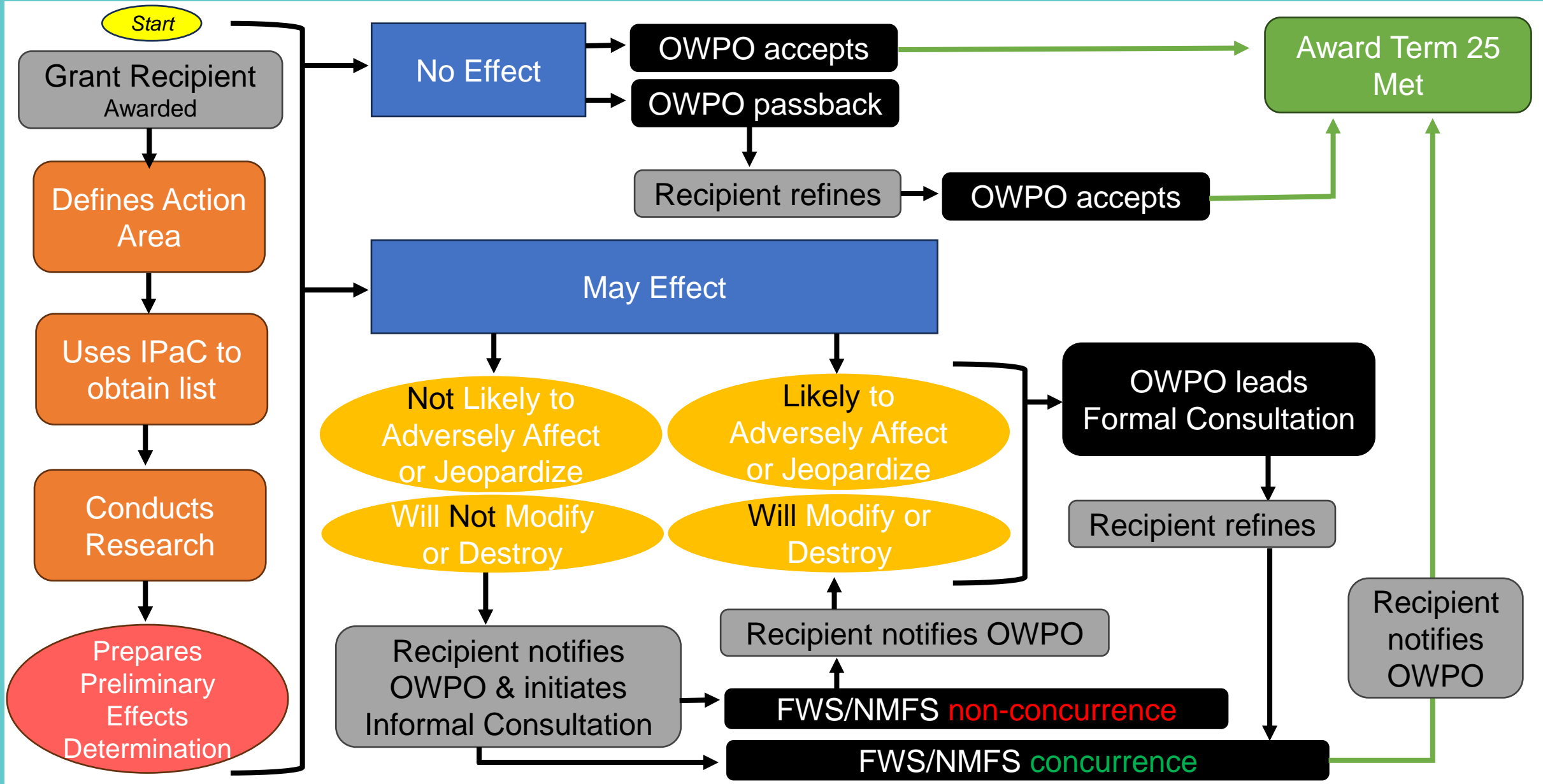
# ESA§7 Consultation Flowchart



Provides detailed consultation flowcharts

ESA Tools & Resources Table





