



March 2021

# NATIVE AMERICAN CULTURAL RESOURCES

Improved Information  
Could Enhance  
Agencies' Efforts to  
Analyze and Respond  
to Risks of Theft and  
Damage



A Century of Non-Partisan Fact-Based Work

# GAO@100 Highlights

Highlights of [GAO-21-110](#), a report to the Committee on Indian Affairs, U.S. Senate

## Why GAO Did This Study

Federal laws prohibit the theft and damage of Native American cultural resources, such as pottery, tools, and sacred objects, on federal and Indian lands. Federal agencies help protect these resources by attempting to prevent theft and damage and by investigating and prosecuting such crimes. These agencies include the Department of Agriculture's U.S. Forest Service; the Department of the Interior's Bureau of Indian Affairs, Bureau of Land Management, U.S. Fish and Wildlife Service, and National Park Service; the U.S. Army Corps of Engineers; and the Tennessee Valley Authority.

GAO was asked to review these agencies' efforts. This report examines (1) approaches selected federal agencies have taken to prevent and detect theft and damage; and (2) factors that have hindered agencies' efforts to prevent, investigate, and prosecute incidents of theft and damage. GAO analyzed data from seven federal agencies, reviewed agency documents, and interviewed agency officials and representatives of Native American tribes.

## What GAO Recommends

GAO is making seven recommendations that each agency take steps to identify and obtain information to enhance their ability to analyze and respond to risks to Native American cultural resources. The agencies generally concurred with the recommendations.

View [GAO-21-110](#). For more information, contact Anna Maria Ortiz at (202) 512-3841 or [ortiza@gao.gov](mailto:ortiza@gao.gov).

March 2021

## NATIVE AMERICAN CULTURAL RESOURCES

### Improved Information Could Enhance Agencies' Efforts to Analyze and Respond to Risks of Theft and Damage

#### What GAO Found

Seven federal agencies that GAO reviewed have taken a variety of approaches to help prevent and detect the theft and damage of Native American cultural resources on federal and Indian lands that may contain such resources. These agencies' approaches included conducting public awareness programs, installing physical protection measures (see photo), and monitoring sites with electronic surveillance equipment. For example, the Bureau of Land Management has partnered with a tribe to host an event in Colorado to remove graffiti and address vandalism on canyon walls and rock art and increase public awareness about the importance of protecting these and other Native American cultural resources.

#### A National Park Service Sign in Arizona Aims to Prevent Theft and Damage



Source: GAO. | [GAO-21-110](#)

Agency officials cited various factors hindering their efforts to prevent, investigate, and prosecute incidents of theft and damage to Native American cultural resources. These factors included resource constraints and limitations with data to support decision-making. For example, officials from all seven agencies said that funding and staff constraints limit their capacity to implement costly prevention measures, such as shore stabilization or physical surveillance. In addition, officials from four of the seven agencies said that not being able to readily access incident data hindered their ability to decide where to focus prevention measures. Officials from three agencies said that limited data on the location and condition of archeological sites hindered their ability to investigate incidents of theft and damage. To address risks in protecting Native American cultural resources, given constrained resources, agencies need sufficient information to support decisions and target efforts. Taking steps to obtain such information would provide agencies with a more informed basis for allocating resources to mitigate the greatest risks to Native American cultural resources. For example, agencies could identify ways to facilitate easier retrieval and analysis of the location and condition of Native American cultural resources to better align available resources with high-priority sites when considering where to implement protective measures.

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## Abbreviations

AHPA	Archeological and Historic Preservation Act of 1974
ARPA	Archaeological Resources Protection Act of 1979
BIA	Bureau of Indian Affairs
BLM	Bureau of Land Management
Corps	U.S. Army Corps of Engineers
DCA	Departmental Consulting Archeologist
FBI	Federal Bureau of Investigation
Forest Service	U.S. Forest Service
FWS	Fish and Wildlife Service
IMARS	Incident Management, Analysis, and Reporting System
Interior	U.S. Department of the Interior
Justice	Department of Justice
LEIMARS	Law Enforcement and Investigations Management Attainment Reporting System
LEMIS	Law Enforcement Management Information System
NAGPRA	Native American Graves Protection and Repatriation Act
Park Service	National Park Service
TVA	Tennessee Valley Authority

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March 4, 2021

The Honorable Brian Schatz  
Chairman  
The Honorable Lisa Murkowski  
Vice Chairman  
Committee on Indian Affairs  
United States Senate

Native American cultural resources have long been targeted by individuals seeking to excavate and steal items for their personal collections or to sell.<sup>1</sup> Native American cultural resources are nonrenewable, irreplaceable, and often extremely fragile, and disturbing sites where those resources are located can damage or destroy the archeological context that would facilitate the understanding of their cultural significance and historical uses of resources found at the site.<sup>2</sup> Some of these resources also have a direct cultural link to modern-day Native American communities who live or whose ancestors lived on the lands. While cultural and religious practices vary, tribes may consider some items at these sites to be sacred or have other profound significance and thereby consider the theft or damage of these items to be detrimental to the preservation of their culture and traditions.

Several federal agencies manage or administer publicly accessible federal and Indian lands that contain Native American cultural

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<sup>1</sup>For the purposes of this report, we use the term “Native American cultural resources” to collectively refer to archaeological resources, as defined by the Archaeological Resources Protection Act of 1979 (ARPA), that are of Native American origin, as well as Native American cultural items, as defined by the Native American Graves Protection and Repatriation Act (NAGPRA). ARPA defines archaeological resources as material remains of past human life or activities that are of archeological interest and at least 100 years old. These items may include pottery, baskets, weapons, structures, paintings, or carvings. NAGPRA defines Native American cultural items as human remains, funerary objects, sacred objects, and objects of cultural patrimony.

<sup>2</sup>We use the standardized federal government spelling of archeology throughout the report, except in titles and direct references to ARPA, where the term is spelled archaeology.

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resources.<sup>3,4</sup> These agencies help protect these resources by attempting to prevent theft and damage and investigating such crimes on the land they manage. These agencies include the Departments of Agriculture, Defense, and the Interior, as well as the Tennessee Valley Authority (TVA). Other federal agencies play a role in enforcing federal criminal prohibitions on the theft and damage of Native American cultural resources. For example, the Federal Bureau of Investigation (FBI) investigates potential crimes, and the Department of Justice (Justice) prosecutes federal crimes. Despite federal agencies' efforts to protect Native American cultural resources—which includes preventing, detecting, investigating, and prosecuting theft and damage—individuals continue to engage in illegal activity with potentially significant effects on Native American communities. For example, in 2017, an investigation by the U.S. Fish and Wildlife Service (FWS) and the U.S. Army Corps of Engineers (Corps) resulted in the prosecution and sentencing of seven individuals in federal district court for excavating and removing archeological resources, without a permit, from an Indian burial mound on Corps property along the Tennessee-Tombigbee Waterway in Mississippi in 2014.<sup>5</sup>

You asked us to examine how federal agencies address the theft and damage of Native American cultural resources on federal and Indian lands. This report examines (1) approaches selected federal agencies have taken to help prevent and detect the theft and damage of Native American cultural resources; (2) what is known about the number and outcomes of incidents of theft and damage of Native American cultural resources; and (3) factors that have hindered agencies' efforts to prevent,

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<sup>3</sup>For purposes of this report, we define federal lands to mean lands which are owned and administered by the United States as part of the national park system, national wildlife refuge system, or the national forest system as well as all other lands the fee title to which is held by the United States, other than lands on the Outer Continental Shelf and lands which are under the jurisdiction of the Smithsonian Institution, and any land other than tribal lands which are controlled or owned by the United States, including lands selected by but not yet conveyed to Alaska Native corporations and groups organized pursuant to the Alaska Native Claims Settlement Act of 1971.

<sup>4</sup>For purposes of this report, we define Indian lands to mean lands of Indian tribes or individual Indians which are held in trust by the United States or subject to a restriction against alienation imposed by the United States, all lands within the exterior boundaries of Indian reservations, and all dependent Indian communities.

<sup>5</sup>All seven individuals entered into plea agreements and were sentenced to imprisonment for varying amounts of time or 5 years of probation. The seven individuals also were collectively ordered to pay over \$150,000 in restitution for damages.

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investigate, and prosecute incidents of theft and damage of Native American cultural resources.

