



# OIL SPILL RESPONSE SECTION 106 COMPLIANCE



## PROTECTING HISTORIC PROPERTIES AND CULTURAL RESOURCES



# WHAT IS SECTION 106?

## SECTION 106 OF THE NATIONAL HISTORIC PRESERVATION ACT (NHPA)

- This act requires that **Federal agencies to take into account the effects of their undertakings on historic properties** that are listed in, or eligible for, inclusion in the National Register of Historic Places (NRHP).
- The **FOSC represents the lead Federal agency** for an Oil Spill response. Clean-up operations are part of the Federal undertaking.
- **Undertaking** means a project, activity, or program funded in whole or in part under the direct or indirect jurisdiction of a Federal agency – including those carried out by or on behalf of a Federal agency.



## *1960s—why NHPA?*

- Unforeseen federal impact
- Kennedy's Urban Renewal Program
- Johnson's Great Society



John F. Kennedy (1961-1963)



Lyndon B. Johnson (1963-1969)





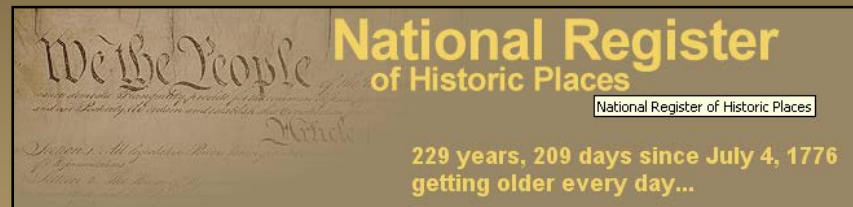
# National Historic Preservation Act, 1966

- Created National Register

- Formed ACHP

- Created SHPOs

- Formed 1<sup>st</sup> national policy on historic preservation



National Conference of State Historic Preservation Officers





# National Historic Preservation Act, 1966

~~PRESERVE  
EVERYTHING?~~

consider the effects of your actions on historic properties before spending federal funds



# National Historic Preservation Act, 1966

## Regulations Implementing Section 106

### 36 CFR 800 *Protection of Historic Properties*

- establishes the compliance process



## 36 CFR 800 Protection of Historic Properties

### Section 106

The head of any Federal agency having direct or indirect jurisdiction over a proposed Federal or federally assisted undertaking in any State and the head of any Federal department or independent agency having authority to license any undertaking **shall**, prior to the approval of the expenditure of any Federal funds on the undertaking or prior to the issuance of any license, as the case may be, *take into account the effect of the undertaking on any district, site, building, structure, or object that is included in or eligible for inclusion in the National Register. The head of any such Federal agency shall afford the Advisory Council on Historic Preservation established under Title II of this Act a reasonable opportunity to comment with regard to such undertaking.*





## 36 CFR 800 Protection of Historic Properties

### *Regulatory Philosophy: Consultation*

#### Consultation is necessary to:

- Identify historic properties
- Assess project's effects on them
- Try to avoid, minimize, or mitigate adverse effects



# Who are the participants?

- Every Federal agency has an official responsible for compliance
- Designating the “lead Federal agency”
- Contractors can be used to prepare reports, etc.
- Consultation appropriate to the scale of undertaking and scope of Federal involvement



Who are the participants?

## Advisory Council

- Issues regulations for implementation
- Oversees operations of the process
- Comments on Federal undertakings and programs that affect historic properties
- Can enter the process if certain criteria are met







Who are the participants?

## State Historic Preservation Office (SHPO)

- Undertakes statewide historic preservation planning and survey
- Nominates properties to the NR
- Reviews and comments on Federal, State, and local undertakings for purposes of Section 106
- Assists local governments with programs and certification



Who are the participants?

## Indian Tribes and Native Hawaiian Organizations

- Respect tribal sovereignty
- Sites significant to native people may not be on tribal lands
- Government-to-government consultation





Who are the participants?

## Local Governments

- May sometimes act as agency official
- Agency official should “actively seek” their views and comments

## Applicants for Federal assistance, licenses, permit, or approval

- Entitled to participate
- Agency official may authorize applicant to consult directly with SHPO, etc.



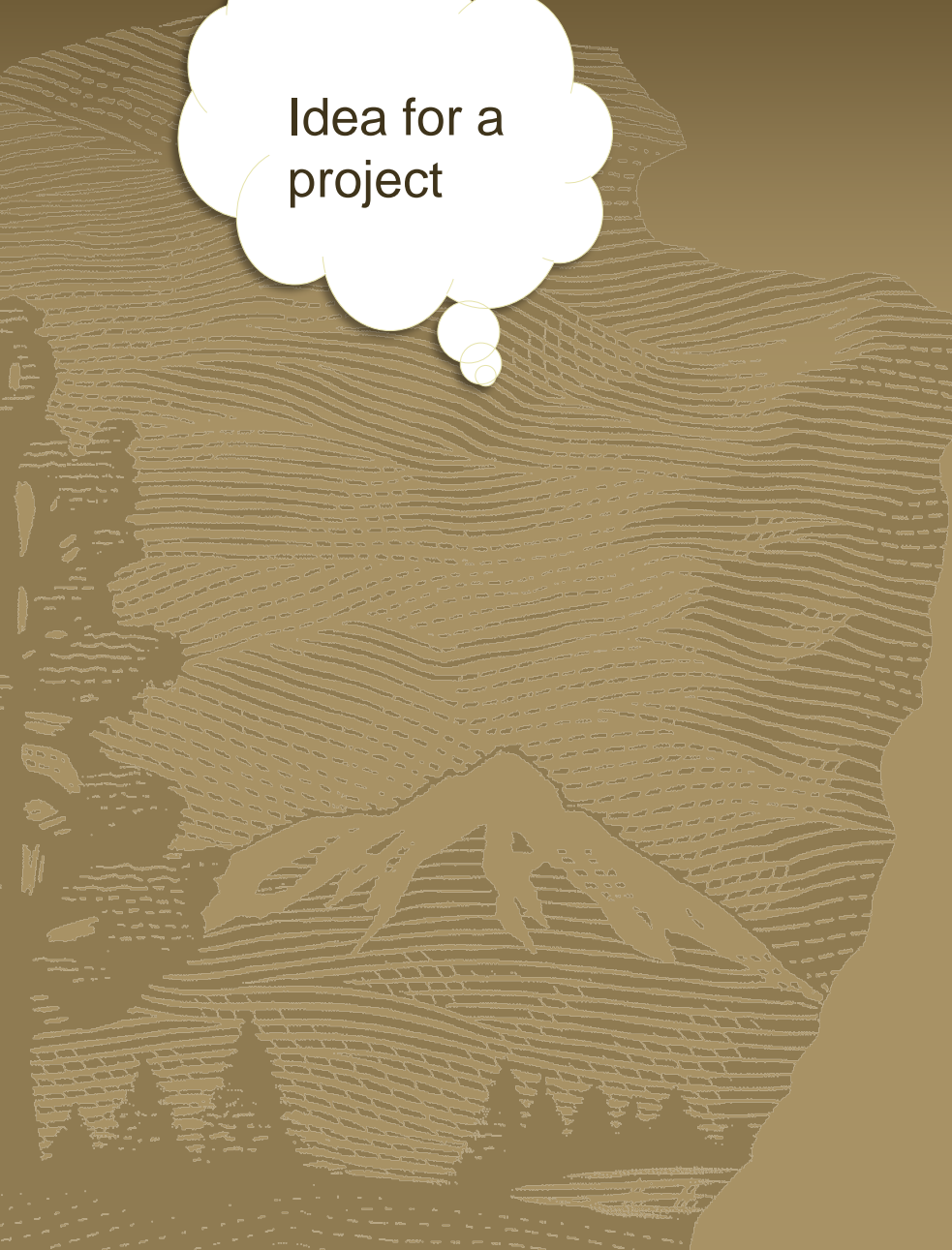


# *Section 106 is Project Planning*





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project





Idea for a  
project



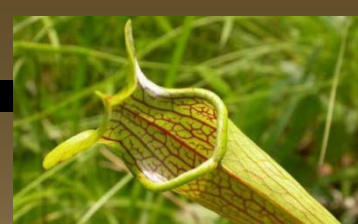
Begin project  
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Idea for a  
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Begin project  
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Check for  
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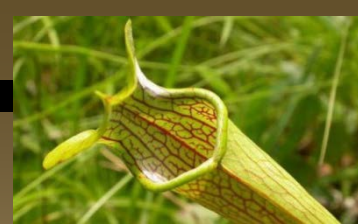


