

SUNKEN WARSHIPS  
January 19, 2001

THE WHITE HOUSE

Office of the Press Secretary

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For Immediate Release

January 19, 2001

STATEMENT BY THE PRESIDENT

United States Policy for the Protection of Sunken Warships

Thousands of United States government vessels, aircraft and spacecraft ("State craft"), as well as similar State craft of foreign nations, lie within, and in waters beyond, the territorial sea and contiguous zone. Because of recent advances in science and technology, many of these sunken government vessels, aircraft and spacecraft have become accessible to salvors, treasure hunters and others. The unauthorized disturbance or recovery of these sunken State craft and any remains of their crews and passengers, is a growing concern both within the United States and internationally. In addition to deserving treatment as gravesites, these sunken State craft may contain objects of a sensitive national security, archaeological or historical nature. They often also contain unexploded ordnance that could pose a danger to human health and the marine environment if disturbed, or other substances, including fuel oil and other hazardous liquids, that likewise pose a serious threat to human health and the marine environment if released.

I believe that United States policy should be clearly stated to meet this growing concern.

Pursuant to the property clause of Article IV of the Constitution, the United States retains title indefinitely to its sunken State craft unless title has been abandoned or transferred in the manner Congress authorized or directed. The United States recognizes the rule of international law that title to foreign sunken State craft may be transferred or abandoned only in accordance with the law of the foreign flag State.

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Further, the United States recognizes that title to a United States or foreign sunken State craft, wherever located, is not extinguished by passage of time, regardless of when such sunken State craft was lost at sea.

International law encourages nations to preserve objects of maritime heritage wherever located for the benefit of the public.

Those who would engage in unauthorized activities directed at sunken State craft are advised that disturbance or recovery of such craft should not occur without the express permission of the sovereign, and should only be conducted in accordance with professional scientific standards and with the utmost respect for any human remains.

The United States will use its authority to protect and preserve sunken State craft of the United States and other nations, whether located in the waters of the United States, a foreign nation, or in international waters.

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DEPARTMENT OF THE NAVY – NAVAL HISTORICAL CENTER  
805 KIDDER BREESE SE – WASHINGTON NAVY YARD  
WASHINGTON DC 20374-5060

## Department of the Navy Policy Regarding Custody and Management of Sunken Naval Vessels and Aircraft Wreck Sites

### Common Questions about Submerged Aircraft and Shipwrecks

#### Federal Laws & Regulations Relating to U.S. Navy Submerged Aircraft and Shipwrecks

Department of the Navy ship and aircraft wrecks are government property in the custody of the U.S. Navy. These seemingly abandoned properties remain government-owned until the Navy takes specific formal action to dispose of them.

Navy custody of its wrecks is based on the property clause of the U.S. Constitution and international maritime law and it is consistent with Articles 95 and 96 of the Law of the Sea Convention. These laws establish that right, title, or ownership of federal property is not lost to the government due to the passage of time. Only by congressional action can ship and aircraft wrecks be declared abandoned.

Through the sovereign immunity provisions of Admiralty law, the Department of the Navy retains custody of all of its naval vessels and aircraft, whether lost within U.S., foreign, or international boundaries. Past court cases supporting this doctrine include litigation in *Hatteras Inc., v. the USS Hatteras* (1984) and *U.S. v. Richard Steinmetz* (1992, also known as the "Alabama bell case"). The treatment of historic naval aircraft throughout the world's oceans has also conformed to these laws.



Under the National Historic Preservation Act (NHPA), the U.S. Navy is obligated to protect its historic properties, including ship and aircraft wrecks, for which it has custodial responsibilities. The NHPA directs federal agencies to manage their cultural resource properties in a way that emphasizes preservation and minimizes the impact of undertakings that might adversely affect such properties. It is important to note that the management of Navy cultural resources such as ship and aircraft wrecks is not only a matter of historic preservation. The issues of war graves, unexploded ordnance, and potential military usage of recovered weapons systems must also be addressed in wreck-site management.

