

## INFORMATION TO USERS

This reproduction was made from a copy of a document sent to us for microfilming. While the most advanced technology has been used to photograph and reproduce this document, the quality of the reproduction is heavily dependent upon the quality of the material submitted.

The following explanation of techniques is provided to help clarify markings or notations which may appear on this reproduction.

1. The sign or "target" for pages apparently lacking from the document photographed is "Missing Page(s)". If it was possible to obtain the missing page(s) or section, they are spliced into the film along with adjacent pages. This may have necessitated cutting through an image and duplicating adjacent pages to assure complete continuity.
2. When an image on the film is obliterated with a round black mark, it is an indication of either blurred copy because of movement during exposure, duplicate copy, or copyrighted materials that should not have been filmed. For blurred pages, a good image of the page can be found in the adjacent frame. If copyrighted materials were deleted, a target note will appear listing the pages in the adjacent frame.
3. When a map, drawing or chart, etc., is part of the material being photographed, a definite method of "sectioning" the material has been followed. It is customary to begin filming at the upper left hand corner of a large sheet and to continue from left to right in equal sections with small overlaps. If necessary, sectioning is continued again—beginning below the first row and continuing on until complete.
4. For illustrations that cannot be satisfactorily reproduced by xerographic means, photographic prints can be purchased at additional cost and inserted into your xerographic copy. These prints are available upon request from the Dissertations Customer Services Department.
5. Some pages in any document may have indistinct print. In all cases the best available copy has been filmed.

**University  
Microfilms  
International**

300 N. Zeeb Road  
Ann Arbor, MI 48106



Order Number 1332532

**The Archaeological Resources Protection Act, other federal  
legislation, and the protection of cultural resources in the  
United States**

Martin, Daniel Gordon, M.A.

The University of Arizona, 1987

**U·M·I**

300 N. Zeeb Rd.  
Ann Arbor, MI 48106



**PLEASE NOTE:**

In all cases this material has been filmed in the best possible way from the available copy. Problems encountered with this document have been identified here with a check mark .

1. Glossy photographs or pages \_\_\_\_\_
2. Colored illustrations, paper or print \_\_\_\_\_
3. Photographs with dark background \_\_\_\_\_
4. Illustrations are poor copy \_\_\_\_\_
5. Pages with black marks, not original copy
6. Print shows through as there is text on both sides of page \_\_\_\_\_
7. Indistinct, broken or small print on several pages
8. Print exceeds margin requirements \_\_\_\_\_
9. Tightly bound copy with print lost in spine \_\_\_\_\_
10. Computer printout pages with indistinct print \_\_\_\_\_
11. Page(s) \_\_\_\_\_ lacking when material received, and not available from school or author.
12. Page(s) \_\_\_\_\_ seem to be missing in numbering only as text follows.
13. Two pages numbered \_\_\_\_\_. Text follows.
14. Curling and wrinkled pages
15. Dissertation contains pages with print at a slant, filmed as received \_\_\_\_\_
16. Other \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**U·M·I**



THE ARCHAEOLOGICAL RESOURCES PROTECTION ACT,  
OTHER FEDERAL LEGISLATION,  
AND THE PROTECTION OF CULTURAL RESOURCES  
IN THE UNITED STATES

by

Daniel Gordon Martin

-----

A Thesis Submitted to the Faculty of the  
DEPARTMENT OF ANTHROPOLOGY  
In Partial Fulfillment of the Requirements  
For the Degree of  
MASTER OF ARTS  
In the Graduate College  
THE UNIVERSITY OF ARIZONA

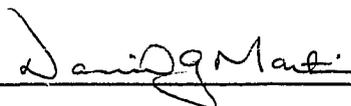
1 9 8 7

## STATEMENT BY AUTHOR

This thesis has been submitted in partial fulfillment of requirements for an advanced degree at the University of Arizona and is deposited in the University Library to be made available to borrowers under rules of the Library.

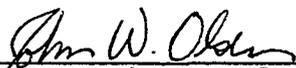
Brief quotations from this thesis are allowable without special permission, provided that accurate acknowledgement of source is made. Requests for permission for extended quotation from or reproduction of this manuscript in whole or in part may be granted by the head of the major department or the Dean of the Graduate College when in his or her judgement the proposed use of the material is in the interests of scholarship. In all other instances, however, permission must be obtained from the author.

SIGNED: \_\_\_\_\_



## APPROVAL BY THESIS DIRECTOR

This thesis has been approved on the date shown below:

\_\_\_\_\_  
John W. Olsen

Assistant Professor of Anthropology

1987 DECEMBER 08

\_\_\_\_\_  
Date

## PREFACE

The preservation of cultural material is a primary goal of all archaeologists. As a science which concerns itself with the study of a scarce and non-renewable resource, archaeology must direct its efforts to fruitful methods of protection and conservation, in addition to survey, excavation and analysis. The combined efforts of professional archaeologists, students of archaeology, and the general public have brought about a number of legal channels through which "Cultural Resource Management" may be achieved. Foremost of these legal channels is the legislation and derivative regulations which have been adopted specifically to protect cultural resources.

I have chosen the topic of "Legal Archaeology" because I feel that the time has come to re-evaluate current legislation, and place the practice of archaeology within a legal framework. All archaeologists must concern themselves with the protection of our resources, and awareness of the various statutes designed for protection is a critical starting point.

#### ACKNOWLEDGEMENTS

As I would have been unable to write this paper without a strong support network, I would like to thank the people who have made it possible: My committee members, Dr. John Olsen, Chair, Dr. J.J. Reid, and Dr. Hermann Bleibtreu; The archaeological staff at the Western Archaeological and Conservation Center, Dr. Keith Anderson, Dr. George Teague, and Trinkle Jones; and Dr. Paul Fish for helping me with sourcework. Thanks also to Jim Bayman for moral support.

I would like to give thanks to my parents for their continuing support in my educational endeavors. Finally, I dedicate this thesis to my wife, Laura, without whose love and support I would have been unable to complete this work.

## TABLE OF CONTENTS

	Page
LIST OF ABBREVIATIONS . . . . .	7
ABSTRACT . . . . .	8
CHAPTER	
1. INTRODUCTION . . . . .	9
2. HISTORY OF CULTURAL RESOURCES LEGISLATION . . . . .	12
Introduction . . . . .	12
Antiquities Act of 1906 . . . . .	13
Historic Sites Act of 1935 . . . . .	14
Reservoir Salvage Act of 1960 . . . . .	15
National Historic Preservation Act of 1966 . . . . .	16
National Environmental Policy Act of 1969 . . . . .	18
Archaeological and Historic Preservation Act of 1974 . . . . .	19
Executive Order 11593 . . . . .	20
Other Federal Regulations . . . . .	21
Conclusion . . . . .	22
3. THE ARCHAEOLOGICAL RESOURCES PROTECTION ACT OF 1979	24
Introduction . . . . .	24
History . . . . .	25
Application . . . . .	27
Purpose . . . . .	27
Prohibitions . . . . .	28
Definitions . . . . .	29
Penalties . . . . .	30
Authority to Issue Permits . . . . .	33
Cooperation and Exchange of Information . . . . .	35
Rewards and Forfeiture . . . . .	35
Confidentiality . . . . .	36
Effectiveness . . . . .	37
Conclusion . . . . .	38

TABLE OF CONTENTS - Continued

CHAPTER	Page
4. RELEVANCE AND APPLICABILITY OF ARPA AND OTHER FEDERAL LEGISLATION TO CULTURAL RESOURCE PROTECTION . . . .	40
Introduction and Philosophical Comments . . . . .	40
Case Review . . . . .	46
Cases tried under Legislation previous to ARPA . .	46
Cases tried under ARPA . . . . .	48
Discussion . . . . .	49
5. LOOKING TOWARD THE FUTURE: IS THE LEGISLATION WORKING? . . . . .	52
Introduction . . . . .	52
Review of Comments and Observations by other Authors . . . . .	53
Analysis based on Case Review . . . . .	54
The role of Public Archaeology . . . . .	56
Future Legislation . . . . .	58
6. CONCLUSION . . . . .	63
APPENDIX. THE ARCHAEOLOGICAL RESOURCES PROTECTION ACT OF 1979 . . . . .	65
LIST OF REFERENCES . . . . .	74

### LIST OF ABBREVIATIONS

Any exploration of legal issues requires that one cite many codes and regulations. This is at times difficult, since actual legislation and regulations may be cited differently. Therefore, the following list of abbreviations is presented to make interpretation easier.

1. C.F.R. - Code of Federal Regulations
2. U.S.C. - United States Code
3. P.L. - Public Law
4. S. - Statute

In addition, Federal agencies are also abbreviated as follows:

1. USDI - United States Department of the Interior
2. USDA - United States Department of Agriculture
3. NPS - National Park Service (USDI)
4. BLM - Bureau of Land Management
5. FS - Forest Service (USDA)

## ABSTRACT

Within the past 100 years, the protection of archaeological and other cultural resources have fallen in part under federal jurisdiction. The role of federal legislation and regulations, with particular emphasis on the Archaeological Resources Protection Act of 1979 (ARPA), is evaluated in terms of guidelines, application, and effectiveness. A history of federal legislation is presented, followed by an in-depth review and analysis of ARPA. The relevance and applicability of ARPA and other legislation is reviewed in terms of resource significance, definitions of archaeological material, logistics of law enforcement, and prosecution of violators. A case review is presented and analyzed. The role of public archaeology and future legislation is discussed as they apply to continued efforts toward preservation of cultural resources.

CHAPTER ONE  
INTRODUCTION

The discipline of archaeology has intrinsic problems. Primarily, the prehistoric and historic artifacts and material culture which archaeologists use as a data base is a non-renewable, limited resource. Secondly, archaeological resources are exploited by many other people besides archaeologists. This imbalance between the amount of material available and the rate at which it is being exhausted presents a serious problem. Archaeologists rely on these data to illuminate the past through scientific study. In order to continue this study, efforts must be made to preserve the record of the past.

The need for conservation has been noted by many. Paul Fish notes that the combined forces of attrition of the archaeological record, such as population growth, development, improved access and commercial looting are destroying archaeological sites by the tens of thousands annually (Fish, 1980: 685). William D. Lipe adds a philosophical outlook; that "all sites are rather immediately threatened, if one takes a time frame of more than a few years" (1974: 214). Lipe states that the discipline needs to shift towards conservation models as primary (id.). The result of not doing so could potentially

mean "the death of productive field work. . .in our own lifetimes" (id.: 213). Archaeologists, students of archaeology, and many members of the general public have long recognized this predicament. As a result, federal, state and local laws and regulations have been enacted in order to preserve and protect archaeological and other cultural resources.

Legislative mandates requiring federal agencies to account for the impact of development on archaeological resources have produced new paradigms within the discipline. In broad overview, these paradigms may be stated as "Cultural Resource Management" or "Conservation Archaeology" (See Lipe, 1974; Schiffer and Gummerman, 1977). "Salvage Archaeology" and "Contract Archaeology" are subdivisions of cultural resource management, and specifically address the process by which endangered sites are excavated or surveyed in advance of development. The increase in legislation, coupled with the archaeological response, has created both problems and prospects within the discipline.

The need for conservation has been keenly felt, but the actual practice of protection has several shortcomings. These include lack of adequate protective legislation, problems in definition of archaeological resources within legislation enacted, lack of enforcement, difficulties in prosecution under the law, and a general deficiency in

public education. In addition, the broader issue of protection of cultural resources on private land has not been addressed adequately. Even if all shortcomings were rectified, legislation is still only applicable to federal, state or locally owned and/or administered land.