# Award Term 26

Historic Properties

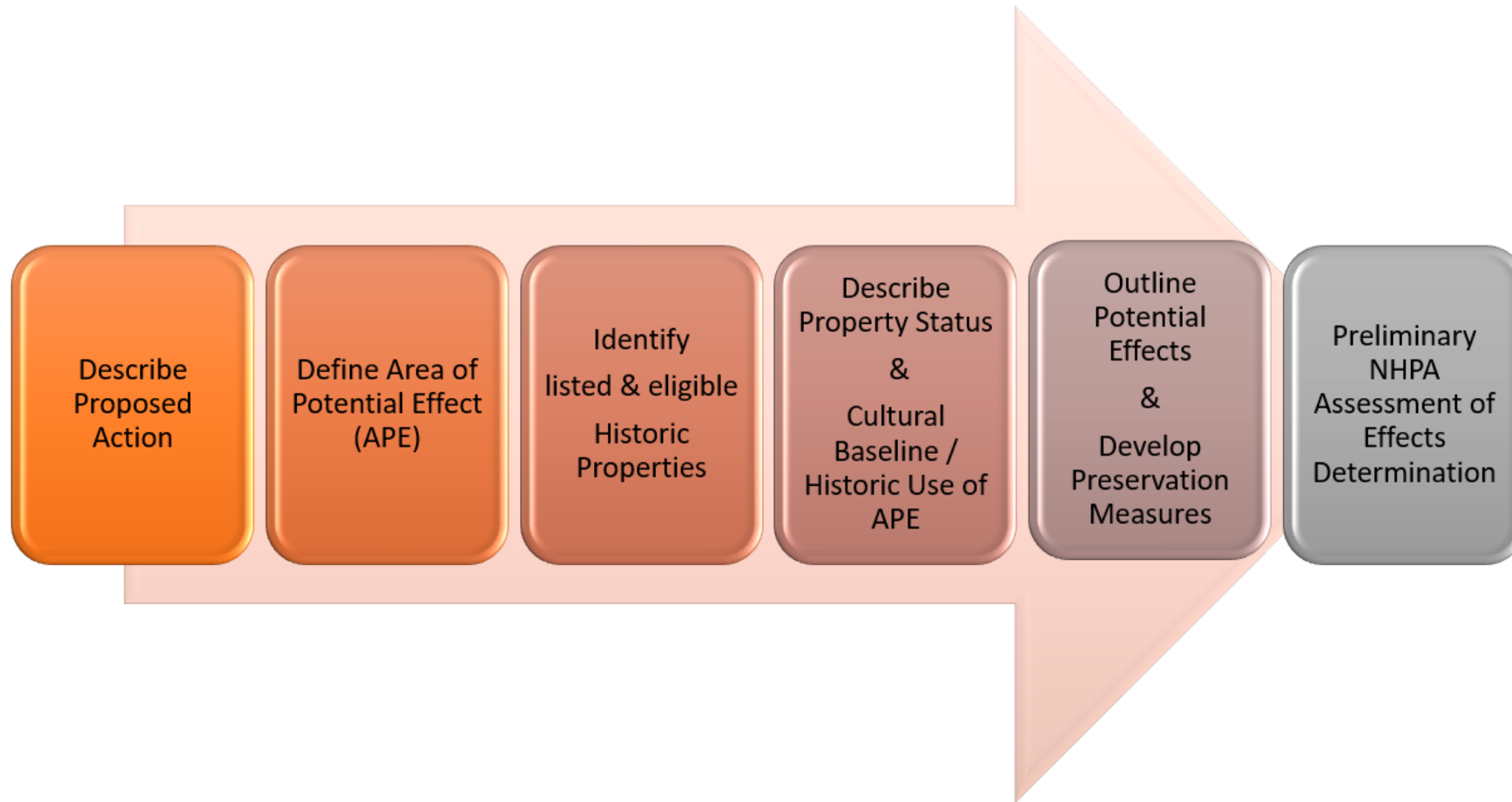






# Developing a Preliminary “Assessment of Effects” Determination

National Historic Preservation Act



