

# The National Historic Preservation Act

*As restoration efforts are underway on lands impacted by the Deepwater Horizon BP spill, federal agencies are responsible under the National Historic Preservation Act to consult with states, tribes and other interested parties concerning potential effects of restoration work on recognized historic resources. The process has many components.*

In 1966, Congress passed the National Historic Preservation Act, legislation intended to preserve historical and archaeological sites in the nation. The Act ensures that for any undertaking involving direct or indirect funding, permits or permissions by a federal agency, the federal government must consider the possible impacts on historic properties, whether on publicly held or privately held lands.

The 1966 Act created the Advisory Council on Historic Preservation, the National Register of Historic Places, the list of National Historic Landmarks, and the State Historic Preservation Offices. The Act was amended in 1969, 1976, 1980 and 1992; these amendments strengthened the Act, increasing the types of historic resources to be included and increasing protection for Native American and Native Hawaiian preservation efforts.

Section 106 of the Act mandates a review process for all federally funded and permitted projects that may impact sites listed on, or eligible for listing on, the National Register



Tom MacKenzie/FWS

*Pelicans nesting*

of Historic Places. Section 106 also requires consultation, especially with tribes, and gives oversight of historic properties statewide to each State Historic Preservation Office.

Any federal agency planning a project must identify the area of the project and any listed or eligible historic properties that may be impacted by the work, as well as evaluate the resource's eligibility or historic importance. The evaluation is provided to the State Historic Preservation Office, federally recognized Native American tribes, and other interested parties for their consultation. The parties may concur with the agency's assessment, but if the parties do not agree on the assessment of eligibility, the issue goes to the keeper of the National Register of Historic Places.

The agency then assesses the impact of its action on the historic resource, and returns to the State Historic Preservation Office and interested parties for consultation and concurrence. If the agency believes the project will not adversely affect eligible properties, it must provide supporting documentation. If a planned project may damage an eligible historic resource, the agency must consider alternative plans. If a project cannot avoid adverse

impacts, the agency must work with the State Historic Preservation Office, interested parties and the Advisory Council on Historic Preservation to develop a mitigation plan and products. If all concur, a memorandum of understanding is developed that outlines the details of the agreement. While Section 106 requires consultation, it does not require approval by a State Historic Preservation Office.

The National Historic Preservation Act, and Section 106 in particular, establish a process to ensure that all interested parties have the opportunity to comment on proposed federal or federally funded projects. Ensuring that states, tribes, and local communities are provided with information and the occasion to offer their commentary is often a lengthy process, one which has great value in enhancing citizen collaboration.

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