The purpose of this thesis is to examine the federal legislation that has been designed to protect archaeological and other cultural resources. A history of this legislation will be presented, with a focus on the most recent enactment - the Archaeological Resources Protection Act of 1979. I will review these laws in terms of their guidelines, applications and effectiveness. Following this review will be a discussion of the salient features of the protective legislation, examination of case studies, and an analysis of the current state of affairs with regard to the future of protective legislation and the practice of archaeology within the present legal system.

CHAPTER TWO  
HISTORY OF ARCHAEOLOGICAL AND CULTURAL RESOURCES  
PROTECTIVE LEGISLATION

Introduction

The foundations for protection of archaeological and cultural resources in the United States were established at the end of the nineteenth century. During this time, the inception and subsequent work of such societies as the American Association for the Advancement of Science, the American Anthropological Association, the Archaeological Institute of America and the Bureau of American Ethnology began to arouse interest in American Indian antiquities (Lee, 1970: 1-26). One unfortunate consequence of this heightened awareness was the relatively unhindered plundering of archaeological sites, particularly in the Southwest. As vandalism, pothunting, and unscientific excavation and removal of artifacts increased, movements to protect archaeological sites gained momentum. At this time, the only protective action available to the government was to remove significant lands from sale and/or access (id.: 39). By 1900, political pressure on Congress from special interest groups began to change this situation (See Lee, 1970, for a full account).

### The Antiquities Act of 1906

Between 1900 and 1906, a number of antiquities bills were presented to congress, designed to reserve public lands which contained significant archaeological sites. This process culminated in the passage of the Antiquities Act of 1906 (Pub. L. 34-209, 34 Stat. 225, current version codified at 16 U.S.C. 431-433 (1982 and Supp. III 1985): hereinafter cited as P.L. 34-209). The act provided for the following:

1. The prosecution of "any person that shall appropriate, excavate, injure or destroy any prehistoric ruin or monument, or any object of antiquity situated on lands owned or controlled by the Government of the United States."
2. "That the President of the United States is hereby authorized, in his discretion, to declare by public proclamation, historic landmarks, historic and prehistoric structures, and other objects of historic or scientific interest that are situated upon. . . (United States Land). . .to be national monuments."
3. "That permits for the examination of ruins, the excavation of archaeological sites, and the gathering of objects of antiquity upon the lands. . .may be granted by the Secretaries of the Interior, Agriculture and War. . .according to regulations as they may prescribe."

(P.L. 34-209, 1906)

The Antiquities Act of 1906 provided several important guidelines. First, it established protection for archaeological resources. Second, it gave the President power to set aside lands and establish national monuments in order to preserve those resources. Third, it put in place a system of granting permits for legitimate research. Finally,

it established criminal sanctions for violators of the act.

The significance of this act was not lost on following generations. The basis for all subsequent protection of cultural resources in the United States stemmed from its passage. The attention of the federal government was now focused on the role it could play in resource conservation and protection. The next significant piece of legislation would not be enacted until 1935 - the Historic Sites Act.

#### The Historic Sites Act of 1935

The purpose of the Historic Sites Act of 1935 was "to provide for the preservation of historic American sites, buildings, objects and antiquities of national significance, and for other purposes" (Pub. L. No. 74-292, 49 Stat. 666, current version codified at 16 U.S.C. 461-467 (1982 and Supp. III 1985): hereinafter cited as P.L. 74-292). The act gave the Secretary of the Interior, through the National Park Service, power to acquire, maintain and administer historic and archaeological sites, buildings or objects (P.L. 74-292, Sec. 2, 1935). The act also created a general advisory board to counsel the Secretary in matters relating to the act (P.L. 74-292, Sec. 3, 1935). Violations of the act were punishable by "a fine of not more than \$500" (P.L. 74-292, Sec. 2(k), 1935).

This act holds little significance for adequate protection of archaeological resources, although it provides for the establishment and preservation of historical sites. The main problem is two-fold. One, the act only applies to archaeological sites deemed significant (P.L. 74-292, Sec 2(f), 1935). As will be demonstrated in later chapters, determination of "significance" of archaeological sites or materials is highly debatable. Two, the penalties for violation are miniscule in relation to the actual value of archaeological resources.

#### The Reservoir Salvage Act of 1960

The Reservoir Salvage Act was passed on June 27, 1960 (Pub. L. 86-523, 74 Stat. 220, current version codified at 16 U.S.C. 469-469c, 1982: hereinafter cited to as P.L. 86-523). The purpose of this act was to enlarge the scope of the Historic Sites Act of 1935, and specifically "provide for the preservation of historical and archaeological data (including relics and specimens) which might otherwise be lost as the result of the construction of a dam" (P.L. 86-523, 1960). The act calls for notice to be given to the Secretary of the Interior in the event of dam construction (P.L. 85-523, Sec. 2(a), 1960). The Secretary is then required to have a survey of the area completed "to ascertain whether such area contains historical and

archaeological data (including relics and specimens) which should be preserved in the public interest (P.L. 85-523, Sec. 2(b), 1960). The act also allows the Secretary to enter into agreements and contracts for any salvage work deemed necessary (P.L. 85-523, Sec. 3, 1960).

The problem inherent in this act, as with the Historic Sites Act of 1935, is that archaeological resources are not well-defined, and preservation "in the public interest" is a relative clause open to differing interpretations. Other authors have noted that this type of phrasing leaves identification and preservation of resources in a precarious position, because "other concerns (compete) for management's time and money" (Somers, 1979: 61). Gary Somers notes that despite these difficulties, the Reservoir Salvage Act accomplished the important goal of giving salvage archaeology legal definition, and establishing "the procedure whereby archaeological and historical salvage would be performed in advance of construction activities" (Somers, 1979: 15).

#### The National Historic Preservation Act of 1966

The National Historic Preservation Act of 1966 (NHPA) was conceived in order to "establish a program for the preservation of additional historic properties throughout the Nation, and for other purposes" (Pub. L. 89-665, 80

Stat. 915, current version codified at 16 U.S.C. 470-470h (1982 and Supp. III 1985): hereinafter cited as P.L. 89-665). NHPA has three main functions. It authorizes the Secretary of the Interior to create and maintain the National Register, a list of sites, districts, buildings, structures and objects significant to American history, architecture, archaeology and culture (P.L. 89-665, Sec. 101(a), 1966). It also provides for funding of preservation projects through matching Federal grants (P.L. 89-665, Sec. 101(a), 1966). Finally, it creates an Advisory Council on Historic Preservation to advise the President and Congress on preservation matters, recommend the conduct of studies, and encourage training and education in historic preservation (P.L. 89-665, Sec. 202(a), 1966).

NHPA is relatively weak in its application to archaeology. It only provides provisions for the placement of archaeological sites and/or materials to the National Register. While it is true that outstanding areas such as Mesa Verde or Chaco Canyon are registered (National Register, 1976: 88, 482), the majority of archaeological sites are just not "significant" enough for induction. Paul Fish points out that in addition, "it is not financially or logistically possible to identify and nominate all such properties to the National Register within the foreseeable future" (1980: 692, footnote 59). In addition, although NHPA

broadens the scope of sites and materials eligible for protection, and does provide means for their preservation and study, it simply is not comprehensive enough in protecting basic archaeological resources. Under this act, archaeological data compete with a wide variety of other resources, and much may fall by the wayside.

The National Environmental Policy Act of 1969

The National Environmental Policy Act of 1969, or NEPA, was enacted by Congress on January 1, 1970 (Pub. L. 91-190, 83 Stat. 852, current version codified at 42 U.S.C. 4321-4347 (1982 & Supp. III 1985): hereinafter cited as P.L. 91-190). NEPA provides for a national policy to "encourage productive and enjoyable harmony between man and his environment" (P.L. 91-190, Sec. 2, 1970). The act has two main functions. First, it created the Council on Environmental Quality (P.L. 91-190, Sec. 201, 1970). The duty of the Council is to maintain the goals of the act through review and appraisal of environmental conditions and trends (P.L. 91-190, Sec. 204, 1970). Second, the act requires that environmental impact statements be submitted for "major Federal actions significantly affecting the quality of the human environment" (P.L. 91-190, Sec. 102(C), 1970).

This legislation, although not referring specifically to archaeological materials, does maintain that impact statements must consider "any irreversible or irretrievable commitments of resources which would be involved in the proposed action" (P.L. 91-190, Sec. 102(C)(v), 1970). Paul Fish correctly points out that archaeological materials fit this description (1980: 692). He also notes that archaeologists would be included in planning for federal projects, which alleviates some of the problems of "stopgap salvage" and concentrates on preservation efforts (id.).

The Archaeological and Historic Preservation Act of 1974

The Archaeological and Historic Preservation Act of 1974 (Pub. L. 93-291, 88 Stat. 174, current version codified at 16 U.S.C. 469-469c, 1982: hereinafter cited as P.L. 93-291) was enacted in order to amend the Reservoir Salvage Act of 1960 (P.L. 86-523). Referred to as the "Moss-Bennett" bill in Congress, this act clearly requires that archaeological surveys and assessments must be completed for all federal or federally-assisted projects. The act sets forth specific procedures to be followed by the agencies or government-assisted contractors.

Although the passage of this bill has done much to increase archaeological awareness among federal agencies, problems do exist. One of the difficulties, again, lies in

the definition of "significance". Section 4(b) of the act requires that the Secretary of the Interior determine whether the data in question are "significant" (P.L. 93-291, 1974). Clearly, "significance" carries different meaning between varying levels of interested parties, and the Secretary of the Interior must compromise between competing interests. Charles McGimsey (1985: 330) also notes that the legislation fails to reference the National Historic Preservation Act of 1966 (P.L. 89-665), "so that the basic coordination of activities funded by Moss-Bennett are not clearly meshed with with the 1966 Act's administrative structure". In general, the act is a strongly positive step toward a comprehensive program of preservation of cultural resources.

#### Executive Order 11593

Executive Order 11593, "Protection and Enhancement of the Cultural Environment", was issued on May 13, 1971 by President Nixon (3 C.F.R., 1971). This statement was designed to further the purposes established by previous legislation, such as NEPA (P.L. 91-190), NHPA (P.L. 89-665), The Historic Sites Act of 1935 (P.L. 74-292) and the Antiquities Act of 1906 (P.L. 34-209). In particular, the order requires that federal agencies "locate, inventory, and nominate to the Secretary of the Interior all sites,

buildings, districts and objects under their jurisdiction or control to qualify for listing on the National Register" (3 C.F.R. 154, 1971). It also directs the Secretary of the Interior to advise these agencies on criteria for nomination and preservation.

The difficulty with Executive Order 11593, similar to that of NHPA, is that the majority of archaeological materials on federal land are unlikely to be nominated. In principle, the order provides adequately for a continued policy of preservation. In terms of archaeology, it falls far short of the required protective legislation necessary.

#### Other Federal Regulations

It should be noted that various federal agencies have also adopted regulations providing for the protection of archaeological resources. These agencies include the Department of the Interior (43 C.F.R.), the National Park Service, USDI (36 C.F.R.), and the Forest Service, USDA (36 C.F.R.).

The Department of the Interior has adopted a number of regulations for lands under its authority (43 C.F.R., part 3, 1986). In particular, "Any object of antiquity taken, or collection made, on lands owned or controlled by the United States, without a permit. . .may be seized wherever found and at any time, by the proper field officer. . .and

disposed of as the Secretary shall determine, by deposit in the proper national depository or otherwise" (id., part 3.16). The National Park Service's regulations state that "possessing, destroying, injuring, defacing, removing, digging or disturbing. . .archaeological resources" is prohibited (36 C.F.R., part 2.1(6), 1986). The Forest Service prohibits "digging in, excavating, disturbing, injuring or destroying any archaeological, paleontological, or historical site, or removing, disturbing, injuring or destroying an archaeological, paleontological, or historic object" (36 C.F.R., part 261.9(g), 1986).

