

GAO Highlights

Highlights of GAO-20-466T, a testimony before the Subcommittee for Indigenous Peoples of the United States, Committee on Natural Resources, House of Representatives

Why GAO Did This Study

Federal agencies are required in certain circumstances to consult with tribes on infrastructure projects and other activities—such as permitting natural gas pipelines—that may affect tribal natural and cultural resources. According to the National Congress of American Indians, federal consultation with tribes can help to minimize potential negative impacts of federal activities on tribes' cultural resources.

The Secretary of Homeland Security has waived federal cultural resource laws that generally require federal agencies to consult with federally recognized tribes to ensure expeditious construction of barriers along the southern U.S. border.

This testimony discusses examples of (1) federal laws and regulations that apply to Native American cultural resources and (2) factors that impact the effectiveness of federal agencies' tribal consultation efforts. It is based on reports GAO issued from July 2018 through November 2019 related to federal laws that apply to Native American cultural resources, tribal consultation for infrastructure projects, and border security. It also includes additional information about the consultation requirements in these cultural resource laws and regulations.

What GAO Recommends

GAO recommended in March 2019 that 17 federal agencies take steps to improve their tribal consultation practices. The agencies generally agreed and one agency has implemented the recommendation.

View GAO-20-466T. For more information, contact Anna Maria Ortiz at (202) 512-3841 or ortiza@gao.gov.

February 26, 2020

NATIVE AMERICAN ISSUES

Examples of Certain Federal Requirements That Apply to Cultural Resources and Factors That Impact Tribal Consultation

What GAO Found

Examples of federal laws and regulations that apply to Native American cultural resources include:

- **The Native American Graves Protection and Repatriation Act (NAGPRA).** In August 2018, GAO reported that NAGPRA prohibits the intentional removal from, or excavation of, Native American cultural items from federal or tribal lands unless a permit has been issued and other requirements are met. NAGPRA and its implementing regulations contain provisions to address both the intentional excavation and removal of Native American cultural items as well as their inadvertent discovery on federal and tribal lands.
- **Section 106 of the National Historic Preservation Act (NHPA).** In March 2019, GAO reported that section 106 of the NHPA and its implementing regulations require federal agencies to consult with Indian tribes when agency "undertakings" may affect historic properties—including those to which tribes attach religious or cultural significance—prior to the approval of the expenditure of federal funds or issuance of any licenses.

In March 2019, GAO reported that tribes and selected federal agencies identified a number of factors that impact the effectiveness of consultation on infrastructure projects, based on GAO's review of the comments on consultation submitted by 100 tribes to federal agencies in 2016 and GAO's interviews with officials from 57 tribes and 21 federal agencies. Examples of these factors include:

- **Agency consideration of tribal input.** Sixty-two percent of the 100 tribes that provided comments to federal agencies in 2016 identified concerns that agencies often do not adequately consider the tribal input they collect during consultation when making decisions about proposed infrastructure projects.
- **Maintaining tribal contact information.** Officials from 67 percent of the 21 federal agencies in GAO's review cited difficulties obtaining and maintaining accurate contact information for tribes, which is needed to notify tribes of consultation opportunities.

GAO also found that the 21 agencies in GAO's review had taken some steps to facilitate tribal consultation. For example:

- Eighteen agencies had developed systems to help notify tribes of consultation opportunities, including contact information for tribal leaders or other tribal officials.
- Five agencies' tribal consultation policies specify that agencies are to communicate with tribes on how tribal input was considered.