# Definitions

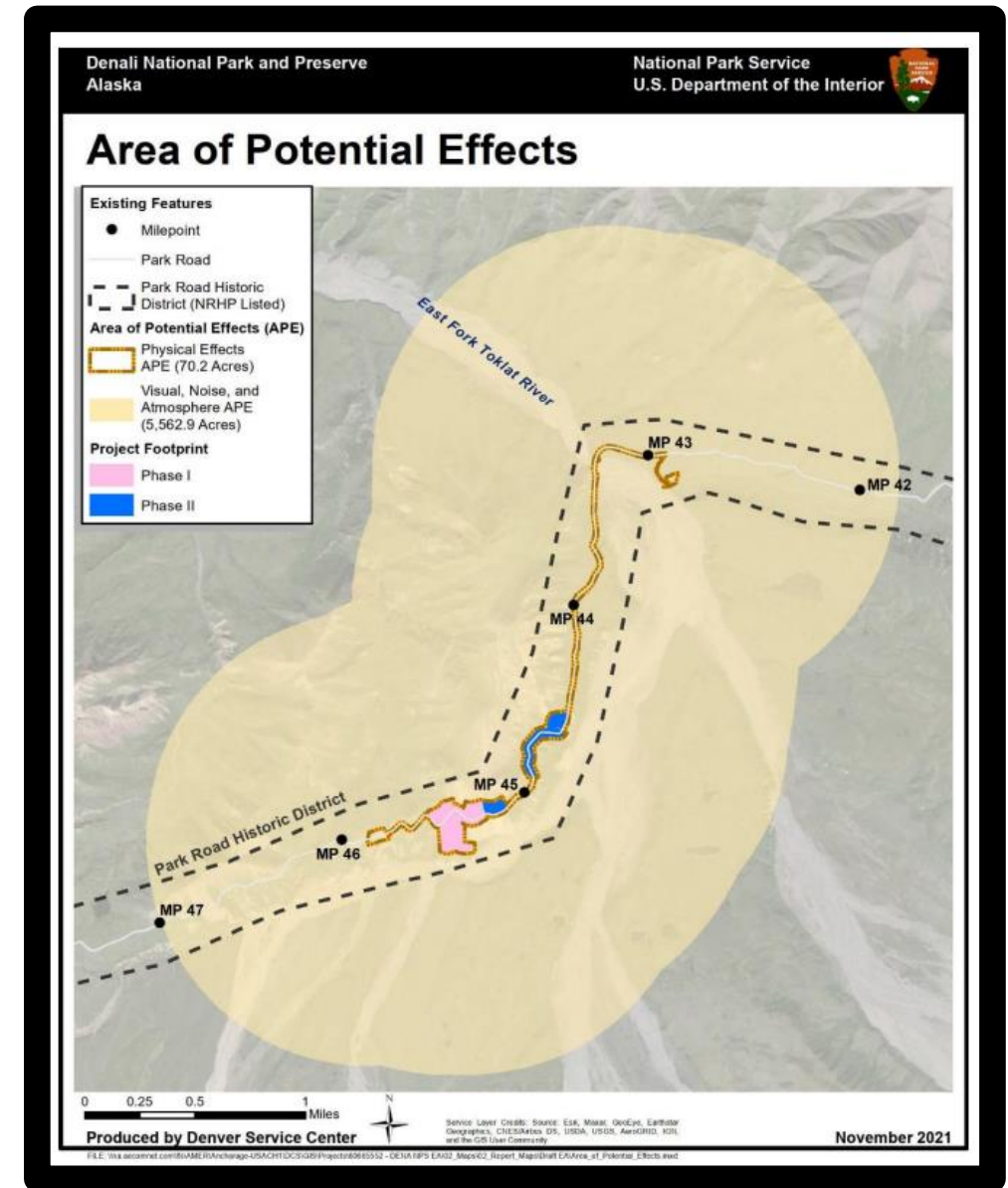
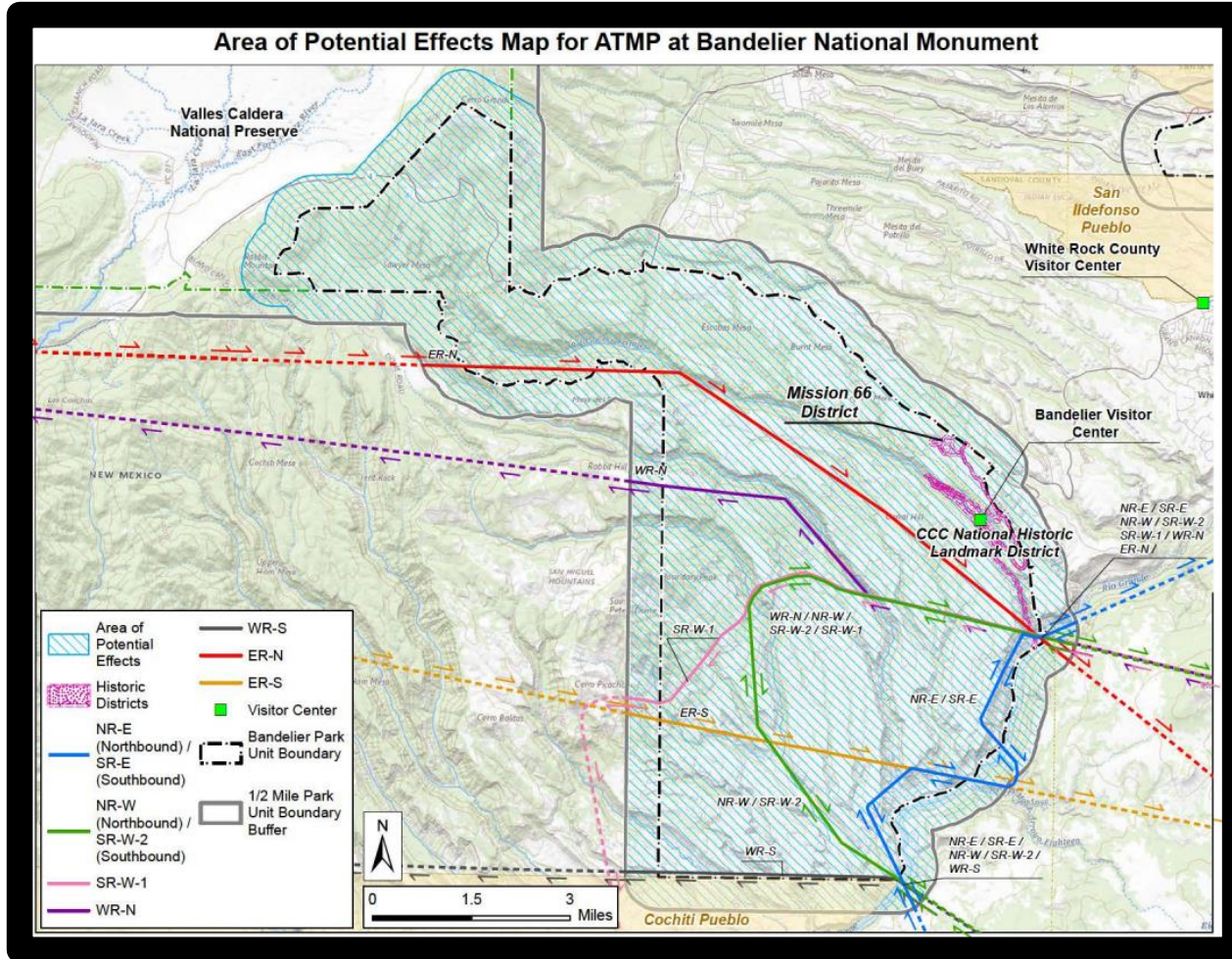
## National Historic Preservation Act

