



# NATIONAL HISTORIC PRESERVATION ACT

Disclaimer: The views expressed herein are those of the presenter and do not necessarily represent the views of the US EPA or the United States. The presentation and all associated materials and remarks do not create any rights or benefits for third parties. Further this presentation is for information purposes only and does not constitute legal advice.

# Agenda

- Who and what is involved in the NHPA process?
- The United States Code and the Federal Regulations
- What does Section 106 Require?
- Tribes and NHPA
  - Consultation
  - Tribal Land
  - Confidentiality
- Overview of Unanticipated Discovery Plan
- Working with your Tribal Historic Preservation Officer (THPO)
- Examples of Situations
- Open Discussion

# General NHPA System

## NHPA System and Players

- Statute and Regulations
- Federal agencies/agency official
- Advisory Council on Historic Preservation (ACHP)
  - Sets regulations and policy
  - Provides guidance to agencies, Congress, the President, the public, SHPOs/THPOs, Tribes, and other interested parties
  - Consults on NHPA compliance on nationwide or significant matters
- State Historic Preservation Officer (SHPO) and Tribal Historic Preservation Officer (THPO)
- Consulting Parties
- Public
- Department of Interior and National Park System
  - Preservation, Professional Standards and Guidelines
  - Approval of SHPOs/THPOs

# The Statute – Section 106

54 U.S.C. § 306108 - Effect of undertaking on historic property

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, prior to the approval of the expenditure of any Federal funds on the undertaking or prior to the issuance of any license, shall **take into account the effect of the undertaking on any historic property**. The head of the Federal agency shall **afford the Council a reasonable opportunity to comment** with regard to the undertaking.



# The Regulations

## 36 CFR Part 800

- § 800.1 Purposes.
  - § 800.2 Participants in the Section 106 process.
  - § 800.3 Initiation of the section 106 process.
  - § 800.4 Identification of historic properties.
  - § 800.5 Assessment of adverse effects.
  - § 800.6 Resolution of adverse effects.
  - § 800.7 Failure to resolve adverse effects.
  - § 800.8 Coordination With the National Environmental Policy Act.
  - § 800.9 Council review of section 106 compliance.
  - § 800.10 Special requirements for protecting National Historic Landmarks.
  - § 800.11 Documentation standards.
  - § 800.12 Emergency situations.
  - § 800.13 Post-review discoveries.
  - § 800.14 Federal agency program alternatives.
  - § 800.15 Tribal, State, and local program alternatives. [Reserved]
  - § 800.16 Definitions.
- Appendix A to Part 800 Criteria for Council Involvement in Reviewing Individual section 106 Cases



# Section 106 Review Process

36 CFR § 800.3-7

C  
O  
N  
S  
U  
L  
T  
A  
T  
I  
O  
N



## INITIATE the process

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

*No undertaking with potential to affect historic properties?*

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

*No historic properties present or affected?*

NO



## ASSESS adverse effects

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

*No historic properties adversely affected?*

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

General  
NHPA  
Process

# UNDERTAKING

## Includes

- EPA funding or financial assistance
- Permit or license from EPA
- EPA direct action (e.g., Superfund response action)