### Conclusion

There is a broad legislative base in the United States legal system for the protection of cultural resources. As has been noted, much of this legislation leaves significant gaps in its scope of protection, particularly in definitions of archaeological materials and the equally important concept of "significance". Much of the legislation focuses on historic sites, and archaeological definitions can be included, but are secondary considerations. Although the Congress has recognized the importance of archaeological materials to our cultural heritage, it seemed reluctant to provide any comprehensive plan for the specific preservation of archaeological data. Only the Antiquities Act of 1906 is

fully directed towards archaeology, and this legislation is outmoded with respect to the actual values of archaeological resources and the requirements of the discipline. Therefore, a review of the history of protective legislation provides the appropriate backdrop to the events which culminated in the passage of the most significant act of legislation in archaeological resource protection - The Archaeological Resources Protection Act of 1979.

## CHAPTER THREE

## THE ARCHAEOLOGICAL RESOURCES PROTECTION ACT OF 1979

Introduction

Chapter two provides the basic outline of the history and development of cultural resource legislation in the United States. As has been made clear, the acts, Executive Order 11593, and other federal regulations have provided a firm foundation for the protection of archaeological data. However, there are serious shortcomings of that legislation in terms of specific archaeological information. Problems of definition, scope of studies, and competing interests still plagued conservation efforts. As Janet Friedman (1985: 82) points out, "it was obvious that a stronger law was necessary if we were going to truly protect our heritage of archaeological sites from total destruction". This stronger law found its form in the Archaeological Resources Protection Act of 1979 (Pub. L. 96-95, 93 Stat. 721, current version codified at 16 U.S.C. 470aa-47011, 1982: hereinafter referred to as P.L. 96-95), commonly referred to as "ARPA".

The Archaeological Resources Protection Act of 1979 is the most comprehensive piece of legislation yet to be passed specifically treating archaeological resources. Despite the amount of prior legislation protecting cultural materials (both historical and archaeological), only the Antiquities

Act of 1906 is distinctly archaeological-oriented. As mentioned in chapter two, and as will be discussed in chapter four, all of the other legislation refers only to that archaeological information which may be considered "significant".

### History

The history of ARPA begins during the late 1970s, "when rampant and growing vandalism was destroying archaeological sites, particularly throughout the Southwestern United States" (Friedman, 1985: 82). A key feature in the development of ARPA was the lack of enforcement under The Antiquities Act of 1906. The legal case of the United States vs. Ben Diaz established the precedent for further governmental action. In this case, Diaz was accused of appropriating Apache ceremonial face masks from a cave on the San Carlos Indian Reservation. He was convicted in Arizona District Court (Green and Davis, 1980: 80), and appealed in 1974 to the Ninth Circuit of the United States Court of Appeals. Circuit Judge Merrill reversed the decision. In his opinion, Judge Merrill ruled that "the statute, by use of undefined terms of uncommon usage, is fatally vague in violation of the due process clause of the constitution" (Green and Davis, 1981: 81).

The difficulties of interpreting the 1906 Act were

indeed fatal in this case. The prosecution founded its argument on the fact that despite the recent manufacture of the masks (ca. 1969-1970), a case for "antiquity" could be made based on the age of the ceremonies represented by them (Green and Davis, 1981: 80). The Judgement held that definitions of "ruin", "monument", or even "object of Antiquity" were not adequately explained by the act, rendering it unenforceable (id.: 81).

The Diaz case neutralized the Act of 1906, and made apparent the need for stronger legislation. During the late seventies, a coalition of groups and individuals began to advocate for more rigorous protection laws. The Society for American Archaeology took a more active role in lobbying Congress (Collins and Michel, 1985: 86), and urged the Department of the Interior to draft new legislation. The response of the DOI was a proposal to amend the 1906 Act with stricter definitions of archaeological resources and more comprehensive amendments to strengthen the act (id.). Unfortunately, the promised amendments contained no changes in the penalty structure (\$500 was still the maximum fine), and contained no provisions for prosecution of traffickers in looted artifacts.

Given the lack of initiative on the part of the DOI, the SAA began to take steps towards drafting their own legislation. Mark Michel, hired as a lobbyist by the SAA,

retained a Santa Fe attorney, David Douglas, to write the new proposal. The finished product, " 'An Act To Preserve American Antiquities', was later to become the core of the Archaeological Resources Protection Act of 1979" (id.: 87). Congressman Morris Udall of Arizona agreed to sponsor the bill. This was particularly beneficial as Udall was then Chairman of the House Interior Committee. A strong public relations campaign was launched in support of the proposed legislation and members of Congress were petitioned for additional backing. The effort was successful, and on February 1, 1979, Congressman Morris Udall introduced ARPA to the House of Representatives (id.: 84). On October 31, 1979, with minor changes, it was signed into law (P.L. 96-95, 1979).

### Application

#### Purpose

ARPA serves multiple purposes. As stated in the act, the purpose of ARPA "is to secure, for the present and future benefit of the American people, the protection of archaeological resources and sites which are on public and Indian lands" (P.L. 96-95, Sec. 2(b), 1979). The act is also designed to "foster increased cooperation and exchange of information between governmental authorities, the professional archaeological community, and private

individuals having collections of archaeological resources and data (P.L. 96-95, Sec. 2(b), 1979). In addition, ARPA "bolsters protection in two areas where the 1906 Act was weak: definitions and penalties" (Fish, 1980: 695).

#### Prohibitions

The prohibited acts, as proscribed by ARPA, are broken down into four main categories. They are as follows:

a. "No person may excavate, remove, damage, or otherwise alter or deface any archaeological resource located on public lands or Indian lands".

b. "No person may sell, purchase, exchange, transport, receive, or offer to sell, purchase or exchange any archaeological resource if such resource was excavated or removed from public lands or Indian lands in violation of (the Act)".

c. "No person may sell, purchase, exchange, transport, receive, or offer to sell, purchase or exchange. . any archaeological resource (in violation of state or local law)".

d. "Any person who knowingly violates, or counsels, procures, solicits, or employs any other person to violate, any prohibition. . .shall, upon conviction, be fined not more than \$10,000 or imprisoned not more than one year, or both".

(P.L. 96-95, Sec. 6(a-d), 1979)

In addition to these prohibitions, ARPA also includes provisions that exempt collectors of arrowheads "located on the surface of the ground" (P.L. 96-95, Sec. 6(g), 1979) and those persons in possession of archaeological resources lawfully acquired prior to enactment of the act (P.L. 96-95, Sec. 6(f), 1979).

### Definitions

The section on definitions of archaeological resources under ARPA is a vast improvement over prior legislation. As stated in the act, an "'archaeological resource' means any material remains of past human life or activities which are of archaeological interest" (P.L. 96-95, Sec. 3(1), 1979). Included in this section is a list of artifacts which shall be considered as resources under the regulations. The section exempts paleontological material unless it occurs in archaeological context. Finally, archaeological material must be at least 100 years old to qualify as a resource under the act. This limit was imposed, presumably, to set a precise standard and avoid problems such as the Diaz decision.

The Final Uniform Regulations for ARPA (Federal Register, 49(4), 1984: 1016-1034) provide a substantial listing of "material remains" covered under the act. It also furnishes subdefinitions for "archaeological interest" and "material remains" (Sec. 1215.3). The exclusion clause (Sec. 1215.3(4)) is expanded, adding coins, bullets and unworked rocks and minerals to paleontological data. During the review period for the proposed regulations, many people expressed concern over the so-called "arrowhead clause". Obviously, "arrowhead" is extremely imprecise in archaeological terms. The Regulations attempt to clarify

this point by defining "arrowheads" as "any projectile point which appears to have been designed for use with an arrow" (Sec. 1215.3(5)(b)). Although this definition remains vague, archaeologists hope that artifacts such as knives, drills and spearpoints will receive protection under the act.

#### Penalties

ARPA provides both civil and criminal penalties for violators. Criminal penalties are covered under Section 6(d) of the act. As stated, penalties may be applied to "any person who knowingly violates, or counsels, procures, solicits or employs any other person to violate, any prohibition contained in sub-section (a), (b) or (c)" (see categories 1-3 listed above) (P.L. 96-95, Sec. 6(d), 1979). Lorrie Northey points out that from a legal stance, this section refers to a "general intent crime; that is, it requires only an intent to perform the act in question, not intent to violate the law" (1982: 82). The wording in this section is a vast improvement over previous legislation since it covers not only looters, but also persons who promote looting. The effect of this section should be to deter initiation of commercial ventures.

The penalties for a criminal complaint are substantial. Violation of the law may result in a fine of not more than \$10,000, imprisonment of not more than one year, or both (P.L. 96-95, Sec. 6(d), 1979). A proviso is attached to this

section stating that "if the commercial or archaeological value of the archaeological resources involved and the cost of restoration and repair exceeds the sum of \$5,000, such person shall be fined not more than \$20,000 or imprisoned not more than two years, or both" (id.). Subsequent violations may result in a fine of up to \$100,000, five years imprisonment, or both (id.).

One difficulty with this section is the determination of "value" of an archaeological resource. Commercial values of artifacts are fairly easy to estimate based on market rates. The Final Uniform Regulations for ARPA (Federal Register, 49(4), Sec. 1215.16) note that "through the use of commercial value to set penalty amounts, persons who traffic in archaeological resources will find their own price schedules working against them" (January 6, 1984). As the primary goal of commercial looters is to extract the most valuable artifacts, this approach in legal context seems straightforward and practical.

Archaeological value, on the other hand, is much more difficult to ascertain objectively. For an archaeologist, resources are invaluable. Placing a fixed price on any given item is extremely difficult. One suggested method of addressing this problem is to estimate value based on cost-benefit analysis of the price for restoration and repair of a damaged site (id.). The Final Uniform Regulations seem to

discount this and any other methods for determining archaeological value, leaving a significant gap in cost assessment for archaeological value. Lorrie Northey suggests that "informational value", the cost of retrieving information from a site, might form an objective method for determination of archaeological value (1982: 85). Again, one is faced with the dilemma of the value an archaeologist might place on a given resource above and beyond the cost of retrieval. It is, at least, a step in the proper direction to ensure that archaeological value be taken under some consideration in assessment of penalties.

A side-effect of Section 6(d) is that so-called "weekend treasure hunters" may be charged with a criminal violation. From a strict viewpoint, this may not be a productive means of deterrence. Educational programs are more likely to curb the damage done by unwitting parties. ARPA addresses this problem through exemption of "arrowhead collectors" (Sec. 6(g)) and persons collecting such items as coins or bottles from non-archaeological context (16 U.S.C. 470kk(b), 1982).

Civil penalties are covered under Section 7 of the Act. These penalties are assessed at the discretion of the land manager involved. As with criminal penalties, civil penalties are determined through evaluation of resource value (commercial and archaeological) and the cost of

restoration and repair (P.L. 96-95, Sec. 7(2)(A & B)). The United States Code provides for flexibility in the assessment of civil penalties. They may serve to educate, deter, or compensate, depending on the discretion of the land manager (16 U.S.C. 470ff, 1982). Under this system, unknowing or unintentional violators of the law may be dealt with more leniently, while intentional violations may be charged both criminally and civilly.