Idea for a project

Begin project development

Check for compliance

Consultation



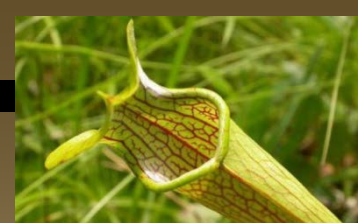
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Begin project development

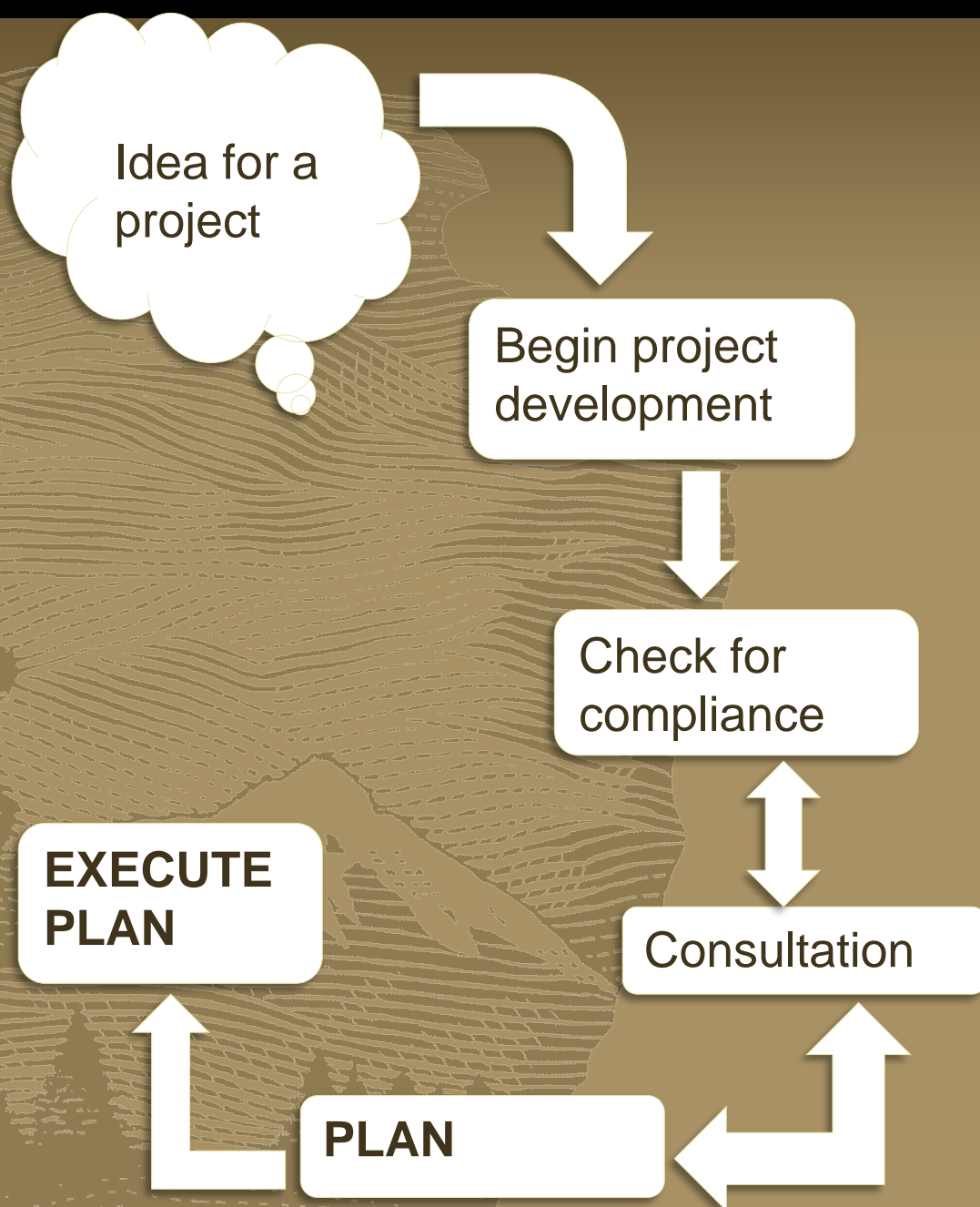
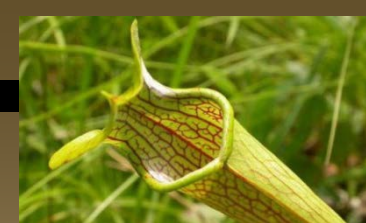
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Consultation