NHPA Term	Definition
Area of Potential Effect	<p>The geographic area(s) within which an undertaking may directly or indirectly cause alterations in the character of use of historic properties, if any such properties exist.</p> <p>The APE is influenced by the scale and nature of an undertaking and may vary.</p>
Historic Property	<p>Any prehistoric or historic district, site, building, structure, or object included in, or <b><u>eligible for inclusion</u></b> in the National Register of Historic Places. This term includes artifacts, records, and remains that are related to and located within such properties. The term includes properties of traditional religious and cultural importance to an Indian tribe or Native Hawaiian organization and that meet the National Register criteria.</p>
Effect	<p>An alteration of the characteristic of a historic property qualifying for inclusion in or eligibility for the National Register of Historic Places.</p>




# Area of Potential Effect

## National Historic Preservation Act




# Identification of Historic Properties

## National Historic Preservation Act



National Park Service



National Register of Historic Places

**S**TATE  
**H**ISTORIC  
**P**RESERVATION  
**O**FFICE

**NC SHPO** | The National Conference of State Historic Preservation Officers



NATIONAL ARCHIVES

RESEARCH OUR RECORDS | VETERANS' SERVICE RECORDS | EDUCATOR RESOURCES

### Native American Heritage

Home > Research Our Records > American Indian and Alaska Native Records in the National Archives > American Indian Treaties > American Indian Treaties

American Indian Records

- Main Page
- Research Individuals
- Bureau of Indian Affairs Records (BIA)
- Census Records
- Embalment Records

### American Indian Treaties: Catalog Link

The series, "Ratified Indian Treaties, 1722-1869" (National Archives Identifier 299798), is made available online through the National Archives Catalog.

Digitized treaties can be explored by date or by tribe. For each treaty, click on the National Archives Identifier (NAID) number.


TRIBAL TREATIES DATABASE (PUBLIC BETA)

OKLAHOMA STATE UNIVERSITY LIBRARIES

## TRIBAL TREATIES DATABASE



**NATIONAL ASSOCIATION OF TRIBAL HISTORIC PRESERVATION OFFICERS**




**Advisory Council on Historic Preservation**

U.S. Department of the Interior

## Indian Affairs

**Find a THPO >**



**eGIS** Tribal Directory Assessment Tool (TDAT)



# “Reasonable & Good Faith Effort”

## National Historic Preservation Act

- Take into account past planning, research and studies; the magnitude and nature of the undertaking and the degree of federal involvement; the nature and extent of potential effects on historic properties; and the likely nature and location of historic properties within the APE.
- The regulations note that a reasonable and good faith effort may consist of or include background research, consultation, oral history interviews, sample field investigation, and field survey.
- The regulations contain a post-review discovery provision since a reasonable and good faith effort to identify historic properties may not be exhaustive and, therefore, some properties might be identified as the project is implemented.

