



August 1, 2025  
Department of Defense  
Office of the Assistant to the Secretary of Defense for Privacy, Civil Liberties, and Transparency  
Regulatory Directorate  
4800 Mark Center Drive, Mailbox #24, Suite 05F16  
Alexandria, VA 22350-1700

**Re: Comments on Navy Interim Final Rule - National Environmental Policy Act Procedures**  
RIN 0703-AB31 | 32 CFR Part 775

On behalf of the Alliance for Tribal Clean Energy, we submit these comments regarding the Navy’s July 3, 2025 interim final rule rescinding 32 CFR Part 775 to align with new Department of Defense, Navy NEPA procedures. The Alliance works to advance Tribal energy sovereignty and clean energy development while ensuring cultural heritage is protected and federal trust responsibilities are upheld. We recognize the Navy’s stated rationale that this rescission is primarily procedural; however, even procedural revisions can significantly impact how the Navy fulfills its federal trust responsibility and consultation obligations to Tribal Nations and how NEPA processes intersect with Tribal-led environmental stewardship and energy initiatives. These comments respond to the Navy’s request for input on the rationale for revisions, retention of categorical exclusions, emergency procedures, and broad regulatory updates.

**I. Tribal Sovereignty in Military NEPA Actions**

The rationale for rescinding Navy-specific procedures must not come at the expense of Tribal sovereignty or cultural resource protections. Military readiness and national security obligations can and must coexist with the federal trust responsibility. We respectfully disagree with the Navy’s determination under Executive Order 13175<sup>1</sup> that this rule has “no substantial effect on Indian Tribal Governments.” Changes to NEPA procedures directly shape how and when Tribal consultation occurs, and thus implicate EO 13175.

Meaningful Tribal consultation and thorough cultural resource identification are not check-box exercises, they are foundational to meeting federal obligations under Executive Order 13175 and DoD Instruction 4710.02.<sup>2</sup> These processes require both adequate resourcing and sufficient lead time to ensure that affected Tribal Nations can participate fully and that cultural landscapes are properly documented. When NEPA processes are overly streamlined or rushed, there is a real risk that consultation will be compressed or underfunded, resulting in the inadvertent disturbance of sacred sites, burial grounds, and other irreplaceable cultural resources.

To avoid these harms, Navy NEPA procedures must mandate early, pre-NEPA cultural mapping that is conducted in collaboration with affected Tribes. This proactive step ensures that sacred and cultural resources are identified before alternatives are developed or categorical exclusions are considered. Embedding this requirement at the front end of project planning aligns with Section 106 of the National

---

<sup>1</sup> *Executive Order* No. 13175, “Consultation and Coordination with Indian Tribal Governments,” 65 *Fed. Reg.* 67249 (Nov. 9, 2000).

<sup>2</sup> U.S. Department of Defense. *DoD Instruction 4710.02: DoD Interactions with Federally Recognized Tribes*. Washington, DC: U.S. Department of Defense, September 24, 2018.



Historic Preservation Act<sup>3</sup> and reflects the Department of Defense’s own cultural resource management policy<sup>4</sup>, which emphasizes early coordination and avoidance of adverse impacts. Integrating early Tribal cultural review will help the Navy comply with the Fiscal Responsibility Act’s statutory timelines while ensuring that later litigation or delays due to inadequate consultation are avoided, consistent with Executive Order 14154.

## **II. Categorical Exclusions Limits and Tribal-Specific Use**

Expanded or retained Categorical Exclusions (CEs) must not be used to bypass consultation or disregard cultural sites. The Navy should prohibit CEs for any training, construction, or operational activity with potential effects on sacred sites, burial grounds, or ancestral landscapes, including those located off-reservation. Formal Tribal agreement should be required before applying CEs in culturally sensitive areas. In addition, the Navy should create Tribal-beneficial CEs to support Tribal-led clean energy and infrastructure projects on adjacent or jointly managed lands where Navy actions or permitting are involved, while ensuring cultural protections are not compromised. No CE should be used until a prior cultural survey and Tribal consultation confirm there will be no impact to cultural resources, consistent with CEQ’s extraordinary circumstances provisions. Additionally, the Navy must provide transparent public justification for the use of CEs in military training or land management actions and ensure that CE policies actively support Tribal energy sovereignty initiatives in alignment with cultural preservation. In implementing any CE, the Navy must also ensure actions meet the “major Federal action” threshold at 42 U.S.C. § 4336e and apply extraordinary circumstances review consistent with 40 CFR 1501.4(b) whenever Tribal cultural or historic properties may be impacted.

