

## **ANNEX M: HISTORIC PROPERTIES PROTECTION GUIDELINES FOR ALASKA FEDERAL ON-SCENE COORDINATORS**

This annex includes the “*Alaska Implementation Guidelines for Federal On-Scene Coordinators for the Programmatic Agreement on Protection of Historic Properties During Emergency Response Under the National Oil and Hazardous Substances Pollution Contingency Plan*” (Alaska Guidelines). These guidelines provide Alaska-specific information for Federal On-Scene Coordinators to assist them in planning for, and responding to, spills and releases in Alaska. The Alaska guidelines are consistent with, and support, the national “*Programmatic Agreement on Historic Properties During Emergency Response Under the National Oil and Hazardous Substances Pollution Contingency Plan*” (Programmatic Agreement). The Alaska Guidelines, which were developed by the ARRT’s Cultural Resources Working Group, were finalized and signed in January 2002 (see the document for the signatories). The Alaska Guidelines were adopted by the ARRT in June 2002. Guideline revisions will be developed by the Cultural Resources Working Group and approved by the ARRT. The most current version of the Alaska Guidelines is available on the ARRT website at: <http://www.akrrt.org/plans.shtml>

The national Programmatic Agreement is available on the internet at:

<http://www.achp.gov/NCP-PA.html>

Section III.D.2 of the Alaska Guidelines discusses ways that Federal On-Scene Coordinators (FOSCs) may obtain historic properties expertise in accordance with the Programmatic Agreement. U.S. Coast Guard FOSCs in Alaska obtain historic properties expertise from qualified individuals whose companies have Basic Purchase Request Agreements with the USCG. Environmental Protection Agency FOSCs in Alaska obtain historic properties expertise from qualified individuals whose companies have subcontracts/basic ordering agreements with the EPA Region 10 Superfund Technical Assistance and Response Team contractor.

Questions regarding the Alaska Guidelines may be directed to: U.S. Department of the Interior, Office of Environmental Policy and Compliance, 1689 C Street, Room 119, Anchorage, Alaska 99501-5126, 907-271-5011 (phone); 907-271-4102 (fax).

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**ALASKA IMPLEMENTATION GUIDELINES  
FOR FEDERAL ON-SCENE COORDINATORS**

**FOR THE**

**PROGRAMMATIC AGREEMENT ON PROTECTION OF  
HISTORIC PROPERTIES DURING EMERGENCY RESPONSE  
UNDER THE NATIONAL OIL AND HAZARDOUS  
SUBSTANCES POLLUTION CONTINGENCY PLAN**

**U.S. Coast Guard  
U.S. Environmental Protection Agency  
U.S. Department of the Interior  
U.S. Department of Agriculture  
Alaska Department of Natural Resources  
Alaska Inter-Tribal Council**

**January 2002**

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The attached Alaska Implementation Guidelines for Federal On-Scene Coordinators (Guidelines) for the *Programmatic Agreement on Protection of Historic Properties during Emergency Response under the National Oil and Hazardous Substances Pollution Contingency Plan (Programmatic Agreement)* have been adopted by the undersigned Federal, State, and Tribal officials in Alaska for incorporation into their respective oil spill and hazardous substance release planning and response procedures. The purpose of the Guidelines is to ensure consistent application and interpretation of the *Programmatic Agreement* throughout Alaska by U.S. Coast Guard and U.S. Environmental Protection Agency Federal On-Scene Coordinators and representatives of supporting entities including the U.S. Departments of Interior and Agriculture; the Alaska State Historic Preservation Officer (Alaska Department of Natural Resources); and the Alaska Inter-Tribal Council. Although the signatories intend to follow the procedures set forth in these Guidelines, the Guidelines do not irrevocably bind the signatories to follow the procedures contained in this document.

*[Signed]*

*15 January 2002*

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T.J. Barrett, Rear Admiral, U.S. Coast Guard Commander  
17<sup>th</sup> Coast Guard District

(Date)

*[Signed]*

*18 January 2002*

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Carl Lautenberger, Alaska Regional Response Team Co-Chairperson  
U.S. Environmental Protection Agency

(Date)

*[Signed]*

*9 January 2002*

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Pamela Bergmann, Regional Environmental Officer - Alaska  
U.S. Department of the Interior

(Date)

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*17 January 2002*

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Dennis E. Bschor, Regional Forester  
U.S. Department of Agriculture, Forest Service

(Date)

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*9 January 2002*

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Judith Bittner, Alaska State Historic Preservation Officer  
Alaska Department of Natural Resources

(Date)

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*9 January 2002*

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James W. LaBelle, Executive Director  
Alaska Inter-Tribal Council

(Date)

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## I. BACKGROUND AND PURPOSE

### A. Background

As a result of the first U.S./U.S.S.R oil spill exercise, which was held in 1988, the U.S. Department of the Interior, Alaska Office of Environmental Policy and Compliance (DOI-OEPC) and the Alaska Department of Natural Resources (ADNR) Office of History and Archeology (AOHA) began to work informally with Federal On-Scene Coordinators (OSCs) to help ensure that historic properties protection is considered following an oil spill or hazardous substance release in Alaska. Because of this groundwork, steps were taken following the March 1989, T/V *Exxon Valdez* Oil Spill (EVOS) to minimize injury to historic properties during the multi-year EVOS response effort.