### **ACHP: Meeting the “Reasonable & Good Faith” Identification Standard in Section 106 Review**

[https://www.achp.gov/sites/default/files/guidance/2018-05/reasonable\\_good\\_faith\\_identification.pdf](https://www.achp.gov/sites/default/files/guidance/2018-05/reasonable_good_faith_identification.pdf)



# Tribal Engagement & Consultation

## National Historic Preservation Act

### Example Methodology

1. Grant Recipient compiles contacts
  - a. Obtain Tribal List from TDATE for Project Areas based on your strategized workplan
  - b. Obtain Tribal list from State SHPO/THPO (if available) and inquire about any known ancestral interests
  - c. Cross reference BIA Tribal Leaders Directory
  - d. Cross reference BIA Indian Lands database for any intersection with your APE
  - e. Cross reference Tribal Treaty Archives for any intersection with your APE
2. Grant Recipient drafts initial Tribal Engagement materials
  - a. Prepare draft letter content to gauge Tribal interest and requests for any government-to-government consultations.
  - b. Prepare draft Tribal response tacking sheet and plan to reengage following initial engagement.
3. Grant Recipient contacts OWPO for assistance with making initial contact to identified Tribes
  - ❖ No timeline associated with Tribal response, 30-days for review and comment is customary.
  - ❖ Tribes who attribute religious/cultural significance to a property often request additional time.
  - ❖ OWPO will authorize the start of activities within a reasonable timeframe.

The NHPA Tools & Resources Table provides resources for **Tribal Consultation**



NHPA Tools and Resources	
The following tools and resources are available to assist states in understanding the consultation process and identifying historic properties from reported field reports.	
NHPA	<a href="https://www.nps.gov/nhpapubs/2018/06/nhpapubs.pdf">https://www.nps.gov/nhpapubs/2018/06/nhpapubs.pdf</a>
U.S. Code of Federal Regulations	<a href="https://www.ecfr.gov/current/title-36/chapter-VIII/part-800">https://www.ecfr.gov/current/title-36/chapter-VIII/part-800</a>
CFR NHPA	<a href="https://www.ecfr.gov/current/title-36/chapter-VIII/part-800">https://www.ecfr.gov/current/title-36/chapter-VIII/part-800</a>
ACHP	<a href="https://www.nps.gov/achp">https://www.nps.gov/achp</a>
ACHP Introduction to 106	<a href="https://www.nps.gov/achp/section-106-process/section-106-process-introduction-section-106">https://www.nps.gov/achp/section-106-process/section-106-process-introduction-section-106</a>
106 Review Process Flowchart	<a href="https://www.nps.gov/achp/digital-library/section-106-landing/section-106-review-process-flowchart">https://www.nps.gov/achp/digital-library/section-106-landing/section-106-review-process-flowchart</a>
106 Applicant Toolkit	<a href="https://www.nps.gov/achp/digital-library/section-106-landing/section-106-applicant-toolkit">https://www.nps.gov/achp/digital-library/section-106-landing/section-106-applicant-toolkit</a>
Q&A NHPA 106	<a href="https://www.nps.gov/achp/digital-library/section-106-landing/section-106-regulations/section-106-questions-and-answers">https://www.nps.gov/achp/digital-library/section-106-landing/section-106-regulations/section-106-questions-and-answers</a>
Citizen's Guide to 106 Review	<a href="https://www.nps.gov/achp/digital-library/documents/2021/106-citizen-guide-2021-01-15-21.pdf">https://www.nps.gov/achp/digital-library/documents/2021/106-citizen-guide-2021-01-15-21.pdf</a>
