



Learning from the Experts Webinar Series

Offshore Wind Reviews under Section 106 of the National Historic Preservation Act

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**Bureau of Ocean Energy Management
Office of Renewable Energy Programs
May 10, 2023**

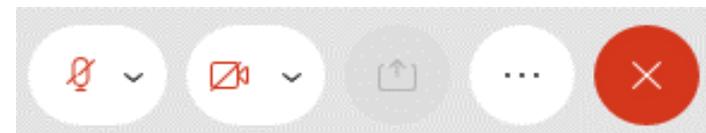
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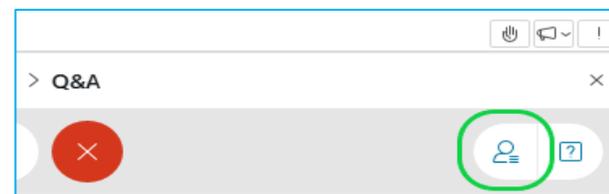
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Learning from the Experts

This webinar series is hosted by NYSERDA's offshore wind team and features experts in offshore wind technologies, development practices, and related research.

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The views and opinions expressed in this presentation are those of the presenter and do not represent the views or opinions of NYSERDA or New York State.



NYSERDA





BOEM Bureau of
Ocean Energy Management

National Historic Preservation Act Section 106 Review Process

NYSERDA Hosted Webinar

May 10, 2023

Sarah Stokely, Chris Horrell, Marissa Moshier, Laura Schnitzer
BOEM Office of Renewable Energy Programs

Agenda

Purpose of today's presentation:

1. Provide an overview of BOEM's environmental review and leasing process including timing of National Historic Preservation Act (NHPA) Section 106 consultations.
2. Describe the NHPA Section 106 Process and BOEM's standard procedure for Section 106 review.
3. Present BOEM's strategy for implementing National Environmental Policy Act (NEPA) substitution for Section 106 review and describe the benefits of NEPA substitution.



BOEM's Environmental Review and Leasing Process including Timing of NHPA Section 106 Consultations



BOEM Offshore Wind Project Environmental Review Process

[Planning & Analysis]

[Leasing]

[Site Assessment]

[Construction & Operations]

Initiate Leasing Process (RFI/Call)

Lease Granted

Submit SAP

BOEM Deems COP Complete & Sufficient

BOEM Approves COP



Area Identification
Wind Energy Areas

Publish Leasing Notices

Pre-survey Meetings/Plan

Site Assessment & Surveys
(maximum timeframe)

BOEM Environmental & Technical Reviews

Installation



NEPA/Environmental Reviews

NEPA Review and NHPA Section 106



Auction



BOEM Reviews & Approves SAP

NEPA Review and NHPA Section 106

(with Project Design Envelope – optional)



Submit COP

NEPA Review and NHPA Section 106



Submit Design & Installation Plans



BOEM Offshore Wind Consultations

- BOEM conducts public outreach, engagement, and consultation throughout the lease area development process to complete the NEPA and NHPA reviews of the SAP and COP with federally-recognized Tribes (Tribes), state and federal agencies, and Section 106 Consulting Parties:
 - Tribes, Advisory Council on Historic Preservation (ACHP), State Historic Preservation Offices (SHPO), local governments, preservation organizations, etc.
- BOEM has several regional Programmatic Agreements (PAs) in place to fulfill its obligations under NHPA Section 106 for renewable energy activities on the outer continental shelf (OCS).
 - Specifically, BOEM has a PA for New Jersey and New York:
<https://www.boem.gov/sites/default/files/renewable-energy-program/State-Activities/HP/NY-NJ-Programmatic-Agreement-Executed.pdf>
- More details regarding how and when BOEM conducts specific consultations will be described in the next sections.



NHPA Section 106 Process and BOEM's Standard Procedures



NHPA Section 106

- Section 106 of the NHPA requires federal agencies to consider the effects of their undertakings on historic properties and provide the opportunity for the ACHP to comment.
 - An undertaking is defined in 36 C.F.R. § 800.16(y) as a project, activities, 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; those carried out with Federal financial assistance; and those requiring a Federal permit, license, or approval.
 - An historic property is defined 36 C.F.R. § 800.16(l)(1)] in 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 (National Park Service). This term includes artifacts, records, and material remains that are related to and located within such properties. Properties of traditional religious and cultural importance to an Indian tribe or Native Hawaiian organization may be determined eligible for inclusion in the National Register.



NHPA Section 106

- Section 106 of the NHPA requires federal agencies to consider the effects of their undertakings on historic properties.
 - Federal agencies meet this requirement by completing the Section 106 process set forth in the implementing regulations, “Protection of Historic Properties,” 36 C.F.R. Part 800.
 - The goal of the Section 106 process is to identify and to consider historic properties that might be affected by an undertaking and to attempt to resolve any adverse effects through consultation.
 - The process provides for participation by Indian tribes and Native Hawaiian organizations; Tribal Historic Preservation Officers (THPOs); Tribal, state, and local governments; State Historic Preservation Officers (SHPOs); applicants for Federal assistance, permits, or licenses; representatives from interested organizations; private citizens; and the public.
 - Federal agencies and consulting parties strive to reach agreement on measures to avoid, minimize, and mitigate adverse effects on historic properties and to find a balance between project goals and preservation objectives.