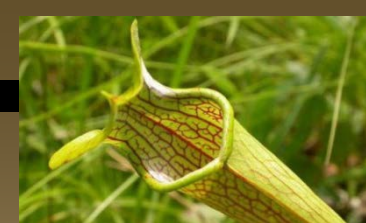
**PLAN**











Idea for a project



Begin project development



Check for compliance



Consultation



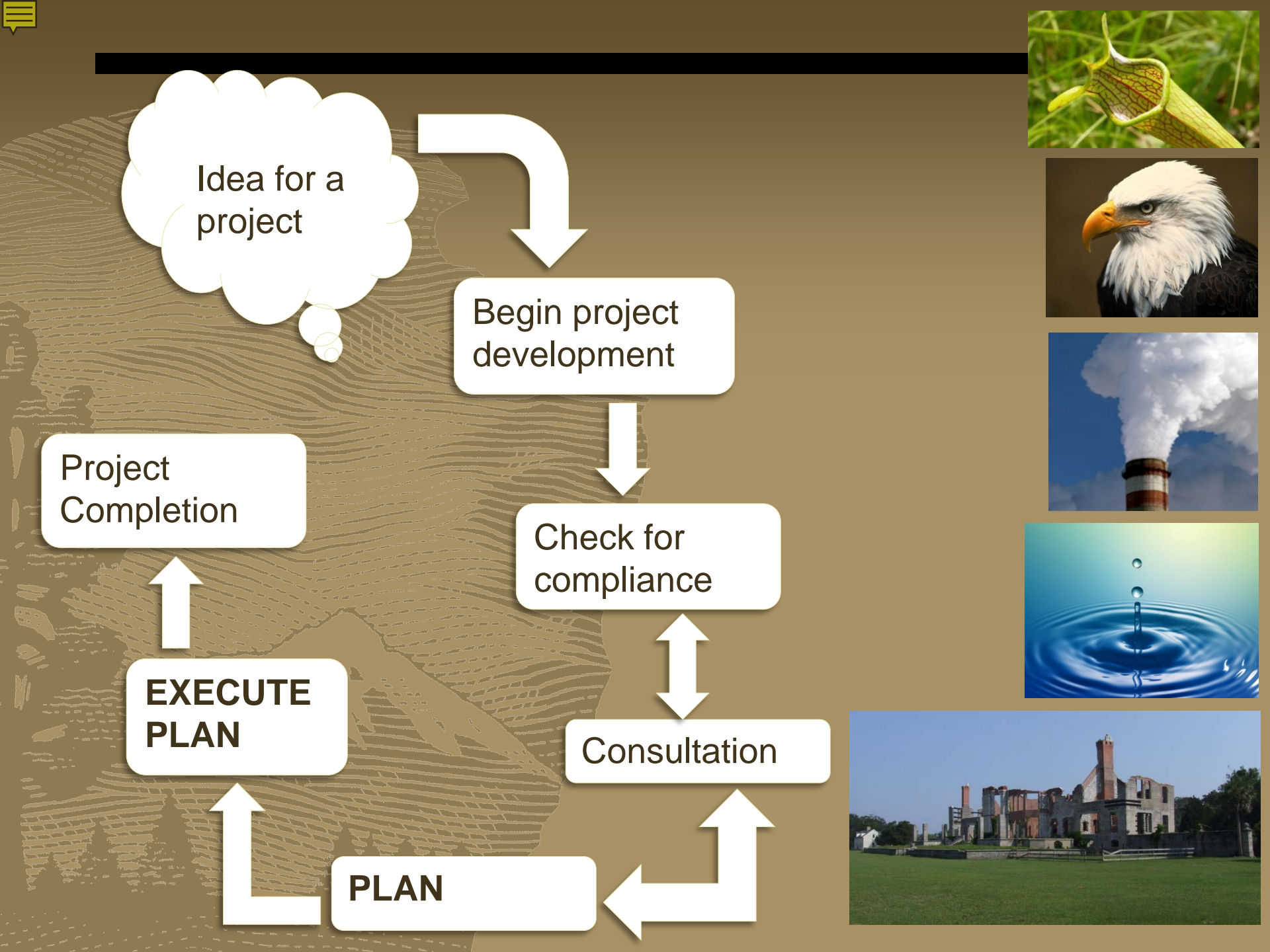
PLAN



EXECUTE PLAN



Project Completion





## 36 CFR 800 Protection of Historic Properties

### *Regulatory Philosophy: Timing*

- "...prior to the expenditure of any Federal funds on the undertaking"
- Early in the planning process
- At a point in the process when a broad range of alternatives may still be considered



§ 800.1(c)

Idea for a project

Begin project development

Project Completion

when it normally occurs

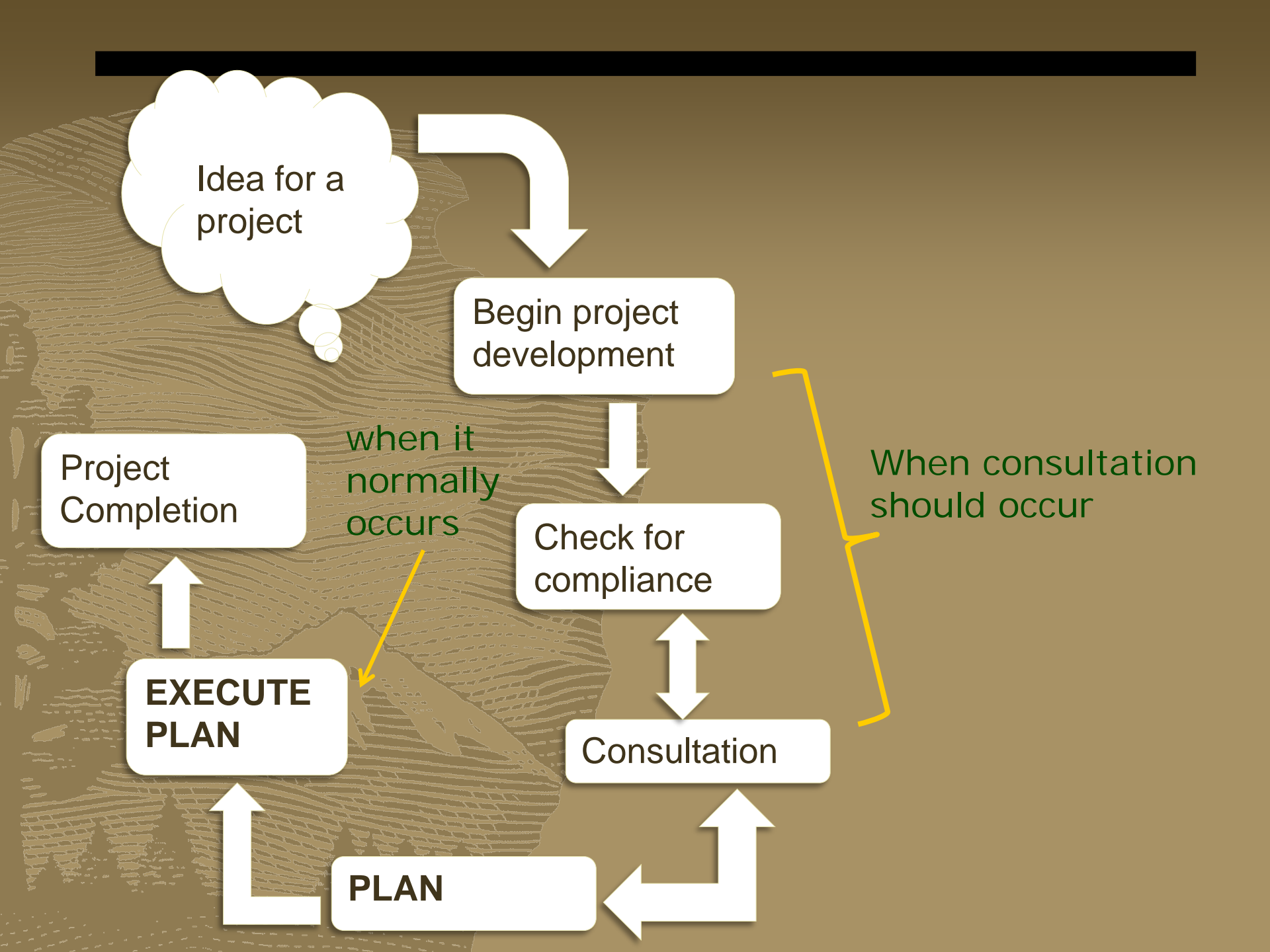
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When consultation should occur

**EXECUTE PLAN**

Consultation

**PLAN**







# The Four Steps

1. Establish undertaking and identify consulting parties
2. Determine APE, identify historic properties, and evaluate significance
3. Apply criteria of adverse effects
4. Resolve adverse effects



Will impact be adverse?





- What are we going to do?
- What is the area affected?
- What cultural resources are in the area?
- How important are those resources?
- How will the resources be affected?
- How can the effects be reduced or avoided?
- What do our partners and others interested in the resource think of our proposal?



## COMPLIANCE WITH SECTION 106 NHPA ELIGIBILITY AND ADVERSE EFFECTS

- The lead agency must determine whether or not NRHP-eligible Historic Properties are present within the area of the undertaking.
- If Historic Properties are present, the lead agency must then determine whether or not the undertaking will have an adverse effect on them.
- In many cases, site location information is sensitive, and not subject to FOIA.





## COMPLIANCE WITH SECTION 106 NHPA ELIGIBILITY AND ADVERSE EFFECTS

**Historic Property:** Any prehistoric or historic district, site, building, structure, or object included in, or eligible for inclusion in the National Register; such items include artifacts, records, and remains which are related to the district, site, building, structure, or object.





# HISTORIC PROPERTIES (EXAMPLES)



Prehistoric Sites



# HISTORIC PROPERTIES (EXAMPLES)



Historic Sites and Structures

# HISTORIC PROPERTIES (EXAMPLES)



Submerged Cultural Resources



# HISTORIC PROPERTIES (EXAMPLES)



Artifacts

# *Traditional Cultural Properties (TCPs)*



A TCP is eligible for inclusion in the National Register because of its association with cultural practices or beliefs of a living community that

- a) are rooted in that community's history, and
- b) are important in maintaining the continuing cultural identity of the community.







## COMPLIANCE WITH SECTION 106 NHPA FINDINGS

- No Potential for Effect
- No Historic Properties Affected
- No Adverse Effect
- Adverse Effect



# HISTORIC PROPERTIES AND OTHER CULTURAL RESOURCE LAWS

- **Native American Graves Protection and Repatriation Act (NAGPRA)** – Protects Native American burial sites, including human remains and funerary objects. Human remains are NOT to be disturbed or collected!
- **Archaeological Resources Protection Act (ARPA)** – Protects cultural resources on Federal lands, including National Parks and National Wildlife Refuges.