In July 1992, the Alaska Regional Response Team (RRT) established a Cultural Resources Working Group (CRWG) to develop written guidelines for OSCs to use to ensure that historic properties are taken into account following an oil spill or hazardous substance release. Members of the CRWG included representatives from two state and five federal entities and the oil industry<sup>1</sup>. An approximately two-year effort ensued in which draft guidelines were prepared.

In September 1994, the U.S. Environmental Protection Agency (EPA) and U.S. Coast Guard (USCG) co-chairs of the Alaska RRT sent a letter to the National Response Team (NRT) asking for guidance on questions that had arisen during the development of the Alaska guidelines. Work on the Alaska guidelines was put on hold until direction was received from the NRT.

As a result, the NRT formed an *ad hoc* committee on cultural resources protection, which in turn, developed the *Programmatic Agreement on Protection of Historic Properties during Emergency Response under the National Oil and Hazardous Substances Pollution Contingency Plan (Programmatic Agreement)*. Chaired by the NRT representative from the U.S. Department of Justice, the committee included representatives from EPA, USCG, DOI (OEPC and the National Park Service), Department of Commerce (National Oceanic and Atmospheric Administration), U.S. Department of Agriculture (USDA), U.S. Department of Defense, the Advisory Council on Historic Preservation (ACHP), and the National Conference of State Historic Preservation Officers (SHPO).

The committee met over about 2 years to develop the national *Programmatic Agreement*. During this time, numerous drafts were reviewed by representatives of participating organizations. In addition, the public was afforded an opportunity to comment on the draft national *Programmatic Agreement* through a Federal Register Notice published in December 1996 by the ACHP.

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<sup>1</sup> CRWG members included representatives from the U.S. Coast Guard; U.S. Environmental Protection Agency; U.S. Departments of Interior, Agriculture, and Commerce; the Alaska Departments of Natural Resources and Environmental Conservation; and the oil industry. Representatives of the Alaska Inter-Tribal Council and the U.S. Army Corps of Engineers were subsequently added.

After completing the public and agency review process, the *ad hoc* committee presented the national *Programmatic Agreement* to the NRT, which approved it in March 1997. In May 1997, the national *Programmatic Agreement* was signed by the first 3 of the 10 signatories, USCG, EPA, and the National Conference of SHPOs. Six of the remaining signatories signed during the ensuing months, the latest in November 1997. The final party, the USDA, signed in August 1998. The national *Programmatic Agreement* became effective for each signatory 90 days after they signed the document.

In accordance with the national *Programmatic Agreement*, regional representatives of the *Programmatic Agreement*'s signatories may choose to: (1) implement the national *Programmatic Agreement*, or (2) develop a regional programmatic agreement that includes the provisions of the national *Programmatic Agreement* as well as appropriate additional provisions responsive to regional concerns. The national *Programmatic Agreement* incorporated the major concepts contained in the draft Alaska historic properties protection guidelines. Therefore, rather than developing a regional *Programmatic Agreement*, the Alaska Implementation Guidelines for Federal On-Scene Coordinators (Alaska Implementation Guidelines) were prepared.

## B. Purpose

The Alaska Implementation Guidelines complement the national *Programmatic Agreement* by providing Alaska-specific information to Federal OSCs to assist in planning for, and responding to, oil spills and hazardous substance releases in Alaska. In addition, the Alaska Implementation Guidelines ensure consistent application and interpretation of the national *Programmatic Agreement* throughout Alaska by USCG and EPA Federal OSCs and representatives of supporting entities including the USDA; DOI; Alaska SHPO, (ADNR); and Alaska Inter-Tribal Council.

The national *Programmatic Agreement* is contained in Annex M of Change 2 of the *Alaska Federal/State Preparedness Plan for Response to Oil and Hazardous Substance Discharges/Releases (Unified Plan)*. The Alaska Implementation Guidelines will also be included in Annex M. Both the national *Programmatic Agreement* and the Alaska Implementation Guidelines may be found on the Alaska RRT web page ([www.akrrt.org](http://www.akrrt.org)).

## II. PRE-INCIDENT PLANNING

The national *Programmatic Agreement* outlines a number of steps to be taken during pre-incident planning. The discussion below reiterates each of those steps and then describes how each step is addressed in Alaska.

### A. Identification of Historic Properties

#### 1. National *Programmatic Agreement*

The national *Programmatic Agreement* calls for the identification of “...(1) historic properties that have been listed in or determined eligible for inclusion in the National Register of Historic Places that might be affected by response to a release or spill; and (2) unsurveyed areas where there is a high potential for the presence of historic properties.”

The national *Programmatic Agreement* calls for the identification of exclusions, which “...may be specific geographic areas or types of areas where, should a release or spill occur, historic properties are unlikely to be affected. This includes the specifics listed in Appendix I [of the national *Programmatic Agreement*] and any additional exclusions agreed on by the signatories to [the national *Programmatic Agreement*].”

#### 2. Alaska Implementation Guidelines

The Alaska Heritage Resources Survey (AHRs) system, which is housed in the AOHA, serves as the statewide repository for: (1) historic properties listed in or determined eligible for the National Register of Historic Places (National Register); (2) all known historic and archaeological sites and locations that may be eligible for the National Register; and (3) areas that have been surveyed, even if no sites were found. Information included in the AHRs is submitted by federal, state, and local government agencies (including federal land-management agencies), tribal entities, and the general public. Access to the system is through the AOHA and is restricted to individuals with official business related to historic properties. Official business includes emergency responses to oil spills and hazardous substance releases. It is important to note that required historic properties-related reporting does not always occur in a timely manner. Therefore, there may be information regarding historic properties in an area affected by a spill or release that is not contained in the AHRs system.

