

# Consultation under Section 106 of the National Historic Preservation Act during Decommissioning: Lessons Learned and Best Practices

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# Environmental Reviews for Decommissioning

## National Environmental Policy Act (NEPA)

- NRC Implementing Regulations in 10 CFR Part 51
- NEPA was Amended through the Fiscal Responsibility Act in June 2023
  - New page and time limit requirements
  - Additional streamlining opportunities
- Generic Environmental Impact Statement on Decommissioning of Nuclear Facilities (NUREG-0586, Supplement 1)
  - Generically analyzes impacts across all sites
  - A few resource areas are considered site-specific



# National Environmental Policy Act (NEPA): The "Umbrella Act" and other Federal Consultations

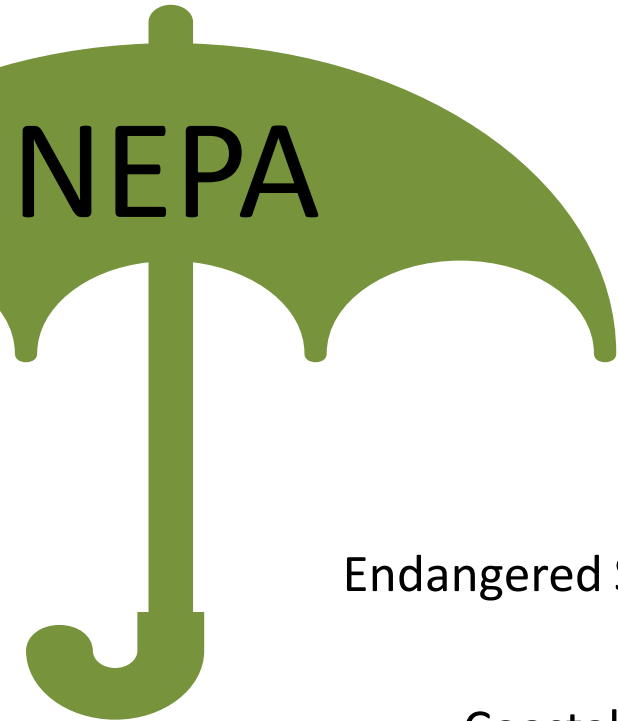


National Historic  
Preservation Act

Clean Water Act

Clean Air Act

Marine Mammal  
Protection Act



Endangered Species Act

Coastal Zone  
Management Act

Environmental Justice  
(E.O. 12898)

Magnuson Stevens Act



# Why are other Federal consultations important to consider?



**Requires close coordination:**  
Applicant provides data while  
NRC is the lead with other  
Federal agencies and Tribes



**Role of other Federal  
agencies:**  
Data completeness, timelines,  
and concurrence with effect  
determinations



**Risk mitigation:**  
If lessons learned and best  
practices are not incorporated,  
could pose schedule risks.

**Early coordination is key!**





# Section 106 Review Process

36 CFR § 800.3-7

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## INITIATE the process

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

*Undertaking with potential to affect historic properties?*

NO

YES



## IDENTIFY historic properties

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

*Historic properties present or affected?*

NO

YES



## ASSESS adverse effects

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

*Historic properties adversely affected?*

NO

YES



## 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

# Environmental Considerations during Decommissioning

- Submittal of a License Termination Plan (LTP) is considered a Federal action, which requires an environmental review
- NRC typically develops an environmental assessment, which tiers from the Decommissioning GEIS
- NRC also considers other environmental requirements and consultations, such as
  - Section 106 of the National Historic Preservation Act
  - Section 7 of the Endangered Species Act

# Environmental Considerations During Decommissioning Outside of the LTP review

10 CFR 50.82(a)(6) states that:

“power reactor licensees in decommissioning shall not perform any decommissioning activities that, among other things, result in **significant environmental impacts not previously reviewed.**”



Most common source to consider whether an impact has been previously reviewed is the Decommissioning GEIS and other NEPA documents (e.g., EISs or EAs).