## **III. Emergency Procedures Protecting Cultural Resources in Urgent Actions**

Emergency military NEPA actions must incorporate strong and enforceable protections for Tribal cultural resources. Immediate Tribal notification and meaningful consultation are essential for any emergency action that has the potential to impact sacred sites, ancestral landscapes, or other cultural resources. Even under compressed timelines, the Navy must fully maintain compliance with Section 106 of the National Historic Preservation Act and the Native American Graves Protection and Repatriation Act (NAGPRA)<sup>5</sup>, consistent with 36 CFR § 800.12 and 25 U.S.C. § 3002(d).<sup>6</sup>

These legal obligations do not lapse during emergencies and must be treated as integral to the Navy’s mission readiness and planning processes. Following any emergency action, the Navy must conduct a thorough post-emergency review in collaboration with affected Tribal Nations, ensuring that mitigation measures are implemented to address cultural impacts and prevent recurrence. Integrating these safeguards affirms the federal trust responsibility and reinforces that even in urgent circumstances, the protection of Tribal heritage remains a legal and moral imperative.

---

<sup>3</sup> United States Code. *National Historic Preservation Act*. 54 U.S.C. § 306108 (2014).

<sup>4</sup> U.S. Department of Defense. *DoD Instruction 4715.16: Cultural Resources Management*. Washington, DC: U.S. Department of Defense, September 18, 2018.

<sup>5</sup> 25 U.S.C. § 3002(d)

<sup>6</sup> *Code of Federal Regulations*. Title 36, “Protection of Historic Properties: Emergency Situations,” § 800.12 (2023); *United States Code*. 25 U.S.C. § 3002(d) (2021).



#### **IV. Sacred Landscapes, TEK, and Co-Management**

The Department of Defense’s NEPA procedures must be designed to ensure that military activities do not unintentionally erase or damage Tribal heritage. Navy NEPA regulations should explicitly include protections for off-reservation cultural landscapes and privately owned ancestral sites whenever a federal action, funding decision, or permit triggers a review.

The Navy should also formally recognize Tribal Traditional Ecological Knowledge (TEK) as a source of best available science and create clear pathways for co-management agreements that allow Tribes and the military to share stewardship of cultural and environmental resources affected by military operations. This co-stewardship approach is equally critical for Tribal-led clean energy initiatives that overlap with Navy lands or environmental planning areas.

In addition, we recommend that the Navy incorporate the principles of Articles 11 and 12 of the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP)<sup>7</sup>, which affirm the protection of Indigenous cultural heritage and sacred sites, aligning Navy policy with U.S. commitments to uphold international Indigenous rights standards.

#### **V. Section 106 and NAGPRA Protections Under Streamlined Navy NEPA**

Navy NEPA revisions must explicitly state that Section 106 and NAGPRA obligations are fully preserved and cannot be waived under streamlined, categorical, or emergency procedures. Early cultural review is critical to avoid inadvertent disturbance of burial grounds and sacred sites. Even if NEPA is “purely procedural,” as the Supreme Court emphasized in *Seven County Infrastructure Coalition v. Eagle County*,<sup>8</sup> the Navy’s NEPA process is where these substantive protections are operationalized. Streamlining cannot dilute those obligations.

#### **Conclusion**

National defense priorities must be balanced with the enduring federal trust and treaty obligations to Tribal Nations. The Navy’s NEPA framework must protect sacred sites, cultural landscapes, and Tribal sovereignty while maintaining efficiency in mission readiness. These protections are not obstacles to national security, they are legal and moral duties that uphold the government-to-government relationship and the cultural survival of the First Peoples of this land. Ensuring these safeguards is also essential to supporting Tribal-led clean energy and infrastructure development that align with cultural preservation, environmental stewardship, and long-term defense resilience.

We respectfully request that the Department of the Navy and the Department of Defense hold a dedicated Tribal consultation session before finalizing the Department-wide NEPA procedures to ensure Tribal Nations are treated as co-equal decision-makers in actions that impact their lands and heritage. We further request that these recommendations be fully incorporated into the final DoD NEPA procedures to safeguard Tribal heritage, codify protections for sacred and cultural landscapes, and uphold the United States’ trust and treaty responsibilities in every stage of the environmental review process.

---

<sup>7</sup> United Nations General Assembly, *United Nations Declaration on the Rights of Indigenous Peoples*, G.A. Res. 61/295, U.N. Doc. A/RES/61/295 (Sept. 13, 2007), arts. 11–12.

<sup>8</sup> *Seven County Infrastructure Coalition v. Eagle County*, 145 S. Ct. 1497 (2025).



With respect and in service to Tribal Nations,

A handwritten signature in black ink that reads "Chéri A. Smith". The signature is written in a cursive style with a large, looping initial "C".

Chéri A. Smith (*Mi'kmaq*)  
President & CEO  
**Alliance for Tribal Clean Energy**

[www.tribalcleanenergy.org](http://www.tribalcleanenergy.org) | [policy@tribalcleanenergy.org](mailto:policy@tribalcleanenergy.org) | 1629 K Street, NW | Washington, DC 20006