For this review, we identified seven federal agencies with responsibilities for managing and administering federal and Indian lands where cultural resources, including those of Native American origin, can be found.<sup>6</sup> They include the U.S. Forest Service (Forest Service) within the Department of Agriculture; the Corps within the Department of Defense;<sup>7</sup> the Bureau of Indian Affairs (BIA), the Bureau of Land Management (BLM), FWS, and the National Park Service (Park Service) within the Department of the Interior (Interior); and the TVA. To examine approaches federal agencies have taken to help prevent and detect the theft and damage of Native American cultural resources, we reviewed agency documents, such as annual performance reports. We interviewed headquarters cultural resource and law enforcement officials from each agency to obtain information about the approaches taken to help prevent and detect theft and damage of Native American cultural resources.<sup>8</sup> Specifically, in our interviews, we discussed examples of approaches taken, the relative benefits of different approaches, and the factors considered when selecting approaches. We also obtained corroborating documents, such as written descriptions of approaches and photographs. We summarized information obtained and grouped the approaches into several categories.

To examine what is known about the number and outcomes of incidents of theft and damage of Native American cultural resources, we obtained and analyzed law enforcement data on incidents of theft and damage of Native American cultural resources on federal or Indian lands identified by BIA, BLM, FWS, Forest Service, Park Service, and TVA for fiscal years 2009 through 2018. These data were the most recently available data at the start of our review. We did not obtain data from the Corps because Corps officials said they partner with local or other federal agency law

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<sup>6</sup>Six of the federal agencies manage the majority of federal lands where Native American cultural resources may be located. In addition, Interior's Bureau of Indian Affairs is responsible for the administration and management of nearly 55 million surface acres of land held in trust for American Indians, tribes, and Alaska Natives that may also contain Native American cultural resources.

<sup>7</sup>We did not include other departments within the Department of Defense because federal lands they manage are generally not widely accessible to the public.

<sup>8</sup>Some tribes have assumed responsibility, pursuant to statute, for law enforcement on their land from the Bureau of Indian Affairs. We did not interview tribal cultural resource and law enforcement officials for this engagement because we focused our review on federal agencies.



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enforcement to investigate such incidents and do not track these data. We requested data on incidents involving violations of the criminal provisions of the Archaeological Resources Protection Act of 1979 (ARPA) and the Native American Graves Protection and Repatriation Act (NAGPRA). In addition, we requested data on incidents involving the theft or damage of Native American cultural resources recorded as violations of other federal statutes prohibiting the theft or damage of government property. Federal agencies are not required to track which incidents of theft or damage involve Native American cultural resources. Therefore, their data systems—designed to track incidents and manage investigations more broadly—often did not facilitate easy identification of cases involving Native American cultural resources. To identify specific cases of theft or damage involving Native American cultural items, some agency officials conducted a record-level review using their professional judgment.<sup>9</sup> We also obtained and analyzed data from the FBI regarding its investigations of theft and damage incidents for the same period. To examine outcomes, we obtained data from Justice on cases that agencies referred for prosecution from fiscal years 2009 through 2018.<sup>10</sup>

We assessed data reliability by reviewing agency documents on the data systems, such as code books and data dictionaries; conducting data testing, including identifying missing data, duplicates, and any other anomalies in the data; and interviewing agency officials about system quality controls and to reconcile data anomalies. We found the data to be sufficiently reliable for the purposes of our reporting objectives, with some qualifications that we discuss in the report. For example, because the agency data systems were designed for broader purposes and captured different types of information, the data are not suitable for reporting aggregate incidents or trends across agencies.

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<sup>9</sup>BIA, FWS, and TVA conducted a record-level review and identified which records were violations of ARPA—specifically those involving resources of Native American origin, where possible—or NAGPRA, and which were violations of other statutes, where possible. BLM and Park Service did not conduct a record-level review because agency officials said it would be labor-intensive to do so. The Forest Service conducted a record-level review, but Forest Service officials said they could not reliably determine the number of incidents that specifically involved Native American cultural resources.

<sup>10</sup>Specifically, we requested data on matters that involved violations of the criminal provisions of ARPA and NAGPRA. Justice officials advised that requesting matters involving other types of violations, such as theft or damage of government property, would result in an excessive number of unrelated cases and that there was no feasible way to filter the results to reasonably align with our scope. We reviewed the cases involving ARPA violations to determine whether they involved items of Native American origin and excluded any cases that did not.

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To identify factors that have hindered agencies' efforts to prevent, investigate, and prosecute incidents of theft or damage of Native American cultural resources, we conducted semistructured interviews with headquarters agency officials, including cultural resources staff and law enforcement officers, about such factors. We determined the categories of hindering factors we included in the semistructured interview based on earlier interviews with agency officials and background document review. When available, we obtained agency documents to corroborate information from the semistructured interviews. In some cases, headquarters officials obtained and provided additional information from their field offices. One GAO analyst summarized and analyzed agencies' responses regarding the factors that pose risks to their efforts to prevent, investigate, and prosecute incidents of theft and damage of Native American cultural resources, and another analyst reviewed and verified the summary of responses. We also obtained information on any steps the agencies had taken to address the risks these factors posed. We determined that the risk assessment component of internal control was significant to this review, along with the principles that management should identify, analyze, and respond to risks related to achieving the defined objectives.<sup>11</sup>

We conducted this performance audit from August 2018 to March 2021 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

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## Background

Native American cultural resources have a long history of being excavated and stolen from federal and Indian lands and added to private or institutional collections or sold for profit, according to federal agency officials and representatives of tribal associations. This practice may involve disturbing or destroying graves, ceremonial sites, and archeological sites that have historical, cultural, and scientific importance.<sup>12</sup> In December 2016, noting that tribal cultural items continue

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<sup>11</sup>GAO, *Standards for Internal Control in the Federal Government*, [GAO-14-704G](#) (Washington, D.C.: Sept. 2014).

<sup>12</sup>We use the term "archeological site" to refer to locations on federal lands that contain archeological resources.

to be removed from the possession of Native Americans and sold in violation of federal and tribal laws, Congress passed a resolution condemning the theft, illegal possession or sale, transfer, and export of tribal cultural items.<sup>13</sup> The resolution also found that an increase in the investigation and successful prosecution of violations of ARPA and NAGPRA is necessary to deter illegal theft and sale of tribal cultural items. Theft and damage of Native American cultural resources on federal and Indian lands can be prosecuted under these or other laws. Table 1 shows the criminal provisions of the Antiquities Act of 1906, ARPA, and NAGPRA that address the theft and damage of Native American cultural resources.

**Table 1: Examples of Laws That Can Be Used to Address the Theft and Damage of Native American Cultural Resources**

Year law enacted	Law	Theft and damage provisions
1906	Antiquities Act of 1906	Criminalizes, among other things, the appropriation, excavation, or destruction, without permission, of any historic or prehistoric ruin or monument or any other object of antiquity situated on land owned or controlled by the federal government.
1979	Archaeological Resources Protection Act of 1979 (ARPA)	Prohibits, among other things, the removal or damage of archaeological resources from public <sup>a</sup> or Indian <sup>b</sup> lands without a permit.  Prohibits trafficking in archaeological resources, the excavation or removal of which is wrongful under federal, state, or local law. Specifically, ARPA prohibits the sale, purchase, exchange, transport, receipt, or offer to sell, purchase, or exchange any archaeological resources excavated or removed without authorization from public or Indian lands. ARPA also prohibits the trafficking in interstate or foreign commerce of archaeological resources, the excavation, removal, sale, purchase, exchange, transportation, or receipt of which is wrongful under state or local law.  Imposes criminal penalties for knowingly violating these prohibitions.
1990	Native American Graves Protection and Repatriation Act (NAGPRA)	Prohibits the intentional removal from, or excavation of, Native American cultural items from federal <sup>c</sup> or tribal lands <sup>d</sup> unless an ARPA permit has been issued and other requirements are met.  Prohibits the sale, purchase, use for profit, or transport for sale or profit of any Native American cultural items, including funerary objects, sacred objects, and objects of cultural patrimony, obtained in violation of the act.  Imposes criminal penalties for knowingly violating this prohibition.

Source: GAO analysis of relevant laws. | GAO-21-110

Notes: Native American cultural resources collectively refer to archaeological resources, as defined by ARPA, that are of Native American origin, and Native American cultural items, as defined by NAGPRA.

<sup>a</sup>ARPA defines public lands as lands which are owned and administered by the United States as part of the national park system, national wildlife refuge system, or the national forest system as well as all

<sup>13</sup>H. Con. Res. 122, 114th Cong. (2016) (enacted). The resolution defines tribal cultural item to have the same meaning as cultural item in the Native American Graves Protection and Repatriation Act (25 U.S.C. § 3001(3)).

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other lands the fee title to which is held by the United States, other than lands on the Outer Continental Shelf and lands which are under the jurisdiction of the Smithsonian Institution.

<sup>b</sup>ARPA defines Indian lands as lands of Indian tribes, or individual Indians, which are either held in trust by the United States or subject to a restriction against alienation imposed by the United States, except for any subsurface interests in lands not owned or controlled by an Indian tribe or an individual Indian.

