



Archeology Program

National Park Service
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The Listing of Outlaw Treachery (LOOT) Clearinghouse

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The Listing of Outlaw Treachery (LOOT) Clearinghouse consists of information about completed legal cases concerning the theft, trafficking, destruction, or defacement of archeological resources on public lands. LOOT came about in 1986 as an initiative to improve implementation of the, then, recently passed Archaeological Resources Protection Act (ARPA). The NPS has maintained the clearinghouse for the past 20 years. To our knowledge, this is the only ongoing effort to collect information specifically on these types of legal cases.

The intent of the clearinghouse is to facilitate the exchange of information about successfully prosecuted cases involving the theft or destruction of archeological resources on Federal, State, Tribal, and municipal lands. Information about completed cases assists in developing successful strategies for prosecuting cases involving archeological resource law violations. The clearinghouse also provides opportunities to examine trends in the prosecution of such cases. Though it does not contain information about all archeological resource law cases that have been prosecuted in the United States, we suggest that it contains a representative sample that can be used to assess the impact of changes in laws, regulations, and legal practices over time.

Archeological Resource Protection in the U.S.

Between 1906 and 1974 the Antiquities Act was the primary law that specifically addressed protection of archeological resources on Federal lands. The Act asserted wide and general public interest in and control over archeological resources on Federal and Indian lands. This public interest and concern continues to the present and is the basis for the Federal government's efforts to protect archeological sites from looting and vandalism. However, the Antiquities Act did not effectively prevent or deter deliberate, criminal looting of archeological sites on those lands. In 1974, the Act was found to be unconstitutional in the 9th Circuit Court of Appeals, limiting the efficacy of the Act in prosecuting looters and vandals.

Without protection from strong laws and regulations, archeological resources were in serious danger. Archeologists worked vigorously to redress the situation by proposing new legislation for the protection of archeological resources. ARPA, passed in October 1979, addressed deficiencies of the Antiquities Act and contained several new provisions that significantly strengthened the ability to prosecute archeological resource violations in Federal courts. These provisions included explicit and detailed definitions of cultural resources, stiffer fines and sentences, anti-trafficking provisions, provisions for confidentiality of site locations, and support for States' protection of archeological resources.

In 1988, the Federal government enacted uniform regulation amendments that lowered the threshold for prosecutions that can result in felony convictions, large fines, and imprisonment for up to two years from \$5,000 to \$500 worth of damage to archeological sites. Attempting to damage a site was added to the regulations as a prohibited act. The ARPA amendments also required Federal agencies to report on looting of archeological sites on their managed lands to the Secretary of the Interior.

ARPA regulation amendments provided impetus for Federal agencies to devote more resources to protection of archeological resources on federally managed lands. New initiatives in the years immediately following the amendments included budget increases for archeological law enforcement; training for rangers and field law enforcement agents, archeologists, and public prosecutors; detection and investigation equipment; and new archeological resource protection programs.

In 2002, "Theft of, Damage to, or Destruction of Cultural Heritage Resources; Unlawful Sale, Purchase, Exchange, Transportation, or Receipt of Cultural Heritage Resources" became a stand-alone, Federal sentencing guideline for crimes involving cultural resources. The new guideline seeks to ensure that non-quantifiable harm is adequately recognized in the penalty. The guideline also expanded the list of protected resources beyond archeological resources listed in ARPA to include categories such as ethnological objects and commemorative works.

The Inception of an Archeological Clearinghouse

The LOOT Clearinghouse grew out of Federal meetings to improve implementation of ARPA. Federal agency archeologists identified a need for a central source of information about completed prosecutions related to vandalism, looting, and trafficking of archeological resources. While the original intent was to track the use of ARPA in prosecutions, the clearinghouse soon grew to contain records about any legal cases involving American archeological resources.

The records have been compiled in a number of ways. Many of the cases in the LOOT Clearinghouse that pre-date 1989 were submitted by Martin McAlister. McAlister, who was

then employed as a Federal archeologist in the American Southwest, collected information about adjudicated cases in the region where he worked and forwarded them to the Departmental Consulting Archeologist.

Beginning in 1987, a LOOT form, a standard request for information about completed cases, was attached to the annual questionnaire about the Federal Archeology Program. The Departmental Consulting Archeologist sends this questionnaire to all Federal agencies with responsibilities for archeological resources, and uses compiled data in preparation of the Secretary of the Interior's Report to Congress on the Federal Archeology Program. The annual data call has been an important mechanism for collecting information about prosecutions of looting and vandalism.