## Does Not Include

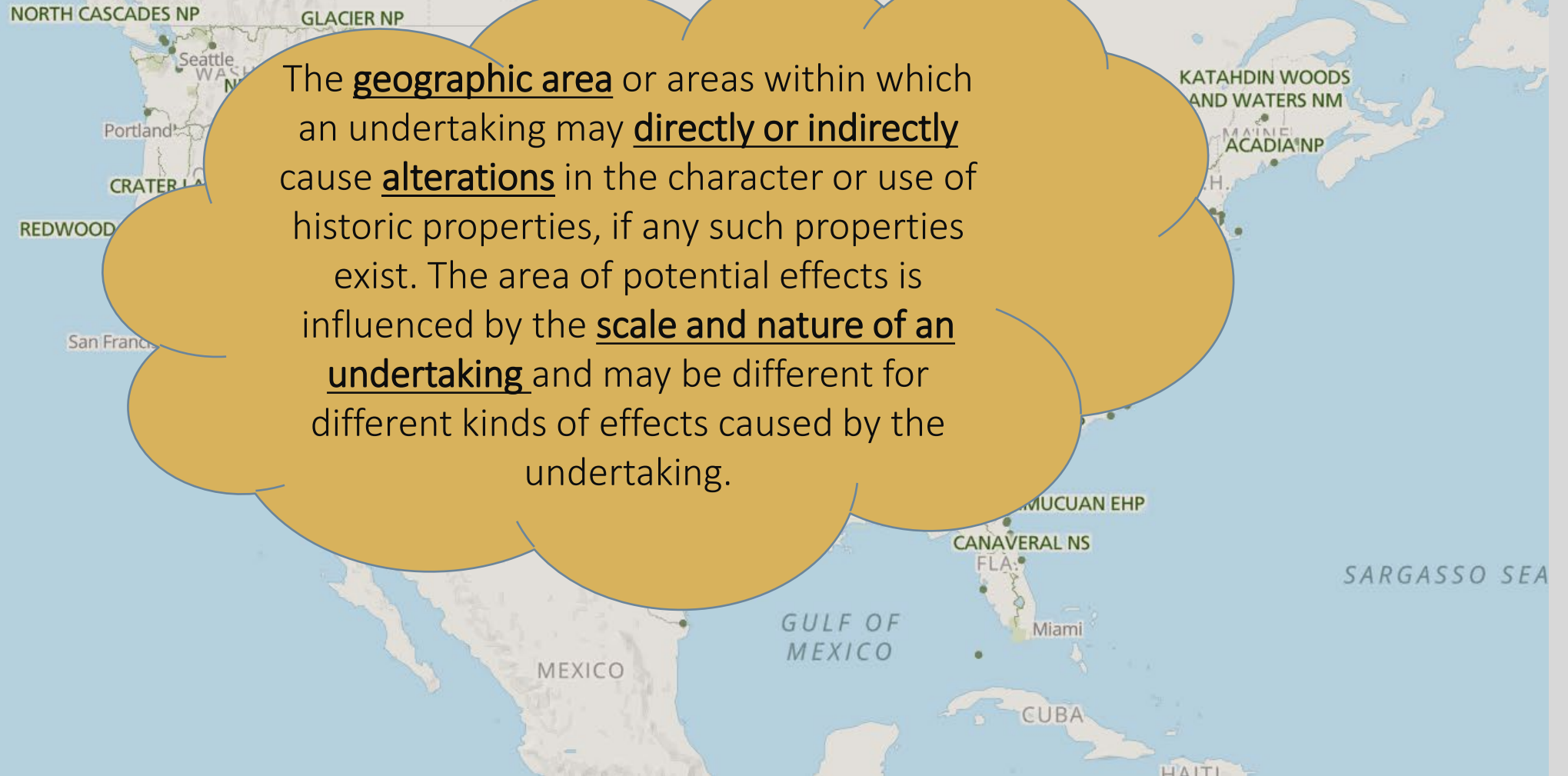
- Permits issued by States or Tribes under approved programs
- Other matters determined not to be undertakings

# Consultation

- NHPA
  - General: The agency official should consult with the SHPO/THPO in a manner appropriate to the agency planning process for the undertaking and to the nature of the undertaking and its effects on historic properties. The agency official shall involve the consulting parties . . . in findings and determinations made during the section 106 process
    - Section 101(d)(6)(B) of the act requires the agency official to consult with any Indian tribe or Native Hawaiian organization that attaches religious and cultural significance to historic properties that may be affected by an undertaking. This requirement applies regardless of the location of the historic property. Such Indian tribe or Native Hawaiian organization shall be a consulting party.
  - 30 days: If the SHPO/THPO fails to respond within 30 days of receipt of a request for review of a finding or determination, the agency official may either proceed to the next step in the process based on the finding or determination or consult with the Council in lieu of the SHPO/THPO. If the SHPO/THPO re-enters the Section 106 process, the agency official shall continue the consultation without being required to reconsider previous findings or determinations.
- Government-to-government consultation under EPA's Consultation Policy, the 1984 Indian Policy, and EO 13175
  - Different from NHPA consultation
  - Can occur together and be complementary

