

## Archaeological Resources Protection Act

**Agencies:** U.S. National Park Service and Bureau of Ocean Energy Management (within the Department of the Interior)

**Citation:** [16 U.S.C. §§ 470aa et seq.](#)

**Enacted as:** the “Archaeological Resources Protection Act of 1979”, on October 31, 1979

**Where Law Applies:** The application of ARPA is generally limited to archaeological resources on public lands (owned and administered by the United States) and Indian lands. However, ARPA’s definition of public lands expressly excludes the outer continental shelf.

However, the enforcement of federal trafficking such resources under ARPA section 6(c) has been applied in cases involving archaeological resources taken from private lands and even resources looted from foreign lands. It states that “no person may sell, purchase, exchange, in interstate or foreign commerce, any archaeological resource excavate, removed, sold, purchased, exchanged, transported, or received in violation of any provision rule, regulation, ordinance, or permit in effect under State or local law.” Enforcement of this ARPA trafficking would generally occur within the U.S. territory, however, international law recognizes that a coastal State may enforce such trafficking laws against foreign flagged vessels and nationals within the territorial sea and the U.S. 24 nm contiguous zone.

### **Summary:**

The [Archaeological Resources Protection Act \(ARPA\)](#) (16 U.S.C. §§ 470aa et seq.) was enacted for “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 (section 2(4)(b)). With regard to the marine environment, ARPA applies only in federal marine protected areas or other submerged lands to which the U.S. Government retained title and did not transfer to states under the [Submerged Lands Act](#) or other otherwise owns or controls through agreements with states. At the time ARPA was enacted, commercial looting of archaeological sites located on federal lands was not sufficiently deterred by then-existing laws. Looters were emboldened by the ineffectiveness of the [Antiquities Act](#) in *United States v. Diaz*, [368 F. Supp. 856 \(D. Ariz. 1973\)](#), *rev’d*, [499 F.2d 113 \(9<sup>th</sup> Cir. 1974\)](#), and the threat of a \$500 fine under the Antiquities Act. The Society for American Archaeology, the largest professional association devoted to the archaeology of the Americas, took their concerns with looting to Congress, and nine months later ARPA was passed.

In general, federal public land managers rely on the ARPA permitting and enforcement provisions instead of the Antiquities Act; however, permits under the Antiquities Act may still be issued, particularly on the outer continental shelf, which is expressly excluded from the definition of public lands under ARPA. The criminal sanctions for various resources crimes went further than the Antiquities Act by adding civil (administrative) enforcement and forfeiture provisions. To ensure that archaeological information, wherever found, would not be lost to

science, ARPA articulated the public's role in land management as interested parties and possessors of archaeological resources. ARPA protects resources on "public lands" which include the National Park system, National Wildlife Refuge system, National Forest system, and all other lands which the United States holds in fee. Exempted from coverage are lands on the outer continental shelf and under the jurisdiction of the Smithsonian Institution.

For a more detailed summary of ARPA, see <http://www.nps.gov/archeology/tools/Laws/arpa.htm>.

**Source:** Sherry Hutt, Caroline M. Blanco, & Ole Varmer, *Heritage Resources Law: Protecting the Archeological and Cultural Environment* (The National Trust for Historic Preservation) (1999)

### **Legislative History:**

The Archaeological Resources Protection Act was drafted, debated, and enacted relatively quickly in response to the critical weaknesses in artifact protection under the Antiquities Act demonstrated by the 1974 *Diaz* decision. ARPA improved on the AA with more detailed descriptions of the prohibited activities, larger financial and incarceration penalties for convicted violators, and anti-trafficking provisions.

The 1988 amendments focused more attention on management actions, adding section 10(c) to direct Federal land managers to establish programs to increase public awareness of the significance of the archaeological resources located on public lands and Indian lands, as well as and the need to protect such resources. The intent of this amendment was to reach visitors using public lands with the message that archaeological resources, while valuable to all, must be properly investigated and cared for and enjoy legal protection when located on public lands.

Section 14 of the 1988 amendments requires the major land managing Federal departments (Interior, Agriculture, Defense, and the Tennessee Valley Authority) to plan and schedule archaeological surveys of the lands under their control. The aim of this new section was to emphasize the need for better knowledge of the locations and character of archeological resources under Federal jurisdiction.

**Source:** National Park Service Archaeology Program: <http://www.nps.gov/archeology/tools/Laws/arpa.htm> last visited July 1, 2013.

### **Cases:**

- *Klein v. Unidentified Wrecked & Abandoned Sailing Vessel*, [758 F.2d 1511 \(11th Cir. 1985\)](#) (Kravitch, J., concurring in part, dissenting in part), *aff'g* [568 F. Supp. 1562 \(S.D. Fla. 1983\)](#).
- *Nye County, Nevada* (Forest Service, Dept. of Agriculture [notice of violation](#) of ARPA and proposed assessment issued Aug. 17, 1997).
- *United States v. An Archaic Etruscan Pottery Ceremonial Vase*, [No. 96-CIV. 9437 \(S.D.N.Y. filed Dec. 16, 1996\)](#) (*verified complaint in rem*).

- *United States v. Gerber*, [999 F.2d 1112 \(7th Cir. 1993\)](#), cert. denied, [510 U.S. 1071 \(1994\)](#).
- *Matter of Search and Seizure of Shivers*, [No. 1:92-M-148](#) (E.D. Tex. 1995) (1995 WL 293188), adopted, [890 F.Supp. 613 \(E.D. Tex. 1995\)](#), reconsideration denied, [900 F.Supp. 60 \(E.D. Tex. 1995\)](#), *aff'd sub nom.*, *United States v. Shivers*, 96 F.3d 120 (5th Cir. 1996).
- *United States v. Shumway*, [112 F.3d 1413 \(10th Cir. 1997\)](#).

#### **Law Articles:**

- Jay M. Zitter, J.D., *Validity, Construction, and Operation of Archaeological Resources Protection Act of 1979*, 16 U.S.C.A. §§ 470aa to 470mm, 184 A.L.R. Fed. 139 (2011).

#### **Other Relevant Sources:**

- National Park Service, Archeology Program, [The Archaeological Resources Protection Act of 1979](#)