#### Authority to Issue Permits

Section 4 of the act defines the provisions under which a permit may be issued for excavation and removal of archaeological resources from federal or Indian lands (P.L. 96-95, 1979). Applications for permits are reviewed and granted at the discretion of the Federal land manager involved (*id.*, Sec. 4(a)). Permits are not required for survey alone (Federal Register, 49(4), 1984, Sec. 1215.5(b)(1)). As Northey (1982: 89) points out, requiring a permit for survey would be impractical since proving that an illegal survey took place would be nearly impossible. A savings provision, ARPA section 12(a), exempts activities related to "mining, mineral leasing, reclamation, and other multiple uses of the public lands" (P.L. 96-95, 1979) from permit requirements. The impact of these activities on archaeological resources are restricted by other legislation such as NEPA.

ARPA does not require permits for the excavation of resources by Indian members or tribes on their own land, except in cases where Indian tribal law contains permitting provisions (*id.*, Sec. 4(g)(1)). It therefore gives tribes wide-ranging control over their own archaeological materials. However, ARPA does not give Indian tribes veto rights over permits issued for excavation on public land of sites containing religious or cultural significance (Northey, 1982: 93). It merely requires that notice be given to the tribe concerned (16 U.S.C. 470cc).

The requirements for permit issue are fairly stringent (See Federal Register, 49(4), 1984: 1031). Applicants must be appropriately qualified, the proposed work must be undertaken in furthering archaeological knowledge in the public interest, evidence must be submitted demonstrating that excavated material will be curated appropriately, and all activities performed under the permit must be consistent with established plans for land management. The regulations also require that any work performed on Indian land be approved by the tribe involved.

The permitting procedure under ARPA breaks significantly from the Antiquities Act of 1906 in two ways. First, permits are no longer restricted to institutional organizations such as universities and museums. This is in reaction to a far wider range of individuals and groups

practicing archaeology, such as contract organizations. Second, the issuance of permits is regulated by federal land managers so as to comply with "archaeology in the public interest". This is a potentially problematic section because archaeologists applying for permits must in some way make provisions for dissemination of results in a public forum.

#### Cooperation and Exchange of Information

Part of the purpose of ARPA is to foster improved communications between individuals, government agencies and professional archaeologists so that information can be exchanged and used to develop larger data bases. Section 11 of ARPA decrees that the Secretary of the Interior "shall take such action necessary" to promote this cooperation (P.L. 96-95, 1979). This is a minor but important section of ARPA. The rapid collection of data under the provisions of ARPA and other legislation presents a serious problem in terms of synthesis for archaeological application. This section mandates a process by which this coordination of material may take place.

#### Rewards and Forfeiture

Section 8 of ARPA is designed to accomplish two purposes. The first, Rewards, allows for the payment of "an amount equal to one-half (of fines collected),. . .not to exceed \$500" to any person furnishing information which leads to a civil violation assessment or criminal conviction

(P.L. 96-95, Sec. 8(a), 1979). This section is intended to provide incentive to the public to report violations of the act. Green and Hanks (1985: 106) note that rewards have been paid in several cases so far and that the provision seems to be working.

The second purpose, Forfeiture, provides for the seizure of "all vehicles and equipment of any person which were used in connection with (the) violation" (id., Sec. 8(b)). As with Section 8(a), this is intended to serve as a deterrent to would-be violators.

Section 8 also states that in cases where violations occur on Indian lands, all penalties and forfeited items are to be transferred to the Indian tribe involved (id., Sec 8(c)).

#### Confidentiality

Section 9 of ARPA provides that information concerning "the nature and location of any archaeological resource. . . may not be made available to the public" unless the federal land manager involved determines that such release would further the purposes of ARPA or the Archaeological and Historic Preservation Act of 1974, or that such release would not create "a risk of harm to such resources" (P.L. 96-95, Sec. 9(a), 1979). This section prevents disclosure of information under the Freedom of Information Act, and protects known sites and/or materials from looters who might

otherwise gain access to such information. There is a proviso in this section which allows a state Governor to request information if he or she chooses (*id.*, Sec. 9(b)).

### Effectiveness

It is difficult at the time of this writing to objectively evaluate the effectiveness of ARPA. There was a five year hiatus between the passage of the act (1979) and the publication of the Final Uniform Regulations (1984). Although prosecutions took place within this period, many successful, the full application of ARPA is yet to be realized. Procedures for issuance of permits have only been in effect for three years, and problems within the process have yet to be fully elucidated. Court interpretations of the application of ARPA, although so far generally positive, may be challenged in the future (See discussion of United States vs. Lyman and Shumway, chapter four).

For the time being, one may examine success rate of prosecution as a general measure of effectiveness. As of 1985, 24 individuals had been charged with violations (Green and Hanks, 1985: 105). Of these, 18 pled guilty. Of the 6 individuals pleading not-guilty, only one was convicted. Simple mathematics, then, reveals an 80% success rate.

Success in prosecution is not the only measure of effectiveness. This approach ignores the many sites that

have been plundered with no recourse. But, this practical as well as philosophical problem concerned with actual law enforcement is a separate issue. It is difficult to police vast public and Indian lands; neither ARPA nor any other legislation can solve this logistical problem. What the laws do accomplish is deterrence through successful prosecution and penalties.

As a final note, effectiveness can also be viewed in terms of ARPA vs. previous legislation. From a comparative perspective, ARPA solves many of the serious difficulties inherent in prior acts. In this fashion, ARPA more "effectively" regulates degradation of cultural resources. It will be interesting to return to this issue in future years, when ARPA will have emerged from its infancy.

### Conclusion

The passage of ARPA marked a milestone for the protection of archaeological resources. As discussed in chapter two, prior legislation was inadequate in terms of scope of coverage, definitions of resources, and penalties. Although there are still problematic areas in the application of ARPA, it is far superior to prior Acts. ARPA provides a strong whip for enforcement agencies, especially in the areas of definitions and penalties. Its provisions are specifically geared towards the activities of commercial

looters and traders in illegally acquired artifacts. At the same time, ARPA reinforces federal policy regarding the management of archaeological resources through federally funded or assisted development projects.

## CHAPTER FOUR

THE RELEVANCE AND APPLICABILITY OF ARPA  
AND OTHER FEDERAL LEGISLATION  
TO CULTURAL RESOURCE PROTECTIONIntroduction and Philosophical Comments

There exists within any attempt at legislation a series of checks, balances, and trade-offs. Archaeologists would prefer a system in which all resources are protected to the full extent possible. However, given the varied nature and locations of archaeological sites within the United States, particularly on public lands, conflicts of interest are inherent. As an example, the philosophy of the U.S. Forest Service and the Bureau of Land Management is to regulate public land with respect to multiple usage. Therefore, archaeologists must compete with loggers, mining companies, and other developers that would make use of that land.

In addition to conflicts of interest, there is also the difficulty of where to draw the line in regulation and prosecution. Professional pothunters represent a serious threat to archaeological resources, as do large-scale development projects. Clearly, these agencies must be managed. But, is it reasonable to impose "burdensome penalties on weekend treasure hunters and the 'innocent' public" (Northie, 1982: 73)? One must address the philosophical as well as practical questions concerning the

application of protective legislation.

One of the most persistent difficulties in the interpretation of federal legislation has been in the definition of what constitutes a "significant resource" (For discussion, See Raab and Klinger, 1977; Glassow, 1977; Sharrock and Grayson, 1979). The Department of the Interior's regulations define a site as significant if it has "yielded or may be likely to yield, information important in prehistory or history" (36 C.F.R. 1202.6, 1980). Clearly, "importance" is a relative term depending on the perspective of the individual evaluating the resource.

Raab and Klinger suggest that significance is best measured in terms of "explicit, problem-oriented research designs" (1977: 632), as opposed to approaches such as criteria for placement on the National Register, monetary values, or measurement by unique characteristics. The research design approach allows for determination of significance within the larger framework of meaningful research; the application of current method and theory to produce data relevant to archaeological goals. A problem with this orientation is that the archaeological community is far from coherent as to what constitutes a holistic framework of archaeological goals. (See Glassow, 1977: 414). Application of explicit research designs to federal mandates would be of great value in expediting relevant research.

Unfortunately, it does not address to a high enough degree how the data implicit to these research designs might be considered as "significant". The concept must be integrated into the larger framework of decisions regarding protection and preservation of resources.

Sharrock and Grayson (1979) follow this line of reasoning in their article "'Significance' in Contract Archaeology". They maintain that the "burden of proof is on the federal agency to demonstrate that a site is neither significant nor potentially significant if the site is not to receive protective management consideration" (id.: 327). In particular, they suggest that the dynamics of "significance" vary through time and space, and that sites with potential significance may be ignored (id.: 327-28).

Michael Glassow pinpoints these difficulties in his 1977 article, "Issues in Evaluating the Significance of Archaeological Resources". He states that codification of research problems on a regional scale should be encouraged as a means for determining significance on a site-to-site basis. However, this approach contains "several fundamental shortcomings" (id., 414). First, there is constraint on regional interests dependent on "the number of participating archaeologists and their backgrounds and competencies" (id.). Second, given that areal knowledge is still restricted, "research designs will have to be very limited"

(id.). Third, and most important, "the approach is dependent upon the current technical, methodological, and theoretical development of the discipline" (id.). Glassow makes the excellent point that given the rapidly changing nature of archaeological research, "significance" of sites shifts as the modes of method and theory advance (id.).

A productive method for evaluation of significance, as proposed by Glassow, would incorporate five major criteria. These criteria are as follows: variety, quantity, clarity, integrity and environmental context. Variety refers to qualitative properties of a given site such as form, temporal locus and spatial locus (id.: 415). Quantity refers to quantitative aspects or amounts of data available (id.). Clarity reflects "the physical distinctiveness of site components" (id.) or the degree to which attributes of a site may be broken down into well-defined units of analysis. Integrity simply indicates the state of preservation (id.). Finally, environmental context pertains to "the nature of surroundings of archaeological resources" (id.). For example, the relationship and uniqueness of a given site to the surrounding natural habitat.

Glassow makes the point that in evaluating significance of archaeological resources that are potentially endangered by development activities, one must rank those resources relative to each other and relative to areal significance.

This process inevitably ends up in a decision as to which data are the most important. In the context of complying with federal regulations, this procedure makes sense. It allows for a relatively objective measurement of archaeological properties. Although total preservation is the optimal situation, archaeologists must compromise with other interests. Therefore, it is in the best interest to archaeology to select those sites and/or data which are considered most relevant. In this scope, "significance" may be considered in terms of general research design, as advocated by other authors, as well as the criteria proposed by Glassow. It remains a fact that not all archaeological data may be preserved. Regrettable as this may be for archaeology, at least endangered resources may be evaluated and selectively preserved in the best interests of the discipline.

The logistics of law enforcement also present an impediment to the effectiveness of protective legislation. The federal government owns or controls millions of acres of land, much of it relatively inaccessible. Relative to the amount of land owned, the number of enforcement officers available to patrol it is minute. The National Park Service, USDA Forest Service and the BLM all employ rangers, and many have even received training in cultural resource protection (Friedman, 1981: 3). Unfortunately, there are few officers

whose sole duty is surveillance of archaeological properties. Again, one is faced with the problems of competing interests for the time and energy of the agencies and personnel involved.

The prosecution of individuals in violation of federal legislation can also be problematic. Agency Land Managers and officers must be cognizant of all the requirements for a successful prosecution in order to prepare a case correctly. Ken Garvin, a district ranger for the Petrified Forest and a teacher of ARPA investigations, writes that "to successfully prove the elements under (ARPA), considerable cooperation must exist among the investigator, archaeologist, and the United States attorney" (1987: 10).