Adverse impacts, such as some alterations or demolition to structures eligible for listing on the National Register of Historic Places (NRHP) could be considered an unreviewed significant environmental impact.

# How do you determine if a building is eligible for listing?

- A professional who meets the Secretary of the Interior's standards in 36 CFR Part 61 and is experienced in conducting Historic American Building Surveys would determine the facility's eligibility.
- This evaluation considers the facilities age, significance, integrity.
  - Buildings are generally 50 years or older for that criteria to be considered significant




## **Best Practice**

Licensees should consider addressing in the Post Shutdown Decommissioning Activities Report (PSDAR) whether the nuclear facility might be historically significant and eligible for listing in the National Register of Historic Places (NRHP)

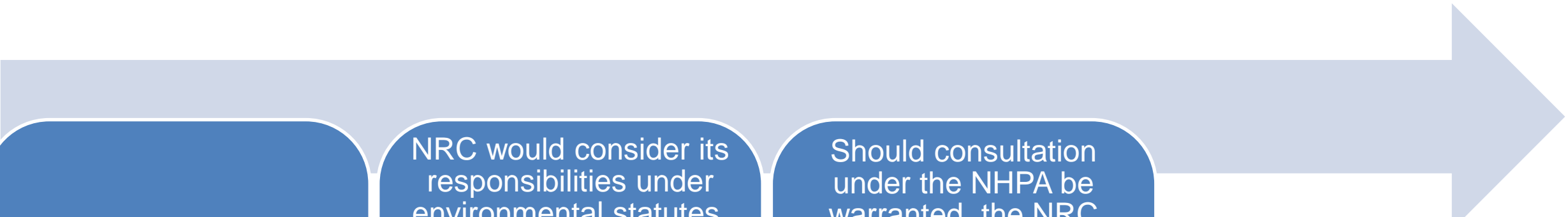


# What if an activity would cause a significant environmental impact not previously reviews?

The licensee can either:

-  submit a licensing action, such as a request for an amendment, that would request review of major decommissioning activities that would diminish the historic integrity (e.g., physical demolition) of buildings previously deemed eligible for the NRHP;
-  decide not to perform the proposed activity;
-  or modify the proposed activity so that the unreviewed significant environmental impact does not occur.

# What happens after an amendment is submitted?



A license amendment request would be considered a Federal action, which would trigger an environmental review

NRC would consider its responsibilities under environmental statutes, including:

- National Environmental Policy Act (NEPA)
- Section 106 under the National Historic Preservation Act (NHPA)
- Section 7 under the Endangered Species Act (ESA)

Should consultation under the NHPA be warranted, the NRC would work with the State Historic Preservation Office, the licensee, and other consulting parties to develop strategies to minimize, mitigate, or avoid the potential environmental impacts from decommissioning activities.

Once the environmental review of the activity, including any necessary consultation under the NHPA, is finalized, the activity would be in compliance with 10 CFR 50.82(a)(6).

# Section 106: Best Practices for Applicants

Coordinate early and often with NRC during pre-application phase

Ensure consistent understanding of data needs, which may be informed by NRC's consultation with State Historic Preservation Offices (SHPO), Tribes, and other interested parties.

Awareness that tribal and cultural resources may still exist on power plant sites. Include Secretary of Interior qualified professionals on your team.

Conduct fieldwork and reports prior to application submittal or in PSDARs.

# Section 106: Best Practices for NRC

Early and frequent coordination with Tribes and SHPOs

Incorporate lessons learned from completed Section 106 consultations

- Pre-application and early coordination with applicants (in addition to Tribes and SHPOs)
- Use of template and signed programmatic agreements as starting points
- Matrixed staffing to build stronger working relationships with Tribes and SHPOs

New risk-informed approaches

- Use of non-Federal representatives for consultation under Endangered Species Act (savings of 50% or more NRC staff time on the consultation)
- Streamlined internal processes
- Risk-informed technical content and scope

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# Questions?