<sup>c</sup>NAGPRA defines federal lands as any land other than tribal lands which are controlled or owned by the United States, including lands selected by but not yet conveyed to Alaska Native Corporations and groups organized pursuant to the Alaska Native Claims Settlement Act of 1971.

<sup>d</sup>NAGPRA defines tribal lands as all lands within the exterior boundaries of any Indian reservation, all dependent Indian communities, and any lands administered for the benefit of Native Hawaiians pursuant to the Hawaiian Homes Commission Act, 1920 and section 4 of Pub. L. No. 86-3.

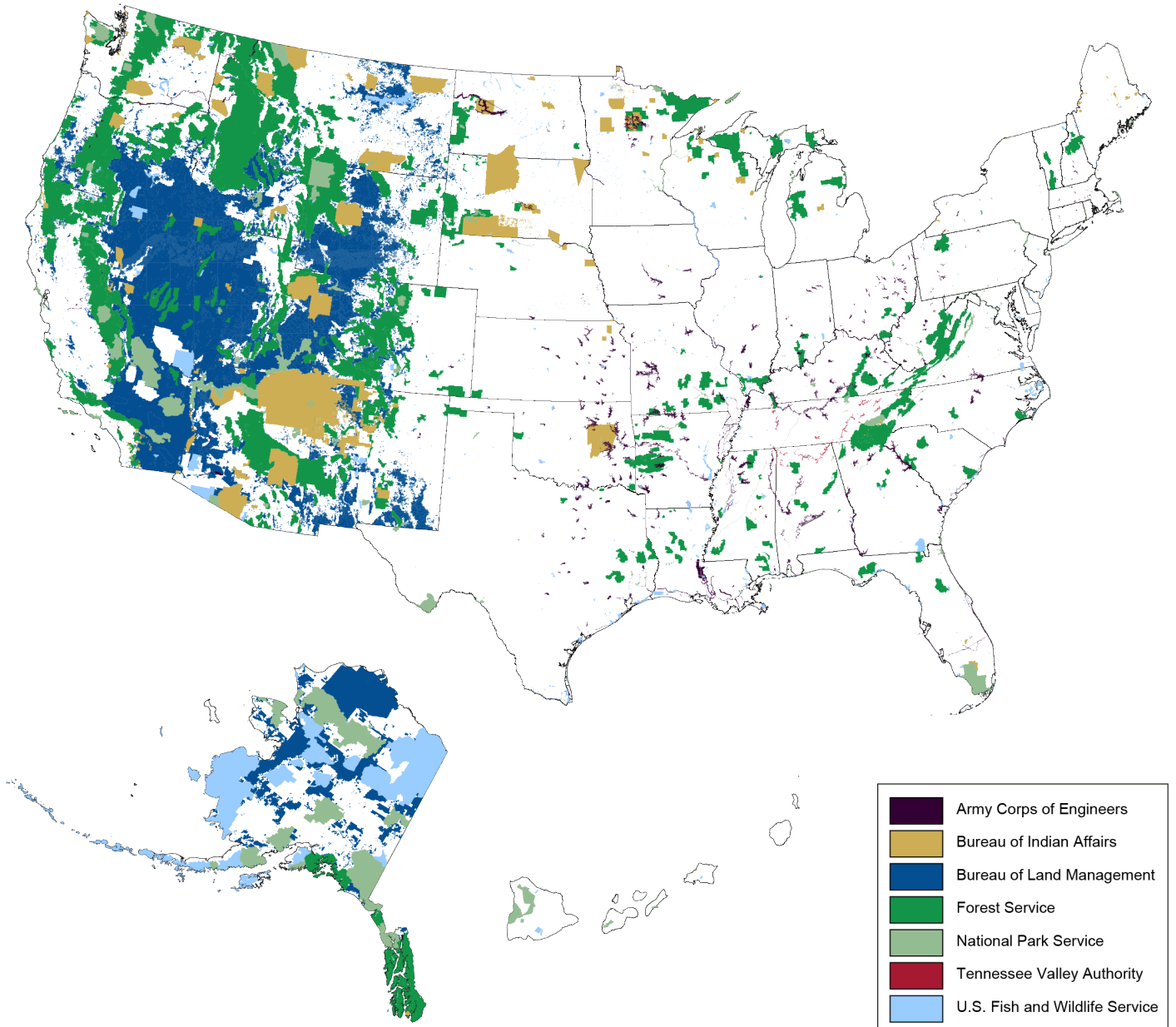
The federal agencies that manage or administer federal and Indian lands from which Native American cultural resources may be stolen or damaged include the following:

- **BIA.** BIA is responsible for the administration and management of nearly 55 million surface acres of land held in trust for American Indians, tribes, and Alaska Natives.
- **BLM.** BLM manages over 245 million acres of land for a wide range of uses, such as grazing, energy development, mining, and recreation. In addition, BLM works to protect certain natural resources by managing national monuments and wilderness areas.
- **Corps.** Among other things, the Corps manages approximately 8 million acres of federal land for the support of commercial navigation, management of aquatic ecosystems, for flood risk management projects, and for other purposes.
- **Forest Service.** Forest Service manages approximately 193 million acres of land as national forests and national grasslands. It manages these lands for multiple uses, such as harvesting timber; mining; grazing; recreation; and the protection of natural resources, such as wilderness areas and wild and scenic rivers.
- **FWS.** FWS manages land for the conservation and protection of fish; wildlife; plants; and habitats, such as wetlands. FWS manages approximately 150 million acres of land and an additional 650 million acres of marine monuments, where it conducts law enforcement in coordination with other agencies.
- **Park Service.** The Park Service manages approximately 85 million acres to protect natural and cultural resources. Park Service lands are comprised of parks, national monuments, national scenic and historic trails, and wild and scenic rivers.

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- **TVA.** As a government corporation created by statute, TVA manages approximately 293,000 acres and 11,000 miles of shoreline to maximize public enjoyment, flood control, navigation, power production, and economic growth. TVA receives its funding through sales of electricity and does not receive federal appropriations.

Figure 1 shows the locations of land managed or administered by these federal agencies.

**Figure 1: Lands Managed or Administered by Selected Federal Agencies**



Sources: Census Bureau, U.S. Geological Service, and U.S. Army Corps of Engineers. | GAO-21-110

Note: Bureau of Indian Affairs (BIA) land includes (1) Indian lands, as defined in the Archaeological Resources Protection Act of 1979 (ARPA) and for which ARPA assigns management authority to the Secretary of the Interior; and (2) reservations, because BIA enforces the Native American Graves

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Protection and Repatriation Act (NAGPRA) there. BIA land does not include Native Hawaiian Homelands, which are tribal lands under NAGPRA, because BIA does not enforce NAGPRA there.

To prevent, detect, and investigate the theft and damage of Native American cultural resources on these lands, federal agencies generally rely on their own cultural resources staff and law enforcement officers.<sup>14</sup> Cultural resource staff are responsible for a range of activities that include identifying, preserving, and managing cultural resources, such as conducting surveys and developing inventories.<sup>15</sup> Law enforcement officers patrol federal and Indian lands; conduct routine investigations; and respond to illegal activities, including violations of laws prohibiting the theft and damage of Native American cultural resources. With the exception of the Corps, each agency maintains a records management system in which law enforcement officers record and track incidents of suspected illegal activity, including possible violations of laws.<sup>16</sup>

Table 2 provides information on the total number of cultural resource staff, law enforcement officers, and acres of land managed by selected federal agencies responsible for implementing ARPA and NAGPRA on federal and Indian lands.

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<sup>14</sup>Agencies included in our review have law enforcement officers, except for the Corps, which relies on local law enforcement entities or other federal agencies to investigate incidents on land it manages, according to Corps officials.

<sup>15</sup>Generally, under ARPA, information concerning the nature and location of any archaeological resource may not be made available to the public. However, disclosure of such information is permissible if the federal land manager determines that it would further the purposes of ARPA and not create a risk of harm to such resources or to the site where such resources are located. 16 U.S.C. §470hh(a).

<sup>16</sup>Specifically, BIA, BLM, and the Park Service maintain data in Interior's Incident Management, Analysis, and Reporting System (IMARS). Because of its unique mission enforcing laws to protect fish, wildlife, plants, and habitats, FWS maintains its data in another database, known as the Law Enforcement Management Information System (LEMIS). The Forest Service maintains its law enforcement data in its Law Enforcement and Investigations Management Attainment Report System (LEIMARS). TVA maintains its data in a web-based, commercially available database system. The Corps does not have a law enforcement division and, as such, does not maintain a law enforcement database.