"The investigator must provide evidence placing the suspect(s) at the scene, and provide additional evidence that the suspect(s) knowingly excavated, damaged, removed, defaced or altered an archaeological resource".

"The archaeologist must provide the commercial or archaeological value of the resource, and estimate any restoration or repair costs".

"The U.S. attorney must have the required evidence and information concerning the case before a successful prosecution can be realized".

(id.)

As can be seen from this statement, prosecution requires multiple steps. Although ARPA is designed to streamline the process through clarity of purpose and definition, the application and effectiveness of the act depends in great

measure on individual abilities.

Given these elements of the relevance and applicability of ARPA and other federal legislation, I would now like to turn to a discussion of cases which have been prosecuted under these acts.

### Case Review

When one considers the application of the legal system to archaeological resources, it is crucial to recall the procedures that guide the establishment of precedents. The Diaz case, discussed in chapter three, set a clear precedent within the Antiquities Act of 1906 which for all practical purposes made the legislation ineffective. The purpose of the following section is to review other cases which have been tried under ARPA as well as other legislation, and attempt to address the trend of current prosecution efforts.

#### Cases tried under legislation previous to ARPA

##### The United States vs. Smyer and May

In this case, defendants William Smyer and Byron May were charged with illegal excavation of two Mimbres sites in the Gila National Forest, New Mexico (Green and Davis, 1981: 88). Forest Service officers discovered excavation equipment and a truck at the sites, although the suspects were not present. The vehicle was traced to May, and both Smyer and May were found to have artifacts in their possession. They

were tried under the Antiquities Act. The defense based its argument on the Diaz decision, claiming that the Antiquities Act of 1906 was unconstitutionally vague. However, the Judge overruled the motion for dismissal, stating that in this case, "objects 800-900 years old were taken from ancient sites for commercial motives" (Green and Davis, 1981: 89). The defendants were found guilty.

This was an important decision because it upheld the constitutionality of the Antiquities Act. The Judge was correct in his assertion that the artifacts appropriated were clearly "objects of antiquity", and that the wording of the Act was sufficient for conviction.

The United States vs. Quarrell and Quarrell

In this case, the defendants, Mike and Charles Quarrell, were charged under the Antiquities Act of 1906 for illegal excavation of a Mimbres site in the Gila National Forest, New Mexico (Green and Davis, 1981: 82). As with the Smyer-May case, the defense was based on the ruling in Diaz. The Judge overruled this plea, and found the defendants guilty. Another decision was added in favor of the Antiquities Act.

The United States vs. Camazine

This case is presented as an example of a ruling not in favor of the Antiquities Act. The defendant, Scott Camazine, was charged with the excavation of a prehistoric ruin on the

Zuni Indian Reservation (Collins, 1980: 1). As with the Quarrell and Smyer-May cases, the defense based its argument on the Diaz ruling. The Magistrate upheld the motion, and dismissed the case. Green and LeBlanc (1979: 4) note that this case came between the convictions handed down in the Quarrell and Smyer-May, and could have potentially had grave implications in the upholding of the constitutionality of the 1906 Act.

#### Cases tried under ARPA

##### The United States vs. Lyman and Shumway

In this case, defendants Darrell Lyman and Casey Shumway were charged with illegal looting of the Turkey Pen Ruin, San Juan County, Utah (Fike, 1980: 33). The men were observed by BLM rangers while digging in an extensive midden area. Shumway escaped, but Lyman was apprehended and charged under ARPA. A plea of guilty was entered in court and Lyman was fined \$1,500, half suspended, plus two years probation (Fike, 1980: 33). Lyman's testimony indicated Shumway as his accomplice. Shumway was then apprehended and similiarly charged. At trial, he pled not-guilty. Shumway's case was dismissed when the Judge ruled that since "midden" was not included in the list of terms covering archaeological materials, a "no-choice" verdict of not guilty was required (Fike, 1980: 34). Despite the fact that Shumway was not

convicted under ARPA, he was found guilty under Title 18 (Depredation of Government Property) and sentenced to three years probation (Fike, 1980: 34).

The United States vs. Lacy and Palmer

In this case, defendants Ted Palmer and Davil Lacy were observed by BLM and local law enforcement officials as they were digging in sites along Butler Wash, Utah. They were apprehended and charged under ARPA (Fike, 1980: 34). Both men pled guilty. They were placed on probation for two years and fined \$200 each. In addition, an additional fine of \$300 was levied in lieu of vehicle seizure. Richard Fike points out that while "the penalties imposed appear low, prevailing justice is gratification" (1980: 34).

Discussion

The relevance and applicability of ARPA and other legislation may be viewed from a number of perspectives. As discussed previously, competing interests in land management policy, guidelines and problems in regulation, difficulties in definition of resources, especially in terms of "significance", and drawbacks in the logistics of enforcement are all crucial factors of analysis.

These components can be broken down and analyzed as discrete units, and such analysis is certainly important in determining areas in need of further review and

clarification. However, one must not lose sight of the overall pattern. The federal government has now achieved a relatively comprehensive plan for the protection of archaeological resources. It has been a long process, with only recent steps geared particularly towards archaeological data. Without this legislation, archaeology would be facing a crisis - a crisis in respect to a diminishing data base. Despite any inherent difficulties in legislating conservation, it is imperative that these steps be taken. As some archaeologists are fond of saying, "our future lies in ruins". Without these ruins, our future would be grim indeed.

Personal conclusions with regards to the applicability and relevance of federal legislation are as follows. First, it is a fact of the discipline that the focus of our study is based in a non-renewable resource. This resource is rapidly disintegrating from the effects of construction, development, mining and other land-altering activities, commercial looting, vandalism, and in some cases, poor archaeological research. Second, it is far beyond the capabilities of the discipline to deal directly with this problem. What is required is a set of legal tenets designed specifically towards protection and preservation. This becomes the role of federal legislation; the application of our legal system to the conservation of cultural resources.

Third, archaeologists must recognize that although the system is not perfect, we must work within it to achieve the maximum benefits that it has to offer. Taking positive action now will ensure a future of continued research.

Federal legislation is not the sole avenue of approach. Destruction of archaeological resources often occurs purely out of ignorance. Although the purpose of this thesis is mainly to consider the role of legislation in resource protection, it is equally important to consider the larger holistic framework, discussed in chapter five.

## CHAPTER FIVE

## LOOKING TOWARD THE FUTURE: IS THE LEGISLATION WORKING?

Introduction

One of the largest problems looming over the protection of cultural resources in the United States is the fact that many archaeological and historical sites and materials are located on lands difficult to safeguard from destruction. As Northie points out, "there are few regulations of archaeological resources on private lands, (and) many of the nation's remaining archaeological resources are located on undeveloped tracts of state and federal land, particularly the vast public lands in the Western United States" (1982: 69). The difficult questions that must be addressed are: Is the current legislation effective? Is it possible to protect archaeological and historical property within the United States?

Another problem lies within the legislation itself. Besides ARPA, the only act that specifically addresses archaeological material is the Antiquities Act of 1906. Other pieces of legislation, such as the Historic Sites Act of 1935 (P.L. 74-292), the Reservoir Salvage Act of 1960 (P.L. 86-523), the National Historic Preservation Act of 1966 (P.L. 89-665), and the Archaeological and Historical Preservation Act of 1974 (P.L. 93-291) only address

archaeological resources of a "significant" nature. The definition of "significance", as discussed in chapter four, poses difficulties in the interpretation of the regulations concerning these acts.

#### Review of Comments and Observations by Other Authors

It has been argued that in the process of legislating protection for archaeological resources, much of the scope and detail of traditional archaeological study has been lost (King, 1984b: 25). This is an issue of serious concern. The legislation that was designed to protect our resources has in some ways developed into a bureaucratic monster, and placed much archaeological work in the hands of private contractors who, of necessity, must be concerned with profit. Ezra Zubrow cites many instances in which contract work, designated by federal legislative fiat, has produced shoddy results (Zubrow, 1984). It is a serious dilemma, reconciling the need for preservation with inadequate research design, poor technique and questionable contributions to the data pool. However this dilemma is resolved, and I would note that this is likely to remain a major issue in the years to come, it remains true that the legislation was designed in order to preserve and protect, and archaeologists must make the best of the current system.

I raise this point, although it is not the focus of

this thesis, because evaluation of the current system should be made in light of the problems it has created as well as the benefits it provides. I prefer to take the optimistic viewpoint.

#### Analysis Based on Case Review

One of the best ways to gauge the effectiveness of current legislation is to look at case histories; how the legislation is applied in actual legal practice. In the final analysis, the strength of any legislation designed for the protection of cultural resources depends on whether or not it will stand up in court. As was shown in the Diaz case, the Antiquities Act of 1906 contained serious deficiencies which were not brought to light until they were challenged. The result of that decision proved disastrous to resource protection. In the hiatus until the passage of ARPA, much irreparable damage has occurred without possibility of redress.

The case review in chapter four presented a glimpse into prosecutions under ARPA and the Antiquities Act of 1906. Based on the Case Summaries presented in Green and Davis (1981: 75-79) and Green and Hanks (1985: 105) of antiquities violations on record, the following chart (based on decision per individual) summarizes the outcomes:

Citation:	Guilty	Not-guilty	Dismissed
ARPA	18	2	3
ANTIQUITIES ACT OF 1906	9	3	0
STATE STATUTES & FED. CODES	16	1	3
TOTALS	43	6	6

The figures given here demonstrate that legal action has been very effective against violators. ARPA has a 78% success rate; the Antiquities Act of 1906 a 75% success rate, and State Statutes and Federal Codes an 80% success rate. The total success rate is 78%.

The trend manifest in court cases is extremely encouraging. Having shown the legislation to be effective in application, one may state that the intent of protective statutes is being carried out. Effective cases can be prepared and proven in court; the outcomes serving as both precedents and deterrents. Continued success in prosecution serves as inspiration to enforcement officers as well as archaeologists, and demonstrates that the legal system is an effective tool for the protection of cultural resources.

### The Role of Public Archaeology

This section will address two issues: the role of general public education in protection of resources, and specific procedures for promoting that education. As discussed in the last section of chapter four, federal legislation alone cannot stem the tide of resource destruction. There is a pressing need for a system in which unknowing parties to archaeological degradation are alerted to their activities, and educated in the reasons for preservation.

Peter Pilles notes that "as the destruction of archaeological sites skyrockets and shrinking funds make archaeologists more accountable for their expenditure of public monies, many archaeologists have realized their responsibilities to the public" (1981: 48). In addition, he comments that ARPA is specifically designed to promote interaction between the archaeological community, federal agencies and the public (id.). Given the importance of public aid and support to the discipline, this section of ARPA should be utilized to its full extent.

Bruce Rippeteau categorizes the "public" in terms of three general categories (1982: 85-87). First, there are the "weekend citizens", who view collection of artifacts as a hobby. Second is the "vicious vandal", who, when given the opportunity, will willfully destroy archaeological

resources. Third, there is the "commercial miner", organized looters who excavate sites for profit. In terms of education, it is the first group who may be most enlightened. The second group may also profit from educational efforts, but in general should be made targets of enforcement. Commercial miners are the worst case scenario. They are aware of the consequences of their actions, and view them as a cost of doing business. Education would have little effect on this group; strenuous surveillance and prosecution are the only viable alternatives for deterrence.

Rippeteau mentions a number of techniques employed by federal agencies for promoting public education. The most general of these is the use of brochures and posters, by the Forest Service and the BLM respectively, which outline for land users the basic tenets of law and ethics in dealing with conservation of archaeological resources (1979: 95). The National Park Service relies primarily on park employees to educate visitors through interpretation of park resources (Reilly, 1987: 9). In addition, signs are used at easily accessible sites to provide information as well as warnings (Rippeteau, 1979: 95). A more recent strategy has been to fence sites in remote areas, with explanatory signs attached. Rippeteau notes that inspections of sites in Colorado where these precautions have been taken reveals

that damage appears to be minimal (id.: 95).

