

BUT WAIT, THERE'S MORE...

ARPA Q & A



The Archaeological Resources Protection Act of 1979 (ARPA)

The Archaeological Resources Protection Act of 1979 (ARPA) was passed to protect a valuable limited resource, information about our shared past. Broadly speaking there are two aspects in the application of ARPA. The first is the lawful excavation and study of archaeological sites. The second is the illegal excavation or removal of an archaeological resource. The former stipulates requirements for issuance of a permit for an archaeological survey and/or excavation on federal or tribal lands. This ensures that data from archaeological resources is carefully collected and appropriately disseminated. The latter stipulates the procedures and penalties when an archaeological site has been disturbed. This provides disincentive for the destruction of data that might otherwise be lawfully collected.

Understanding the Terms

What is an "Archaeological Resource?"

As defined in the ARPA statute, an archaeological resource is ***" . . . any material remains of past human life or activities which are of archaeological interest ... at least 100 years of age"*** (16 USC 470bb(1)).

Okay, so what makes something "of archaeological interest?"

The term 'of archaeological interest' means ***"capable of providing scientific or humanistic understandings of past human behavior, cultural adaptation, and related topics through the application of scientific or scholarly techniques such as controlled observation, contextual measurement, controlled collection, analysis, interpretation and explanation"*** (36 CFR 296.3(a)(1) or 43 CFR 7.3(a)(1)).

Uh... alright, that's clear, but what's meant by "material remains?"

'Material remains' means ***"physical evidence of human habitation, occupation, use, or activity, including the site, location or context in which such evidence is found"*** (36 CFR 296.3(a)(2) or 43 CFR 7.3(a)(2)).

Could you provide some examples of material remains?

Certainly! Surface or subsurface structures, shelters, facilities, or features, such as; bedrock mortars, cairns, earthworks, fortifications, graves, kilns, middens, borrow pits, or canals; surface or subsurface artifact concentrations or scatters; whole or fragmentary tools, implements, containers, weapons and weapon projectiles, clothing, and ornaments, such as pottery, bone, stone, feathers, basketry, or bottles; byproducts, waste products, or debris resulting from manufacture or use of human-made or natural materials; rock carvings, rock paintings, intaglios, and other works of artistic or symbolic representation; all portions of shipwrecks, including but not limited to: armaments, apparel, tackle, cargo (36 CFR 296.3(a)(i)-(x) or 43 CFR 7.3(a)(3)(i)-(x)).

Permitting

When is an ARPA permit required?

Any time an archaeological survey or excavation is undertaken on Federal or Tribal lands by a qualified individual who is not working for the federal agency or tribe.

Who is considered a qualified individual?

One who meets the Secretary of the Interior Standards. Generally, ARPA permits are issued to an archaeologist or historian with an advanced degree in anthropology or history.

What does the ARPA permit stipulate?

The ARPA permit will state WHO is authorized, to do WHAT action (survey/excavate/collect), and WHERE specifically using Township, Range and Section or other recognized land divisions. Importantly, the ARPA permit stipulates where and how any materials collected will be stored. It also specifies how the data generated by the permitted activity will be disseminated.

Who issues the ARPA permit?

The Regional Director has that authority, which is commonly delegated to the Regional Archaeologist/Regional Historic Preservation Officer.

Archaeological Resource Damage

What acts are prohibited under ARPA?

“No person may excavate, remove, damage, or otherwise alter or deface or attempt to excavate, remove, damage, or otherwise alter or deface any archaeological resource located on public lands or Indian lands unless such activity is pursuant to ... [an ARPA] permit ... (16 USC 470ee(a))”.

We have found an archaeological site on our Refuge/Hatchery that has been looted. What should we do?

Contact your Law Enforcement Officer (LEO) and your RHPO. Treat the site as a crime scene, try not to disturb anything, keep others away, and take some preliminary notes and photographs. The LEO will have training on the criminal aspects of ARPA. Each region will have one or more archaeologist trained to do a “Damage Assessment.”

What is a “Damage Assessment?”

This is a proscribed procedure to calculate the “commercial” or “archaeological value” of the lost archaeological resources which will be used when the case is brought to trial. The Damage Assessment will also provide an estimate of the cost for restoration and repair of the archaeological resource.



What is “commercial value?”

“... the commercial value of any archaeological resource involved in a violation ... shall be its fair market value. Where the violation has resulted in damage to the archeological resource, the fair market value should be determined using the condition of the archaeological resource prior to the violation, to the extent that its prior condition can be ascertained” (36 CFR Part 296.14(b) or 43 CFR 7.14(b)).

What is “archaeological value?”

“... the archaeological value of any resource involved in a violation ... shall be the value of the information associated with the archaeological resource. This value shall be appraised in terms of the costs of the retrieval of the scientific information which would have been obtainable prior to the violation. These costs may include, but need not be limited to, the cost of preparing a research design, conducting field work, carrying out laboratory analysis, and preparing reports as would be necessary to realize the information potential” (36 CFR Part 296.14(a) or 43 CFR 7.14(a)).