NHPA Section 106 Review Process

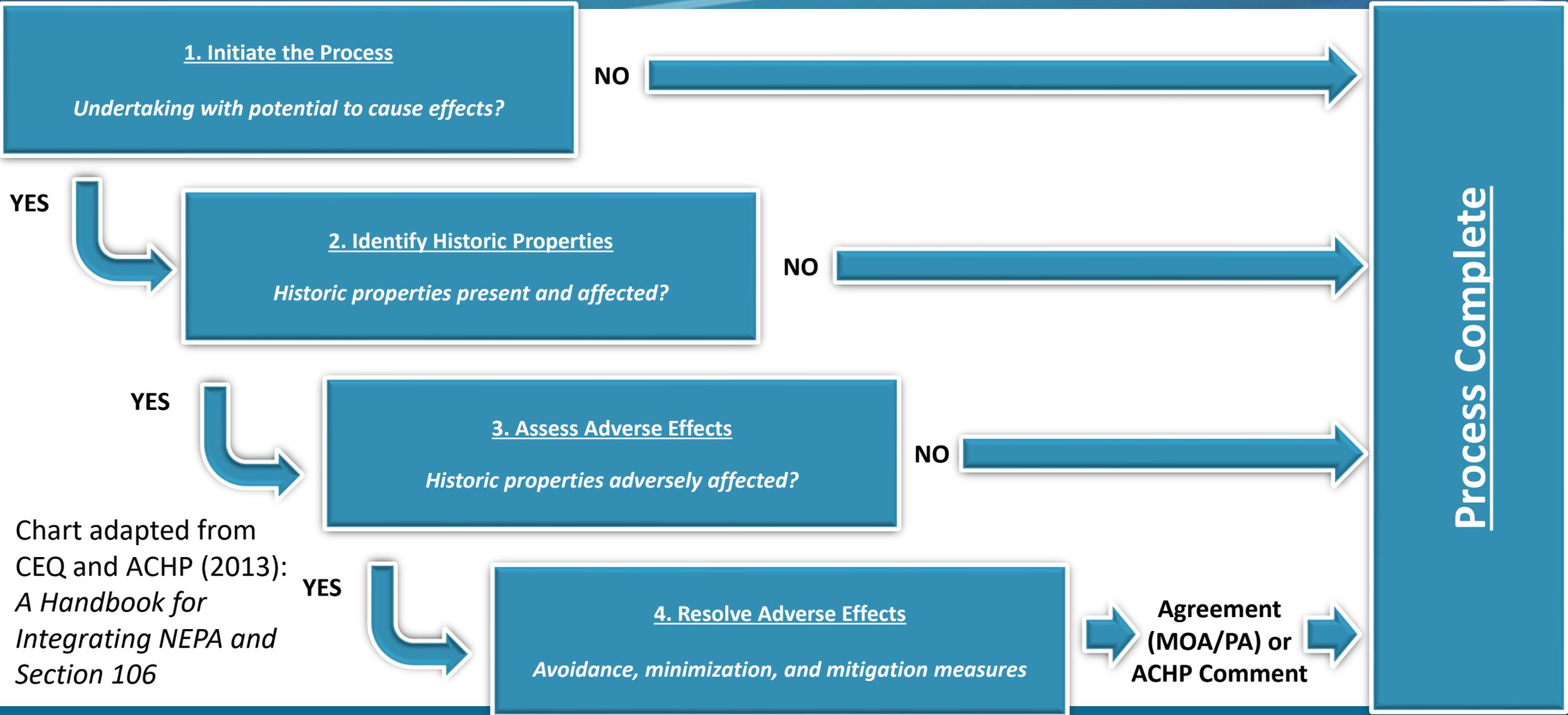


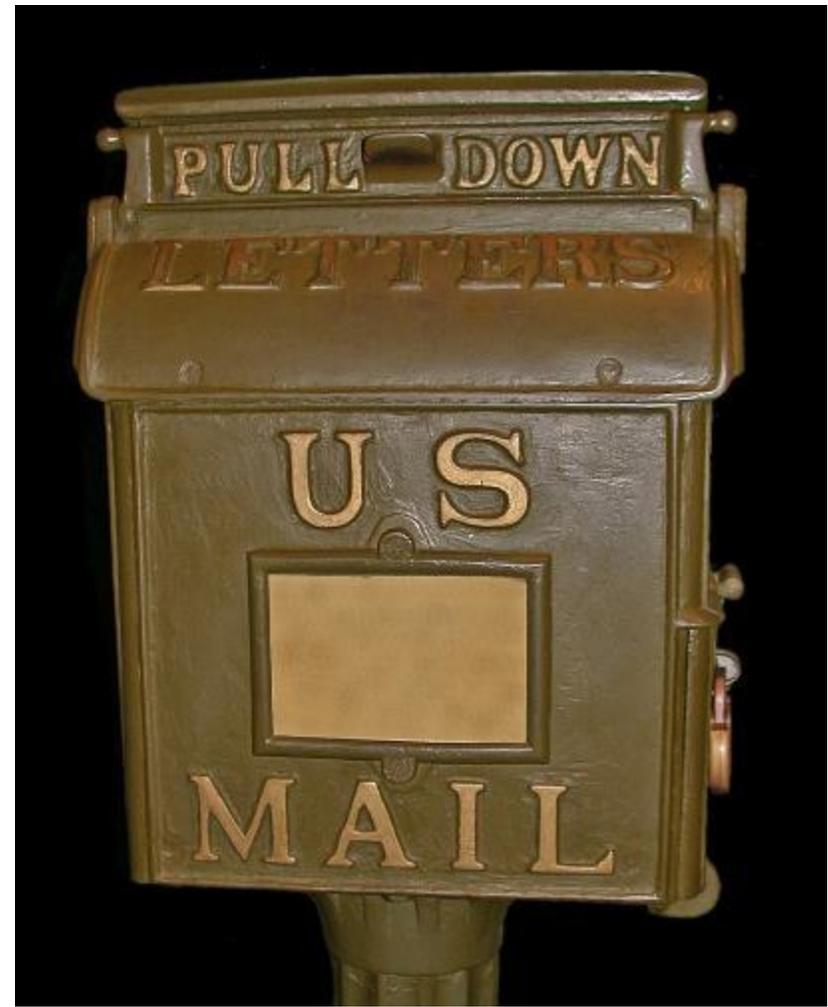
Chart adapted from
CEQ and ACHP (2013):
*A Handbook for
Integrating NEPA and
Section 106*