# Area of Potential Effects

The **geographic area** or areas within which an undertaking may **directly or indirectly** cause **alterations** in the character or use of historic properties, if any such properties exist. The area of potential effects is influenced by the **scale and nature of an undertaking** and may be different for different kinds of effects caused by the undertaking.



# Historic Property

36 CFR 800.16(/):

Any prehistoric or historic district, site, building, structure, or object included in, or eligible for inclusion in, the National Register of Historic Places maintained by the Secretary of the Interior.

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.

# Factors for Eligibility

Possess integrity of location, design, setting, materials, workmanship, feeling, and association and

- (a) that are associated with events that have made a significant contribution to the broad patterns of our history; or
- (b) that are associated with the lives of persons significant in our past; or
- (c) that embody the distinctive characteristics of a type, period, or method of construction, or that represent the work of a master, or that possess high artistic values, or that represent a significant and distinguishable entity whose components may lack individual distinction; or
- (d) that have yielded, or may be likely to yield, information important in prehistory or history.

GENERALLY, must be 50 years old, but not always



# Adverse Effect

An adverse effect is found when an undertaking may **alter, directly or indirectly**, any of the **characteristics** of a historic property that qualify the property for inclusion in the National Register in a manner that would **diminish the integrity** of the property's location, design, setting, materials, workmanship, feeling, or association.



# Types of Findings

1. No potential to cause any effect to historic properties, 800.3(a)(1)
2. Finding of no historic properties or no historic properties affected, 800.4(d)(1)
3. Finding of no adverse effect, 800.5(b), (c)
4. Finding of adverse effect 800.5(d)(2)



# Resolve Adverse Effect

- Memorandum of Agreement ([36 CFR 800.6](#))
  - ACHP may be party
- Programmatic Agreement ([36 CFR 800.14](#))
  - More likely to include ACHP as a party
- Other alternatives ([36 CFR 800.14](#))
- Unanticipated/Inadvertent Discovery Plan
- Informal Agreement
- No Agreement → ACHP Comment ([36 CFR 800.7](#))



## NHPA Process

1. Undertaking = Federal \$, direct action, permit/agreement?

2. Area of Potential Effects = What areas might be affected?

3. Historic Property = Are there any in the APE?

4. Adverse Effect = Will activities hurt physical properties or experience of HP?

36 CFR Part 800



# Tribes and NHPA

- THPOs/Tribal Representatives
  - Historic Properties on “Tribal Lands” (more on that later) (plus often a lot more)
- 54 USC 302706
  - (a) In General.— Property of traditional religious and cultural importance to an Indian tribe or Native Hawaiian organization may be determined to be eligible for inclusion on the National Register.
  - (b) Consultation.— In carrying out its responsibilities under section [106] of this title, a Federal agency shall consult with any Indian Tribe or Native Hawaiian organization that attaches religious and cultural significance to property described in subsection (a).
- 36 CFR 800.2
  - “any Indian Tribe or Native Hawaiian organization that attaches religious and cultural significance to historic properties that may be affected by an undertaking. This requirement applies regardless of the location of the historic property”

# Who? What? Where?

- What are historic properties of traditional religious and cultural importance?
  - Viewsheds, ceremonial or religious areas, areas of lifeways or traditional uses, hunting/gathering/fishing areas, funerary objects, burial sites, archaeological sites
  - Must still meet the eligibility requirements for National Register (see slide 11)
- Where might such property be located? Anywhere and may be unknown to SHPO!
  - Tribal Land\* (see next slide)
  - Non-Tribal Land
- With whom does the agency consult?
  - On Tribal Land – THPO or, if no THPO, SHPO and Tribal representatives
  - Non-Tribal Land – SHPO and Tribal representatives