Reasonable & Good Faith Identification Standard 106	<a href="https://www.nps.gov/achp/digital-library/guidance/2018/09/reasonable-good-faith-identification.pdf">https://www.nps.gov/achp/digital-library/guidance/2018/09/reasonable-good-faith-identification.pdf</a>
NPS	<a href="https://www.nps.gov">https://www.nps.gov</a>
Historic Preservation: NHPA	<a href="https://www.nps.gov/subjects/historic-preservation/national-historic-preservation-act.htm">https://www.nps.gov/subjects/historic-preservation/national-historic-preservation-act.htm</a>
National Register of Historic Places (NRHP)	<a href="https://www.nps.gov/subjects/nationalregister/index.htm">https://www.nps.gov/subjects/nationalregister/index.htm</a>
NHP Database	<a href="https://www.nps.gov/subjects/nationalregister/database-research.htm">https://www.nps.gov/subjects/nationalregister/database-research.htm</a>
SHPO/THPO	<a href="https://www.nps.gov/subjects/shpo">https://www.nps.gov/subjects/shpo</a>
SHPO Directory	<a href="https://www.nps.gov/subjects/shpo">https://www.nps.gov/subjects/shpo</a>
ACHP Role of THPO in 106 Process	<a href="https://www.nps.gov/achp/digital-library/section-106-landing/role-tribal-historic-preservation-office/section-106-process">https://www.nps.gov/achp/digital-library/section-106-landing/role-tribal-historic-preservation-office/section-106-process</a>
National Association of THPOs	<a href="https://members.nahpo.org/directory/FindStateWithForm-%2024">https://members.nahpo.org/directory/FindStateWithForm-%2024</a>
NPS Find a THPO	<a href="https://www.nps.gov/subjects/historic-preservation/tribal-historic-preservation-office-program.htm">https://www.nps.gov/subjects/historic-preservation/tribal-historic-preservation-office-program.htm</a>
Tribal Nations	<a href="https://www.bia.gov/tribes">https://www.bia.gov/tribes</a>
White House Memo Standards for Tribal Consultation	<a href="https://www.whitehouse.gov/wp-content/uploads/2021/11/20211103-memo-standards-for-tribal-consultation">https://www.whitehouse.gov/wp-content/uploads/2021/11/20211103-memo-standards-for-tribal-consultation</a>
ACHP 106 Consultation w/ Tribes in the Review Process: The Handbook	<a href="https://www.nps.gov/achp/digital-library/2021/106-consultation-tribal-handbook-11-23-final_0.pdf">https://www.nps.gov/achp/digital-library/2021/106-consultation-tribal-handbook-11-23-final_0.pdf</a>
ACHP Limitations on Delegation of Authority by Federal Agencies to Initiate Tribal Consultation	<a href="https://www.nps.gov/achp/digital-library/guidance/2018/09/limitations-on-delegation-of-authority-by-federal-agencies-to-initiate-tribal-consultation-section-106-of-nhpact-jul2011.pdf">https://www.nps.gov/achp/digital-library/guidance/2018/09/limitations-on-delegation-of-authority-by-federal-agencies-to-initiate-tribal-consultation-section-106-of-nhpact-jul2011.pdf</a>
BIA Tribal Viewer	<a href="https://hogan.gov/education/tribal-viewer">https://hogan.gov/education/tribal-viewer</a>
BIA Tribal Leaders Directory	<a href="https://www.bia.gov/services/tribal-leaders-directory">https://www.bia.gov/services/tribal-leaders-directory</a>
Tribal Directory Assessment Tool	<a href="https://tribaltool.gov/tdat/">https://tribaltool.gov/tdat/</a>
National Archives: Treaties	<a href="https://www.archives.gov/research/intro-american-treaties/tribal-links">https://www.archives.gov/research/intro-american-treaties/tribal-links</a>
CR: Tribal Treaties Database	<a href="https://treaties.dhs.gov/">https://treaties.dhs.gov/</a>