Pilles adds that in addition to these measures, amateurs should be encouraged to join archaeological societies and programs as an alternative to pothunting (1981: 49). This interface between the profession and the public provides both education and positive contributions to the discipline. Other suggested methods include lectures and tours, public programs at federally maintained sites, and the use of television and newspapers to promote archaeology (id.). As Pilles states, "the future of the profession is directly related to how well we succeed in obtaining public assistance and support for the discipline" (id.: 53).

Public education is a crucial facet of resource protection. Enforcement activities are mainly oriented towards commercial looters, and it is logistically impossible to protect all archaeological sites. A strong public awareness program, geared towards the "weekend citizen", could achieve significant results in reducing the amount of unknowing destruction. As Congress has stipulated, cultural resources are a public domain. The preservation of archaeological sites and materials depends heavily on public interest and knowledge.

#### Future Legislation

While ARPA represents the strongest and most complete

piece of enacted legislation concerning the protection of archaeological resources, many authors have been quick to point out deficiencies. Lorrie Northey raises three significant problems concerning regulation. They are: the definition of an archaeological resource, assessment of penalties, and conflicts between archaeological and other interests (Northey, 1982: 100-112). The definition of an "archaeological resource", a singularly important problem in previous legislation, remains so within ARPA. Northey points out that "a broad definition would create administrative as well as constitutional problems" (Northey, 1982: 102). On the other hand, a narrow definition would limit the scope of the act.

As discussed in chapter three, ARPA maintains that archaeological resources are "any material remains of past human life or activities which are of archaeological interest" (16 U.S.C. 470bb), and includes a list of items. Although the list of items in ARPA is not exclusive, it remains problematic. The Shumway case, discussed in chapter four, is a clear example. Recall that the judge ruled in favor of the defendant because "midden" was not included on the list (Green and Davis, 1981: 50). There is also the problem of remains that would be of interest to the archaeologist but not necessarily to other parties. Archaeological data such as context, environment, geology,

availability of resources such as raw material, etc., are not specifically covered under ARPA's definition of "archaeological resources".

As it stands currently, leaving a broad definition of "archaeological resource" to interpretation of the courts seems dangerous. A functional list makes prosecution under ARPA more effective, and a list may be changed accordingly. As Northey points out, an "advantage of (the list) approach is that it would be easier to modify. . . than a basic functional definition" (Northey, 1982: 103). Paul Fish adds that amending the "100 year" clause to a 50-year limit is plausible in the future (1980: 695). These are positive suggestions which warrant further investigation.

The dilemma of interest conflicts remains. Ronald Rosenberg (1980: 736) notes that regulatory control of resource protection may be perceived as an interference with public use, and that "value accorded the protected interest must be weighed against the other competing interests". Lorrie Northey adds that "when a conflict arises between commercial interests and archaeological interests in 'insignificant' resources, commercial interests prevail" (1982: 108). Future legislation might impose stricter regulations on commercial activities, in recognition of the non-renewable nature of archaeological resources. Northey suggests that commercial ventures "be treated as complying

with a constructive ARPA permit", so that violations could be punished under ARPA (id.). This approach would solve many difficulties of competing interests.

Another point of contention is the responsibility accorded to federal land managers through ARPA. Rosenberg points out that "the local land manager is empowered to make important decisions regarding the exploitation of an archaeological site guided only by uniform regulations" (1980: 733). This conclusion is well-taken; land managers are not generally trained in the details of archaeological site significance. A solution to this problem might be the establishment of review boards that would function as supervisors to land managers.

Future legislation should also consider the protection of resources on private lands. In this case, the United States lags far behind other countries. "In many other countries, private ownership of land does not override public rights of access or preservation of particularly important sites" (Fish, 1980: 695). The United States government recognizes that cultural heritage is a public domain, but has not taken steps to insure that "significant" resources on private property are preserved for future public benefit.

The future of protective legislation offers many possibilities. Strong measures are now in force, but even

stronger steps must be taken in order to fully preserve the record of the past. The current political and public climates bode auspiciously for further protection, and all interested parties must make a strong effort now to fully incorporate the conservation ethic into national awareness.

## CHAPTER SIX

## CONCLUSION

Archaeological materials provide the basis for our understanding of the past and are a non-renewable, limited resource. Population growth and expansion, development, mining and other land-altering activities, vandalism and commercial looting all threaten the archaeological record through destruction of these resources. Archaeology as a discipline relies on these data, but the understanding of prehistory is not solely the realm of archaeologists. It is a public realm as well. It is therefore in the best interest to all concerned that past material culture be preserved for the present as well as the future.

The federal government has recognized this need for preservation. Through our political and legal system, legislation has been enacted in order to preserve the record of the past. Beginning with the Antiquities Act of 1906, through the passage of the Archaeological Resources Protection Act of 1979, a concerted effort has been made to minimize the damage to our cultural heritage.

The practice of archaeology has and will continue to make contributions to the understanding of cultural development and prehistory. Because our data base is a limited resource, all possible efforts must be made to

protect it. Archaeology cannot continue to operate within a vacuum. The discipline has met this challenge well through the adoption of paradigms such as Cultural Resource Management and Conservation Archaeology. These sub-disciplines must continue to grow and work within our legal system.

The system is not perfect. Legislation is an effective tool, but must be implemented in concert with an archaeological ethic of preservation for the future. If we recognize the need for conservation, and work within the framework of productive research designs, we can continue to make further advances in the explication and interpretation of archaeological data. The field continues to produce a fine-edged knowledge of our past, but in order to continue doing so, we must first ensure that present and future archaeologists have a data base from which to work. The legislative and legal system provides the means to achieve this end. The groundwork has been laid. It is now up to the archaeological and public communities to see that it works.

**APPENDIX:**  
**THE ARCHAEOLOGICAL RESOURCES PROTECTION ACT OF 1979**

PUBLIC LAW 96-95—OCT. 31, 1979

93 STAT. 721

Public Law 96-95  
96th Congress

## An Act

To protect archaeological resources on public lands and Indian lands, and for other purposes.

Oct. 31, 1979  
[H.R. 1825]*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*Archaeological  
Resources  
Protection Act of  
1979.

## SHORT TITLE

SECTION 1. This Act may be cited as the "Archaeological Resources Protection Act of 1979".

16 USC 470aa  
note.

## FINDINGS AND PURPOSE

SEC. 2. (a) The Congress finds that—

16 USC 470aa.

- (1) archaeological resources on public lands and Indian lands are an accessible and irreplaceable part of the Nation's heritage;
- (2) these resources are increasingly endangered because of their commercial attractiveness;
- (3) existing Federal laws do not provide adequate protection to prevent the loss and destruction of these archaeological resources and sites resulting from uncontrolled excavations and pillage; and
- (4) there is a wealth of archaeological information which has been legally obtained by private individuals for noncommercial purposes and which could voluntarily be made available to professional archaeologists and institutions.

(b) The purpose of this Act is to secure, for the present and future benefit of the American people, the protection of archaeological resources and sites which are on public lands and Indian lands, and to foster increased cooperation and exchange of information between governmental authorities, the professional archaeological community, and private individuals having collections of archaeological resources and data which were obtained before the date of the enactment of this Act.

## DEFINITIONS

SEC. 3. As used in this Act—

16 USC 470bb.

- (1) The term "archaeological resource" means any material remains of past human life or activities which are of archaeological interest, as determined under uniform regulations promulgated pursuant to this Act. Such regulations containing such determination shall include, but not be limited to: pottery, basketry, bottles, weapons, weapon projectiles, tools, structures or portions of structures, pit houses, rock paintings, rock carvings, intaglios, graves, human skeletal materials, or any portion or piece of any of the foregoing items. Nonfossilized and fossilized paleontological specimens, or any portion or piece thereof, shall not be considered archaeological resources, under the regulations under this paragraph, unless found in an archaeological

context. No item shall be treated as an archaeological resource under regulations under this paragraph unless such item is at least 100 years of age.

(2) The term "Federal land manager" means, with respect to any public lands, the Secretary of the department, or the head of any other agency or instrumentality of the United States, having primary management authority over such lands. In the case of any public lands or Indian lands with respect to which no department, agency, or instrumentality has primary management authority, such term means the Secretary of the Interior. If the Secretary of the Interior consents, the responsibilities (in whole or in part) under this Act of the Secretary of any department (other than the Department of the Interior) or the head of any other agency or instrumentality may be delegated to the Secretary of the Interior with respect to any land managed by such other Secretary or agency head, and in any such case, the term "Federal land manager" means the Secretary of the Interior.

(3) The term "public lands" means—

(A) lands which are owned and administered by the United States as part of—

- (i) the national park system,
- (ii) the national wildlife refuge system, or
- (iii) the national forest system; and

(B) 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;

(4) The term "Indian lands" means lands of Indian tribes, or Indian individuals, 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 Indian individual.

(5) The term "Indian tribe" means any Indian tribe, band, nation, or other organized group or community, including any Alaska Native village or regional or village corporation as defined in, or established pursuant to, the Alaska Native Claims Settlement Act (85 Stat. 688).

(6) The term "person" means an individual, corporation, partnership, trust, institution, association, or any other private entity or any officer, employee, agent, department, or instrumentality of the United States, of any Indian tribe, or of any State or political subdivision thereof.

(7) The term "State" means any of the fifty States, the District of Columbia, Puerto Rico, Guam, and the Virgin Islands.

43 USC 1601  
note.

#### EXCAVATION AND REMOVAL

Permit  
application.  
16 USC 470cc.

SEC. 4. (a) Any person may apply to the Federal land manager for a permit to excavate or remove any archaeological resource located on public lands or Indian lands and to carry out activities associated with such excavation or removal. The application shall be required, under uniform regulations under this Act, to contain such information as the Federal land manager deems necessary, including information concerning the time, scope, and location and specific purpose of the proposed work.

(b) A permit may be issued pursuant to an application under subsection (a) if the Federal land manager determines, pursuant to uniform regulations under this Act, that—

(1) the applicant is qualified, to carry out the permitted activity,

(2) the activity is undertaken for the purpose of furthering archaeological knowledge in the public interest,

(3) the archaeological resources which are excavated or removed from public lands will remain the property of the United States, and such resources and copies of associated archaeological records and data will be preserved by a suitable university, museum, or other scientific or educational institution, and

(4) the activity pursuant to such permit is not inconsistent with any management plan applicable to the public lands concerned.

(c) If a permit issued under this section may result in harm to, or destruction of, any religious or cultural site, as determined by the Federal land manager, before issuing such permit, the Federal land manager shall notify any Indian tribe which may consider the site as having religious or cultural importance. Such notice shall not be deemed a disclosure to the public for purposes of section 9.

(d) Any permit under this section shall contain such terms and conditions, pursuant to uniform regulations promulgated under this Act, as the Federal land manager concerned deems necessary to carry out the purposes of this Act.

(e) Each permit under this section shall identify the individual who shall be responsible for carrying out the terms and conditions of the permit and for otherwise complying with this Act and other law applicable to the permitted activity.

(f) Any permit issued under this section may be suspended by the Federal land manager upon his determination that the permittee has violated any provision of subsection (a), (b), or (c) of section 6. Any such permit may be revoked by such Federal land manager upon assessment of a civil penalty under section 7 against the permittee or upon the permittee's conviction under section 6.