# “Tribal Land” and NHPA

- EPA programs generally refer to Indian country as defined at 18 U.S.C. § 1151  
“Indian country,” as used in this chapter, means
  - (a) all land within the limits of any Indian reservation under the jurisdiction of the United States Government, notwithstanding the issuance of any patent, and, including rights-of-way running through the reservation,
  - (b) all dependent Indian communities within the borders of the United States whether within the original or subsequently acquired territory thereof, and whether within or without the limits of a state, and
  - (c) all Indian allotments, the Indian titles to which have not been extinguished, including rights-of-way running through the same.
- NHPA defines “Tribal Land” as:
  - (1) all land within the exterior boundaries of any Indian reservation; and
  - (2) all dependent Indian communities.

54 U.S.C. § 300319

# Data Sovereignty and Confidentiality

- Generally, there is no confidentiality of communications between the federal government and Tribes.
- Under FOIA, members of the public and others can request access to records held by EPA, and such records may be withheld only if they meet one of the exemptions of FOIA.
  - Exemption 4 – Confidential Business Information
    - (1) it is a trade secret or (2) it is privileged commercial or financial information
  - Exemption 3 – Statutory
    - 54 U.S.C. § 307103: “location, character, or ownership”; “historic property”; and “invasion of privacy,” “risk harm,” or “impede use of traditional religious site by practitioners.”
- **Key Takeaway:** We urge Tribal representatives to contact EPA with their legal counsel to discuss specific situations where Tribes feel they need to submit culturally sensitive information to EPA to discuss options and best practices.

# Example EPA NHPA Communication



**REGION 5**

CHICAGO, IL 60604

Letter to Initiate Consultation and Proposed Determination

The Environmental Protection Agency (EPA) has awarded a Brownfields Cleanup Grant to \_\_\_\_ for \_\_\_\_\_. EPA wishes to invite Tribes with interests in [LOCATION] to consult under Section 106 of the National Historic Preservation Act (NHPA), 54 U.S.C. § 306108, and its implementing regulations, 36 C.F.R. Part 800. Further, EPA is proposing a determination of \_\_\_\_\_ pursuant to 36 C.F.R. § 800.\_\_\_\_.

Description of Undertaking

Description of APE and Identification of Historic Properties

Proposed Determination\*

\*Sometimes referred to as “preliminary determination.”

# Authorization

36 CFR 800.2(c)(4):

“The agency official may authorize an applicant or group of applicants to initiate consultation with the SHPO/THPO and others, but remains legally responsible for all findings and determinations charged to the agency official. The agency official shall notify the SHPO/THPO when an applicant or group of applicants is so authorized. A Federal agency may authorize all applicants in a specific program pursuant to this section by providing notice to all SHPO/THPOs. Federal agencies that provide authorizations to applicants remain responsible for their government-to-government relationships with Indian Tribes.”



# Emergency Response and NHPA

## Multiagency programmatic agreement on emergency response

- Look for some pre-incident planning discussions from Region 5's Regional Response Team

Waiver

## Other Laws

- Federal
  - Native American Graves Protection and Repatriation Act
  - Archaeological & Historic Preservation Act
  - Archaeological Resources Protection Act
  - American Indian Religious Freedom Act
  - National Environmental Policy Act
- State and Tribal Laws

## Resources

- [Advisory Council on Historic Preservation – Free Training](#)
- [National Park Service](#)
- [NATHPO](#) and [NCSHPO](#)
- [TDAT](#) and [BIA](#)
- ACHP Contact Bill Marzella, [bmarzella@achp.gov](mailto:bmarzella@achp.gov)