NHPA Section 106 Review Process

Step 1: Initiate the Process

- BOEM notifies Tribes, the affected SHPOs, and the ACHP prior to the issuance of the Notice of Intent (NOI) to Prepare an EIS
- BOEM and third-party contractor identify and invite Section 106 consulting parties
- BOEM and third-party contractor logs responses over 30-day period, conducts follow-up phone calls, and maintains list of confirmed consulting parties
- BOEM provides dates of scheduled NEPA public scoping meetings to Section 106 consulting parties via a notification letter.





NHPA Section 106 Review Process

Step 2: Identify Historic Properties

- BOEM determines the Areas of Potential Effect (APEs) for marine archaeological resources, terrestrial archaeological resources, and aboveground cultural resources.
 - Preliminary APEs are delineated by lessee and provided in the COP.
 - Marine Archaeological Resources Assessment (MARA), Terrestrial Archaeological Resources Assessment (TARA), and Historic Resources Visual Effects Assessment (HRVEA) technical studies are provided in the COP and reviewed by BOEM for sufficiency.
 - BOEM develops the Cumulative HRVEA (CHRVEA) as a separate technical study
- BOEM provides these reports to Tribes, SHPOs, and Consulting Parties for review

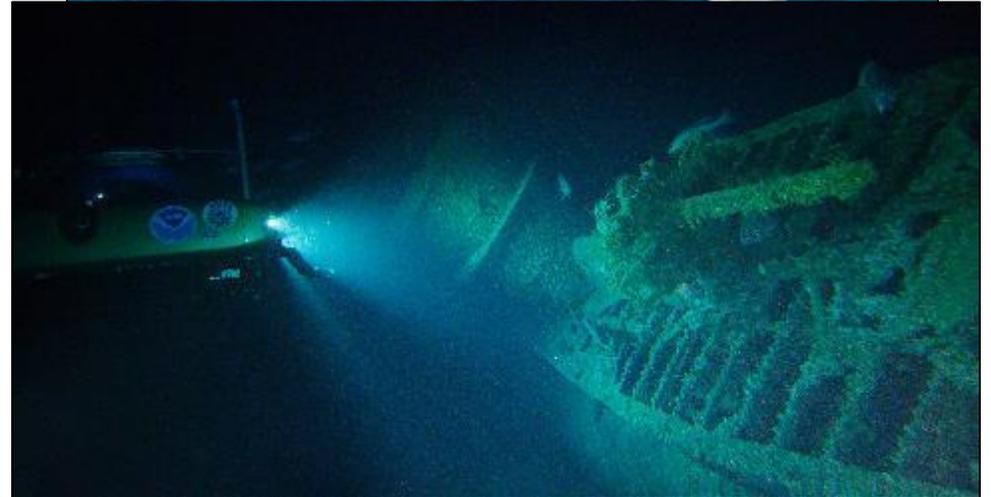
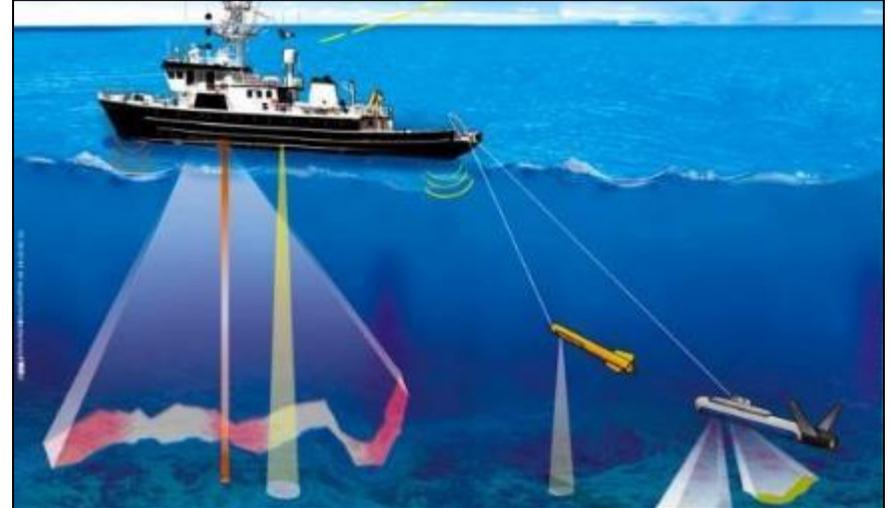




Marine Archaeological Resources Assessment (MARA)

Step 2: Identify Historic Properties (continued)

- The MARA report documents the identification and preliminary assessment of a project's potential physical effects on historic archaeological resources and ancient submerged landform features (ASLF) that are historic properties and are on the OCS and in state waters.