# HISTORIC PROPERTIES AND OTHER CULTURAL RESOURCE LAWS

Abandoned Shipwreck Act, 1987, (P.L. 100-298)  
American Indian Religious Freedom Act, 1978 (P.L. 95-341)  
Antiquities Act of 1906 (P.L. 59-209)  
Archaeological Resources Protection Act, 1979 (P.L. 96-95)  
Archeological Recovery Act, 1960 (P.L. 86-523, Reservoir Salvage Act)  
Archeological and Historic Preservation Act, 1974, Section 110 as amended (P.L. 93-291)  
Department of Transportation Act, 1966 (P.L. 89-670)  
Federal Highway Act, 1956 (P.L. 91-605)  
Federal Land Policy and Management Act, 1976  
Federal Property and Administrative Services Act of 1949, as amended  
Government Performance and Results Act of 1993 (GPRA)  
Historic Sites Act, 1935 (P.L. 74-292)  
Mining in the National Parks Act of 1976 (P.L. 94-429)  
Museum Act, 1955  
National Historic Preservation Act, 1966 (P.L. 89-665)  
National Park Service Organic Act, 1916 (P.L. 74-235)  
National Park System Resource Protection Act  
Native American Graves Protection and Repatriation Act, 1990 (P.L. 101-601)  
The National Environmental Policy Act of 1969, as amended (Pub. L. 91-190, 42 U.S.C. 4321-4347, January 1, 1970, as amended by Pub. L. 94-52, July 3, 1975, Pub. L. 94-83, August 9, 1975, and Pub. L. 97-258, § 4(b), Sept. 13, 1982)  
Tax Reform Act, 1976 (P.L. 94-455)  
Volunteers in the Parks Act of 1969  
World Heritage Conservation Act of 1980 (P.L. 96-515)





# HISTORIC PROPERTIES AND OTHER CULTURAL RESOURCE LAWS

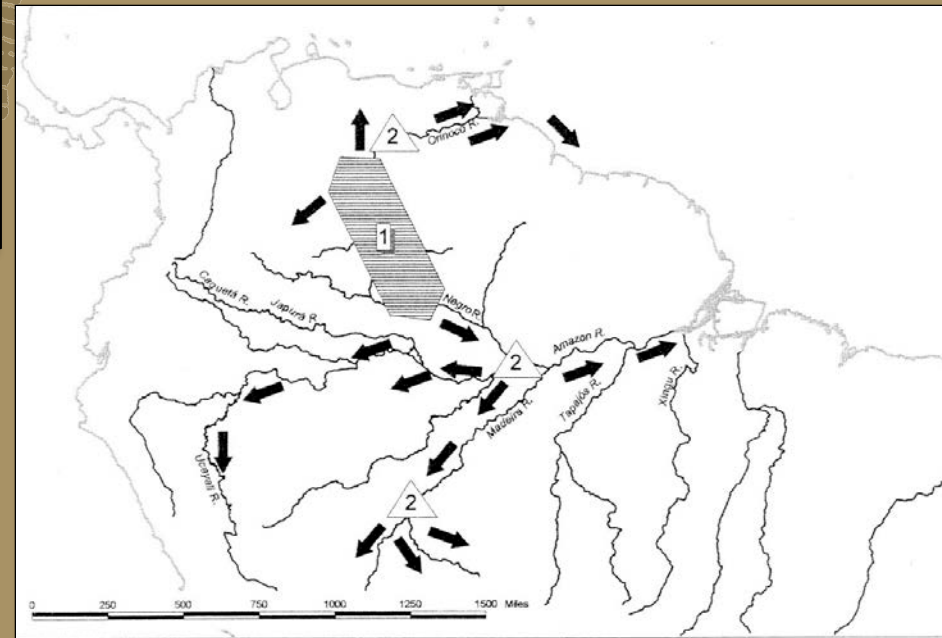
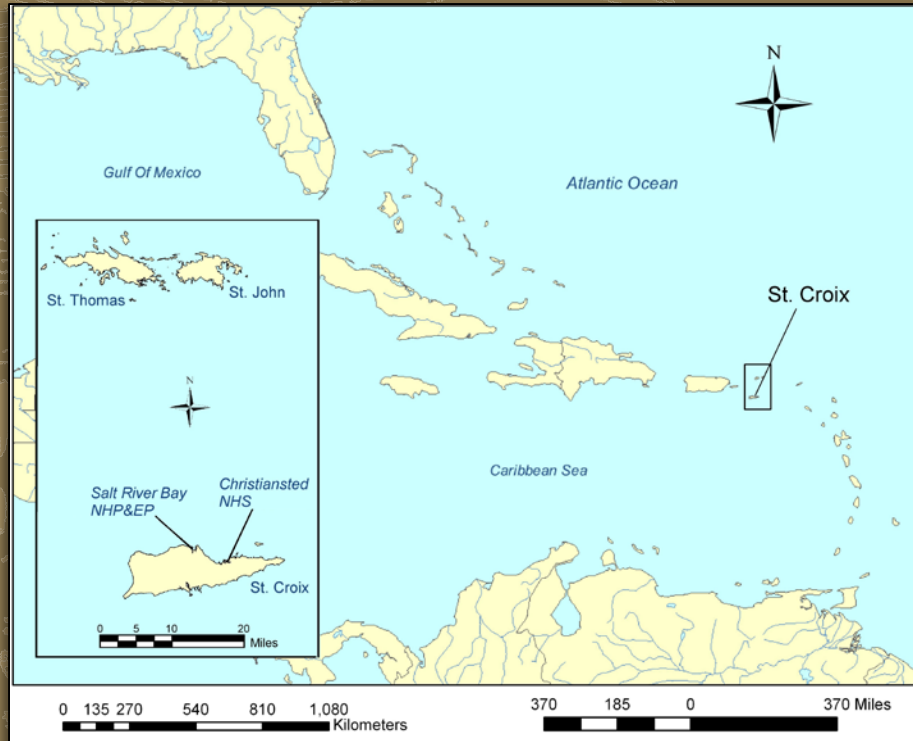
Don't forget State laws, local historic preservation laws, ordinances, etc.



## WHO WERE THE ANCIENT PEOPLES OF ST. CROIX?

- St. Croix has been home to people for nearly 2000 years
- First explorers arrived by canoe and boat from South America
- People have continued to arrive, from neighbor islands, the Western Hemisphere, and, finally, across the Atlantic

# WHO WERE THE ANCIENT PEOPLES OF ST. CROIX?





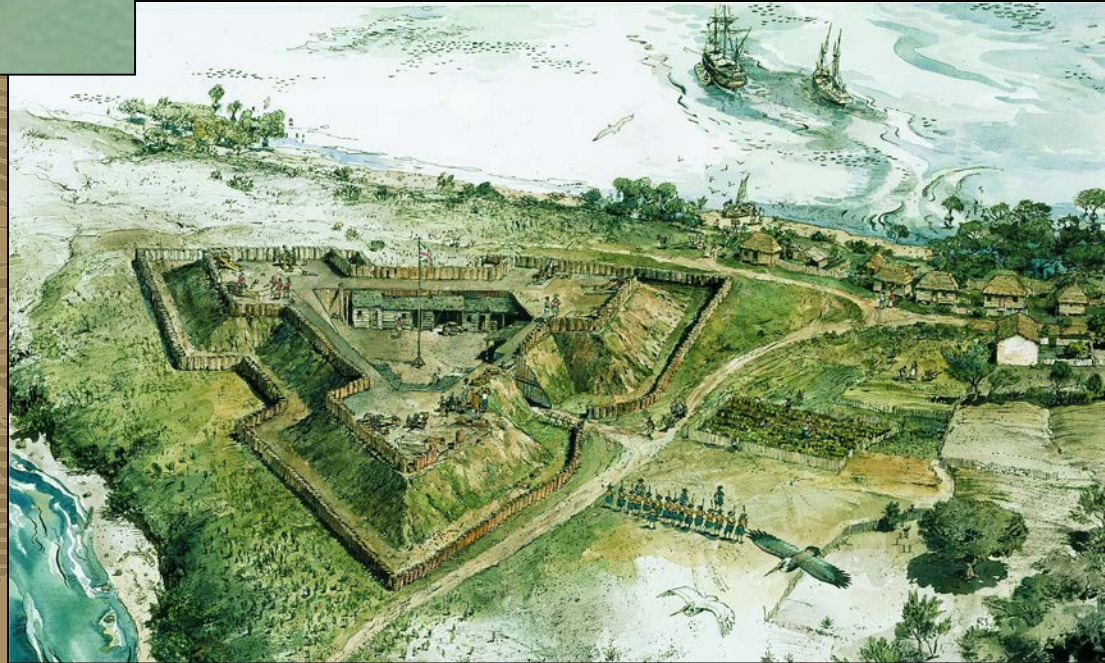
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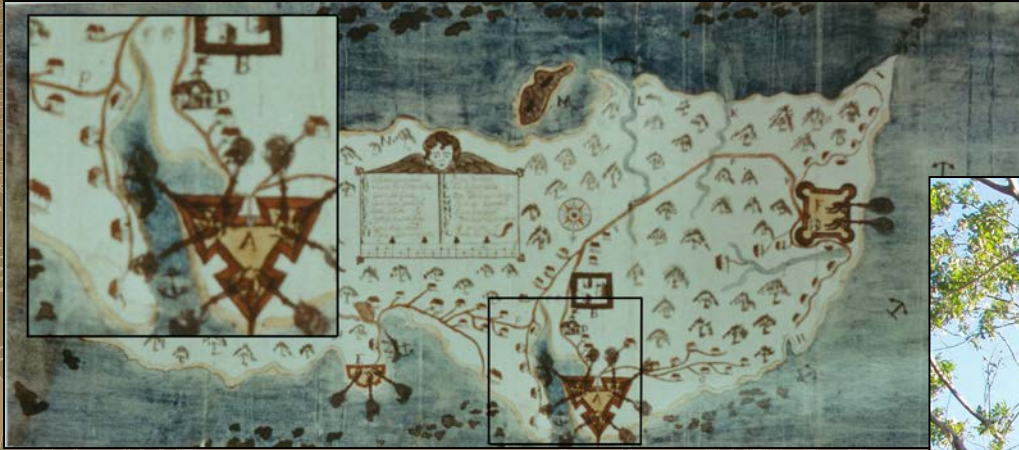
## SALADOID (CA. 400 B.C. – A.D. 600)