What is the “cost of restoration and repair?”

“... the cost of restoration and repair of archaeological resources damaged as a result of a violation ... shall be the sum of the costs already incurred for emergency restoration or repair work, plus those costs projected to be necessary to complete restoration and repair, which may include, but need not be limited to the costs of the following: (1) Reconstruction of the archaeological resource; (2) Stabilization of the archaeological resource; (3) Ground contour reconstruction and surface stabilization; (4) Research necessary to carry out reconstruction or stabilization; (5) Physical barriers or other protective devices, necessitated by the disturbance of the archaeological resource, to protect it from further disturbance; (6) Examination and analysis of the archaeological resource including recording remaining archaeological information, where necessitated by disturbance, in order to salvage remaining values which cannot be otherwise conserved; (7) Reinterment of human remains in accordance with religious custom and State, local, or tribal law, where appropriate, as determined by the Federal land manager; (8) Preparation of reports related to any of the above activities “(36 CFR Part 96.14(c)(1)-(8) OR 43 CFR 7.14(c)(1)-(8)).

I've been collecting arrowheads from the refuge for years. Is this wrong?

Where are you located and what did you say your name was?

These posters were developed by Region 1 cultural resources staff as part of an interagency ARPA investigation. See Bibliography-51 for more details.

The Value of Archaeology

To Native American Cultural Identity...

The Native Americans, archaeological sites and artifacts are essential elements of historical and group identity. And as the diversity increasingly built on "diversity" efforts to meet business goals, including land acquisition for many projects, the archaeological sites provide the "time" information with a limited time on their preservation and values.



To Our Nation's Heritage...

Former Director of the U.S. Fish and Wildlife Service once said, "What a country! Some people think it's only a country to be proud of." The archaeological sites, artifacts and structures and "time" provide archaeological sites that are part of our public heritage. The artifacts provide the history to give us a better understanding of our past.



To Scientific Knowledge...

Archaeological sites are irreplaceable resources. The archaeological and historical sites help the state archaeological study to provide the public with the past. When sites are disturbed, their archaeological value can never again be put together.



While the Archaeological Resources Protection Act is a necessary tool to protect resources, it is not a magic wand. It is necessary to have the right people in the right places.

The history of humankind is written in stone. And bone, and seeds, and soil...

ARPA: Protecting Our Heritage

The Archaeological Resources Protection Act of 1979, as amended:
This Act protects materials of archaeological interest that are greater than 50 years old on public and Indian lands from unauthorized removal or destruction. Individuals who destroy, deface, or remove archaeological resources from federal lands are subject to severe penalties and fines under the Act's provisions.

Individuals can be charged for an ARPA violation if it is determined that:

- they did knowingly disturb, remove, damage, alter, or deface an archaeological resource, or attempted to do so;
- the resource was located on public or Indian lands, or obtained legally and transported across state lines;
- they acted without a permit; and
- the archaeological value or monetary value (not cost of restoration) and repair would be \$500 (for a felony), but that \$250 for a misdemeanor.

Other Federal Laws Protecting Cultural Resources:


- 1907 Antiquities Act
- 1923 Historic Sites Act
- 1960 National Historic Preservation Act, as amended
- 1962 National Environmental Policy Act
- 1974 Archaeological and Historic Preservation Act
- 1978 American Indian Religious Freedom Act
- 1980 Native American Graves Protection and Repatriation Act

Most states also have laws that protect cultural resources.




The Cost of Looting


To the Public...



Destruction of sacred sites.




Loss of irreplaceable archaeological data.




Even more paper dollars to assess and repair the damage.

To the Looters...



Forfeiture of property.




Loss of freedom and future.

Everyone pays, everyone loses....

Timeline for Justice

An Archaeological Looting Investigation

- December 2001:**
 - A report at South Valley National Park reports the discovery of several large holes in their public lands in a known archaeological site. The report and staff of the National Park Service were alerted for investigation.
- January to September 2002:**
 - A task force was established by several federal agencies to investigate what appears to be massive archaeological looting operations.
 - Search warrants are executed and thousands of artifacts are recovered that had been taken from public lands.
 - Evidence is documented and repair damage to archaeological sites due to looting is initiated throughout 2002.
- December 2002:**
 - Defendants indicted on federal felony charges including violating the Archaeological Resources Protection Act (ARPA) and conspiracy.
- December 2003:**
 - Numerous reports have alleged being the operations. The task force continued, others are being investigated.



Scope of the Investigation:

- Thousands of artifacts were immediately recovered from several sites.
- Over 1000 staff hours have been expended on the investigation. Task force staff includes archaeologists, geologists, geologists and other staff from the USFS, BLM, FWS, NPS, and USGS.
- Damage to federal public lands due to California and Texas-related over 100,000.