**Table 2: Number of Acres of Lands Managed, Cultural Resource Staff, and Law Enforcement Officers for Selected Federal Agencies Responsible for Implementing the Archaeological Resources Protection Act of 1979 (ARPA) and the Native American Graves Protection and Repatriation Act (NAGPRA)**

Agency	Number of acres managed	Number of cultural resource staff, fiscal year 2018	Number of law enforcement officers, fiscal year 2018
Bureau of Indian Affairs (BIA)	55,000,000	9	317
Bureau of Land Management (BLM)	245,000,000	232	260
National Park Service (Park Service)	85,000,000	193	1,355
Tennessee Valley Authority (TVA)	293,000 <sup>a</sup>	6	56 <sup>b</sup>
U.S. Army Corps of Engineers (Corps)	8,000,000	141	N/A <sup>c</sup>
U.S. Fish and Wildlife Service (FWS)	150,000,000 <sup>d</sup>	19	231
U.S. Forest Service	193,000,000	358	417

Sources: Agency data. Alternative sources indicated in table notes, where applicable. | GAO-21-110

- <sup>a</sup>TVA manages an additional approximately 508,000 acres that are inundated with water or at power generation facilities.
- <sup>b</sup>Two of TVA's law enforcement officers are specifically dedicated to ARPA enforcement, according to agency officials.
- <sup>c</sup>The Corps does not have a law enforcement function; instead it relies on local law enforcement entities; other federal agencies, such as FWS; or the Department of Justice to investigate incidents on land it manages.
- <sup>d</sup>FWS conducts law enforcement in an additional approximately 650 million acres of marine monuments in coordination with the U.S. Coast Guard, National Oceanic and Atmospheric Administration, and others.

Other federal agencies also play a role with respect to archeological resources located on federal and Indian lands. For example, the FBI investigates some incidents referred by other federal agencies, tribal organizations, and other sources, generally through its Art Crime Team. In addition, the FBI and federal agency law enforcement divisions may refer matters to Justice, where Assistant U.S. Attorneys in the relevant district determine whether to prosecute or decline referred cases. Further, to help coordinate federal archeological efforts government-wide—which Interior collectively refers to as the Federal Archeology Program—the Secretary of the Interior established the position of the Departmental Consulting Archeologist (DCA) within the Park Service in 1927. The DCA coordinates the National Strategy for Federal Archeology,<sup>17</sup> coordinates the collection of information on federal archeological activities and related

<sup>17</sup>Interior first established the National Strategy for Federal Archeology in 1990 and updated it in 1999. It highlights areas for inclusion in public archeological endeavors such as conservation, preservation, protection, and study of archeology sites; the incorporation of public outreach activities in archeological projects; and the sharing of archeological reports, data, and research.



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government-wide challenges, issues periodic reports to Congress,<sup>18</sup> provides guidance and standards for the departmental and federal archeology programs, and provides programmatic technical assistance to other federal agencies.

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## Federal Agencies Use a Variety of Approaches to Help Prevent and Detect the Theft and Damage of Native American Cultural Resources

Federal agencies use various approaches to help prevent and detect the theft and damage of Native American cultural resources. In doing so, agencies often collaborate with tribes, state and local governments, and community members and volunteers to better protect archeological resources, including Native American cultural resources, on federal and Indian lands. By collaborating with such groups, federal agencies are better able to leverage resources to protect items on federal lands, according to agency officials and documents. Specifically:

- **Agencies conduct public awareness programs to help prevent and detect the theft and damage of Native American cultural resources.** All seven agencies in our review conduct public awareness programs, as ARPA requires. These programs aim to promote appreciation of the importance of archeological resources and the need to preserve them, as well as awareness that the theft and damage of cultural resources is illegal. For example, BIA officials told us that they have used billboards along highways across the Southwest (see fig. 2), articles in local newspapers and outdoor magazines, and materials provided with hunting tags to raise awareness about theft and damage at archeological sites and provide information about how the public can report such activities.

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<sup>18</sup>Section 5(c) of the Archeological and Historic Preservation Act of 1974 (AHPA) required the Secretary of the Interior to report annually to relevant congressional committees on, among other things, the scope and effectiveness of federal agencies' archeological and historic programs. Section 13 of ARPA requires a separate component of the section 5(c) report to report on the activities carried out under ARPA. Section 5(c) of the AHPA was repealed in 1996. However, according to attorneys with Interior's Office of the Solicitor, the ARPA section 13 reporting requirement has not been repealed.

**Figure 2: Bureau of Indian Affairs Billboard in Arizona Providing Information for how to Report Theft or Damage at Archeological Sites**



Source: Bureau of Indian Affairs. | GAO-21-110

In addition, agencies have coordinated with tribes and other entities to hold public outreach events. For instance, the Park Service collaborates with the Ocmulgee Mounds Association to host an annual celebration event in Georgia to raise public awareness of Native American heritage, arts, and culture. The annual event, which began in 1991, is now one of the largest Native American gatherings in the Southeast, according to the association. In 2019, over 24 federally recognized tribes participated in the activities, and over 15,000 people attended the celebration. Similarly, in 2017, 2018, and 2019, BLM partnered with a tribe and local organizations to host an event to remove graffiti and address acts of vandalism on canyon walls and rock art in Rough Canyon, near Grand Junction, Colorado, while providing educational opportunities to learn about the importance of local archeological resources.<sup>19</sup>

- **Agencies use physical protection measures, including camouflage, fencing, trail closures, and traffic diversion.** Six of

<sup>19</sup>BLM has partnered with the Ute Indian Tribe of the Uintah and Ouray Reservation in northeastern Utah; the Colorado Archaeological Society; and Mt. Garfield Middle School, near Grand Junction, Colorado.

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the seven agencies in our review have installed, in some instances, physical protection measures to help prevent theft and damage of Native American cultural resources. In describing their use of protective measures, Forest Service officials we interviewed cited a collaborative effort with local volunteers to repair a protective shelter to display a collection of historic canoes belonging to the Sauk-Suiattle Indian Tribe at the Mount Baker-Snoqualmie National Forest in Washington State. In another example, TVA officials undertook shore stabilization efforts at Guntersville Reservoir in Jackson County, Alabama, to protect archeological sites, using stones to prevent soil erosion that could expose cultural resources, making them vulnerable to theft and damage (see fig. 3). However, Park Service officials we interviewed stated that in some instances, implementing physical protection measures may not be the most effective approach to protecting Native American cultural resources and are not always practical for large areas of managed land. These officials also said that physical protection measures sometimes attract additional attention to archeological sites.

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**Figure 3: Tennessee Valley Authority Shore Stabilization Project, Gunterville Reservoir, Alabama**



Source: Tennessee Valley Authority. | GAO-21-110

- **Agencies conduct site monitoring, using physical and video surveillance, to help prevent and detect theft and damage of Native American cultural resources.** All seven agencies in our review rely on physical or video surveillance to help protect archeological sites and detect theft and damage that may threaten these resources. TVA officials we interviewed stated that in addition to

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the video surveillance of sites, the agency established a volunteer program, the Thousand Eyes Volunteer Site Stewardship program, to train volunteers to conduct physical surveillance of archeological sites, including sites where Native American cultural resources may be present. Since its establishment in 2015, the program has trained 45 volunteers (see fig. 4). In addition, Corps officials told us that cultural resources staff physically monitor both accessible and inaccessible sites on land the Corps manages. These officials also stated that the Corps relies on game and trail cameras, as well as collaboration with tribes, to monitor sites in areas where theft and damage has been known to occur.

**Figure 4: Volunteers Participating in the Thousand Eyes Volunteer Site Stewardship Program**



Source: Tennessee Valley Authority. | GAO-21-110

Note: Through its Thousand Eyes Volunteer Site Stewardship Program, the Tennessee Value Authority trains volunteers to conduct physical surveillance of archeological sites, including sites where Native American cultural resources may be present.

- **Agencies provide training for cultural resources staff and law enforcement officers.** Officials with all seven agencies stated that staff received classroom and field training to facilitate the protection of archeological sites on lands managed by their agency. For example, Park Service officials we interviewed said the agency organized a 3-day Archaeological Violation Investigation class and a series of classes focusing on ARPA for cultural resource professionals. Officials from four agencies also stated that their law enforcement

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officer trainees received some training on ARPA, and other laws that aim to protect archeological resources, through the Federal Law Enforcement Training Center.<sup>20</sup> In addition, some agencies offer training opportunities to local law enforcement officers and coordinate with local partners to provide additional training to meet investigative needs in specific areas, according to agency officials. For example, to help address the frequency of theft and damage-related activity in the southwest United States, BIA's regional archeologist in its Western Region office collaborated with tribal personnel and a retired federal agent to develop a 2-day ARPA orientation course. Developed in 2018, this course is designed to educate federal and tribal cultural resources staff and law enforcement officers on how to recognize and investigate potential incidents of theft or damage.