# Section 106 Review Process

36 CFR § 800.3-7

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## INITIATE the process

- Determine undertaking
- Coordinate with other reviews
- Identify SHPO/THPO, Indian tribes/NHOs, and other parties
- Plan to involve the public

*Undertaking with potential to affect historic properties?*

YES

NO



## IDENTIFY historic properties

- Determine APE and scope of effort
- Make reasonable and good faith effort to identify
- Determine National Register eligibility
- Consult SHPO/THPO, Indian tribes/NHOs, and other parties
- Involve the public

*Historic properties present or affected?*

YES

NO



## ASSESS adverse effects

- Apply Criteria of Adverse Effects
- Consult SHPO/THPO, Indian tribes/NHOs, and other parties
- Involve the public

*Historic properties adversely affected?*

YES

NO



## RESOLVE adverse effects

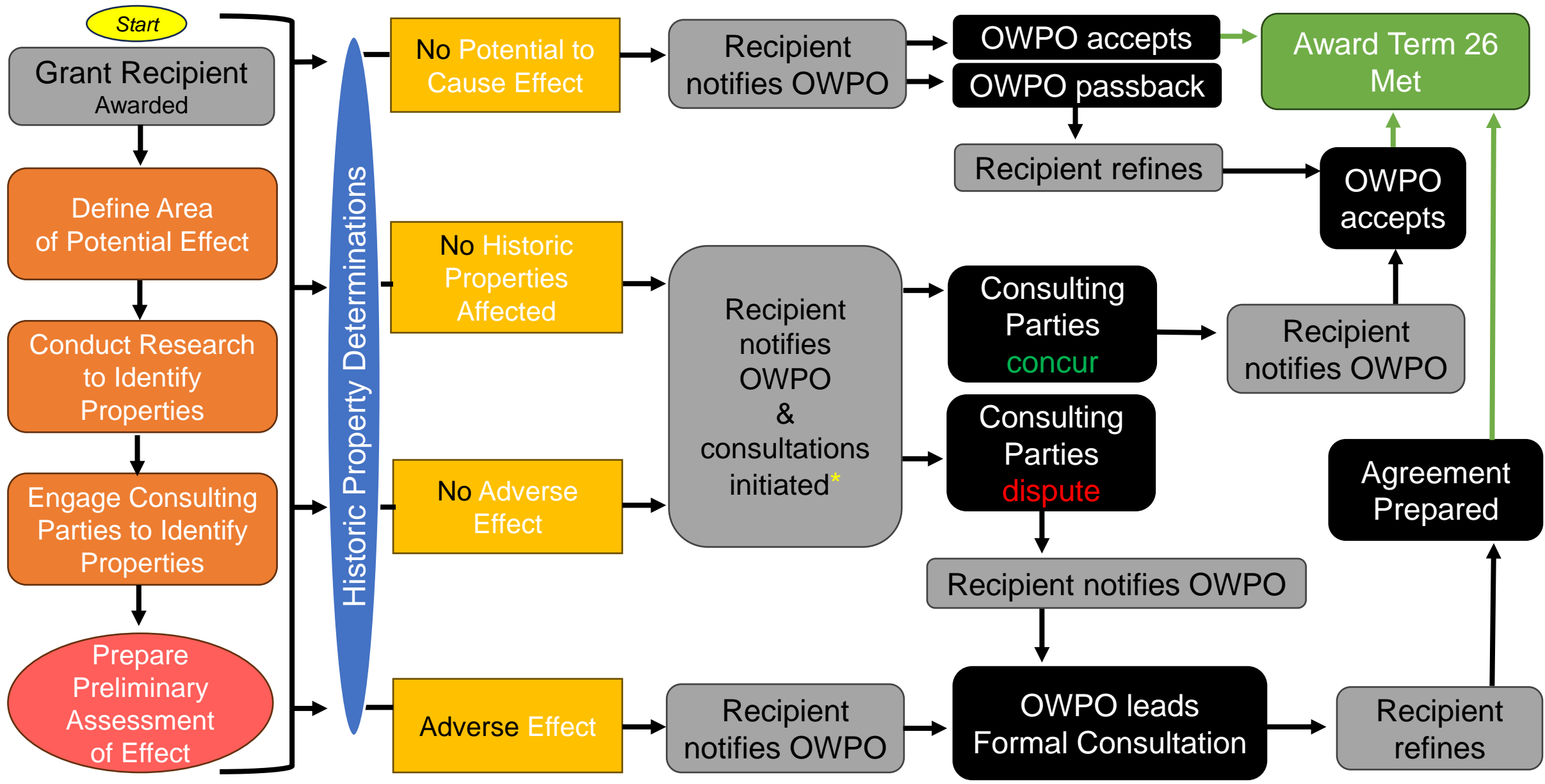
- Develop and consider alternatives or modifications to avoid, minimize, or mitigate adverse effects
- Notify the ACHP
- Consult SHPO/THPO, Indian tribes/NHOs, and other parties
- Involve the public