Information on historic properties is included the Sensitive Areas Section of each of the *Unified Plan's* 10 subarea contingency plans (SCPs). The SCPs link the identification and protection of historic properties to implementation of the national *Programmatic Agreement*. The SCPs also provide a relative ranking of the level of concern for different types of historic properties. For example, National Historic Landmarks, burial sites, National Register-eligible village sites, and intertidal sites are considered to be of “Major Concern”; National Register-eligible sites (other than village sites) and sites adjacent to shorelines are considered to be of “Moderate Concern”; and other historic properties are considered to be of “Lesser Concern.” Rankings have also been done for many other types of resources and areas (e.g., seabird colonies, coastal habitat types, and commercial use areas).

The signatories of these Alaska Implementation Guidelines have adopted the list of categorically excluded spills or releases contained in Appendix 1 of the national *Programmatic Agreement*, and have added additional categorical exclusions. The expanded list is contained in Attachment 1 of the Alaska Implementation Guidelines. If all signatories of these Alaska Implementation Guidelines concur in writing, additional categorical exclusions may be added to Attachment 1<sup>2</sup>.

## B. Identification of Parties to Be Notified

### 1. National *Programmatic Agreement*

The national *Programmatic Agreement* calls for the development of a "...list of parties that are to be notified in the event of an incident in a non-excluded area. This list should include the SHPO for the State in which the incident occurred, federal and Indian tribal land owners or land managers and Hawaiian Native organizations in the area where the incident occurred, if any."

### 2. Alaska Implementation Guidelines

In the event of an incident in a non-categorically excluded area, representatives of each of the following entities may need to be notified for the purposes of historic properties protection:

- Alaska State Historic Preservation Officer (ADNR)
- U.S. Department of the Interior (Office of Environmental Policy and Compliance; Bureau of Indian Affairs; National Park Service; Fish and Wildlife Service; Bureau of Land Management; Minerals Management Service)
- U.S. Department of Agriculture (Forest Service)
- U.S. Department of Defense
- Federally-recognized Tribes
- Boroughs and other local governments
- Private land owners
- Alaska Native regional and/or village corporation

When an incident is in a non-categorically excluded area, the Federal OSC's Historic Properties Specialist, on behalf of the Federal OSC, is responsible for (1) determining for each spill or incident, which of the above entities needs to be notified for historic properties protection, and (2) notifying appropriate representative(s) of those entities. Contact information is included in each SCP.

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<sup>2</sup> In 1998, 1999, and 2000, there were approximately 850, 1,200 and 1,800 oil spills and hazardous substance releases in Alaska reported to the USCG and EPA. Of those spills and releases, over 99.99 percent in each year were categorically excluded from additional National Historic Preservation Act Section 106 compliance.

## C. Identification of Emergency Response Strategies

### 1. National *Programmatic Agreement*

The national *Programmatic Agreement* calls for the development of “...emergency response strategies that can be reasonably anticipated to protect historic properties. The [F]ederal OSC shall ensure that response strategies, including personnel and equipment needed, are developed to protect or help protect historic properties at risk. This includes consideration of the sensitivity of historic properties to emergency response measures proposed in [Area Contingency Plans] or other response plans, including chemical countermeasures and in situ burning.”

### 2. Alaska Implementation Guidelines

A list of potential emergency response strategies that can be “...reasonably anticipated to protect historic properties” is included in Attachment 2. It is possible that other response strategies for the protection of historic properties may be identified and used during an incident response in addition to those identified in Attachment 2.

Geographic Response Strategies (GRSs) have been, and will continue to be, developed for many locations in Alaska. GRSs identify specific response actions that may be taken in a defined location following an oil spill or hazardous substance release that affects, or may affect, the GRS area. As GRSs are developed for selected locations within each of the 10 SCPs in Alaska, Federal OSCs shall ensure that GRS response strategies appropriately consider the protection of historic properties throughout the GRS-identification, development, and field testing processes. In addition, Federal OSCs will ensure that one of the following statements is included on each graphic depicting GRS response strategies<sup>3</sup>:

- REPORT any cultural resources found during operations to the FOSC Historic Properties Specialist.
- FOSC Historic Properties Specialist should INSPECT site prior to operations.
- FOSC Historic Properties Specialist should MONITOR on-site operations.

Historic properties specialists from Federal and/or State agencies with management responsibility for the lands covered by each GRS--following consultation with appropriate tribal trustee and private land owner representatives--will recommend to the Federal OSC, which of the above statements needs to be included on each GRS.

Federal OSCs will ensure that other emergency response strategies, including pre-approvals of chemical countermeasures, that are included in SCPs include the consideration of historic properties.

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<sup>3</sup> It is recommended that the phrase “as the circumstances of the emergency allow” be added after the title “Response Strategy” on each GRS to remind responders that all actions under Response Strategies must consider the circumstances of each case.

This will be accomplished by Federal OSCs ensuring that State and Federal agencies with historic properties management responsibility for lands covered by each SCP are included in the development of response strategies.