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## Agency Data Show Hundreds of Incidents of Theft and Damage of Native American Cultural Resources and 77 Cases Referred for Prosecution

Agency investigations data indicate that there were hundreds of incidents of theft and damage of Native American cultural resources from fiscal years 2009 through 2018. However, not all incidents involving theft or damage of Native American cultural resources may be captured in the data, according to agency officials and our review of the data. Federal agencies are not required to track which incidents of theft or damage involve Native American cultural resources. Therefore, their data systems—designed to track incidents and manage investigations more broadly—often did not facilitate easy identification of cases involving Native American cultural resources. During the same period, Justice's data indicate that agencies referred for prosecution 77 cases involving violations of ARPA or NAGPRA.

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## Agency Data Show Hundreds of Incidents of Theft and Damage but May Not Capture the Full Extent of Such Incidents

Over fiscal years 2009 through 2018, data from BIA, FWS, TVA, and the FBI indicated several hundred incidents involving possible violations of the criminal provisions in ARPA and NAGPRA.<sup>21</sup> The FBI and TVA, for example, identified other incidents involving theft or damage of Native American cultural resources that were investigated as violations of other laws and regulations by conducting additional data queries or manually conducting a review of records in their law enforcement data. Because

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<sup>20</sup>The Federal Law Enforcement Training Center, within the Department of Homeland Security, provides career-long training to law enforcement professionals in areas common to all law enforcement officers, such as firearms, driving, tactics, investigations, and legal training.

<sup>21</sup>As of August 2020, Corps officials said the agency has been involved in about 12 ongoing investigations and prosecutions in the last 2 years as they partner with local or other federal agencies on incidents involving theft and damage of Native American cultural resources.

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there are variations in how the agencies' databases are structured and organized, and each agency has different practices for recording incidents of suspected illegal activities, information from the databases is generally not directly comparable.

Our analysis of specific agency data for fiscal years 2009 through 2018, except where otherwise noted, showed the following:

- **BIA.** BIA data showed 54 incidents involving theft and damage of Native American cultural resources for fiscal years 2015 through 2018. The data identified two of these incidents as ARPA violations and the remaining 52 incidents as involving cultural or archeological resources but not associated with a violation of a specific law. BIA did not provide data for fiscal years 2009 through 2014 because it would require reviewing paper files in each regional office before aggregating the data at the headquarters level, which would be prohibitively labor-intensive. Examples of incidents documented in BIA's law enforcement database include the destruction and removal of items at a known archeological site and illegal internet auctions involving Native American cultural resources.
- **FWS.** FWS identified data specific to Native American cultural resources and sites from both of its law enforcement offices. Specifically, its Office of Law Enforcement data showed 98 incidents related to violations of ARPA or NAGPRA. In addition, its Office of Refuge Law Enforcement data showed 46 incidents involving Native American cultural resources—of which 10 were investigated as ARPA violations, and 36 were investigated as violations of agency regulations, such as the regulations prohibiting trespassing on or removing objects of antiquity from a national wildlife refuge.<sup>22</sup> Examples included subjects found searching for items at a Native American archeological site and unauthorized excavation at a Native American archeological site.
- **TVA.** TVA data showed 77 ARPA incidents and 18 incidents involving other laws. TVA law enforcement investigated non-ARPA cases as theft of government property or violations of other laws. Examples of incidents reported in TVA's data include observing individuals diving for cultural resources in TVA-managed bodies of water or digging in river or stream banks in search of cultural resources.

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<sup>22</sup>In this data set, a single violation could be associated with multiple statutes or regulations.

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- **FBI.** FBI data showed 29 investigations—of which 24 involved violations of ARPA or NAGPRA and, in some cases, other laws, while one was investigated as a violation of the Bald and Golden Eagle Protection Act.<sup>23</sup> The FBI did not provide details of charges for four cases. Investigations resulted from referrals of incidents from tribes, other federal agencies, individuals, or other sources.<sup>24</sup>

Agency data, however, may not capture the full extent of incidents involving the theft and damage of Native American cultural resources for several reasons. Specifically:

- **Agency law enforcement data systems are used for broad purposes.** Agencies' databases we reviewed are used for broad law enforcement purposes. Each agency uses its system primarily to record and manage investigations but may also use it to analyze crime data, assist with staffing decisions, and inform resource allocation and budgeting. Officials from several agencies told us that their agency law enforcement data systems were designed to assist and track investigations broadly and not to readily identify incidents involving theft and damage of Native American cultural resources, since there is no requirement to do so. For example:
  - Forest Service data show a total of 599 incidents involving violations of ARPA or Forest Service regulations for fiscal years 2009 through 2018. However, after conducting a record-level review in response to our questions, Forest Service officials said they were not able to reliably identify the number of incidents that specifically involved Native American cultural resources, given the information available in the records.
  - Similarly, BLM and Park Service data for this period included about 1,500 incidents and 1,900 incidents, respectively, involving violations of ARPA. However, BLM and Park Service officials were not able to identify readily which incidents involved archeological resources of Native American origin.
  - In addition, the Forest Service and Park Service were not able to identify incidents involving NAGPRA violations. Park Service officials told us that this is because the agency's law enforcement

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<sup>23</sup>16 U.S.C. § 668(a). The Bald and Golden Eagle Protection Act prohibits, among other things, possession of eagle feathers unless allowed by permit. An FBI official told us that, when a Native American cultural resource includes eagle feathers in its construction, it can be less burdensome to prove a violation of this law than to prove a violation of ARPA or NAGPRA.

<sup>24</sup>The FBI tracks investigations.



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data system does not specifically record whether incidents involve Native American items or potential NAGPRA violations. To identify all incidents related to Native American cultural resources, BLM and Park Service officials said they would need to review each case file manually, which would be labor-intensive.

- **Some data were not readily available.** BIA did not have data regarding theft and damage violations involving Native American cultural resources for fiscal years 2009 through 2014 because the agency previously kept paper records and did not migrate these data to the new system, according to a BIA official. One BIA official told us that identifying relevant incidents before 2015 would require officials at the agency's regional offices to review paper records for those years, assemble the data, and provide the data to headquarters officials to compile.

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### Seventy-Seven Cases Involving ARPA or NAGPRA Were Referred for Prosecution in Fiscal Years 2009 through 2018

For fiscal years 2009 through 2018, according to Justice's data, federal agencies referred 77 cases of ARPA and NAGPRA violations involving Native American cultural resources to Justice. The referred cases had a total of 111 defendants. BLM, the FBI, Forest Service, Park Service, and TVA referred 70 percent of the cases to Justice. According to Justice's data, of the cases referred for prosecution

- 16 cases involving 23 defendants were declined, primarily due to lack of sufficient evidence;
- six cases involving six defendants remained active as of July 2019;
- one case went to a jury trial, and the defendant was found not guilty;
- four cases involving four defendants were dismissed; and
- 50 cases involving 77 defendants resulted in guilty pleas and sentencing.<sup>25</sup>

An Assistant U.S. Attorney we interviewed told us that ARPA and NAGPRA cases are difficult to prosecute. For example, these laws require proving that the item was taken knowingly and that it occurred after enactment of the laws. Further, prosecutors must prove that the Native American cultural resource was taken from certain lands.<sup>26</sup> In

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<sup>25</sup>These 77 defendants may have been charged with multiple counts of violating ARPA, NAGPRA, or both, and pled guilty to at least one count.

<sup>26</sup>Specifically, for ARPA prosecutions, the archaeological resources must be taken from public or Indian lands, and for NAGPRA prosecutions, the Native American cultural items must be taken from federal or tribal lands.

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addition, an Assistant U.S. Attorney said that other crimes, such as murder or assault, are typically higher priorities than property crimes, such as the theft or damage of Native American cultural resources. Justice officials said it is difficult to determine the number of cases of theft or damage to Native American cultural resources prosecuted under statutes other than ARPA or NAGPRA, such as statutes prohibiting the theft or destruction of government property, because there is not a means to determine which of these incidents may also have involved Native American cultural resources.

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## Various Factors Hinder Agencies' Efforts to Prevent, Investigate, and Prosecute the Theft and Damage of Native American Cultural Resources

Agency officials we interviewed identified various factors that hinder their ability to prevent the theft and damage of Native American cultural resources, as well as their enforcement efforts to investigate and prosecute such incidents. Specifically, they cited three factors that hinder their prevention and enforcement efforts: resource constraints, competing agency priorities, and limitations with data to support decision-making. In addition, officials said that severe weather can hinder their ability to prevent theft and damage to Native American cultural resources. Further, the cost and complexity of prosecuting archeological incidents, as well as the availability of training, can hinder their investigation and prosecution efforts. While some agencies have taken steps to mitigate certain factors, none have developed a plan to comprehensively address factors that hinder their prevention and enforcement efforts.

