



Office of Nuclear Material Safety and Safeguards

NRC Tribal Consultation Information Tool

(This document is not guidance)

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Quick Reference for the Key Differences in Tribal Consultation Under National Historic Preservation Act Section 106 and the NRC’s Tribal Policy Statement

The NRC can conduct consultation with Federally recognized Tribes under the National Historic Preservation Act (NHPA), which is often described as Section 106 consultation, and under the Commission’s Tribal Policy Statement (TPS). While consultation under either authority share similarities in some of the processes, these two processes are not substitutes for each other and do not represent a choice for a party to select. For example, the NRC must conduct Section 106 consultation when it determines that its actions are a federal undertaking. The following table is not guidance and meant to inform participants of similarities and key differences between the two consultation processes.

	National Historic Preservation Act Section 106 Consultation	Tribal Policy Statement Consultation
Lead	Division of Rulemaking, Environmental, and Financial Support – Environmental Center of Expertise	Division of Materials Safety, Security, State, and Tribal Programs – Materials Safety and Tribal Liaison Branch
Overview	Under the NHPA, the NRC is required to consult with Tribes for regulatory activities that meet the definition of a federal undertaking that has the potential to affect historic properties. The NRC determines when its actions are a federal undertaking.	Under the TPS, the NRC has some flexibility to engage in consultation on issues or concerns that have a substantial direct effect on a Tribe but would not trigger a requirement for consultation under the NHPA as a federal undertaking. Additionally, Tribes can request consultation under the TPS.
Goals of consultation	<p>In accordance with 36 CFR 800.16(f) regulations implementing the NHPA Section 106, consultation means the process of seeking, discussing, and considering the views of other participants, and, where feasible, seeking agreement with them.</p> <p>The purpose of the NHPA Section 106 process is to require federal agencies to consider the effects of their undertakings on historic properties and afford the Advisory Council on Historic Preservation (ACHP) a reasonable opportunity to comment on such undertakings (e.g., projects or activities). The Section 106 process seeks to accommodate historic preservation concerns with the needs of federal undertakings through consultation among the federal agency official and consulting parties (e.g., State and Historic Preservation Officers, Federally recognized Tribes, Native Hawaiian Organizations, license applicants, and other parties that have a demonstrated interest in the undertaking/project). The goal is to identify historic properties potentially affected by the proposed federal undertakings/projects or actions, assess potential effects, and seek</p>	<p>The TPS defines consultation in the preamble in the Federal Register (FR) at 82 FR 2402 (Jan. 9, 2017) and describes consultation further in TPS Principle #4. Consultation promotes effective government-to government interactions with Federally recognized Tribes and encourages and facilitates tribal involvement in the areas over which the Commission has jurisdiction. Consultation, as discussed in the TPS, also allows for efforts to conduct meaningful and timely discussions between the NRC and Tribal governments on the NRC’s regulatory actions. The NRC’s Tribal consultation allows Indian Tribes the opportunity to provide input on regulatory actions with Tribal implications. The consultation process provides opportunities for appropriate Tribal officials or representatives to meet with NRC management or staff to achieve a mutual understanding between the NRC and the Tribes of their respective interests and perspectives.</p>

	ways to avoid, minimize or mitigate any adverse effects on historic properties.	
What Topics are in/out	<p>NHPA is limited to federal undertakings. The process requires the federal agency to consider the federal undertaking's effects on historic properties and provides the ACHP an opportunity to comment. For the NRC, undertakings include a project or activity requiring the issuance, amendment, or termination of a license, permit, or approval (e.g., new reactor applications, license renewal applications, fuel facility applications, license termination).</p> <p>NRC typically coordinates its NHPA Section 106 compliance through the National Environmental Policy Act (NEPA) process (per 36 C.F.R. § 800.8). NEPA requires federal agencies to consider the effects of their proposed actions on the aesthetic, historic, and cultural resources. For NEPA compliance, impacts on cultural resources that are not eligible for or listed on the National Register of Historic Places would also need to be considered. Additionally, Tribes may have concerns/comments regarding other resource areas (e.g., groundwater, air, transportation) that can be raised during the NEPA process.</p>	<p>The TPS Principle #4 states that the NRC will provide timely notice and consult in good faith with Tribal governments on NRC's regulatory actions for which Tribal consultation is warranted. The NRC has discretion to determine when to offer consultation on NRC's regulatory actions. Tribal officials may also request that the NRC engage in consultation with them on other matters. According to TPS Principle #4, the NRC will make efforts to grant such requests, taking into consideration the nature of the activity at issue, past consultation efforts, available resources, timing issues, and other relevant factors.</p> <p>While each activity identified by the NRC staff or a Federally recognized Tribe would need its specific details to be evaluated, TPS consultation should be considered, as appropriate, for the following types of activities including rulemaking, policy development, transportation of spent nuclear fuel, emergency preparedness, effluents in waterways, advanced notification, and Agreement State applications.</p>
Who involved from the NRC	<p>NHPA Section 106 consultations consist of relevant technical staff (and/or contractor staff) and Environmental PMs. Tribal leaders request formal government-to-government consultation, the staff accommodates the request and involve senior management (i.e., the decisionmaker) in the consultation. On rare occasions, these interactions may require involvement of the Director for Materials, Waste, Research, State, Tribal, Compliance, Administration, and Human Capital Programs (DEDM).</p>	<p>Consultation conducted under the TPS is on a case-by-case basis which may include the DEDM, Federal Preservation Officer, Division Director, Tribal Liaison, Regional State Liaison Officer, and the cognizant review team.</p> <p>In accordance with the TPS Principle #4: "The NRC representatives for consultations with Tribal officials or representatives will be of an appropriate rank and the level of interaction will be commensurate with the circumstances. The appropriate level of interaction will be determined by a discussion between the NRC and Tribal governments, and program office consultation procedures and guidance."</p>