D. Identification of Who Will Provide Historic Properties Expertise to the Federal OSC

1. National *Programmatic Agreement*

The national *Programmatic Agreement* calls for the identification of "...who will be responsible for providing expertise on historic properties matters to the [F]ederal OSC during emergency response. Depending on the size and complexity of the incident, a [F]ederal OSC historic properties specialist or a historic properties technical advisory group convened by the specialist may be the most effective mechanism."

2. Alaska Implementation Guidelines

Federal OSCs are responsible for identifying individuals who may serve as the Federal OSC's Historic Properties Specialist. Section IV.C.2 of the national *Programmatic Agreement* states that "A federal OSC may obtain historic properties expertise and support in any one of several ways. These include implementing an agreement with State or federal agencies that have historic properties specialists on staff (see IV.B.2), executing a contract with experts identified in ACPs or hiring historic properties specialists on staff."

Attachment 3 contains Historic Properties Specialist personnel standards developed by State and Federal cultural resource specialists for use by Federal OSCs in identifying qualified archaeologists who could contract with Federal OSCs to serve as the Federal OSC's Historic Properties Specialist. In addition, a current listing of "Individuals/Firms Interested in Doing Archaeological Contracting" may be obtained at the AOHA. State and Federal cultural resource specialists are available to provide technical assistance to Federal OSCs for the preparation of solicitations for, and reviewing responses received from, individuals interested in serving as the Federal OSC's Historic Properties Specialist. Requests for technical assistance may be made through DOI-OEPC.

It is recommended that Federal OSCs have a minimum of 6 individuals pre-identified who could serve as his/her Historic Properties Specialist. In the event that pre-identified individuals are not available to serve as the Historic Properties Specialist for a given incident, the Federal OSCs may contact DOI-OEPC and/or AOHA representatives for assistance in identifying an individual who could serve as the Historic Properties Specialist.

It should be noted that for oil spills and/or hazardous substance releases that remain solely on land managed by a single Federal land manager (e.g., a national park, national forest, or national wildlife refuge), the Federal land managing agency whose land is affected may assist the Federal OSC by providing a cultural resources specialist from their agency to fill the role of Historic Properties Specialist.

The Federal OSC's Historic Properties Specialist may recommend, depending on the characteristics of the incident, if it is appropriate to convene an historic properties technical advisory group to

conduct emergency historic property protection response activities. Upon approval by the Federal OSC, the Historic Properties Specialist is responsible for identifying individuals who would serve on the group and for serving as the chairperson for the group.

E. Identification of Appropriate Training for Historic Properties Specialists

1. National *Programmatic Agreement*

The national *Programmatic Agreement* calls for “[p]roviding information on availability of appropriate training for historic property specialists to participate in emergency response, e.g., Hazardous Waste Operations and Emergency Response (HAZWOPER) training, familiarity with all relevant contingency plans and response management systems.”

2. Alaska Implementation Guidelines

Training requirements for Historic Properties Specialists in Alaska are included in the personnel standards identified in Attachment 3. Information on the availability of HAZWOPER and incident command system training and information on opportunities for participating in oil spill and/or hazardous substance release exercise will be provided to Historic Properties Specialists by Federal OSCs.

Information on Alaska RRT meetings and other Alaska RRT-related activities will be provided to Historic Properties Specialists by the Alaska RRT Coordinator. Information on CRWG meetings will be provided to Historic Properties Specialists by the DOI-OEPC.

State and Federal cultural resource specialists are available to provide training to Historic Properties Specialists and Federal OSCs on the national *Programmatic Agreement*, the Alaska Implementation Guidelines, and implementation of the national *Programmatic Agreement* within an incident command system. Requests for training assistance may be made through DOI-OEPC.

F. Development of Historic Properties Information for Response Personnel

1. National *Programmatic Agreement*

The national *Programmatic Agreement* calls for Federal OSCs to work with appropriate parties “...to obtain information for response personnel on laws protecting and activities that may potentially affect historic properties.”

2. Alaska Implementation Guidelines

Attachment 4 contains an example of information on the protection of historic properties for response personnel. Other information on the protection of historic properties may be identified and used during an incident response in addition to the example in this attachment.

### III. FEDERAL LEAD EMERGENCY RESPONSE

The national *Programmatic Agreement* outlines a number of steps to be taken during emergency response. The discussion below reiterates each of those steps and then describes how each step is addressed in Alaska.

#### A. Determination of Whether Categorical Exclusions Apply

##### 1. National *Programmatic Agreement*

The national *Programmatic Agreement* states that the “[F]ederal OSC shall determine whether the exclusions described in section V.A.1.b. [of the national *Programmatic Agreement*] apply. If the incident affects only excluded areas, no further actions are necessary under this [Programmatic Agreement], unless: (a) [p]reviously unidentified historic properties are discovered during emergency response; or (b) [t]he SHPO (or appropriate federal, Indian, or Hawaiian Native organizations) notifies the [F]ederal OSC that a categorically excluded release or spill may have the potential to affect a significant historic property.”

The national *Programmatic Agreement* further states that “[I]f the area where a release or spill occurs has not been excluded, in the cases specified in Section VI.A.1.a or b [of the national *Programmatic Agreement*], if the [F]ederal OSC is unsure whether an exclusion applies, or if the specifics of the incident change so that it no longer fits into one of the exclusions, the remaining steps in this Section [of the national *Programmatic Agreement*] shall be followed.”