# Developing an Unanticipated Discovery Plan (UDP) resource for regional use

**May 6, 2026**

Law Curley, EPA Tribal Liaison

Jamie Stoik, EPA Superfund and Emergency Management Tribal Coordinator




# Unanticipated Discoveries and NHPA

Post NHPA review discoveries

What is a UDP

# Post NHPA Review Discoveries

- Seek information from those likely to have knowledge of, or concerns with, historic properties in the area (e.g. Tribal Historic Preservation Officers)
  - Whether or not a review determines historic properties are likely to be discovered, unidentified properties or discoveries may occur
- 

# Unanticipated Discovery Plans (UDPs)

- Unanticipated Discovery Plans (UDPs) are used by government and industry to set forth the guidelines to be used in the event of an unanticipated discovery of human remains or historic resources.
- UDPs provide directions for on-site project staff on what to do, and how to comply with relevant and appropriate Federal Historic Preservation laws.



# Unanticipated Discovery Plan Workgroup

What is an example of a UDP

How might it be used

# Regional Response Team (RRT5)




- The RRT acts as a regional planning and coordination body for preparedness and response actions.
- Preparedness activities are carried out in conjunction with appropriate Tribal Councils and emergency programs, State Emergency Response Committees, Area Committees, and Local Emergency Planning Committees.

# UDP Workgroup

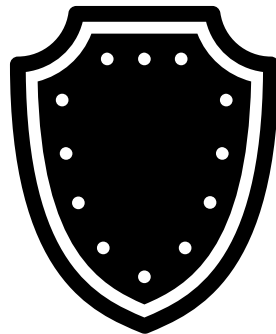
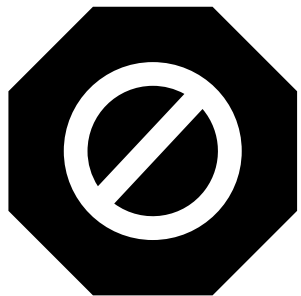
A Regional Response Team *Unanticipated Discovery Plan Workgroup* was formed consisting of representatives from the Environmental Protection Agency (EPA), the US Coast Guard (USCG), and the Department of Interior (DOI) to develop resources to assist Federal On-Scene Coordinators (FOSCs) with NHPA requirements during a response to an oil spill or hazardous substance release.

# Reviewing UDP and NHPA Resources


- Example project plans
  - Historic specialist (THPOS & SHPOs) plans or procedures
  - Regional cultural resources guides and fact sheets
  - Advisory Council on Historic Preservation (ACHP)
- 

# UDP Elements


- Activation of personnel (e.g. notifying SHPO and THPO)
- Stop, Protect, Notify process
- Human Remains or Funerary Artifacts




# Example: Personnel

- A Tribal Monitor can assist with:
    - (1) prompt recognition and evaluation of potential historic properties;
    - (2) avoidance, mitigation, or minimization of adverse effects to historic properties; and
    - (3) implementation of appropriate recommended or culturally appropriate treatment of historic properties
- 

# Example: Process for Assessing and Reporting

- **Stop:** Personnel should halt work activities within a minimum of 50 feet around the potential historic property. Unanticipated discoveries should be treated as though they are potential historic properties and culturally sensitive until qualified personnel arrive.
  - **Protect.** Secure the area of disturbance to ensure that no further disturbance occurs (e.g. use marker flags, protect from the elements, halt traffic).
  - **Notify.** Notify qualified personnel and pre-identified consulting parties.
- 

# Example: Process for Discovery of Human Remains or Funerary Artifacts

- Call the police
  - Suspected human remains should not be touched, moved, disturbed, or photographed or otherwise depicted unless directed to do so by the police or jurisdictional authority
- 


# Supplemental Material


## Alaska Coastal Cultural Resource Job Aid


*It is a privilege to live and work on these lands stewarded by Alaska Native people since time immemorial*


**What are cultural resources?**  
Objects, places, traditions, and beliefs that are significant to a group of people and form a collective cultural identity. Cultural resources include objects/artifacts made of stone, ceramic, bone, metal, glass, or wood, or buildings, structures, cemeteries, monuments, shipwrecks, railroads, trails, and subsistence areas. **There are federal and state laws protecting cultural resources.** Treat cultural resources with respect and help protect them.