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## Factors That Hinder Efforts to Prevent Theft and Damage

- **Resource constraints.** Officials from all seven agencies that manage or administer federal and Indian lands said resource constraints hinder their ability to implement protective measures aimed at preventing theft and damage at archeological sites. For example, BLM officials stated that they rely less on physical protection and site monitoring than other methods to protect Native American cultural resources because those methods tend to be more costly and labor-intensive, respectively. In addition, TVA officials stated that its primary method for physical protection—shoreline stabilization using rock—is expensive both to construct and maintain. Therefore, many sites remain unprotected, creating a backlog of sites for the agency to reprioritize for physical protection as resources become available. To mitigate these constraints, agencies have engaged in various efforts, including collaborating with other entities. For example, BLM coordinated with state government officials in Nevada to train tribal members to monitor vulnerable archeological sites, preserve archeological items, and identify vandalized sites.
- **Competing agency priorities.** Agency officials from five of the seven federal agencies in our review told us that competing agency priorities

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have hindered agency cultural resources staff's ability to identify and evaluate archeological sites and determine the protective measures that may be necessary to prevent theft and damage. Specifically, these officials said that their agency's cultural resources staff spend much of their time conducting consultations required under section 106 of the National Historic Preservation Act.<sup>27</sup> As a result, their staff have less time available to identify archeological sites and evaluate the need for protective measures. For example, BLM officials said that their cultural resource specialists dedicate almost 90 percent of their time to conducting section 106 consultations. Additionally, Forest Service officials we interviewed said that the number of section 106 consultations their staff has conducted has increased annually, from 1,265 in fiscal year 2016 to 3,626 in fiscal year 2018.

- **Limitations with data to support decision-making.** Officials from four of the seven federal agencies also said that not being able to readily access law enforcement data hindered their ability to analyze the need for and make decisions about where to focus their prevention measures. For example, a Park Service official said that its law enforcement data system does not allow easy retrieval and analysis of data on theft and damage-related incidents at archeological sites to assess the number of such incidents in national parks or trends in theft and damage. In addition, TVA officials said that not having the ability to generate a report of the sites with recorded incidents of theft and damage makes it challenging to easily determine which sites the agency should prioritize for prevention measures. As a result, TVA officials said that they manually review reports and data for individual sites when setting priorities for site protection, which is time-consuming and has limited TVA's ability to monitor sites.
- **Severe weather events.** Officials from six of the seven agencies identified the increasing severity and frequency of weather events as a hindrance to their efforts to protect Native American cultural resources. For example, BIA and BLM officials said that increased wildfires and subsequent erosion caused by heavy rains threaten cultural resources by exposing sites that were once buried and

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<sup>27</sup>Under section 106 of the National Historic Preservation Act and its implementing regulations, federal agencies must take into account the effects of undertakings, such as any activity requiring a federal permit or approval or funded in whole or in part by a federal agency, on historic properties through consultation between agency officials, Indian tribes, and others. Historic properties are any prehistoric or historic district, site, building, structure, or object included in, or eligible for inclusion in, the National Register of Historic Places and include properties of traditional religious and cultural importance to an Indian tribe that meet the National Register criteria.

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undetected by the public. In addition, TVA officials told us that due to recent year-round high water levels, they have been unable to safely and effectively monitor some sites, leaving them at risk for undetected theft and damage.

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## Factors That Hinder Efforts to Investigate and Prosecute Theft and Damage

- **Resource constraints.** Agency officials from six of the seven agencies that manage or administer federal and Indian lands said that resource constraints—specifically, reductions in the number of law enforcement officers and the amount of land that law enforcement officers cover—have hindered their ability to detect and investigate instances of theft and damage. For example, FWS officials said that from fiscal year 2009 to fiscal year 2018, the number of law enforcement officers decreased from 441 to 231 officers. Park Service officials told us their agency also experienced a decrease from 1,451 officers to 1,355 in the same time period. Officials reported that these reductions make it difficult for law enforcement officers to investigate crimes on the vast tracks of land the agencies manage. For example, BLM officials stated that, on average, there is one law enforcement officer assigned to 1 million acres of managed land. FWS officials stated that each of their officers is responsible for overseeing an average of 5.2 million acres. In addition, Park Service officials said because of limited resources, it faces delays of up to a month to begin a detailed investigation of an incident site, which can impact the quality of evidence collection and the agencies' ability to develop a strong case for prosecution.
- **Competing agency priorities.** Officials from three of the seven agencies said that law enforcement officers often have other crimes to investigate that are higher priority, such as those involving the health and safety of individuals. For example, a BLM official from the Arizona state office told us that they prioritize drug crime investigations over theft and damage incidents in the Phoenix area. Similarly, an Assistant U.S. Attorney said that given their heavy caseloads, the prosecution of other cases, such as those involving violent crime, often take higher priority for prosecution than those involving violations of ARPA and NAGPRA.
- **Limitations with data to support decision-making.** Officials from three of the seven agencies said their ability to investigate incidents of theft and damage is hindered by having limited data on the location and condition of archeological sites on the land they manage. Specifically, agency officials said that many sites are unknown, and when they receive information about an alleged incident, they do not have sufficient information on the previous conditions of the site to know what resources may have been stolen or damaged or when the

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incident may have taken place. In response, some agencies have taken steps to improve data on archeological sites. For example, a BLM official said its cultural program made a geospatial database available to cultural resource staff that could help detect instances of theft and damage of archeological sites but that it is not yet available to law enforcement staff. Similarly, a TVA official told us that the agency is developing an information system that they expect to be operational by 2021, at the earliest.

- **Availability of training.** Officials from six of the seven agencies said the availability of training hindered their ability to prepare staff to investigate theft and damage-related activity. Officials we interviewed from three of these agencies said that a multiagency training program on archeological crimes that the Department of Homeland Security offered was an important resource for training law enforcement and cultural resource staff. However, a BLM official said that the Department of Homeland Security discontinued this training as of fiscal year 2020. According to the BLM official, this left the agency without federal training specific to ARPA violations for its law enforcement officers and staff archeologists. Officials from BIA, Park Service, and TVA said they have developed or are working to develop training for their staff.
- **Cost and complexity of prosecuting archeological incidents.** Justice officials and agency officials we interviewed from four of the seven agencies that manage federal lands said that it is difficult to prosecute cases under ARPA and NAGPRA and, therefore, prosecutors may be reluctant to take such cases. Further, prosecuting an ARPA or NAGPRA violation requires completion of damage assessments and use of expert witnesses, which add to the costs and complexity of prosecuting a case.

*Standards for Internal Control in the Federal Government* state that agencies should identify, analyze, and respond to risks related to achieving their defined objectives.<sup>28</sup> All seven of the agencies in our review that manage or administer federal and Indian lands have documented objectives regarding protecting cultural resources on those lands. However, to address risks, given constrained resources, agencies need sufficient information about the Native American cultural resources on the lands they administer or manage to better target their efforts. Specifically, federal agency officials told us that limited data for decision-making have hindered their ability to prevent and investigate incidents of

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<sup>28</sup>[GAO-14-704G](#).

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theft and damage. Taking steps to identify and obtain more complete and readily accessible information would provide agencies with a more informed basis for allocating constrained resources and managing competing priorities, as well as allow them to better target risks within their control. For example, agencies could identify the location and condition of vulnerable sites or facilitate easier retrieval and analysis of the number or trends of such incidents in order to better determine where to implement measures to prevent theft or damage. In addition, once agencies identify promising practices to address limited data for decision-making, they could share them with the DCA, in its government-wide coordinating role, to help other agencies in their efforts to protect Native American cultural resources.

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## Conclusions

Items of cultural and sacred significance to Native Americans remain the target of individuals seeking to steal items for their personal collections or to sell. Federal agency officials we interviewed identified several factors, such as resource constraints and problems accessing and analyzing law enforcement data, that hinder their efforts to prevent, investigate, and prosecute the theft and damage of Native American cultural resources. To effectively analyze and address risks to Native American cultural resources, agencies need information to support decision-making, such as the location and condition of archeological sites and numbers or trends of incidents of theft and damage. While some agencies have taken steps to address limited information, they need more complete and readily accessible information to determine how to better protect Native American cultural resources. Taking steps to identify and obtain such information will enhance agencies' ability to analyze and respond to risks and ensure that they are prioritizing their constrained resources to mitigate the greatest risks. As they identify promising practices for addressing limited information, agencies could, in turn, share these with Interior's DCA—who has historically played an important role in coordinating the federal archeological program, including collecting information on federal archeology activities and providing programmatic technical assistance—as a means of helping other agencies maximize their efforts.