##### 2. Alaska Implementation Guidelines

Attachment 5 outlines a two-step process for Federal OSCs to use in determining: (1) when a spill or release is categorically excluded from further National Historic Preservation Act Section 106 (Section 106) consideration, and (2) when a spill or release is not categorically excluded and an Historic Properties Specialist needs to be activated.

#### B. Activation of an Historic Properties Specialist

##### 1. National *Programmatic Agreement*

If it has been determined that a spill or release is not categorically excluded, the national *Programmatic Agreement* specifies that the Federal OSC shall “[a]ctivate the agreed-upon mechanism for addressing historic properties, including notification of the parties identified pursuant to Section V.A.2. [of the national *Programmatic Agreement*], and consultation with these parties concerning the identification of historic properties that may be affected, assessing the potential effects of the emergency response, and developing and implementing emergency response activities. These requirements for notification and consultation shall be satisfied if the [F]ederal OSC makes reasonable and timely efforts to notify and consult the parties listed in this Section [of the national *Programmatic Agreement*]. Thereafter there shall be additional consultation to the extent practicable.”

## 2. Alaska Implementation Guidelines

Attachment 5 outlines the procedures for Federal OSCs to use for determining when to activate an Historic Properties Specialist. If a spill or release is not categorically excluded from additional Section 106 consideration (as identified in Attachment 1), an Historic Properties Specialist needs to be activated to continue in accordance with the national *Programmatic Agreement*.

The activation of an Historic Properties Specialist is time-critical and needs to occur in a reasonable and timely manner to ensure that the Historic Properties Specialist may provide meaningful input to the Federal OSC in the earliest phases of emergency response. Activation of an Historic Properties Specialist ensures that appropriate historic properties consultations and notifications, which are required by the national Programmatic Agreement, are conducted and information on historic properties in the spill or release area is provided to the Federal OSC.

Attachment 6 contains a list of suggested information to be provided to an Historic Properties Specialist at the time of his/her activation by the Federal OSC.

Following activation of an Historic Properties Specialist, it is the responsibility of the Historic Properties Specialist to identify, notify, and consult with all appropriate parties on the identification of historic properties that have been or may be negatively affected by the spill or release; to assess the potential of emergency response activities to negatively affect those historic properties; to provide input to the Federal OSC on ways to avoid or reduce negative effects of emergency response activities on historic properties; and to provide recommendations on additional response strategies that could further protect historic properties. Specific information on how those responsibilities will be accomplished is outlined below in Section III.C. through Section III.E.

### C. Identification of Historic Properties

#### 1. National *Programmatic Agreement*

The national *Programmatic Agreement* calls for consultation “...with the SHPO, landowners and/or land managers, appropriate Indian tribes and Native Hawaiian organizations, and other interested parties identified in pre-incident planning to verify the location of historic properties identified during the planning process and determine if other historic properties exist in areas identified in V.A.1.a.2. [of the national *Programmatic Agreement*] that might be affected by the incident or the emergency response.”

The national *Programmatic Agreement* further states that “...[I]f newly discovered or unanticipated potential historic properties are encountered during emergency response actions, the [F]ederal OSC shall either: 1) consult with the SHPO (or appropriate [F]ederal, Indian, or Hawaiian Native organizations) to determine if the properties are eligible for inclusion in the National Register, or 2) treat the properties as eligible.”

## 2. Alaska Implementation Guidelines

Attachment 7 includes a checklist of steps Historic Properties Specialists need to take to identify historic properties that may be affected by an incident or emergency response activities resulting from the incident. The identification process may require an on-site inspection(s).

### D. Assessment of Potential Effects of Emergency Response Strategies on Historic Properties.

#### 1. National *Programmatic Agreement*

The national *Programmatic Agreement* calls for “...an assessment of potential effects of emergency response strategies on historic properties. Such assessment shall be done in consultation with the parties listed in Section V.A. [of the national *Programmatic Agreement*].”

#### 2. Alaska Implementation Guidelines

Attachment 7 includes a checklist of steps Historic Properties Specialist need to take to assess whether potential emergency response activities will negatively affect historic properties. This assessment needs to be based on consultation with appropriate entities and, if possible, a review of aerial photography or other documentation of the area affected or potentially-affected by the spill or release. The assessment may require an on-site inspection(s).

### E. Implementation of Decisions about Appropriate Emergency Response Actions

#### 1. National *Programmatic Agreement*

The national *Programmatic Agreement* states that the “[F]ederal OSC shall take into account professional comments received from the parties listed in Section V.A. [in the national *Programmatic Agreement*] in making decisions that might affect historic properties. Emergency response strategies delineated in plans may need to be reviewed based on information available at the time of an actual incident. The purpose of this review is to evaluate whether implementation of the strategies in the plan might, for the emergency response action that is underway, adversely affect historic properties and, if so, how such effects might be avoided or reduced.”

The national *Programmatic Agreement* also calls for the Federal OSC to “[m]ake arrangements for suspected artifact theft to be reported to the SHPO, law enforcement officials, and the landowner/manager; [a]rrange for disposition of records and collected materials; and [e]nsure the confidentiality of historic property site location information, consistent with applicable laws, so as to minimize opportunities for vandalism or theft.”

## 2. Alaska Implementation Guidelines

Attachment 7 includes a reminder that the Historic Properties Specialists need to (1) report suspected artifact theft to the Federal OSC, Alaska SHPO, law enforcement officials, and the landowner and/or land manager; (2) arrange for disposition of records and collected materials; and (3) ensure the confidentiality of historic property site location information, consistent with applicable laws, to minimize opportunities for vandalism or theft.