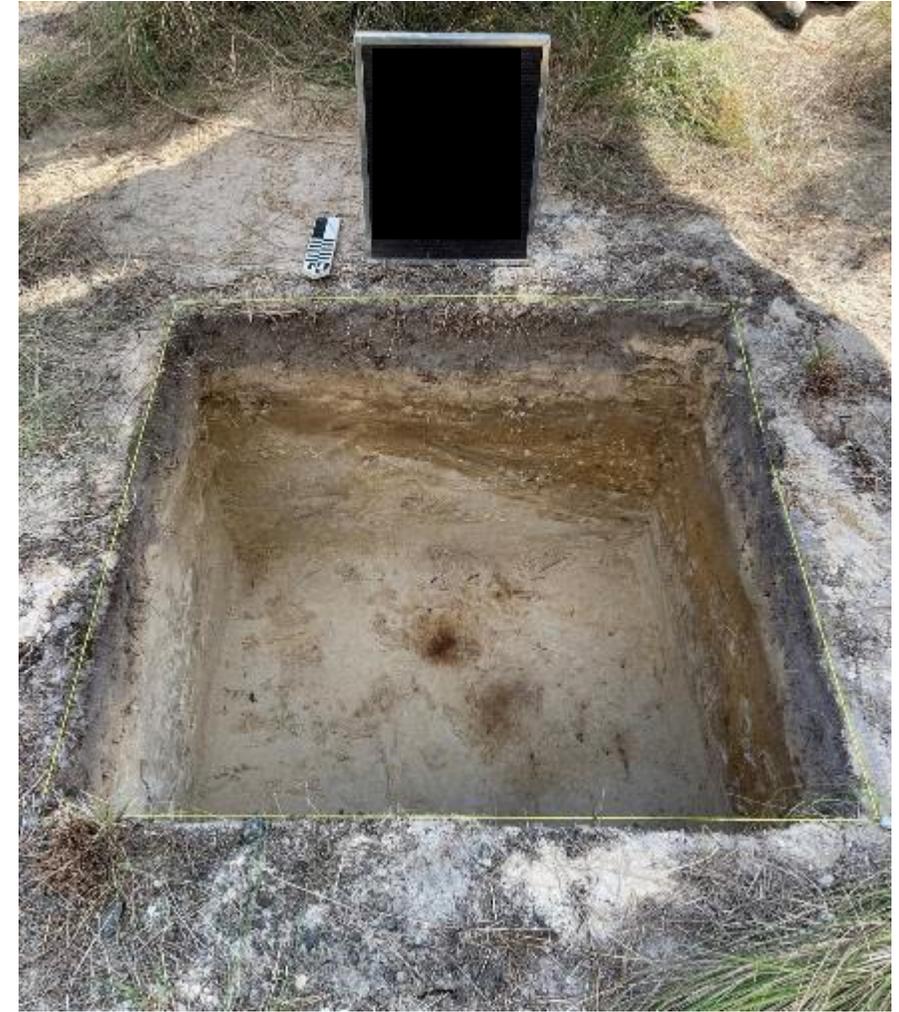
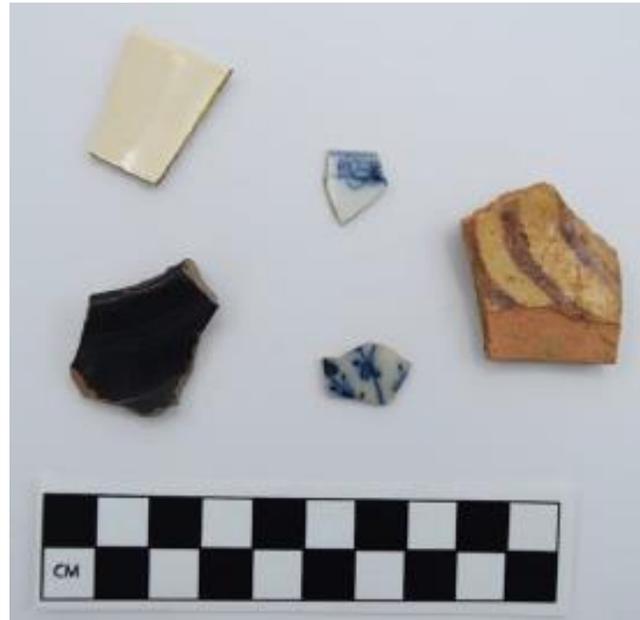




Terrestrial Archaeological Resources Assessment (TARA)

Step 2: Identify Historic Properties (continued)

- The TARA report documents the identification and preliminary assessment of a project's potential physical effects on terrestrial archaeological resources that are historic properties.





Historic Resources Visual Effects Assessment (HRVEA)

Step 2: Identify Historic Properties (continued)

- The HRVEA report documents the identification and preliminary assessment of a project's potential visual, physical, atmospheric, audible, and vibrational, or any other type of direct or indirect effects on historic aboveground resources that are historic properties.
- The Cumulative Historic Resources Visual Effects Assessment (CHVREA) analyzes where the effects of other reasonably foreseeable development activities that may result in cumulative effects.