(g)(1) No permit shall be required under this section or under the Act of June 8, 1906 (16 U.S.C. 431), for the excavation or removal by any Indian tribe or member thereof of any archaeological resource located on Indian lands of such Indian tribe, except that in the absence of tribal law regulating the excavation or removal of archaeological resources on Indian lands, an individual tribal member shall be required to obtain a permit under this section.

(2) In the case of any permits for the excavation or removal of any archaeological resource located on Indian lands, the permit may be granted only after obtaining the consent of the Indian or Indian tribe owning or having jurisdiction over such lands. The permit shall include such terms and conditions as may be requested by such Indian or Indian tribe.

(h)(1) No permit or other permission shall be required under the Act of June 8, 1906 (16 U.S.C. 431-433), for any activity for which a permit is issued under this section.

(2) Any permit issued under the Act of June 8, 1906, shall remain in effect according to its terms and conditions following the enactment of this Act. No permit under this Act shall be required to carry out any activity under a permit issued under the Act of June 8, 1906, before the date of the enactment of this Act which remains in effect as provided in this paragraph, and nothing in this Act shall modify or affect any such permit.

(i) Issuance of a permit in accordance with this section and applicable regulations shall not require compliance with section 106 of the Act of October 15, 1966 (80 Stat. 917, 16 U.S.C. 470f).

(j) Upon the written request of the Governor of any State, the Federal land manager shall issue a permit, subject to the provisions of subsections (b)(3), (b)(4), (c), (e), (f), (g), (h), and (i) of this section for the purpose of conducting archaeological research, excavation, removal, and curation, on behalf of the State or its educational institutions, to such Governor or to such designee as the Governor deems qualified to carry out the intent of this Act.

#### CUSTODY OF RESOURCES

Regulations.  
16 USC 470dd.

SEC. 5. The Secretary of the Interior may promulgate regulations providing for—

(1) the exchange, where appropriate, between suitable universities, museums, or other scientific or educational institutions, of archaeological resources removed from public lands and Indian lands pursuant to this Act, and

(2) the ultimate disposition of such resources and other resources removed pursuant to the Act of June 27, 1960 (16 U.S.C. 469-469c) or the Act of June 8, 1906 (16 U.S.C. 431-433).

Any exchange or ultimate disposition under such regulation of archaeological resources excavated or removed from Indian lands shall be subject to the consent of the Indian or Indian tribe which owns or has jurisdiction over such lands. Following promulgation of regulations under this section, notwithstanding any other provision of law, such regulations shall govern the disposition of archaeological resources removed from public lands and Indian lands pursuant to this Act.

#### PROHIBITED ACTS AND CRIMINAL PENALTIES

16 USC 470ee.

SEC. 6. (a) No person may excavate, remove, damage, or otherwise alter or deface any archaeological resource located on public lands or Indian lands unless such activity is pursuant to a permit issued under section 4, a permit referred to in section 4(h)(2), or the exemption contained in section 4(g)(1).

(b) No person may sell, purchase, exchange, transport, receive, or offer to sell, purchase, or exchange any archaeological resource if such resource was excavated or removed from public lands or Indian lands in violation of—

(1) the prohibition contained in subsection (a), or

(2) any provision, rule, regulation, ordinance, or permit in effect under any other provision of Federal law.

(c) No person may sell, purchase, exchange, transport, receive, or offer to sell, purchase, or exchange, in interstate or foreign commerce, any archaeological resource excavated, removed, sold, purchased, exchanged, transported, or received in violation of any provision, rule, regulation, ordinance, or permit in effect under State or local law.

(d) Any person who knowingly violates, or counsels, procures, solicits, or employs any other person to violate, any prohibition contained in subsection (a), (b), or (c) of this section shall, upon conviction, be fined not more than \$10,000 or imprisoned not more than one year, or both: *Provided, however,* That if the commercial or archaeological value of the archaeological resources involved and the cost of restoration and repair of such resources exceeds the sum of \$5,000, such person shall be fined not more than \$20,000 or impris-

oned not more than two years, or both. In the case of a second or subsequent such violation upon conviction such person shall be fined not more than \$100,000, or imprisoned not more than five years, or both.

(c) The prohibitions contained in this section shall take effect on the date of the enactment of this Act.

(f) Nothing in subsection (b)(1) of this section shall be deemed applicable to any person with respect to an archaeological resource which was in the lawful possession of such person prior to the date of the enactment of this Act.

(g) Nothing in subsection (d) of this section shall be deemed applicable to any person with respect to the removal of arrowheads located on the surface of the ground.

#### CIVIL PENALTIES

Sec. 7. (a)(1) Any person who violates any prohibition contained in an applicable regulation or permit issued under this Act may be assessed a civil penalty by the Federal land manager concerned. No penalty may be assessed under this subsection unless such person is given notice and opportunity for a hearing with respect to such violation. Each violation shall be a separate offense. Any such civil penalty may be remitted or mitigated by the Federal land manager concerned. 16 USC 470ff.

(2) The amount of such penalty shall be determined under regulations promulgated pursuant to this Act, taking into account, in addition to other factors—

(A) the archaeological or commercial value of the archaeological resource involved, and

(B) the cost of restoration and repair of the resource and the archaeological site involved.

Such regulations shall provide that, in the case of a second or subsequent violation by any person, the amount of such civil penalty may be double the amount which would have been assessed if such violation were the first violation by such person. The amount of any penalty assessed under this subsection for any violation shall not exceed an amount equal to double the cost of restoration and repair of resources and archaeological sites damaged and double the fair market value of resources destroyed or not recovered.

(3) No penalty shall be assessed under this section for the removal of arrowheads located on the surface of the ground.

(b)(1) Any person aggrieved by an order assessing a civil penalty under subsection (a) may file a petition for judicial review of such order with the United States District Court for the District of Columbia or for any other district in which such a person resides or transacts business. Such a petition may only be filed within the 30-day period beginning on the date the order making such assessment was issued. The court shall hear such action on the record made before the Federal land manager and shall sustain his action if it is supported by substantial evidence on the record considered as a whole.

(2) If any person fails to pay an assessment of a civil penalty—

(A) after the order making the assessment has become a final order and such person has not filed a petition for judicial review of the order in accordance with paragraph (1), or

(B) after a court in an action brought under paragraph (1) has entered a final judgment upholding the assessment of a civil penalty,

the Federal land managers may request the Attorney General to institute a civil action in a district court of the United States for any district in which such person is found, resides, or transacts business to collect the penalty and such court shall have jurisdiction to hear and decide any such action. In such action, the validity and amount of such penalty shall not be subject to review.

Subpenas.

Witness fees.

(c) Hearings held during proceedings for the assessment of civil penalties authorized by subsection (a) shall be conducted in accordance with section 554 of title 5 of the United States Code. The Federal land manager may issue subpenas for the attendance and testimony of witnesses and the production of relevant papers, books, and documents, and administer oaths. Witnesses summoned shall be paid the same fees and mileage that are paid to witnesses in the courts of the United States. In case of contumacy or refusal to obey a subpoena served upon any person pursuant to this paragraph, the district court of the United States for any district in which such person is found or resides or transacts business, upon application by the United States and after notice to such person, shall have jurisdiction to issue an order requiring such person to appear and give testimony before the Federal land manager or to appear and produce documents before the Federal land manager, or both, and any failure to obey such order of the court may be punished by such court as a contempt thereof.

#### REWARDS; FORFEITURE

16 USC 470gg.

SEC. 8. (a) Upon the certification of the Federal land manager concerned, the Secretary of the Treasury is directed to pay from penalties and fines collected under sections 6 and 7 an amount equal to one-half of such penalty or fine, but not to exceed \$500, to any person who furnishes information which leads to the finding of a civil violation, or the conviction of criminal violation, with respect to which such penalty or fine was paid. If several persons provided such information, such amount shall be divided among such persons. No officer or employee of the United States or of any State or local government who furnishes information or renders service in the performance of his official duties shall be eligible for payment under this subsection.

(b) All archaeological resources with respect to which a violation of subsection (a), (b), or (c) of section 6 occurred and which are in the possession of any person, and all vehicles and equipment of any person which were used in connection with such violation, may be (in the discretion of the court or administrative law judge, as the case may be) subject to forfeiture to the United States upon—

- (1) such person's conviction of such violation under section 6,
- (2) assessment of a civil penalty against such person under section 7 with respect to such violation, or
- (3) a determination by any court that such archaeological resources, vehicles, or equipment were involved in such violation.

(c) In cases in which a violation of the prohibition contained in subsection (a), (b), or (c) of section 6 involve archaeological resources excavated or removed from Indian lands, the Federal land manager or the court, as the case may be, shall provide for the payment to the Indian or Indian tribe involved of all penalties collected pursuant to section 7 and for the transfer to such Indian or Indian tribe of all items forfeited under this section.

PUBLIC LAW 96-95—OCT. 31, 1979

93 STAT. 727

## CONFIDENTIALITY

SEC. 9. (a) Information concerning the nature and location of any archaeological resource for which the excavation or removal requires a permit or other permission under this Act or under any other provision of Federal law may not be made available to the public under subchapter II of chapter 5 of title 5 of the United States Code or under any other provision of law unless the Federal land manager concerned determines that such disclosure would—

- (1) further the purposes of this Act or the Act of June 27, 1960 (16 U.S.C. 469-469c), and
- (2) not create a risk of harm to such resources or to the site at which such resources are located.

(b) Notwithstanding the provisions of subsection (a), upon the written request of the Governor of any State, which request shall state—

- (1) the specific site or area for which information is sought,
- (2) the purpose for which such information is sought,
- (3) a commitment by the Governor to adequately protect the confidentiality of such information to protect the resource from commercial exploitation,

the Federal land manager concerned shall provide to the Governor information concerning the nature and location of archaeological resources within the State of the requesting Governor.

## REGULATIONS; INTERGOVERNMENTAL COORDINATION

SEC. 10. (a) The Secretaries of the Interior, Agriculture and Defense and the Chairman of the Board of the Tennessee Valley Authority, after consultation with other Federal land managers, Indian tribes, representatives of concerned State agencies, and after public notice and hearing, shall promulgate such uniform rules and regulations as may be appropriate to carry out the purposes of this Act. Such rules and regulations may be promulgated only after consideration of the provisions of the American Indian Religious Freedom Act (92 Stat. 469; 42 U.S.C. 1996). Each uniform rule or regulation promulgated under this Act shall be submitted on the same calendar day to the Committee on Energy and Natural Resources of the United States Senate and to the Committee on Interior and Insular Affairs of the United States House of Representatives, and no such uniform rule or regulation may take effect before the expiration of a period of ninety calendar days following the date of its submission to such Committees.

(b) Each Federal land manager shall promulgate such rules and regulations, consistent with the uniform rules and regulations under subsection (a), as may be appropriate for the carrying out of his functions and authorities under this Act.

## COOPERATION WITH PRIVATE INDIVIDUALS

SEC. 11. The Secretary of the Interior shall take such action as may be necessary, consistent with the purposes of this Act, to foster and improve the communication, cooperation, and exchange of information between—

- (1) private individuals having collections of archaeological resources and data which were obtained before the date of the enactment of this Act, and
- (2) Federal authorities responsible for the protection of archaeological resources on the public lands and Indian lands and

professional archaeologists and associations of professional archaeologists.

In carrying out this section, the Secretary shall, to the extent practicable and consistent with the provisions of this Act, make efforts to expand the archaeological data base for the archaeological resources of the United States through increased cooperation between private individuals referred to in paragraph (1) and professional archaeologists and archaeological organizations.