*Questions and information concerning U.S. Navy ship and aircraft wrecks should be addressed to:*

Naval Historical Center (NHC)

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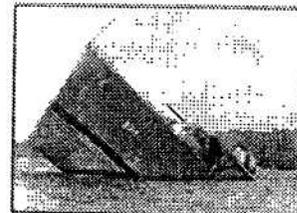
Office of the Underwater Archaeologist  
805 Kidder Breese Street SE  
Washington Navy Yard DC 20374-5060  
202-433-2210; 202-433-2729 (fax)

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## Common Questions

### *Who owns U.S. Navy ship and aircraft wrecks?*

The Department of the Navy retains custody of all its ship and aircraft wrecks unless specific, formal action is taken to dispose of them. The administrative act of striking an aircraft or ship from the active list does not constitute disposal. Even aircraft and ship wrecks that are stricken from the active list remain the property of the United States until such time affirmative action is taken to dispose of these properties, such as sale, or other action in accordance with law.



### *What do I do if I want to dive on Navy ship or aircraft wrecks?*

Divers may dive on Navy ship and aircraft wrecks at their own risk. However, federal property law dictates that no portion of a government wreck may be disturbed or removed. Unauthorized removal of any property from a U.S. Navy wreck is illegal. Sections of the U.S. Code have been successfully applied in prosecuting individuals who violate Navy wreck sites. Navy wrecks may contain unexploded ordnance and other hazards and should be approached with the utmost caution. Please note that diving on wreck sites located in National Park or National Oceanic and Atmospheric Administration sanctuaries may require a dive permit available through those agencies. The Navy strongly encourages cooperation with other agencies and individuals interested in preserving our maritime and aviation heritage. The diving public is encouraged to report the location of underwater ship and aircraft wreck sites to the NHC. Documentation of these wreck locations allows the Navy to evaluate and preserve important sites for the future.

### *What if I witness another diver removing parts from a Navy wreck?*

If you witness the theft of material from a Navy wreck, report it to the U.S. Coast Guard, the NHC, and to your State Historic Preservation Officer or State Underwater Archaeologist. Vandalism of public property is both illegal and inconsiderate to other divers. If theft or destruction is unreported, underwater sites will soon be destroyed and unavailable for future use.

### *What if I want to recover a Navy-owned wreck?*

Recovery of historic ship or aircraft wrecks will be considered only for educational or scientific purposes. It is unlikely the Department of the Navy will recommend the disposal and sale of historic ship or aircraft wrecks. It has been Navy policy not to dispose of historic ship and aircraft wrecks for the following reasons:

- *Congress has mandated through the NHPA that the Department of the Navy make every effort to preserve its historic cultural resources.*
- *The remains of crew members, if any, deserve respect and should remain undisturbed unless*

*proper retrieval and burial become necessary.*

- *There is a possibility that live explosives or ordnance may still be on board.*
- *Arbitrary disposal and sale of wrecks may foster commercial exploitation of cultural resources.*
- *Abandonment of wrecks could deplete a finite inventory of significant cultural resources.*

The Navy does consider requests for loan of historic aircraft. Museums or other private parties interested in recovery of wrecked Navy aircraft for display, educational purposes, or archaeological investigation should contact the NHC for guidance at 202-433-2210.

Under no circumstances should salvage of naval ship or aircraft wrecks be undertaken without prior and specific written approval by the Navy.

### ***What about wreck sites that are debris fields rather than whole aircraft or ships?***

Wreck sites that are not entire aircraft or ships, but are parts strewn in a debris field are considered archaeological sites. Such sites still contain Navy property and must be managed by the Navy in accordance with the National Historic Preservation Act. This means that anyone wishing to recover parts from a debris field is required to contact the Navy for review of the project.