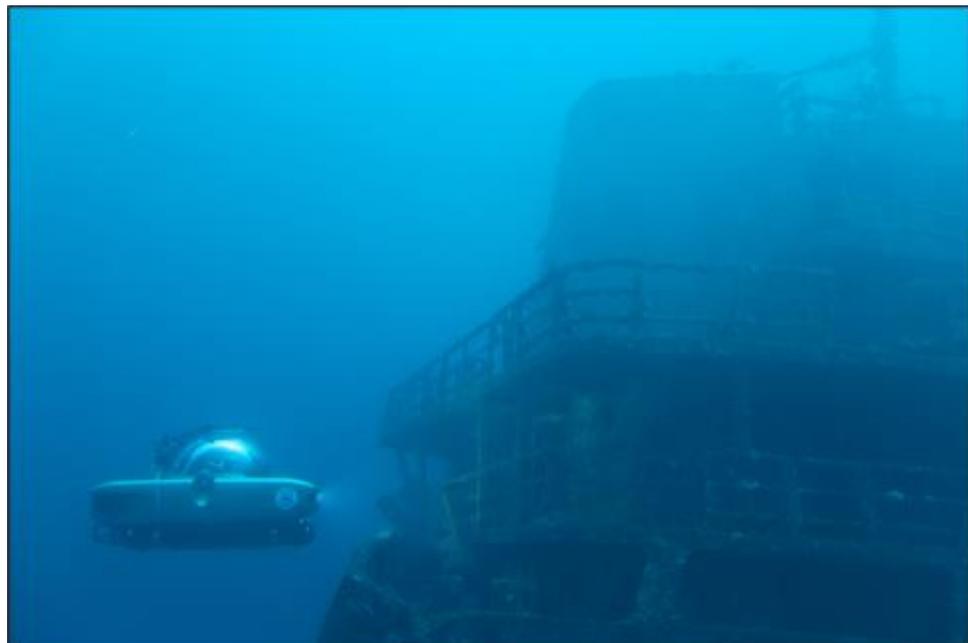




NHPA Section 106 Review Process

Step 3: Assess Adverse Effects

- As defined in at 36 CFR 800.5(a)(1), adverse effects are those that:
 - **Alter** any characteristic that qualifies the property for inclusion in the National Register of Historic Places (NRHP)
 - **Diminish** the integrity of the property's location, design, setting, materials, workmanship, feeling, or association
 - May include **reasonably foreseeable effects** caused by the undertaking, occurring later in time or farther removed in distance, or **that are cumulative.**





NHPA Section 106 Review Process

Step 3: Assess Adverse Effects

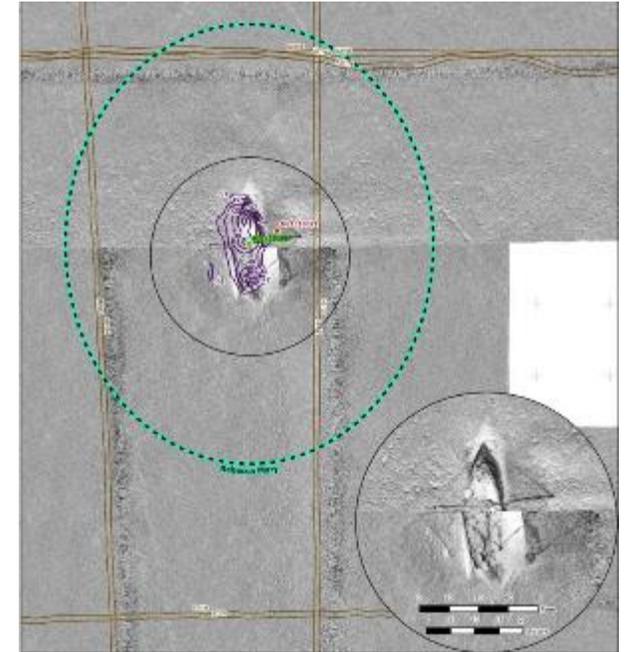
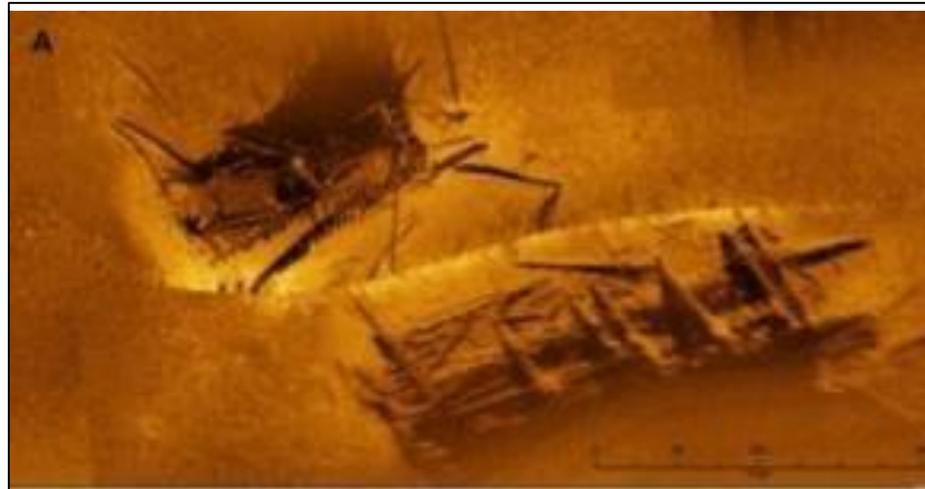
- **Examples of adverse effects most relevant to offshore wind development include:**
 - physical destruction of or damage to all or part of the property;
 - change of the character of the property's physical features within the property's setting that contribute to its historic significance; and
 - introduction of visual elements that diminish the integrity of the property's significant historic features and setting.



NHPA Section 106 Review Process

Step 4: Resolve Adverse Effects

- Through consultation, BOEM resolves adverse effects using measures to avoid, minimize, or mitigate adverse effects.
- A Memorandum of Agreement (MOA) will be developed to resolve adverse effects on historic properties.

