

## **The Cultural Heritage Program: A Course for Managers**

### **Module 5: Implementing the Archaeological Resources Protection Act**

Archaeological resources are threatened by damage or destruction from vandalism, theft, and unauthorized excavation, sometimes called “pot hunting.” There is a black market associated with the sale and trade of illegally collected artifacts and specimens. BLM managers and staff face the constant challenge of protecting cultural resources at risk.

#### Background: The Antiquities Act of 1906

In the late 1800s, citizens and scientists became concerned about rampant looting and destruction of archaeological sites, primarily in the Southwest. As a result, in 1906 Congress passed and President Theodore Roosevelt signed “An Act for the Preservation of American Antiquities.” Known as the Antiquities Act, the law protected “objects of antiquity” that were of “historic and scientific interest” on federal land. The law provided criminal penalties for violations and required that permits be issued to qualified scientific and educational institutions to examine, excavate, or gather any objects of antiquity.

We are well aware that the Antiquities Act also gave the President the ability to establish national monuments. Soon after he signed the law, Teddy Roosevelt designated the first national monument at Devils Tower in Wyoming. This aspect of the law provides the foundation for the BLM’s NLCS.

By the late 1970s, it was apparent that the Antiquities Act needed to be updated or augmented by a newer and tougher law. It wasn’t sufficiently detailed to support successful prosecutions. In 1979, Congress passed the Archaeological Resources Protection Act.

#### Issuing permits under ARPA

Section 4 of the Archaeological Resources Protection Act, also known as ARPA, covers the issuance of permits to excavate or remove any archaeological materials. The Antiquities Act also covered the issuance of permits for paleontological research, which was carried forward in the Paleontological Resources Preservation Act of 2009.

In accordance with ARPA, BLM issues Cultural Resource Use Permits to qualified applicants for the purpose of furthering archaeological knowledge in the public interest. In some cases, the agency issues statewide or district-wide permits to authorize surveys, construction monitoring, or other projects that don’t involve collections or excavations. Fieldwork authorizations may be used to approve individual projects under the general permits. Project-specific permits are generally required to authorize excavations, collections, or other invasive activities.

What is the work associated with issuing a permit? Staff specialists review the proposed research designs and methods, as well as the qualifications of personnel and institutions, to ensure that they meet standards defined by the BLM, State Historic Preservation Officers, and Department of the Interior. ARPA identifies requirements for tribal consultation. Permit applicants are also required to have a curation agreement to ensure that collections, data, and reports are transferred and maintained at an institution that meets federal standards. Artifact collections do not belong in BLM offices. Staff specialists are tasked with monitoring the progress of the work and compliance with the conditions of the permit.

Managers approve and sign and fieldwork authorizations. They participate in the related tribal consultations. Managers need to be aware that they or their own staff can be in violation of ARPA if they collect artifacts. They should leave items in place, record the location, and report the find to the cultural resource specialist for further inspection. In most cases, artifacts should be left in place. In rare instances, the specialist may choose to collect rare or threatened items for safekeeping in a secure location.

### Investigating and prosecuting violations of ARPA

All too often, cultural resource specialists witness the damage inflicted on archaeological resources—rock art covered by spray paint or bullet holes, potholes and collapsed walls at prehistoric pueblos, disturbed graves, and vandalized historic structures. Section 6 of ARPA makes it illegal to excavate, remove, damage, or otherwise alter or deface an archaeological resource on federal or Indian land without a permit. It's illegal to even attempt to do these things. It's also against the law to sell, purchase, receive, or exchange protected resources or to transport them in interstate or foreign commerce.

So, what is the law's definition of an archaeological resource? In general, it includes "any material remains of past human life or activities which are of archaeological interest" and are at least 100 years of age. There is a long list of covered items and materials, which includes (but is not limited to) pottery, basketry, tools, weapons, bottles, structures, rock paintings, rock carvings, graves, and human skeletal materials. Paleontological resources aren't covered unless they are found in the context of an archaeological site, for example, evidence of people hunting mammoths during the Ice Age.

ARPA established criminal and civil penalties, including fines up to \$250,000; prison sentences up to 5 years; and forfeiture of vehicles and equipment used in committing the violation. A 1988 amendment increased the penalties and established a \$500 threshold for a felony violation, in place of the prior \$5,000 threshold, which greatly increased the number of criminal prosecutions. The government can offer rewards for information relating to ARPA violations.

Investigations of site vandalism involve careful documentation for legal cases, followed by efforts to repair the damage. ARPA cases are typically an unplanned part of the annual workload and can be very time-consuming. When the damage has just occurred, or vandals have been caught in the act, cultural resource specialists and law enforcement personnel need to respond quickly and work together to preserve and document the scene of the crime. Then they cooperate with legal staff to pursue a legal case for prosecution under criminal or civil penalties.

A recent ARPA violation is one of the rare situations that require immediate action by the cultural resource specialist. This is also the case for unexpected discoveries of human remains protected by the Native American Graves Protection and Repatriation Act, or NAGPRA. In fact, since many looters target ancient graves, violations of ARPA and NAGPRA often coincide. When human remains or other materials protected under NAGPRA are disturbed either by illegal or permitted activities, time frames for protective actions and tribal consultation are short, as specified in the implementing regulations.

### Roles and responsibilities

The cultural resource specialist confirms that the damage was done in the absence of a Cultural Resource Use Permit; assists law enforcement in conducting an investigation, preparing a

damage assessment report, and building a legal case; and notifies and coordinates with Indian tribes in regard to Native American sites. The specialist may be called to testify as an expert witness in a court case. He or she develops and implements actions to repair the damage and to better protect the site in the long term.

Law enforcement personnel take the lead in criminal investigations and coordinate with BLM and DOI attorneys in guiding cases through the court system.

Managers need to adjust work and staff time to assign a high priority to ARPA cases. They manage the needed coordination among resource specialists, law enforcement staff, and the Solicitor's Office. Managers also need to consider advice from DOI attorneys in deciding whether to pursue criminal or civil penalties.

Specialized ARPA training is highly recommended for both cultural resource specialists and law enforcement personnel. Excellent courses are available through the National Training Center, the Bureau of Indian Affairs, expert consultants, and other sources.

Finally, keep in mind that not all ARPA violations are committed by hardened criminals. Public fascination with archaeology may compel people to collect a few artifacts. People may not realize that they are damaging ancient features while driving their off-highway vehicles in culturally sensitive areas. That's why the Archaeological Resources Protection Act emphasized public education and required that each agency establish a public education program to support its objectives of resource protection. It's better to prevent damage than to repair it.

Public education is only one of the aspects of proactive work in the cultural heritage program, which we'll consider in the next training module.