The advent of the Internet facilitated searching for information about cases. The Archeology Program carried out extensive online research about cases dating between 1988 and 2003. These efforts resulted in the capture of information about every prosecuted archeological resource case that resulted in a judge's opinion and, thus, was available through the Lexis-Nexus Research Service. The majority of significant archeological resource cases completed during this time period are probably included in the LOOT Clearinghouse.

Cases in LOOT

Case Population

As of August 2009, the LOOT Clearinghouse contained approximately 700 records about resolved cases of archeological resource law violations. While ten Federal agencies regularly contribute records to the clearinghouse through the annual questionnaire, the NPS has led in reporting of archeological resource violation cases.

The earliest record dates to 1967. First kept only as paper files, summary information about the cases was eventually entered into an electronic database that functions as a finding aid for information in files. The breadth of data in the LOOT Clearinghouse varies widely from case to case. Investigative reports, court documents, and archeological damage assessments are frequently present in the paper files; however, only documents that are a matter of public record are maintained.

Archeological resource law violations in the LOOT Clearinghouse come from 45 states, although 11 states in the Southwest and the Southeast account for about 70% of the total. The earliest cases come from Southwest, reflecting McAlister's contributions. Southwestern states, however, continue to be a source of a large proportion of cases over time.

The distribution of cases comes from geographical areas of the country with the most active collecting of archeological materials and the most active markets for purchase. Complex interactions between accessibility to archeological resources, the presence of a stewardship ethic in local culture, marketability of looted items, degree of vigilance in protecting archeological resources, and willingness of Federal prosecutors to try cases influence the geographical distribution of cases. The large number of resolved cases from Utah in the LOOT Clearinghouse, for example, is largely due to the energetic prosecutions of one individual.

Large blocks of uninhabited and infrequently patrolled Federal land in the Southwest containing relatively accessible and marketable archeological resources may account for the large number of cases from the Southwest. The Southeast is the source of the second largest number of cases in the clearinghouse, probably stemming from the large number of Civil War battlefields in this region, and a long tradition of collecting Civil War memorabilia. It is possible, however, that there is a bias in reporting to LOOT that emphasizes cases from these areas of the country.

Characteristics of Prosecuted Cases

Over 1,000 separate citations are recorded in the LOOT database, providing opportunities to review the range of legal options that have been used to prosecute violators of archeological resources on Federal lands. Almost 100 specific citations have been recorded in records in the LOOT Clearinghouse, but can be grouped into five categories: Antiquities Act, ARPA, injury to government property, theft of government property, and other miscellaneous laws. Injury to government property encompasses laws and regulations that pertain to damage of Federal property. Theft refers to the removal of archeological resources from Federal lands for personal ownership as well as removal for sale. Miscellaneous laws are a compendium of legislation and regulations that were invoked in addition to or in place of archeological resources laws, such as trespassing, permit violation, or conspiracy.

It is important to remember that resource protection laws not specifically written to address archeological issues are also used to protect archeological resources. Non-archeological resource law citations account for about 60 percent of the total sample of citations in LOOT, with ARPA accounting for about 40 percent. Preference for charging looters and vandals under other laws may stem from greater familiarity with these other laws, a better fit between the circumstances of a particular case and a non-ARPA statute, or greater assurance that prosecutions under laws other than ARPA will be successful.

The majority of cases in the LOOT Clearinghouse are for prosecutions for criminal infractions. Very few were charged with civil violations, issued warnings, or forfeited property. Of those charged with criminal infractions, most were found guilty. This suggests that, as with cases in other areas, prosecutors typically only take cases to trial if they feel the cases are strong. The quality and integrity of evidence collected during investigation of resource violations is critical in making this determination, and it is an area where archeologists and law enforcement personnel can and should work closely together.

Conclusion

Consistently high numbers of incidents of damaged sites reported by Federal agencies indicate that the problem of archeological looting of Federal lands has not been eradicated. The wide array of laws and regulations that are used to prosecute looters and vandals suggest that further education in archeological resource laws and regulations may enhance the frequency and success of prosecutions. At the same time, ongoing efforts to educate the public and foster a stewardship ethic will also work to reduce the overall incidence of looting.

Agencies are working cooperatively to pool important case information, such as in the LOOT clearinghouse so that there is a ready resource available for appropriate use by all. These data are available to prosecutors, archeologists, researchers, and other parties to help protect our national archeological resources.

To learn more about the LOOT clearinghouse and to request access to records, contact the Departmental Consulting Archeologist at dca@nps.gov.

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