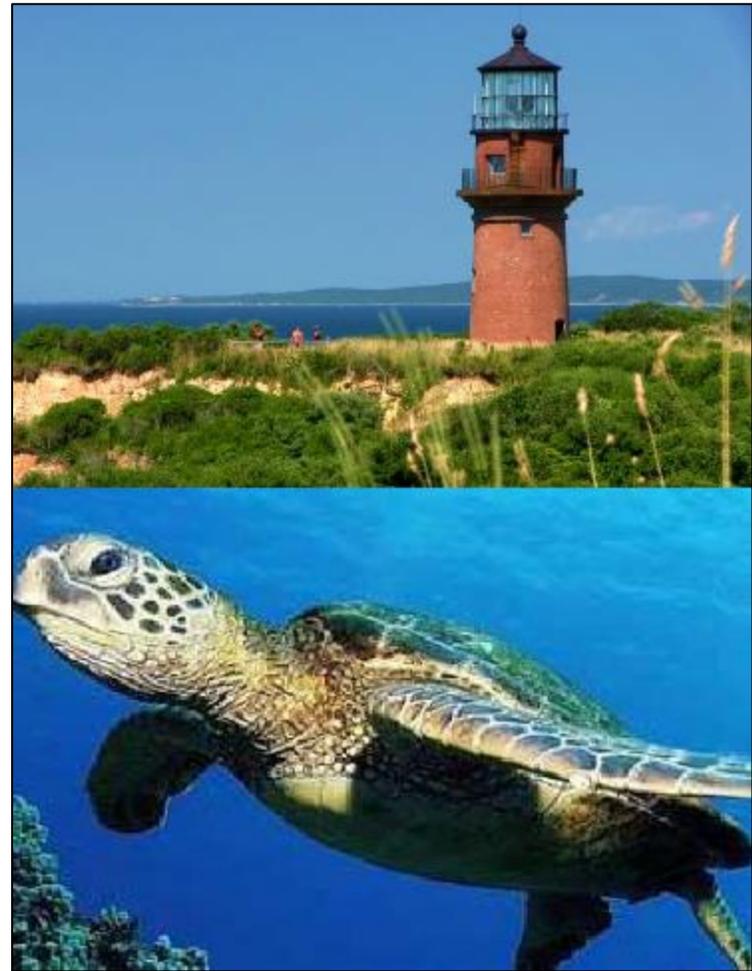


NEPA Substitution for NHPA Section 106 Review Process



NEPA Substitution for the NHPA Section 106 Review

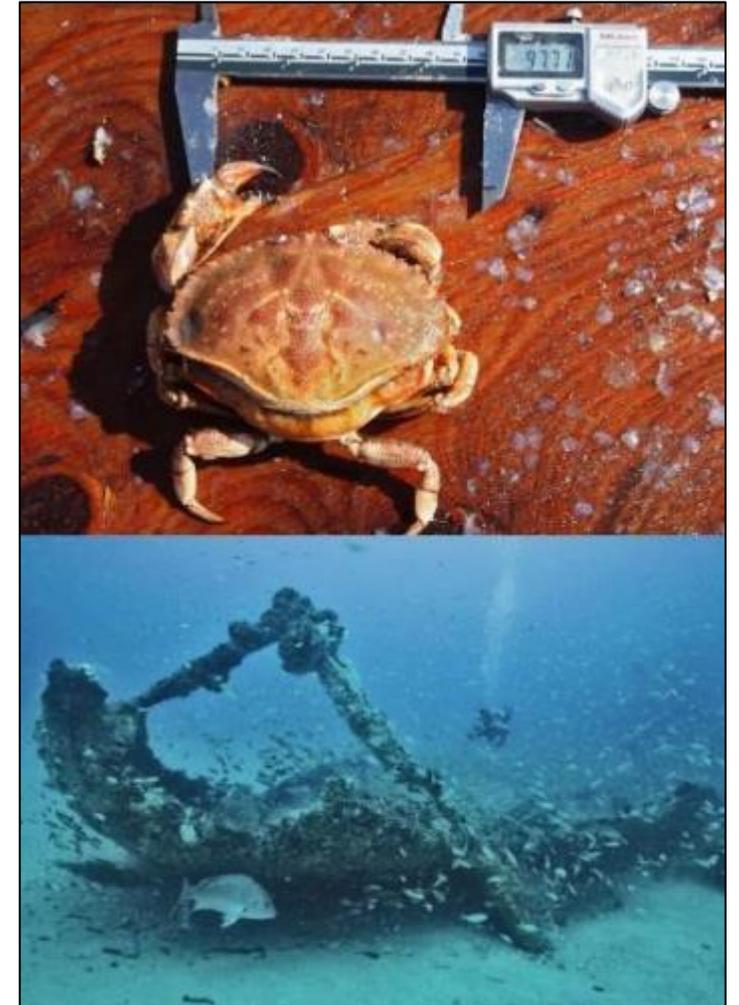
- NHPA Section 106 regulations allow Federal Agencies to use the NEPA process to fulfill a Federal agency's NHPA Section 106 review obligations.
 - This process is known as NEPA substitution for Section 106.
- BOEM took into consideration lessons learned and the needs of Tribes, Consulting Parties, and Lessees in its decision to use NEPA substitution.
- BOEM is using this process on all offshore wind project COP reviews.
 - Implementation of standard NHPA Section 106 process on a NEPA review timeline and coordinated with NEPA milestones





NEPA Overview

- NEPA requires federal agencies to assess the environmental effects of their proposed actions prior to making decisions.
 - It must include alternatives which may reduce or eliminate impacts including, at a minimum, the proposed action and a no action alternative.
 - The description of the affected environment in the Environmental Impact Statement (EIS) will include reasonably foreseeable environmental trends and planned actions other than the proposed Project.
 - An earlier NYSERDA presentation specific to BOEM's leasing process and NEPA review is available online at: <https://www.youtube.com/watch?v=r2j7i-JBm-4>.