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## Recommendations for Executive Action

We are making seven recommendations, one each to the Department of Agriculture, the Department of Defense, and TVA, and four recommendations to the Department of the Interior.

- The Secretary of Agriculture should direct the Chief of the Forest Service to take steps to identify and obtain the information needed to target its efforts for analyzing and addressing risks to Native American

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cultural resources and share any promising practices with the Departmental Consulting Archeologist. (Recommendation 1)

- The Assistant Secretary of the Army for Civil Works should direct the Chief of Engineers and the Commanding General of the U.S. Army Corps of Engineers to take steps to identify and obtain the information needed to target its efforts for analyzing and addressing risks to Native American cultural resources and share any promising practices with the Departmental Consulting Archeologist. (Recommendation 2)
- The Chief Executive Officer of the TVA should take steps to identify and obtain the information it needs to take steps to identify and obtain the information needed to target its efforts for analyzing and addressing risks to Native American cultural resources and share any promising practices with the Departmental Consulting Archeologist. (Recommendation 3)
- The Secretary of the Interior should direct the Director of BIA to take steps to identify and obtain the information needed to target its efforts for analyzing and addressing risks to Native American cultural resources and share any promising practices with the Departmental Consulting Archeologist. (Recommendation 4)
- The Secretary of the Interior should direct the Director of BLM to take steps to identify and obtain the information needed to target its efforts for analyzing and addressing risks to Native American cultural resources and share any promising practices with the Departmental Consulting Archeologist. (Recommendation 5)
- The Secretary of the Interior should direct the Director of FWS to take steps to identify and obtain the information needed to target its efforts for analyzing and addressing risks to Native American cultural resources and share any promising practices with the Departmental Consulting Archeologist. (Recommendation 6)
- The Secretary of the Interior should direct the Director of the Park Service to take steps to identify and obtain the information needed to target its efforts for analyzing and addressing risks to Native American cultural resources and share any promising practices with the Departmental Consulting Archeologist. (Recommendation 7)

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## Agency Comments and Our Evaluation

We provided a draft of this report to the Departments of Agriculture, Defense, Interior, Justice, and TVA for their review and comment. The Forest Service, responding on behalf of the Department of Agriculture, generally agreed with our findings and neither agreed nor disagreed with our recommendation. The Forest Service stated that it would create a workgroup to develop a corrective action plan to address our

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recommendation in coordination with the Department's Office of General Counsel. The Forest Service's written comments are reproduced in appendix I. The Department of Defense concurred with our recommendation and said that it would direct the Corps take steps to identify and obtain information that will enable the agency to target its efforts to address risks to Native American cultural resources. The Department of Defense's written comments are reproduced in appendix II. Interior, responding on behalf of BIA, BLM, FWS, and the Park Service, agreed with the findings and concurred with our recommendations. In its written comments, which are reproduced in appendix III, Interior described the actions each agency plans to implement in response to the recommendations. The Department of Justice declined to provide written comments. TVA agreed with our conclusions and stated that in addition to implementing our recommendation, the agency would continue to support program areas, such as shoreline stabilization, focused on the protection and management of Native American cultural resources on its land. TVA's written comments are reproduced in appendix IV. The Forest Service, Interior, Justice, and TVA also provided technical comments, which we incorporated as appropriate.

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As agreed with your offices, unless you publicly announce the contents of this report earlier, we plan no further distribution until 30 days from the report date. At that time, we will send copies of this report to the appropriate congressional committees; the Secretaries of the Departments of Agriculture, Defense, and the Interior; the Chief Executive Officer of the Tennessee Valley Authority; and the Attorney General. In addition, the report is available at no charge on the GAO website at <http://www.gao.gov>.



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If you or your staff members have any questions about this report, please contact me at (202) 512-3841 or [ortiza@gao.gov](mailto:ortiza@gao.gov). Contact points for our Offices of Congressional Relations and Public Affairs may be found on the last page of this report. GAO staff who made key contributions to this report are listed in appendix V.

A handwritten signature in black ink, appearing to read 'A. M. Ortiz', with a stylized flourish at the end.

Anna Maria Ortiz  
Director, Natural Resources and Environment

# Appendix I: Comments from the U.S. Department of Agriculture



Forest Service

Washington Office

1400 Independence Avenue, SW  
Washington, D.C. 20250

File Code: 1420  
Date:

Dr. Anna Maria Ortiz  
Director, Natural Resources and Environment  
U.S. Government Accountability Office  
441 G Street, N.W.  
Washington, D.C. 20548

Dear Dr. Ortiz:

The U.S. Department of Agriculture's (USDA) Forest Service appreciates the opportunity to respond to the U.S. Government Accountability Office (GAO) draft report "Native American Cultural Resources: Improved Information Could Enhance Agency Efforts to Analyze and Respond to Risks of Theft and Damage, GAO-21-110" dated January 2021.

The Department of Agriculture generally agrees with the GAO draft report and will create a workgroup to develop a corrective action plan to further review possibilities for additional information sharing, improvements to data collection, and to identify, evaluate, and protect Native American archaeological/sacred sites. The Department will also coordinate with the USDA Office of General Counsel to determine legal feasibility of options. If any promising practices are developed, the USDA's Forest Service will share them with the Departmental Consulting Archeologist, as recommended by GAO.

Thank you again for the opportunity to review and respond to the GAO draft report.

Sincerely,

VICTORIA CHRISTIANSEN  
Digitally signed by VICTORIA CHRISTIANSEN  
Date: 2021.01.26 16:00:56 -0500

VICTORIA CHRISTIANSEN  
Chief



Caring for the Land and Serving People

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# Appendix II: Comments from the U.S. Department of Defense



DEPARTMENT OF THE ARMY  
OFFICE OF THE ASSISTANT SECRETARY  
CIVIL WORKS  
108 ARMY PENTAGON  
WASHINGTON DC 20310-0108

January 12, 2021

Ms. Anna Maria Ortiz  
Director, Natural Resources and Environment  
U.S. Government Accountability Office  
441 G Street, NW  
Washington, D.C. 20548

Dear Ms. Ortiz,

This is the Department of Defense (DoD) response to the GAO Draft Report, GAO-21-110, 'NATIVE AMERICAN CULTURAL RESOURCES: Improved Information Could Enhance Agency Efforts to Analyze and Respond to Risks of Theft and Damage,' dated December 9, 2020 (GAO Code 102965).

The DoD appreciates the opportunity to review the GAO Draft Report. The DoD concurs with the GAO Recommendation 2 (See Enclosure).

My point of contact is Stacey Jensen at [stacey.m.jensen.civ@mail.mil](mailto:stacey.m.jensen.civ@mail.mil) or 703-695-6791.

Sincerely,

A handwritten signature in blue ink, appearing to read "R. James", is positioned above the typed name.

R.D. James  
Assistant Secretary of the Army  
(Civil Works)

Enclosure

**GAO Draft Report Dated December 9, 2020**  
**GAO-21-110 (GAO CODE 102965)**

**“NATIVE AMERICAN CULTURAL RESOURCES: Improved Information Could  
Enhance Agency Efforts to Analyze and Respond to Risks of Theft and Damage”**

**DEPARTMENT OF DEFENSE COMMENTS  
TO THE GAO RECOMMENDATION**

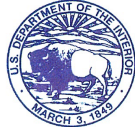
**RECOMMENDATION:** “The Assistant Secretary of the Army for Civil Works should direct the Chief of Engineers and Commanding General of the U.S. Army Corps of Engineers to take steps to identify and obtain the information needed to target its efforts for analyzing and addressing risks to Native American cultural resources and share any promising practices with the Departmental Consulting Archeologist.”

**DoD RESPONSE:** The DoD concurs with the GAO recommendation.

To address this recommendation, the Assistant Secretary of the Army directs the U.S. Army Corps of Engineers to take steps to identify and obtain information that will enable the agency to target its efforts for analyzing and addressing risk to Native American cultural resources. The U.S. Army Corps of Engineers will update its environmental stewardship database to collect information on whether cultural resources sites identified on its managed lands are Native American cultural resources. This would include tracking the number of Native American cultural resources identified and the number of Native American sites that require physical protection, monitoring, or have been subject to erosion or vandalism, etc. Currently, the database does not distinguish between Native American and other types of cultural resources. The update to the database can be accomplished by December 2021 and cultural resource surveys completed after this update will capture these data.

For previous cultural resources surveys, these data may be added using existing information from cultural resources survey reports. Some of this information is located in paper files and archives that may require additional time and resources to access. This effort is estimated to be completed by December 2023.