*AGREEMENT or Council Comment*

## PROCEED







## ***5-minute BREAK***

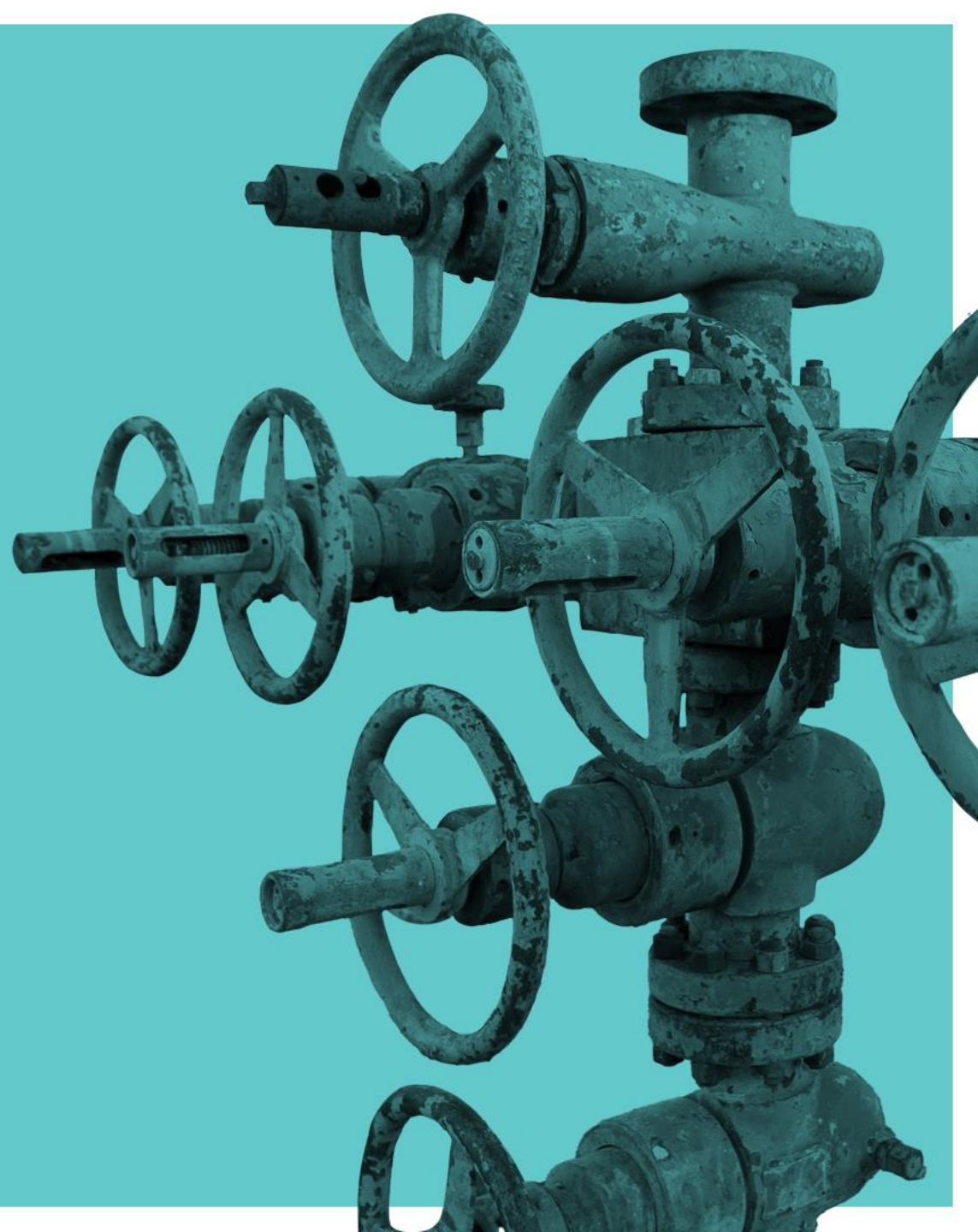
- Please take this opportunity to place all questions related to this section in the chat.
- We are all learning and encourage you to share. Your thoughts will spark thoughts and ideas in others.
- Contributions to the chat will be used in the development of future FAQs, webinars, and tools.

***Return Time: 01:31***



# Wrapping Up

Tips & Takeaways



# Tips and Takeaways

- 1 Engage OWPO to schedule an ESA / NHPA “kick-off” meeting post-award.
- 2 Integrate the use of tools, template, and guidance provided by OWPO.
- 3 Recommended qualifications: ESA (Biology Degree) and NHPA (DOI Secretary Professional Standards)
- 4 Coordinating early and often with sister agencies and integrating existing state resources is key.
- 5 Engage your State wildlife agencies and local FWS Ecological Services Office to better understand the range and occurrence of species and critical habitats.
- 6 A simple conservation measure used to reach a No Effect is to implement the project outside of the sensitive timeframe for the specific species.
- 7 Engage your SHPO/THPO to better understand historic properties and Tribal ancestral interests.
- 9 Use guidance on “[how to prepare a consultation package](#)” from your SHPO
- 10 Focus analyses and discussion on features and characteristics WITHIN the AA and APE.
- 11 When in doubt, reach out!!
- 12 Use of On-Site Monitors



# On-Site Monitors

## Biological & Cultural

### 1) Flexibility

- Reduces seasonal constraints.
- Maximizes project scheduling window.
- Protects multiple interests to reach project completion.
- Good government jobs in multiple fields.

### 2) Expertise

- Professional Subject Matter Expertise (SME).
- Holds qualifications to meet regulatory/permitting requirements.
- Implements protocols accepted by scientific community.
- Experienced with species-specific conservation measures.
- Trained to identify and process unknown or unanticipated discoveries (archaeological & historic).
- Prepares documentation to fulfill reporting requirements.

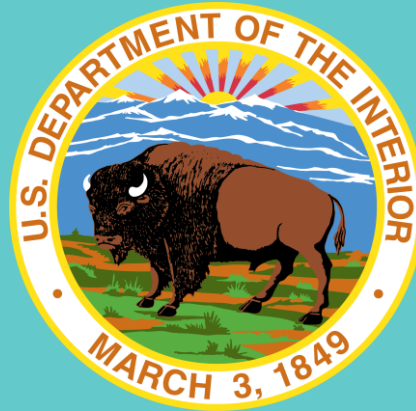
### 3) Documentation

- Prepares accurate technical reports.
- Produces required environmental documentation.
- Builds trust and reduces delays with jurisdictional authorities.

★ Final Note...



Up Next: Question & Answer



Thank you!

Questions?

TO: Primary OWPO Contact / assigned EPS

CC: [environmentalcompliance\\_orphanedwells@ios.doi.gov](mailto:environmentalcompliance_orphanedwells@ios.doi.gov)