# NATIONAL OIL AND HAZARDOUS SUBSTANCES POLLUTION CONTINGENCY PLAN (NCP)

- The NCP does not provide specific guidance for taking historic properties into account during emergency response
- Emergency response – when circumstances dictate that response actions must be taken so quickly that normal consideration of Section 106 is not reasonably practicable





# PROGRAMMATIC AGREEMENT ON PROTECTION OF HISTORIC PROPERTIES DURING EMERGENCY RESPONSE UNDER NATIONAL OIL AND HAZARDOUS SUBSTANCES POLLUTION CONTINGENCY PLAN (NCP), 40 CFR Section Part 300

Often referred to as:

# The '97 PA





# The '97 PA

- Provides an alternative Process
- Assists Informed Decisions by FOSC
- FOSC may designate Historic Properties Specialist



# The '97 PA

“If newly discovered ... historic properties/cultural resources are encountered the Federal OSC shall either:

- Consult with SHPO ...to determine if the properties are eligible for inclusion in the National Register, or
- Treat the properties as eligible”



# The '97 PA

The PA calls for the identification (in planning) of:

- listed or eligible historic properties and cultural resources
- unsurveyed areas with potential to contain historic properties (determined through consultation)





# The '97 PA

## Allows for categorical exclusions

- Responses that avoid land/submerged land-disturbance
- Spills to gravel pads, roads, parking areas, drilling pads, runways
- Lined pits, borrow pits, concrete structures





# Procedure when FOSC Activates an Historic Properties (HP) Specialist

- Receive spill notification
- Determine if historic properties need to be addressed
- If categorically excluded – activation typically not required
- This process must be documented







# Historic Properties Specialist - Activation

- FOSC Activates a qualified Historic Properties Specialist (HPS)
- The HPS works for the FOSC and should not be contracted by the Responsible Party (*compliance with the National Historic Preservation Act is a federal responsibility*)







# Historic Properties Specialist - Activation

- Duties of HPS dependent on each incident. In all cases:
  - *Advise FOSC*
  - *Documentation*
  - *Communication*
  - *Advocacy*





# 97 PA

The PA calls for the development of a list of parties to be notified in the event of an incident in a non-excluded area (planning)



# Potential Impacts to Historic Properties

- Physical destruction, injury, or alteration due to response activities
- Collection of artifacts or vandalism by spill-related workers
- Contamination by oil resulting in destruction of historic properties and loss of use (TCPs)







# Ground Disturbing Activities

- Temporary roads/access routes
- Worker camps, helipads, staging areas
- Hand digging





# Ground Disturbing Activities

## Heavy equipment:

- Dry tilling
- Beach washing
- Trenching







# CULTURAL RESOURCE PROTECTION AND MONITORING

## WHY DO WE NEED TO MONITOR OPERATION ACTIVITIES ?

It allows for **protection** of previously known and new archaeological discoveries and **avoidance** of potential damage to cultural resources.







# SCAT Section 106 Considerations

- In Response, FOSC Represents Lead Federal Agency
- Response Action Subject to NHPA Sec. 106 compliance
- SCAT is Part of Federal Undertaking
- SCAT Program Leads Should Coordinate Section 106 Compliance through FOSC-appointed Historic Property Specialist, if activated
- SCAT Activities Potentially Adversely Affecting Historic Properties
  - Any Sub-Surface Testing: e.g. pits, trenching, coring, snorkel SCAT
  - Travel Corridors
  - Staging Areas
  - Forward Operation Bases
  - Vessel Corridors and Landing locations



# SCAT/OPERATIONS Actions for Cultural Resources

- Program Leads Coordinate with Lead Agency
- Follows Response Best Management Practices
- May Need to have Archaeological and Tribal Monitors
- Report any Inadvertent Finds to Monitors or FOSC designate
- **Maintain Site and Artifact Location Confidentiality, Required by Law**
- **Do Not Disturb or Collect any Cultural Materials**
  - Artifact Collection Is Against Federal and State law
  - If Human Remains are Encountered:
    - On federal lands, Native American Graves Protection and Repatriation Act. On state or private lands – state law.
    - Stop Work in immediate Area and Protect from Damage
    - Report immediately to FOSC designate
    - Do not Disturb, Collect or Photograph unless Directed Otherwise by FOSC Designate or Historic Property Specialist
    - Do Not Discuss with Others, Honor Confidentiality - Need to Know Basis



# Data Management







# Data Management





# NRDA Section 106 Considerations

- NRDA is Federal Undertaking, Subject to NHPS 106 Compliance
- Can be expedited
- Create a NRDA PA for 106?