# Appendix III: Comments from the Department of the Interior



## United States Department of the Interior

OFFICE OF THE SECRETARY  
Washington, DC 20240

Anna Maria Ortiz  
Director, Natural Resources and Environment  
U.S. Government Accountability Office  
441 G Street, NW  
Washington, DC 20548

Dear Ms. Ortiz,

Thank you for providing the Department of the Interior (Department) an opportunity to review and comment on the draft Government Accountability Office (GAO) report entitled, *Native American Cultural Resources: Improved Information Could Enhance Agency Efforts to Analyze and Respond to Risks of Theft and Damage* (GAO-21-110). We appreciate GAO's review and feedback related to the variety of approaches taken to help prevent and detect the theft and damage of Native American cultural resources on federal and Indian lands.

The GAO issued four recommendations to the Department as part of its overall findings to improve these processes. The report contains one recommendation each for the Bureau of Land Management (BLM), Bureau of Indian Affairs (BIA), U.S. Fish and Wildlife Service (FWS), and National Park Service (NPS). Below is a summary of actions taken or planned to implement the recommendations.

**Recommendation 4: "The Secretary of the Interior should direct the Director of BIA to take steps to identify and obtain the information needed to target its efforts for analyzing and addressing risks to Native American cultural resources and share any promising practices with the Departmental Consulting Archeologist."**

**Response:** Concur. BIA agrees with the GAO's findings as it relates to Archaeological Resources Protection Act of 1979 (ARPA) and Native American Graves Protection and Repatriation Act (NAGPRA) compliance. The Office of Trust Services (OTS), Division of Natural Resources (DNR), Branch of Environmental and Cultural Resource Management (BECRM) is currently providing FY 2021 funding for an Archaeology Full Time Employee at each of the 12 BIA Regional Offices for the purposes of ensuring ARPA and NAGPRA compliance. These employees are tasked with developing and implementing a consistent methodology for the purposes of targeting bureau efforts for analyzing and addressing risks to Native American cultural resources and sharing any promising practices with the Departmental Consulting Archeologist.

**Recommendation 5: “The Secretary of the Interior should direct the Director of BLM to take steps to identify and obtain the information needed to target its efforts for analyzing and addressing risks to Native American cultural resources and share any promising practices with the Departmental Consulting Archeologist.”**

**Response:** Concur. The BLM will continue to require operational risk assessments to be conducted annually using the Law Enforcement Integrated Risk Rating Tool and the results will be integrated into the law enforcement planning processes.

The BLM will also update the Investigative Case Management System (ICMS) which will allow a specific resource to be designated when opening or updating an Archaeological Resource Protection Act (ARPA) investigation, such as Native American Cultural Resources. The data drawn will allow the BLM to generate reports based on location data and on all closed and adjudicated ARPA investigations. The results of the Native American cultural resources ICMS will be shared annually with the Departmental Consulting Archeologist.

**Recommendation 6: “The Secretary of the Interior should direct the Director of FWS to take steps to identify and obtain the information needed to target its efforts for analyzing and addressing risks to Native American cultural resources and share any promising practices with the Departmental Consulting Archeologist.”**

**Response:** Concur. The FWS acknowledges its responsibility to protect Native American cultural resources from risk that could lead to theft or damage; these are Trust resources whose protection transcends mission. The FWS will target its efforts to address the needs of these resources; sharing any promising practices with the BIA, the BLM, the NPS, and the Departmental Consulting Archeologist. To address this recommendation, the FWS will take the following actions:

- Convene a workshop between Federal Wildlife Officers and the FWS Cultural Resources staff identify high risk areas and techniques to improve communications.
- Finalize a process for assessing the condition of archaeological sites on the FWS lands.
- Enhance existing training to better focus on protection of cultural resources. Develop a training module on Archaeological Resources Protection Act for inclusion in Federal Wildlife Officer Basic Training curriculum.

**Recommendation 7: “The Secretary of the Interior should direct the Director of the Park Service to take steps to identify and obtain the information needed to target its efforts for analyzing and addressing risks to Native American cultural resources and share any promising practices with the Departmental Consulting Archeologist.”**

**Response:** Concur. The NPS acknowledges its responsibility to protect Native American cultural resources from risk that could lead to theft or damage. To that end, the NPS will assess the needs of these resources, sharing any promising practices with other Bureaus and the Departmental Consulting Archeologist (DCA). The NPS is committed to identifying and outlining the steps required to analyze and address the risks to Native American cultural resources under its purview. Several points of improvement were identified during the formulation of this GAO report and the NPS leadership have already begun coordinating with

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**Appendix III: Comments from the Department  
of the Interior**

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several stakeholders to complete further evaluation. Continued efforts are required to fully identify and analyze available information before any promising practices can be shared with the DCA. The NPS will communicate all promising practices to the DCA. To address this recommendation the NPS will:

- Increase the specificity of incident data surrounding the looting and vandalism of archeological resources on park lands. This will be formally integrated into internal controls processes.
- Improve internal communication, cooperation, and information sharing between the Cultural Resources, Partnerships, and Science directorate, specifically the Archeology Program; and the Visitor and Resource Protection directorate to identify high risk areas and facilitate Native American archeological site protection.

If you have any questions or need additional information, please contact the Internal Control and Audit Follow-up division of the Office of Financial Management at [DOI\\_PFM\\_ICAF@ios.doi.gov](mailto:DOI_PFM_ICAF@ios.doi.gov).

Sincerely,

**RACHAEL  
TAYLOR**  Digitally signed by  
RACHAEL TAYLOR  
Date: 2021.02.12  
10:46:40 -05'00'

Rachael S. Taylor  
Senior Advisor to the Secretary,  
Exercising the Delegated Authority  
of the Assistant Secretary - Policy,  
Management and Budget

# Appendix IV: Comments from the Tennessee Valley Authority



Tennessee Valley Authority, 400 West Summit Hill Drive, Knoxville, Tennessee 37902

January 20, 2021

Ms. Anna Maria Ortiz  
Director  
Natural Resources and Environment  
U.S. Government Accountability Office  
441 G Street N.W.  
Washington, D.C. 20548

Dear Ms. Ortiz:

We appreciate the opportunity to provide comments on draft report (GAO-21-110), *Native American Cultural Resources: Improved Information Could Enhance Agency Efforts to Analyze and Respond to Risks of Theft and Damage*, prepared by the Government Accountability Office.

The Tennessee Valley Authority (TVA) agrees with the conclusions of the draft report, but suggests the following revisions with respect to items applicable or unique to TVA. These corrections include:

- Under the subsection titled, Factors That Hinder Efforts to Prevent Theft and Damage/Resource Constraints, on page 24, the document provides: "TVA officials stated that fencing is expensive both to construct and to maintain." This statement is not accurate. While TVA has used fencing in the past, the agency has found this method of protection to be difficult to maintain. Fencing is not considered costly, just not effective to prevent theft and damage to cultural resources. TVA's primary method for physical protection of cultural resources is stabilization of the shoreline using rock riprap. This method is still used by TVA annually subject to the availability of funds. However, TVA is limited in how many sites it can protect each year because stabilization is an expensive method.
- Page 3 (GAO Highlights) of the document refers to fencing as a "costly prevention measure." If this is based on TVA's statements on fencing in the course of this audit, the reference to "fencing" should also be changed to "shoreline stabilization with riprap."
- Please direct the recommendation to TVA (page 28, third bullet) to its Chief Executive Officer who has been delegated authority by the TVA Board to implementation recommendations of this type.

In addition to the recommendations provided by the GAO, TVA will continue to support program areas focused on the protection and management of Native American cultural resources on its land. These programs include its Thousand Eyes Archaeological Outreach program, Archaeological Resource Protection Act Enforcement, and protection and stabilization of



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**Appendix IV: Comments from the Tennessee  
Valley Authority**

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Ms. Anna Maria Ortiz  
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sensitive resources along our shoreline (for example, TVA protected over 8000 feet of shoreline protecting archaeological sites in fiscal year 2020).

We respectfully request that these changes be made in the final report. If there are any questions, please direct them to Sarah Eason at 202-898-2950 or by email at [saeason@tva.gov](mailto:saeason@tva.gov).

Sincerely,



Susan Jacks on Behalf of Rebecca Tolene  
Vice President  
Environment

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# Appendix V: GAO Contact and Staff Acknowledgments

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## GAO Contact

Anna Maria Ortiz, (202) 512-3841 or [ortiza@gao.gov](mailto:ortiza@gao.gov).

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## Staff Acknowledgments

In addition to the individuals named above, Anne-Marie Fennell (Director), Casey L. Brown (Assistant Director), Jamie Meuwissen (Analyst-in-Charge), Dahlia Darwiche, John Delicath, Justin Fisher, Erik Kjeldgaard, and Jeanette Soares made key contributions to this report.

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