**IMPORTANT!**  
If you observe bone or possible human remains, immediately notify your Supervisor/Authorized Official (AO) or Historic Property Specialist (HPS).


 **Scan here** – Access a short tutorial on how to use this form, and other resources here.

 **Make a call** – An AO or Incident HPS may call the State Historic Preservation Office at (907) 269-8700 for assistance.

 **Do not disturb** – Do not collect or move anything. Doing so can risk damaging an artifact or its historic integrity.

 **Know where you are** – Record GPS coordinates and nearby permanent landmarks.

 **Take some notes** – Describe what you see. Consider size, extent, location, condition, and threats.

 **Take a photo** – Photograph the location and any artifacts using the provided scale and north arrow.

Incident \_\_\_\_\_ Your name \_\_\_\_\_

AO/HPS Name, Phone \_\_\_\_\_ Date \_\_\_\_\_


Lat/Long \_\_\_\_\_

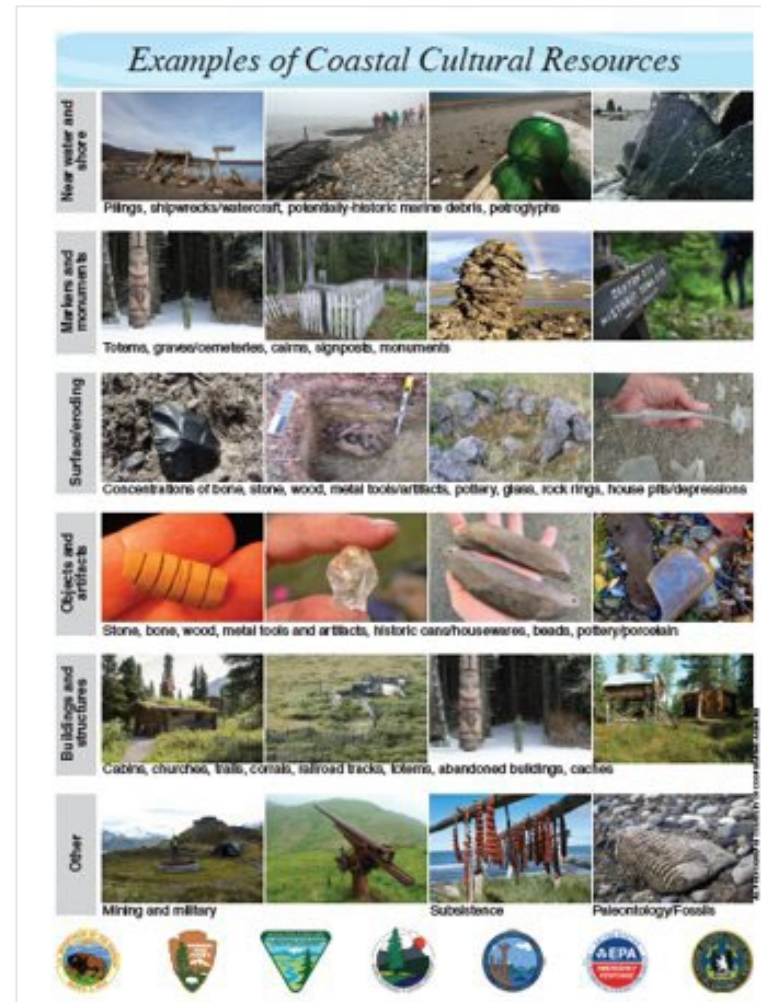
Observations (attach pages if necessary) \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Place this scale and north arrow in your photos.







# Open Discussion