#### SAVINGS PROVISIONS

16 USC 470kk.

SEC. 12. (a) Nothing in this Act shall be construed to repeal, modify, or impose additional restrictions on the activities permitted under existing laws and authorities relating to mining, mineral leasing, reclamation, and other multiple uses of the public lands.

(b) Nothing in this Act applies to, or requires a permit for, the collection for private purposes of any rock, coin, bullet, or mineral which is not an archaeological resource, as determined under uniform regulations promulgated under section 3(1).

(c) Nothing in this Act shall be construed to affect any land other than public land or Indian land or to affect the lawful recovery, collection, or sale of archaeological resources from land other than public land or Indian land.

#### REPORT

16 USC 470ll.

SEC. 13. As part of the annual report required to be submitted to the specified committees of the Congress pursuant to section 5(c) of the Act of June 27, 1960 (74 Stat. 220; 16 U.S.C. 469-469a), the Secretary of the Interior shall comprehensively report as a separate component on the activities carried out under the provisions of this Act, and he shall make such recommendations as he deems appropriate as to changes or improvements needed in the provisions of this Act. Such report shall include a brief summary of the actions undertaken by the Secretary under section 11 of this Act, relating to cooperation with private individuals.

Approved October 31, 1979.

## LIST OF REFERENCES

- Barnes, Mark R.  
1984 Archaeological Legislation: Managing Our Cultural Heritage. American Archaeology 4(2): 114.
- Beaty, Laura L.  
1985 ARPA Enacted: The Legislative Process. American Archaeology 6(1): 90-94.
- Code of Federal Regulations  
1986 Preservation of American Antiquities Title 43, part 3. United States Government Printing Office, Washington, D.C.  
1986 Preservation of Natural, Cultural and Archaeological Resources Title 36, part 2.1. United States Government Printing Office, Washington, D.C.  
1986 Prohibitions Title 36, part 261.9. United States Government Printing Office, Washington, D.C.
- Collins, Robert B.  
1980 The Meaning Behind ARPA: How the Act is Meant to Work. Cultural Resources Report USDA Forest Service, Southwest Region, No. 32, Miscellaneous Paper No. 33.
- Collins, Robert B. and Dee F. Green  
1978 A Proposal to Modernize the American Antiquities Act. Science 202(4372), December 8: 1055-1059.
- Collins, Robert B. and Mark P. Michel  
1985 Preserving the Past: Origins of the Archaeological Resources Protection Act of 1979. American Archaeology 6(1): 84-89.
- Corbyn, Ronald C.  
1980 Problems in Federal Archaeology. ASCA Newsletter Vol. 7, October: 20-29.

Davis, Hester A.

- 1972 The Crisis in American Archaeology. Science 175(4019), January 21: 267-272.

Executive Order 11593

- 1971 Protection and Enhancement of the Cultural Environment. Federal Register 36: 8921-8923.

Fike, Richard E.

- 1980 Antiquities Violations in Utah: Justice Does Prevail. ASCA Newsletter Vol. 7, October: 32-34.

Fish, Paul R.

- 1980 Federal Policy and Legislation for Archaeological Conservation. Arizona Law Review 22: 681-699.

Fowler, John M.

- 1974 Protection of the Cultural Environment in Federal Law. In Federal Environmental Law, edited by Erica L. Dolgin and Thomas G.P. Guilbert, pp. 1466-1517. St. Paul, West Publishing.

Friedman, Janet L.

- 1981 Archaeological Resources Protection Act Law Enforcement Training. ASCA Report 8(2): 2-4.
- 1985a A History of the Archaeological Resources Protection Act: Law and Regulations. American Archaeology 6(1): 82-83.
- 1985b The Regulations: The Early Years. American Archaeology 6(1): 94-101.

Garvin, Ken

- 1987 Enforcing ARPA. Ranger 3(2): 10-12.

Glassow, Michael A.

- 1977 Issues in Evaluating the Significance of  
Archaeological Resources. American Antiquity  
42(3): 413-420.

Green, Dee F.

- 1980 A Summary of the First Court Cases under ARPA.  
ASCA Newsletter Vol. 7, October: 29-31.

Green, Dee F. and Steven LeBlanc (compilers)

- 1979 Vandalism of Cultural Resources: The Growing  
Threat to our Nation's Heritage. Cultural  
Resources Report USDA Forest Service,  
Southwestern Region, No. 28, Albuquerque.

Green, Dee F. and Herrick Hanks

- 1985 Prosecuting Without Regulations: ARPA Successes  
and Failures. American Archaeology 6(1):  
103-107.

Green, Dee F. and Polly Davis (compilers)

- 1980 Cultural Resources Law Enforcement: An Emerging  
Science. USDA Forest Service, Southwestern  
Region, Albuquerque.

Green, Dee F. and Polly Davis (compilers)

- 1981 Cultural Resources Law Enforcement: An Emerging  
Science (2nd Edition). USDA Forest Service,  
Southwestern Region, Albuquerque.

Hester, James J.

- 1982 Conservation Archaeology, The Latest  
Archaeological Paradigm? ASCA Report 9(3): 9-22.

Keel, Bennie C. and Annetta L. Cheek

- 1985 The Regulations: The Late Years. American  
Archaeology 6(1): 101-103.

King, Thomas F.

- 1984a An Overview of Archaeological Law at the Federal  
Level. American Archaeology 4(2): 115-118.

- King, Thomas F.  
1984b Has Conservation Really Helped? in ASCA Proceedings 1984 edited by William J. Mayer-Oakes and Alice W. Portnoy, on file at Arizona State Museum library, Tucson.
- King, Thomas F., Patricia Parker Hickman and Gary Berg  
1977 Anthropology in Historic Preservation: Caring for Culture's Clutter. New York, Academic Press.
- LeBlanc, Stephen A.  
1985 ARPA: Some Lessons. American Archaeology 6(1): 115-117.
- Lee, Ronald F.  
1970 The Antiquities Act of 1906. National Park Service, Washington, D.C.
- Lipe, William D.  
1974 A Conservation Model for American Archaeology. The Kiva 39(3-4): 213-245.
- McGimsey, Charles R. III  
1972 Public Archaeology. New York, Seminar Press.
- 1985 "This, Too, Will Pass": Moss-Bennett in Perspective. American Antiquity 50(2): 326-331.
- McGimsey, Charles R. III and Hester A. Davis (editors)  
1977 The Management of Archaeological Resources: The Airlie House Report. Special Publication of the Society for American Archaeology.
- Meizner, Woody C.  
1981 CRM Archaeology: Federal Variations. Contract Abstracts and CRM Archaeology (currently American Archaeology) 3(1): 44-48.

- Nafziger, James A.R.  
1980 Legal Protection of America's Archaeological Heritage: An Introduction. Arizona Law Review 22: 675-680.
- Northey, Lorrie D.  
1982 The Archaeological Resources Protection Act of 1979: Protecting Prehistory for the Future. Harvard Environmental Law Review 6(1): 61-115.
- Nurkin, Gary  
1981 The Conservation of Archaeological Resources: The Federal Legislation. Contract Abstracts and CRM Archaeology (currently American Archeology) 3(1): 48-59.
- Pilles, Peter J., Jr.  
1981 Public Archaeology on the Coconino National Forest. ASCA Report 8(6): 48-54.
- Raab, L. Mark and Timothy C. Klinger  
1977 A Critical Appraisal of "Significance" in Contract Archaeology. American Antiquity 42(4): 629-634.  
  
1979 A Reply to Sharrock and Grayson on Archaeological Significance. American Antiquity 44(2): 328-329.
- Reilly, Marilou  
1987 Protecting Archaeological Resources. Ranger 3(2): 8-9.
- Rippeteau, Bruce  
1979 Antiquities Enforcement in Colorado. Journal of Field Archaeology 6(1): 85-103.
- Rosenberg, Ronald H.  
1980 Federal Protection for Archaeological Resources. Arizona Law Review 22: 701-735.

- Schiffer, Michael B. and George J. Gummerman (editors)  
1977 Conservation Archaeology: A Guide for Cultural Resource Management Studies. New York, Academic Press.
- Sharrock, Floyd W. and Donald K. Grayson  
1979 "Significance" in Contract Archaeology. American Antiquity 44(2): 327-328.
- Somers, Gary Fred  
1977 Cultural Resource Management; Its Development and Impact upon the Archaeological Profession. Ms. on file, Western Archaeological Center Library, Tucson.
- 1979 The Role of the Federal Government in Historic Preservation. PhD Dissertation, The University of Arizona, Tucson.
- U.S. Congress, House  
1906 Preservation of American Antiquities. 59th Congress, 1st session, H. Rept. 59-2224. U.S. Government Printing Office, Washington, D.C.
- 1935 Preservation of Historic American Sites, Buildings, Objects, and Antiquities of National Significance and for Other Purposes. 74th Congress, 1st session, H. Rept. 74-848. U.S. Government Printing Office, Washington, D.C.
- 1960 Providing for the Preservation of Historical and Archaeological Data (including Relics and Specimens) which might otherwise be lost as a result of the Construction of a Dam. 86th Congress, 2nd session, H. Rept. 86-1392. U.S. Government Printing Office, Washington, D.C.
- 1966 Establishing a Program for the Preservation of Additional Historic Properties throughout the Nation. 89th Congress, H. Rept. 89-1916. U.S. Government Printing Office, Washington, D.C.

## U.S. Congress, House

- 1974 Amending the Act of June 27, 1960 (74 Stat. 220), Relating to the Preservation of Historical and Archaeological Data. 93rd Congress, 2nd session, H. Rept. 93-992. U.S. Government Printing Office, Washington, D.C.
- 1976 Amending the Land and Water Conservation Fund Act of 1965, As Amended, and Amending the Act of October 15, 1966, Establishing a program for the Preservation of Additional Historic Properties throughout the Nation, as Amended, and for other Purposes. 94th Congress, 2nd session, H. Rept. 94-1021. U.S. Government Printing Office, Washington, D.C.
- 1977 National Historic Preservation Policy Act of 1977. 95th Congress, 1st session, H.R. 3602. U.S. Government Printing Office, Washington, D.C.
- 1979 Archaeological Resources Protection Act of 1979. 96th Congress, 1st session, H.R. 1825. U.S. Government Printing Office, Washington, D.C.
- 1980 National Historic Preservation Act Amendments of 1980. 96th Congress, 2nd session, H.R. 5496. U.S. Government Printing Office, Washington, D.C.

## U.S. Congress, Senate

- 1959 Preservation of Historical and Archaeological Data which might Otherwise be Lost as the Result of the Construction of Certain Dams. 86th Congress, 1st session, S. Rept. 86-383. U.S. Government Printing Office, Washington, D.C.
- 1966 Preservation of Historic properties. 89th Congress, 2nd session, S. Rept. 89-1363. U.S. Government Printing Office, Washington, D.C.

## U.S. Congress, Senate

1969 National Environmental Policy Act of 1969. 91st Congress, 1st session, S. Rept. 91-296. U.S. Government Printing Office, Washington, D.C.

1973 Amending Act of June 27, 1960 (74 Stat. 220), Relating to the Preservation of Historical and Archaeological Data. 93rd Congress, 1st session, S. Rept. 93-163. U.S. Government Printing Office, Washington, D.C.

## U.S. Department of the Interior

1984 Archaeological Resources Protection Act of 1979; Final Uniform Regulations. Federal Register 49(4): 1016-1034.

## Wendorf, Fred

1979 Changing Values in Archaeology. American Antiquity 44: 641-643.

## Zubrow, E.B.W.

1984 Small-Scale Surveys: A Problem for Quality Control. American Archaeology 4(1): 16-26.