# ARTIFACT THEFT

97 PA, VI(E):2 requires reporting artifact theft to SHPO, Tribes and Landowners.

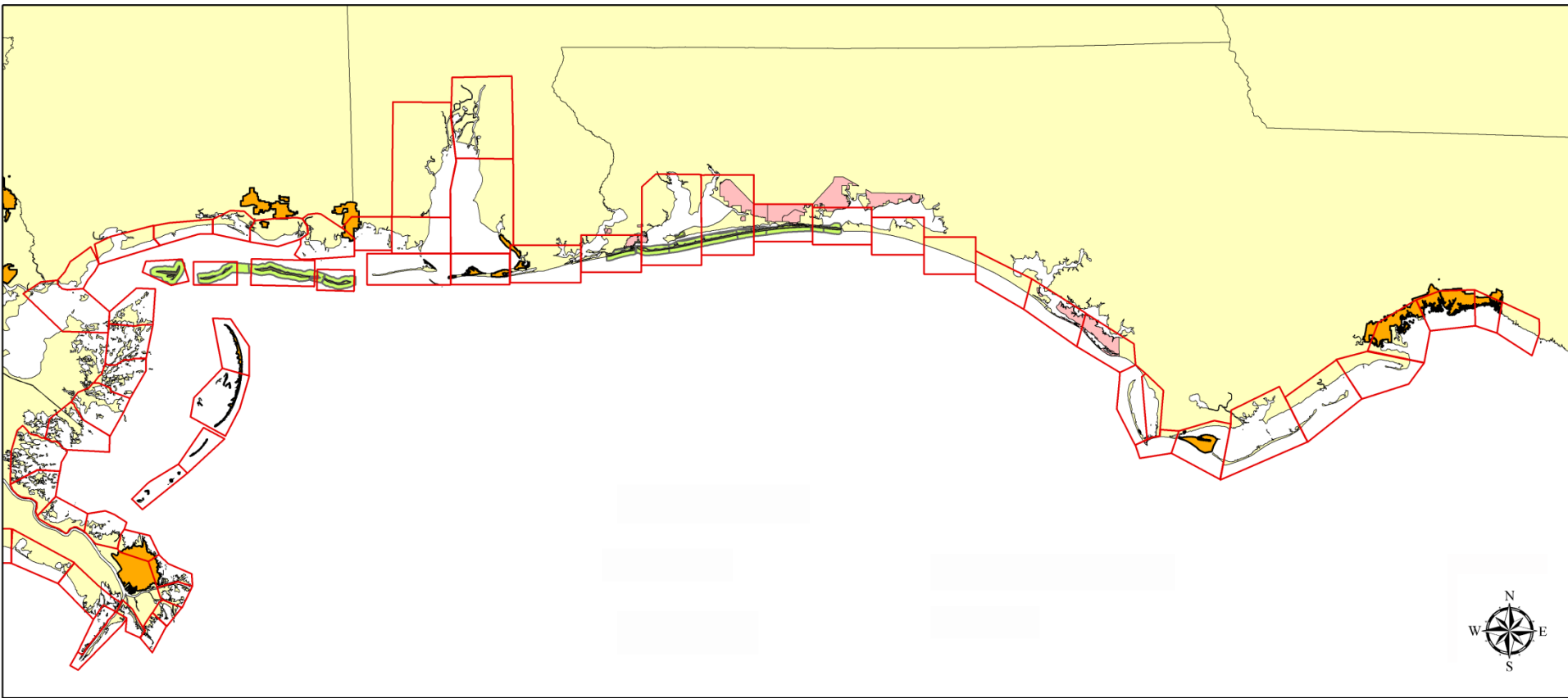
- If on federal land, it is in violation of several federal statutes including ARPA,
- Theft of Government Property (18USC641)
- Injury to government property (18 USC 1361)
- Both statutes can be used in addition to ARPA or when ARPA does not apply.
- Each state has similar laws for state lands.
- Private lands come under state trespass laws.







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




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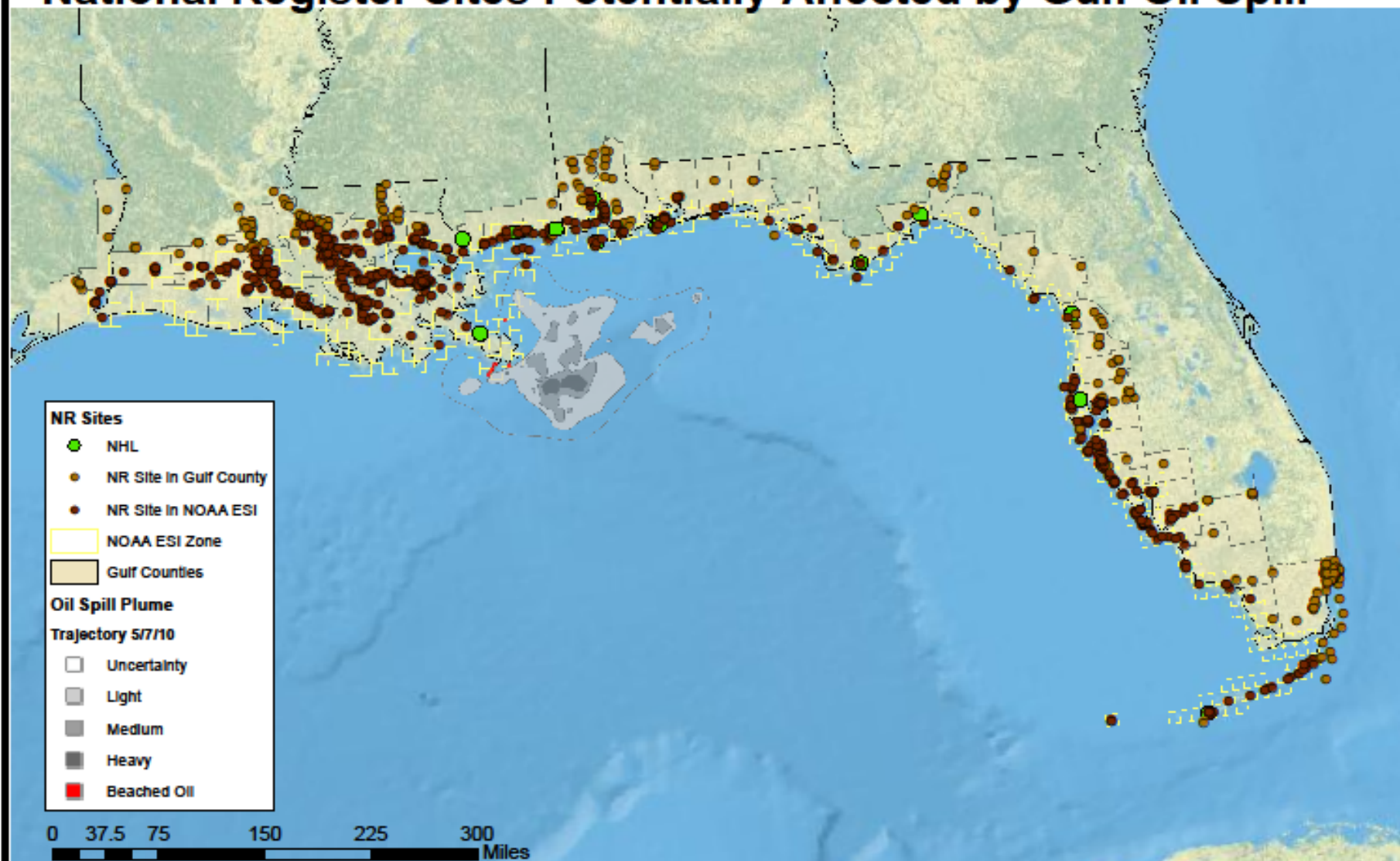
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Miles