When in Process	As indicated above, the NRC typically coordinates its NHPA Section 106 compliance through the NEPA process. Early coordination is also specified in the 36 CFR 800 regulations. Staff also consult with Tribes (and other Section 106 consulting parties) throughout the NEPA review.	As stated by TPS Principle #4, “the NRC will establish early communications and begin consultation as soon as practicable.” Tribal engagement may commence during the pre-application phase of a regulatory action or activity.
How conducted	<p>NRC staff conducts tribal consultation consistent with relevant NHPA/NEPA statutory provisions, regulations, and guidance documents. The staff initiates NHPA Section 106 consultation and the associated NEPA scoping process by letter (either electronically or hard copy sent via USPS). Based on expressions of interest/comments from individual Tribes, the NRC staff may conduct subsequent interactions to establish relationships with Tribal representatives who hold similar levels of authority. The NRC staff can communicate with such representatives through written correspondence, phone calls, or e-mails to the appropriate Tribal contact. The NRC may also conduct follow-up meetings (teleconference, video conference, webinar, face-to-face), as appropriate. These methods of communication are described in NRC guidance documents¹ and are employed on a case-by-case basis.</p> <p>The staff may develop Memoranda of Agreement or Programmatic Agreements with the consulting parties, if there are adverse effects to historic properties, as appropriate.</p>	The NRC staff has flexibility in conducting Tribal consultations under the TPS, because the TPS does not have statutory or regulatory requirements applicable to this type of consultation. While formal guidance will be developed, the NRC staff can refer to the TPS, the Tribal Protocol Manual (TPM, NUREG–2173, Rev. 1), TR-100 and YA-2020-0095 to inform their tribal consultation activities. Consultations under the TPS usually involve a specific regulatory activity (e.g., project, rulemaking, issue). Consultation activities should be flexible so it can accommodate the needs of the NRC and Tribal governments. Some of the methods can include face-to-face, teleconference, video conference, or webinars, as appropriate. The NRC staff will be focused on achieving a mutual understanding between the Tribes and NRC Staff of each party’s interests and perspectives. For further information, see Section 2B of the TPM and contact the NRC tribal liaisons.
When is consultation complete?	NHPA Section 106 consultation ends when the parties agree. If the parties are unable to reach agreement, the federal agency must provide the ACHP an opportunity to provide formal advisory comments, which are sent to the head of the agency and are public. The head of the agency must consider the ACHP’s comments in making a final decision about whether the project will proceed.	The NRC will consult in good faith throughout the agency decision-making process. Tribal consultation under the TPS normally ends once the Tribal Nation has had a realistic and meaningful opportunity to review materials and provide input regarding the specific regulatory activity subject to the tribal consultation. This input will

¹ U.S. Nuclear Regulatory Commission (NRC). 2000. *Standard Review Plans for Environmental Reviews for Nuclear Power Plants*. NUREG-1555. Washington, D.C.

U.S. Nuclear Regulatory Commission (NRC). 2003. *Environmental Review Guidance for Licensing Actions Associated with NMSS Programs*. NUREG-1748. Washington, D.C.

	<p>A NHPA Section 106 closeout letter is issued to participating Tribes.</p>	<p>inform the decisionmaker of the Tribal Nation's concerns and recommendations.</p> <p>In accordance with YA-2020-0095, NRC staff will provide written communication to Federally recognized Indian Tribes that provided input on a NRC regulatory action, as soon as practical, after the agency's final decision.</p>
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