Section I.B. of the national *Programmatic Agreement* states that "...an 'emergency' shall be deemed to exist whenever circumstances dictate that a response action to a release or spill must be taken so expeditiously that normal consideration of the Section 106 process is not reasonably practicable." However, Section 106 is not restricted to initial actions. In order for the Federal OSC to obtain the benefit of the NHPA regulation that provides that compliance with an approved programmatic agreement satisfies the Agency's Section 106 responsibilities, the Federal OSC must act consistently with the provisions of a programmatic agreement throughout the response.

### F. Determination that National *Programmatic Agreement* Cannot Be Satisfied

#### 1. National *Programmatic Agreement*

The national *Programmatic Agreement* states in Section VI.F. that "Whenever the federal OSC determines the requirements of this Section cannot be satisfied concurrently with the paramount requirement of protecting public health and safety, the determination shall be documented in writing including the name and title of the person who made the determination; the date of determination; and a brief description of the competing values between public health and safety and carrying on the provisions of this Section. Notwithstanding such a determination, if conditions subsequently permit, the federal OSC shall endeavor to comply with the requirements of this Section to the extent reasonably practicable."

#### 2. Alaska Implementation Guidelines

If the Federal OSC determines the emergency response requirements of the national *Programmatic Agreement* cannot be satisfied concurrently with the paramount requirement of protecting public health and safety, the Federal OSC may use the form in Attachment 8 to provide the required documentation to the Alaska SHPO and potentially-affected resource managers and trustees.

#### **IV. REVISIONS TO ALASKA IMPLEMENTATION GUIDELINES**

Revisions to the Alaska Implementation Guidelines may be made if all signatories of the guidelines concur in writing.

## ATTACHMENT 1

### SPILLS OR RELEASES CATEGORICALLY EXCLUDED FROM ADDITIONAL NATIONAL HISTORIC PRESERVATION ACT SECTION 106 COMPLIANCE

<p><b>Threatened spills/releases:</b></p> <ul style="list-style-type: none"><li>▶ Response activities related to threatened spills or releases that include the removal of fuel, and which will not include land/submerged land-disturbing activities*.</li></ul>
<p><b>Spills/releases onto (which stay on):</b></p> <ul style="list-style-type: none"><li>▶ Gravel pads.</li><li>▶ Roads (gavel or paved, not including the undeveloped right-of-way).</li><li>▶ Parking areas (graded or paved).</li><li>▶ Dock staging areas less than 50 years old.</li><li>▶ Gravel causeways.</li><li>▶ Artificial gravel islands.</li><li>▶ Drilling mats, pads, and/or berms.</li><li>▶ Airport runways (improved gravel strips and/or paved runways).</li></ul>
<p><b>Spills/releases into (that stay in):</b></p> <ul style="list-style-type: none"><li>▶ Water bodies where the spill or release: (1) <u>will not</u> reach land/submerged land; and (2) will not include emergency response activities with land/submerged land-disturbing components*.</li><li>▶ Water bodies where the spill or release: (1) <u>will</u> reach land/submerged land; and (2) will not include emergency response activities with land/submerged land-disturbing components*.</li><li>▶ Lined pits (e.g., drilling mud pits and reserve pits).</li><li>▶ Borrow pits.</li><li>▶ Concrete containment areas.</li><li>▶ Alyeska Pipeline Terminal complex.</li><li>▶ Fenced areas of Trans-Alaska Pipeline System pump stations.</li></ul>
<p><b>Spills/releases of:</b></p> <ul style="list-style-type: none"><li>▶ Gases (e.g., chlorine gas)</li></ul>

**Important Note to Federal On-Scene Coordinators:** (1) If you are not sure whether a spill or release fits into one of the categories listed above; (2) if at any time, the specifics of a spill or release change so it no longer fits into one of the categories listed above; (3) if the spill is greater than 100,000 gallons; and/or (4) if the Alaska State Historic Preservation Officer or the representative of a Federally-recognized tribe notifies you that a categorically-excluded spill or release may have the potential to affect a significant historic property, then an Historic Properties Specialist needs to be activated in accordance with the Nationwide Programmatic Agreement and the Alaska Implementation Guidelines.

*\* For the purposes of this attachment, limited subsurface testing (e.g., shovel tests) to assess the presence, amount, and/or extent of oil or hazardous substance contamination is not considered a ground-disturbing activity.*

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## ATTACHMENT 2

### POTENTIAL EMERGENCY RESPONSE STRATEGIES FOR HISTORIC PROPERTIES PROTECTION\*

RESPONSE STRATEGY
Mechanical recovery (e.g., use of skimmers, booms, sorbents)
In situ burning
Dispersant use
Protective or diversionary booming
Covering site with protective material
Construction of berms or trenches to divert product away from sites/areas
On-scene inspections by the Federal OSC Historic Properties Specialist or individual(s) authorized by the Federal OSC Historic Properties Specialist
On-scene monitoring by the Federal OSC Historic Properties Specialist or individual(s) authorized by the Federal OSC Historic Properties Specialist
Participation in Shoreline Cleanup Assessment Teams by the Federal OSC Historic Properties Specialist or individual(s) authorized by the Federal OSC Historic Properties Specialist
Participation in Shoreline Cleanup Teams by the Federal OSC Historic Properties Specialist or individual(s) authorized by the Federal OSC Historic Properties Specialist
Provision of information on historic properties protection to response personnel
Provision of information to the Federal OSC on historic properties protection for areas/locations proposed for emergency-response-related support activities (e.g., helipads and staging areas)

\* It is important to note that these response strategies are not listed in any priority order. In addition, other response strategies for the protection of historic properties may be identified and recommended to the Federal OSC for use during an incident response.