 NPS lands  
 U.S. state lands

 Divisions  
 FWS lands  
 Dept. Defense lands



## National Register Sites Potentially Affected by Gulf Oil Spill

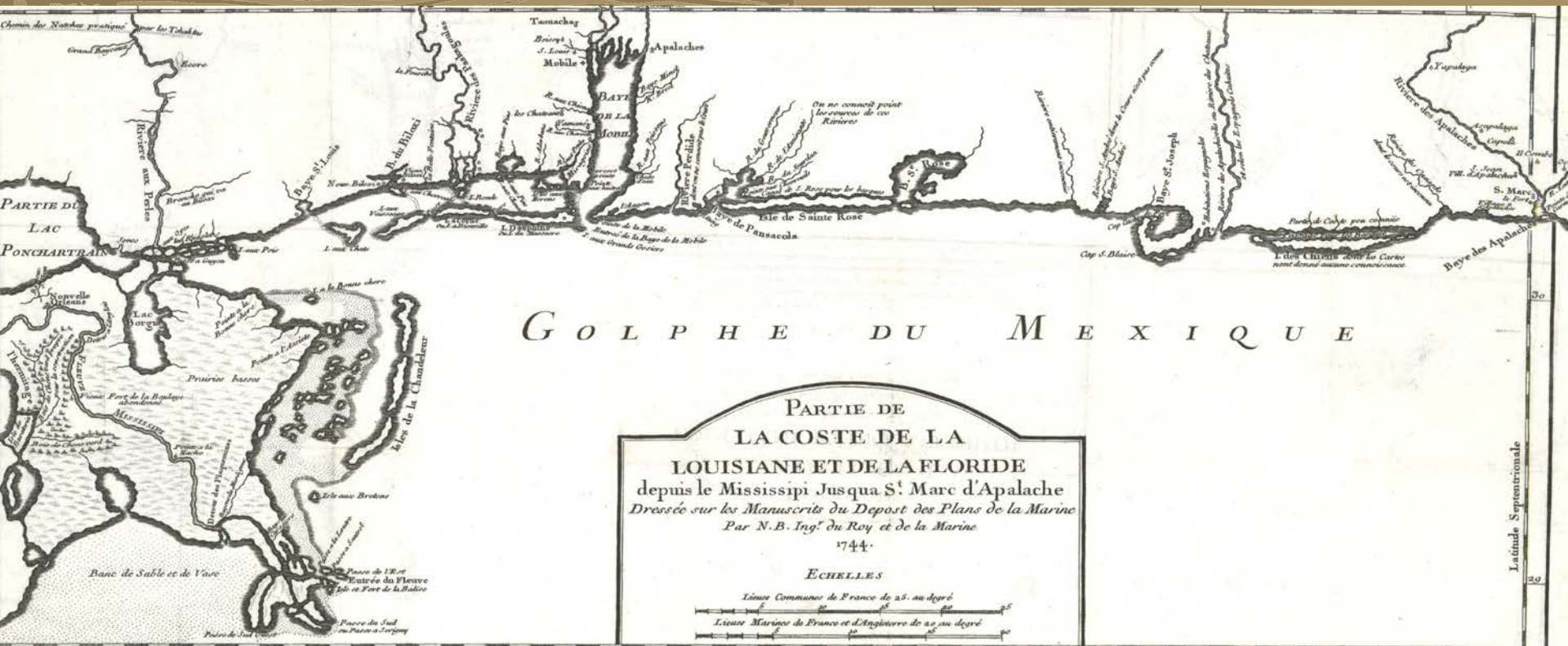




# Historic/cultural resources span over 5,000 years of coastal occupation:

Late Archaic prehistoric  
French and Spanish Colonial (1690s +)  
facilities  
Antebellum (pre-Civil War)

Post Civil War  
World War II training



# LOCATIONS OF ARCHEOLOGICAL SITES



- Scrub forest along back bays and mouths of creeks and rivers
- Some sites are eroding from banks
  - historic and prehistoric
- Beaches





## **Archeological Resources of Gulf Islands National Seashore:**

**151 archeological sites (5 new ones during this incident thusfar). Only a handful are on the shoreline**

## **Archeological Resources of U.S. Fish and Wildlife lands:**

**109 archeological sites across 4 Refuges. Only a handful are on the shoreline**

## **8 Sites listed on the National Register:**

- **Fort Barrancas**
- **Pensacola Lighthouse Complex**
- **Fort Pickens Complex**
- **Perdido Key Complex**
- **Ship Island Lighthouse Complex**
- **Fort Massachusetts Complex**

## **7 National Historic Landmarks across the Mobile UC area of coverage:**

- **Pensacola Naval Air Station Historic District**
- **For San Carlos De Barrancas**
- **USS Alabama**
- **USS Drum**
- **Bottle Creek site**
- **Fort Morgan**
- **Beauvoir**



# SOMETIMES THE BEST OF INTENTIONS...

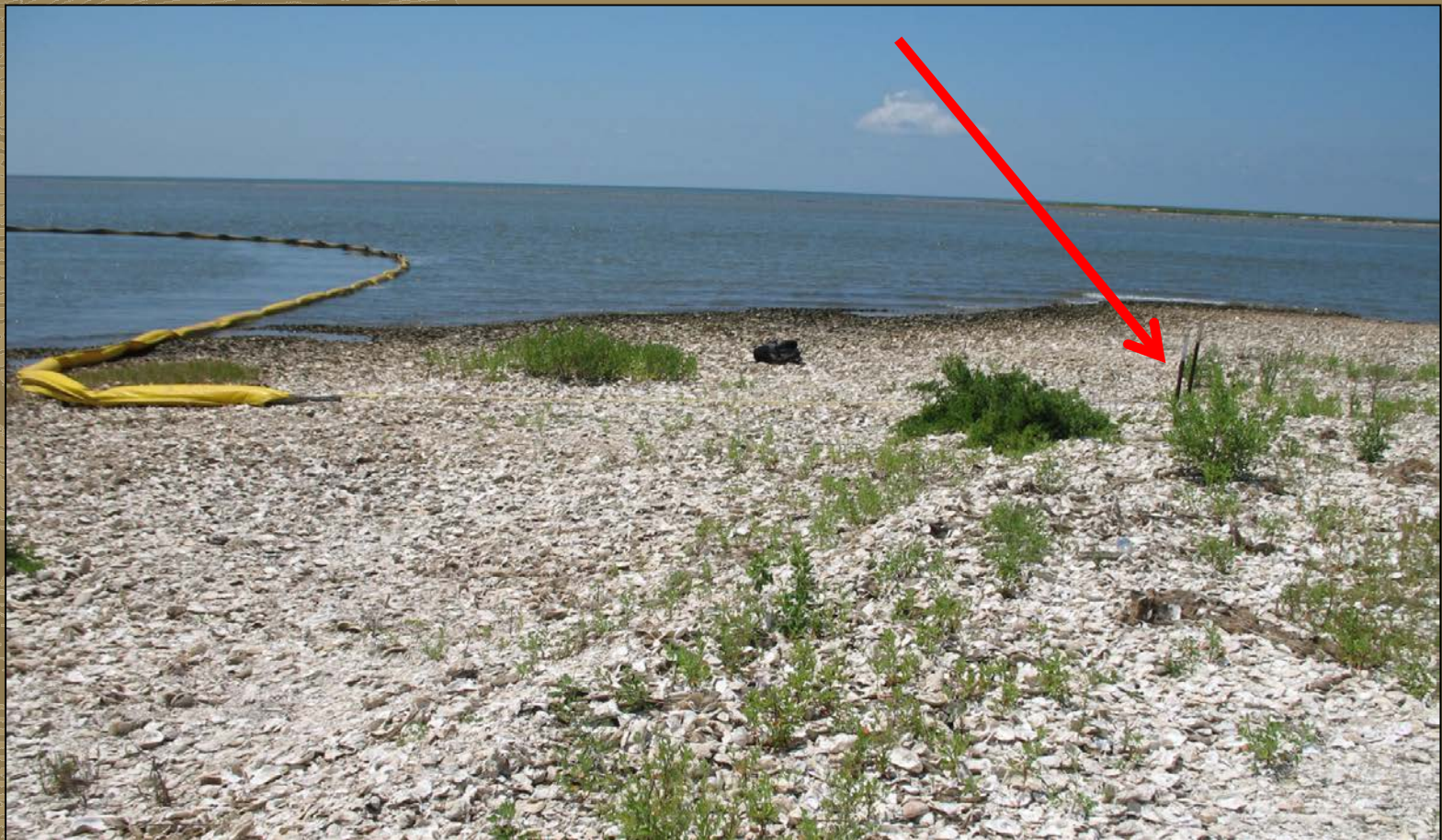
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# BASELINE INVENTORIES