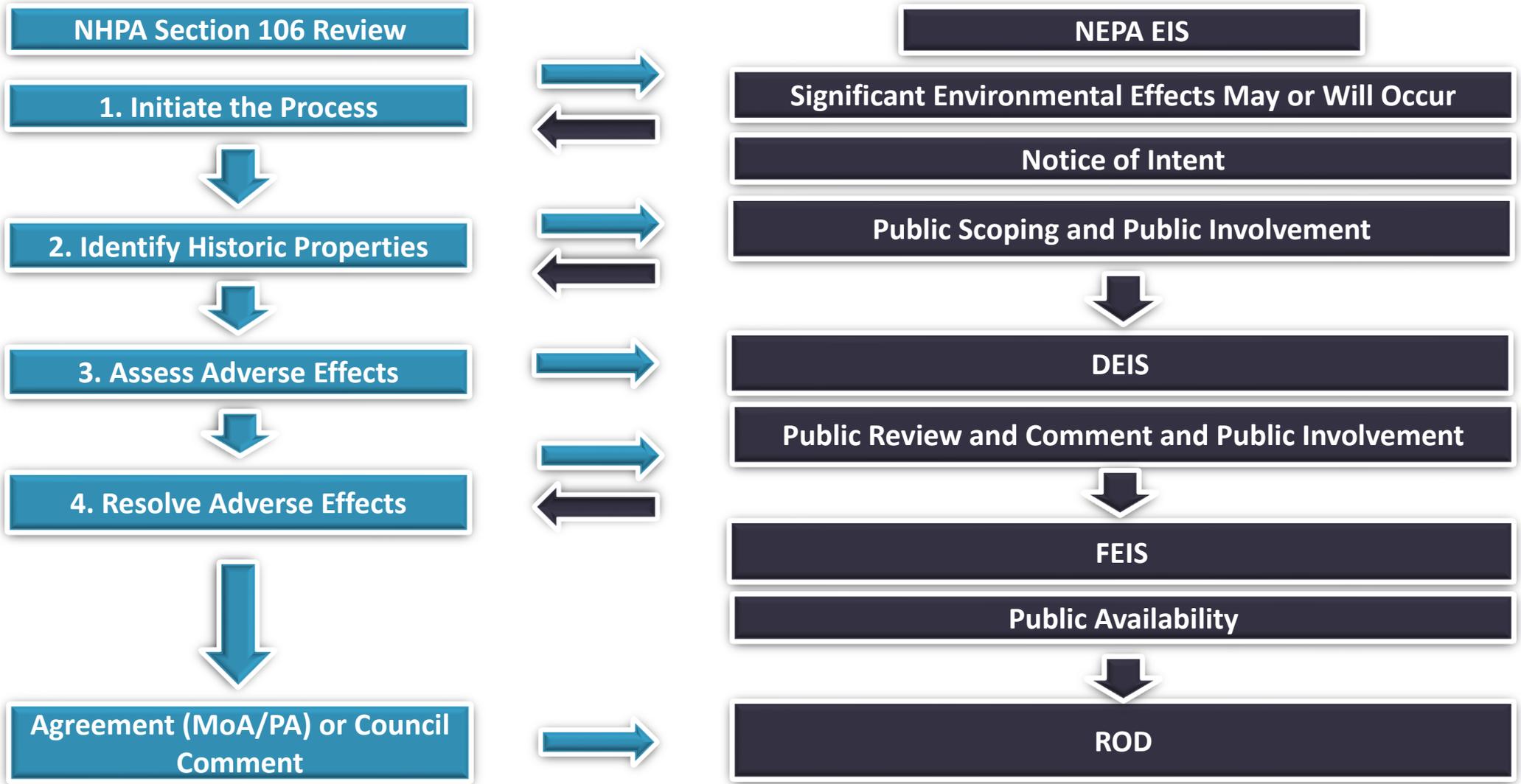


NEPA Substitution for the NHPA Section 106 Review

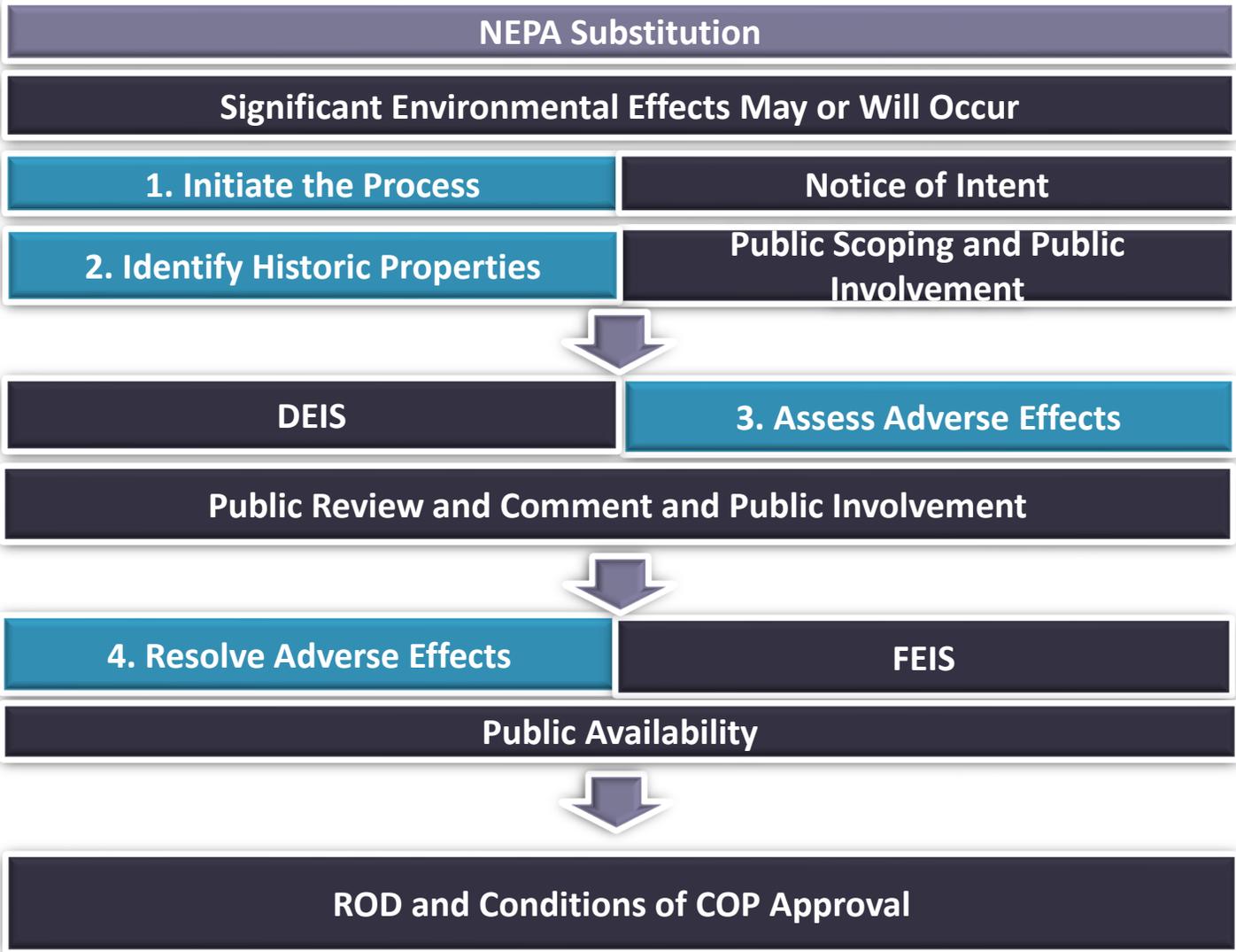
An agency official may use the process and documentation required for the preparation of NEPA documents (EA/FONSI or an EIS/ROD) to comply with NHPA Section 106 if the following conditions are met:

- The agency must notify the SHPO(s) and the ACHP, and THPO(s) if any portion of the APE is on tribal lands, per 36 CFR 800.16(x), that it intends to substitute
- The agency must identify consulting parties in a manner consistent with Section 800.3(f).
- The agency must identify historic properties and assess effects on them in a manner consistent with § 800.4 through 800.5.
- The agency must consult about the action's effects.
- The agency must develop alternatives and mitigation measures in consultation and describe these measures in its NEPA document (EA or EIS).

Standard Approach to NEPA EIS and NHPA: Concurrent & Parallel



NEPA Substitution for the NHPA Section 106 Process



NEPA Substitution: BOEM EIS Process

COP Submittal



- Prior to COP submittal, BOEM will request that lessees include proposals to avoid, minimize, and/or mitigate identified adverse effects to historic properties in the COP

Public Scoping



- Include language in NOI that BOEM intends to use NEPA substitution
- Send letter to SHPO(s), THPO(s), and ACHP **notifying** them of NEPA substitution
- **Identify consulting parties** prior to NOI and using the NEPA scoping process
- Discuss potential adverse effects with consulting parties and specifically inform them that the scoping process is the time to propose alternatives and additional mitigation measures that might avoid, minimize, or mitigate any adverse effects