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## ATTACHMENT 3

### HISTORIC PROPERTIES SPECIALISTS PERSONNEL STANDARDS

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

1. The individual must meet the Secretary of Interior's Historic Preservation Professional Qualification Standards for either Prehistoric or Historical Archeology. In general, these require a graduate degree in Anthropology (or a closely related field), with a specialization in Archeology, and two and one-half years of professional experience. These standards can be found on-line at <http://www.cr.nps.gov/local-law/gis/html/quals.html>.
2. The individual must have demonstrated familiarity with the archaeology and environment of the area in question.
3. The individual must be fully familiar with Federal and State laws and regulations governing historic preservation, and with the operation of the Alaska Office of History and Archaeology, including especially the Alaska Heritage Resource Survey.
4. The individual must have, or must acquire training in compliance with the standards found in 29 CFR 1910 (Hazardous Waste Operations and Emergency Response) and must have, or must acquire, training in Incident Command System. Additionally, the individual should have familiarity with the *National Contingency Plan for Oil and Hazardous Substances Pollution Contingency Plan (NCP)*; the *Alaska Federal/State Preparedness Plan for Response to Oil and Hazardous Substance Discharges/Releases (Unified Plan)* and *Unified Plan* subarea contingency plans; the *Programmatic Agreement on the Protection of Historic Properties during Emergency Response under the NCP (Programmatic Agreement)* and the Alaska Implementation Guidelines for Federal On-Scene Coordinators; and specific procedures such as the SCAT process.

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## ATTACHMENT 4

### HISTORIC PROPERTIES PROTECTION INFORMATION FOR EMERGENCY RESPONSE PERSONNEL: EXAMPLE

#### Tanker XYZ Cleanup Cultural Resource Policy

The Alaska Historic Preservation Act declares the State of Alaska's policy regarding cultural resources as follows:

*to preserve and protect the historic, prehistoric and archaeological resources of Alaska from loss, desecration and destruction so that the scientific, historic and cultural heritage embodied in these resources may pass undiminished to future generations.*

The Unified Command of the Tanker XYZ cleanup strongly supports this policy, and will ensure compliance with State and Federal laws protecting cultural resources. On behalf of the FOSC and within the Unified Command structure, the FOSC's Historic Properties Specialist will ensure that cultural resources are appropriately considered during oil spill response activities. Response personnel play a key role in this program by being aware of their responsibilities under State and Federal law, and by dealing with sites properly when they are encountered. Whenever personnel encounter or discover an archaeological site or artifact, they are required to:

- Leave cultural materials in place at the site of discovery, and mark its location.
- Stop cleanup work in the vicinity surrounding the site.
- Immediately inform the field supervisor, who in turn, should immediately inform the FOSC's Historic Properties Specialist or an appropriately designated cultural resources specialist.

The Alaska Historic Preservation Act and various Federal laws and regulations prohibit collecting or tampering with protected cultural resources, including artifacts, fossils, human skeletal remains, and other items of antiquity, and violation of the act is a crime. In addition, violation of Federal laws protecting cultural resources may result in fines and imprisonment.

All oil spill response personnel (employees and their contractors) must comply with this Cultural Resource Policy:

*Anyone found vandalizing, moving, or taking away cultural materials will be subject to disciplinary actions up to and including immediate dismissal from their work, and an incident report may be filed with law enforcement authorities, requesting prosecution under applicable law.*

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Federal On-Scene Coordinator

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State On-Scene Coordinator

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By, for, and on behalf of (Responsible Party)

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## ATTACHMENT 5

### FEDERAL ON-SCENE COORDINATOR PROCEDURE FOR DETERMINING WHEN TO ACTIVATE AN HISTORIC PROPERTIES SPECIALIST

**STEP 1:**     Receive Notification of Oil Spill or Hazardous Substance Release

**STEP 2:**     Determine if Historic Properties Need to Be Considered

Does the spill or release fall into one of the following categories listed in Attachment 1?

- Yes
- No

If the answer is "YES", no other actions regarding historic properties protection are required.

If the answer is "NO", proceed to Step 3.

**STEP 3:**     To Continue in Accordance with the National Programmatic Agreement, Activate Federal On-Scene Coordinator's Historic Properties Specialist

See Federal OSC's list of pre-identified Historic Properties Specialists.

See Attachment 6 for suggested information to provide to the Historic Properties Specialist upon activation.