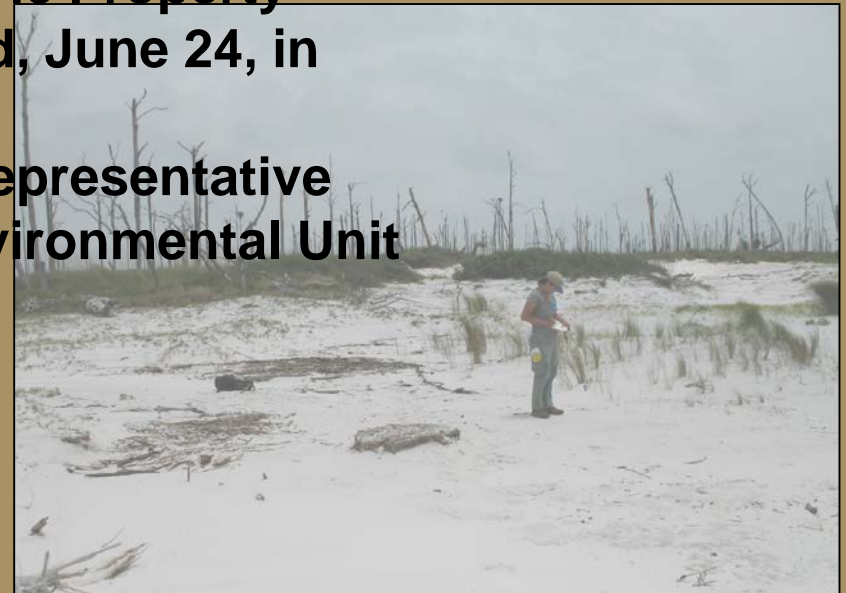
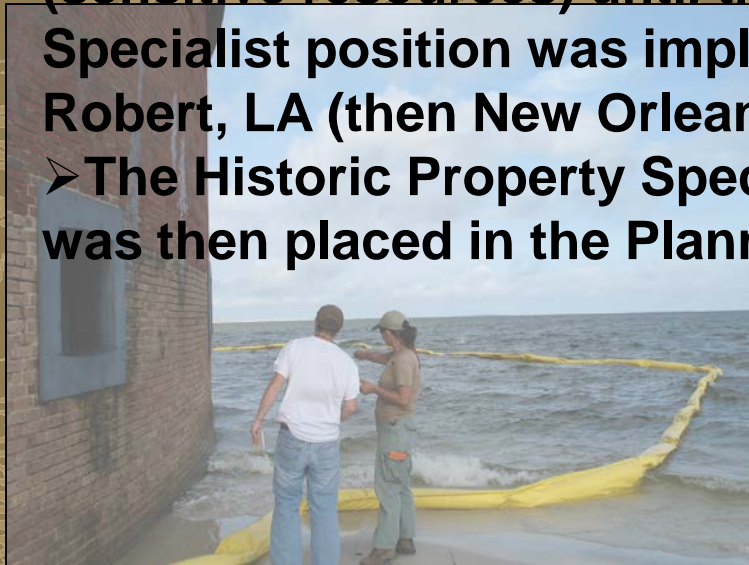
- **NPS-SEAC archeologists arrived in UAC Mobile and S Florida**
- **Conducted baseline inventories of all known historic properties on NPS lands**
- **Conducted baseline inventories on all other Dept. Interior lands in APE (primarily U.S. Fish and Wildlife)**



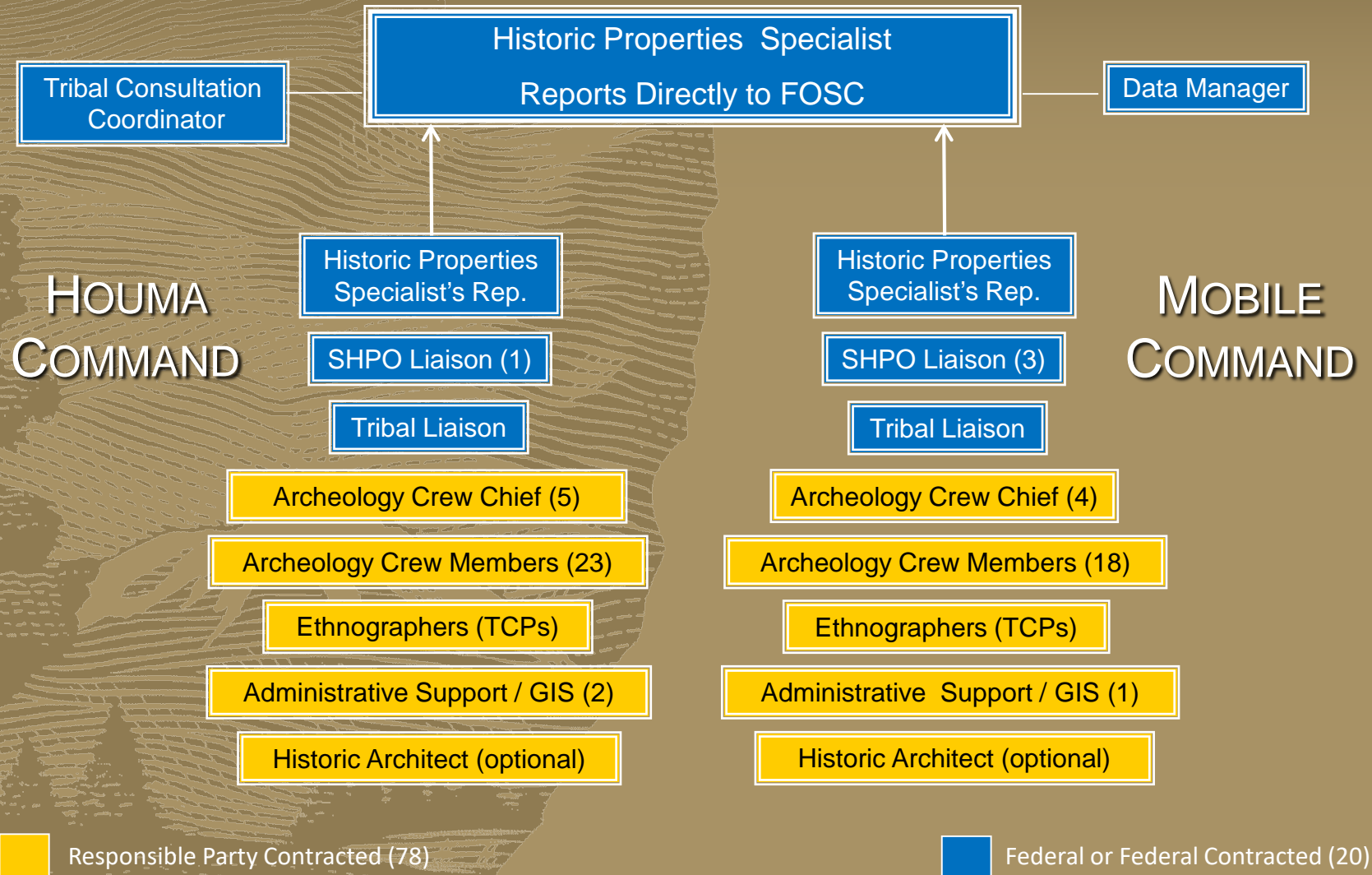


# BASELINE INVENTORIES

- **NPS-SEAC archeologists arrived in UAC Mobile and S Florida**
- **Conducted baseline inventories of all known historic properties on NPS lands**
- **Conducted baseline inventories on all other Dept. Interior lands in APE (primarily U.S. Fish and Wildlife)**
- **Maintained a seat in UAC with Dept. Interior SCAT (sensitive resources) until the Historic Property Specialist position was implemented, June 24, in Robert, LA (then New Orleans, LA)**
- **The Historic Property Specialist Representative was then placed in the Planning-Environmental Unit**



# STRUCTURE OF SECTION 106 RESPONSE



# SECTION 106 AND THE DEEPWATER HORIZON OIL SPILL RESPONSE

## SECTION 106 COMPLIANCE WORK FLOW

SCAT Team archeologists (contractors) survey project area to determine presence of Historic Properties



If Historic Properties are present, SCAT archeologists notify Section 106 Team



Section 106 Team performs consultation and recommended actions are added to STR (shoreline treatment recommendation)



SCAT Team archeologists implement actions recommended by Section 106 Team



# SECTION 106 AND THE DEEPWATER HORIZON OIL SPILL RESPONSE

- This expedited Section 106 work flow allowed a process that would normally take weeks or months to be completed in days or even hours!





# SECTION 106 AND OIL SPILL RESPONSE

## POSSIBLE 106 RECOMMENDATIONS (FROM DEEPWATER)

**CR-1:** Always in effect for every STR. CR-1 states that if something is identified that may be of cultural concern, cleanup activities within 125 m of that area will stop and an archaeologist will be contacted immediately. Contact information for the archaeologist is provided in the STR and you can always call me if need be.

**CR-2:** Archaeological monitor must be present during cleanup activities within the segment. The comments box should state which segments (if any) require a tribal monitor in addition to an archaeological monitor.

**CR-3:** Segments require advanced archaeological survey. A separate consultation sheet will be generated with recommendations, based on archaeology survey.

**CR-4:** Avoid area; exclusion zone.



# IN SUM

- Section 106 Consultation can be painless
- Establish Trustees Contacts in Plan
- Start early, during Preliminary Assessment
- Maintain open and transparent lines of communication through all stages
- Documentation and reporting





*Thank You!*