Draft Environmental Impact Statement



- **Identify historic properties and assess the effects** of the undertaking using lessee's cultural resource submissions and incorporate information into DEIS
- Incorporate **Finding of Effect** into DEIS
- **Develop and refine, with consulting parties, measures to avoid, minimize, or mitigate any adverse effects** and describe them in the DEIS and MOA, if needed
- Invite **NHPA consulting parties** to participate in NEPA public meetings **to discuss findings in DEIS and to comment on the DEIS** through NEPA public comment process

Final Environmental Impact Statement



- Address public/consulting party comments about identification of historic properties, assessment of adverse effects, and measures to resolve adverse effects
- **Include finalized measures to avoid, minimize, or mitigate adverse effects in the Final EIS**

Record of Decision



- Incorporate measures to avoid, minimize, and/or mitigate adverse effects to historic properties within the ROD as binding

BOEM NEPA SUBSTITUTION EIS PROCESS



NEPA Substitution for NHPA Section 106 Review: Benefits

NEPA substitution is part of a multi-faceted approach suitable to BOEM's program needs. NEPA substitution has the following major benefits:

- Allows for a more holistic approach to government-to-government consultations with Tribes
- Section 106 and NEPA reviews will be better synchronized
- Ensures public involvement and comment solicitation for Section 106-related findings and determinations



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June 14, 1:00 p.m. ET

**Overseeing Offshore Wind
from Design to
Decommissioning**

June 29, 1:00 p.m. ET

**Worker Safety in Offshore
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