*NOTE: Activation of an Historic Properties Specialist must be accomplished in a "reasonable and timely" manner. See Section III of the Alaska Implementation Guidelines for more detailed information.*

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## ATTACHMENT 7

### HISTORIC PROPERTIES SPECIALIST CHECKLIST\*

<b>THE FOLLOWING STEPS NEED TO BE TAKEN AS APPROPRIATE BY THE FEDERAL ON-SCENE COORDINATOR'S HISTORIC PROPERTIES SPECIALIST FOLLOWING ACTIVATION**:</b>	
<input type="checkbox"/>	If the spill/release occurs in an area where Geographic Response Strategies (GRS) have been developed, check the historic properties note on the GRS and discuss appropriate actions with the Federal OSC.
<input type="checkbox"/>	Identify the (1) location(s) of known historic properties affected or potentially-affected by the spill or release; and/or (2) potential for undocumented historic properties affected or potentially-affected by the spill or release.
<input type="checkbox"/>	<i>Notify/consult with the Alaska State Historic Preservation Office.</i>
<input type="checkbox"/>	<i>Notify/consult with the Bureau of Indian Affairs for 14(h)(1) sites.</i>
<input type="checkbox"/>	<i>Notify/consult with all appropriate Federal, State, local, and/or private landowner(s) and/or land manager(s).</i>
<input type="checkbox"/>	<i>Notify/consult with appropriate Federally-recognized Tribes.</i>
<input type="checkbox"/>	<i>Notify/consult with appropriate Alaska Native regional and/or village corporations.</i>
<input type="checkbox"/>	<i>Consult with archaeologists/historians/local residents knowledgeable about the area.</i>
<input type="checkbox"/>	<i>Consult with Responsible Party's Historic Properties Specialist (if identified).</i>
<input type="checkbox"/>	<i>Review (if available) aerial photos or other documentation of the area affected or potentially-affected by the spill or release (this could include digital photographs/videos taken by on-scene representatives).</i>
<input type="checkbox"/>	<i>If necessary, conduct on-site inspection to determine presence of historic properties.</i>
<input type="checkbox"/>	Assess whether emergency response strategies have the potential to affect historic properties.
<input type="checkbox"/>	Establish an historic properties policy for all spill-related field personnel.
<input type="checkbox"/>	Implement policy through the Unified Command (e.g., Federal OSC, Safety Officer, or other appropriate individuals.)
<input type="checkbox"/>	Help identify strategies (see Attachment 2) to protect historic properties.
<input type="checkbox"/>	Provide information on response activities that have the potential to negatively affect historic properties.

\*It should be noted that additional steps may be required in more complex incidents. In addition, the identified tasks may require additional qualified individuals working under the direction/oversight of the Federal OSC's Historic Properties Specialist. Qualified individuals may include cultural resources specialists working for the Responsible Party.

\*\*Following activation, brief summaries of daily activities need to be provided via email or fax by the Historic Properties Specialist to the Federal OSC, the Alaska SHPO, and the DOI Regional Environmental Officer.

## ATTACHMENT 7, CONT.

### HISTORIC PROPERTIES SPECIALIST CHECKLIST, CONT.

<b>ONE OR MORE OF THE FOLLOWING STEPS NEED TO BE TAKEN AS APPROPRIATE, AT THE RECOMMENDATION OF THE HISTORIC PROPERTIES SPECIALIST FOLLOWING APPROVAL BY THE FEDERAL ON-SCENE COORDINATOR:</b>	
<input type="checkbox"/>	Travel to the spill or release site to inspect or monitor on-site activities to minimize or eliminate potential historic properties impacts resulting from response-related activities.
<input type="checkbox"/>	Provide information on response activities that have the potential to negatively affect historic properties.
<input type="checkbox"/>	Conduct field survey(s) to provide input to the Federal OSC on areas that need protection.
<input type="checkbox"/>	Participate in assessment teams that survey oiled shorelines and adjacent lands.
<input type="checkbox"/>	Create an Historic Properties Technical Advisory Group to review proposed clean up strategies for shorelines and adjacent lands.
<input type="checkbox"/>	Provide on-site monitoring of cleanup crews.
<input type="checkbox"/>	Conduct archaeological and/or historical recovery at an oiled site.
<input type="checkbox"/>	Arrange for appropriate permits.
<input type="checkbox"/>	Arrange for disposition of records and collected materials.
<input type="checkbox"/>	Ensure the confidentiality of site location information for all activities identified above.
<input type="checkbox"/>	Report any actual or suspected artifact theft to the Federal OSC, Alaska State Historic Preservation Officer, appropriate law enforcement officials and the landowner and/or land manager.
<input type="checkbox"/>	Provide input to Unified Command on how to prevent additional artifact theft.

## ATTACHMENT 8

### DOCUMENTATION OF ACTIONS TAKEN THAT RESULTED IN UNAVOIDABLE INJURY TO HISTORIC PROPERTIES

*This form should be completed and submitted, along with any additional supporting documentation, in a reasonable and timely manner to the appropriate entities listed below:*

<p>Name of incident:</p> <p>Date/time of incident:</p> <p>Location of incident:</p>
<p>Brief description of response action approved (including the date) by Federal On-Scene Coordinator (OSC) where protecting public health and safety was in conflict with protecting historic properties:</p> <p>Brief description of why protecting public health and safety could not be accomplished while also protecting historic properties:</p> <p>Federal OSC Name and Title:</p> <p>Federal OSC Signature:</p> <p>Date of Signature:</p>
<p>Faxed to:</p> <p><input type="checkbox"/> Judith Bittner, Alaska State Historic Preservation Officer (907-269-8908 fax)</p> <p><input type="checkbox"/> (Name and fax number of potentially-affected resource managers/trustees):</p> <p><input type="checkbox"/> (Name and fax number of potentially-affected resource managers/trustees):</p> <p><input type="checkbox"/> (Name and fax number of potentially-affected resource managers/trustees):</p>

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