### ***Does the Navy have a Permitting Policy?***

Yes, the NHC has an application process and guidelines for submitting archaeological research permits. The NHC may issue permits to a qualified person or persons subject to appropriate terms and conditions. For an application, please write to:

Naval Historical Center (NHC)  
Office of the Underwater Archaeologist  
805 Kidder Breese Street SE  
Washington Navy Yard DC 20374-5060.

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### ***Federal Laws and Regulations Relating to U.S. Navy Submerged Ship and Aircraft Wrecks***

- Antiquities Act (16 U.S.C. 433).
- National Historic Preservation Act of 1966(16 U.S.C. 470).
- Archaeological and Historic Preservation Act of 1974 (16 U.S.C. 469).
- Archaeological Resources Protection Act of 1979 (16 U.S.C. 470aa).
- Theft of Government Property (18 U.S.C. 641).
- Abandoned Shipwreck Act of 1987 (43 U.S.C. 2101).
- Documents, Historical Artifacts, and Condemned or Obsolete Combat Material: Loan, Gift, or Exchange(10 U.S.C. 2572).
- Archaeological Resources Protection Act Final Uniform Regulations (32 CFR 229).
- Protection of Historic Properties (36 CFR 800).
- Secretary of the Interior's Standards for Historic Preservation Projects (36 CFR 68).
- Abandoned Shipwreck Act Guidelines (55 FR 50116).
- National Register of Historic Places (36 CFR 60).
- Determinations of Eligibility for Inclusion in the National Register of Historic Places (36 CFR 63).
- Recovery of Scientific, Prehistoric, Historic, and Archaeological Data (36 CFR 66)
- Curation of Federally-Owned and Administered Archaeological Collections (36 CFR 79).

## DEPARTMENT OF DEFENSE

## Department of the Navy

32 CFR Part 767

RIN 0703-AA57

**Application Guidelines for Archeological Research Permits on Ship and Aircraft Wrecks Under the Jurisdiction of the Department of the Navy**

AGENCY: Department of the Navy, DOD.

ACTION: Final rule.

**SUMMARY:** This final rule adds guidelines for obtaining Department of the Navy (DON) archeological research permits for those applying for permission to conduct research on, and/or recover, ship or aircraft wrecks under the jurisdiction of the DON. This permit process will assist the DON in managing and protecting its historic ship and aircraft wrecks. This rule will provide clear guidance on the permit application requirements to conduct research on, and/or recover, DON ship and aircraft wrecks.

**DATES:** Effective May 16, 2000.

**FOR FURTHER INFORMATION CONTACT:** Dr. Robert S. Neyland, Underwater Archeologist, or Barbara A. Voulgaris, 202-433-2210.

**SUPPLEMENTARY INFORMATION:** On November 19, 1999 (64 FR 63263), the Department of the Navy (DON) published a notice of proposed rulemaking on the application guidelines for archeological research permits on Submerged Cultural Resources under the jurisdiction of DON. The comment period closed on January 18, 2000. Interested persons have been afforded the opportunity to participate in the making of this rule. Seven comments were submitted in response to the notice of proposed rulemaking. The comments from cultural resource professionals focused on the meaning of several definitions. In particular, there was a concern that the term "submerged cultural resources" would include more than ship and aircraft wrecks and the term would exclude ship and aircraft wrecks on land. As a result, a change was made to replace the terms "submerged cultural resources" and "underwater cultural resources" with "ship and aircraft wrecks". Also adopted were suggestions that provide additional time in the permit review process, to increase the permit duration, and to clarify guidance on state participation when a DON resource is on a State bottomland. Comments from those representing

salvage interests were generally against restrictions. These comments and suggestions were carefully considered, but most were not adopted since they were in opposition to our goal of protecting DON cultural resources.

As background, in 1993, DON initiated an archeological management program for its historic ship and aircraft wreck sites. This was aided in part by the U.S. Department of Defense (DoD) Legacy Resource Management Program that was established by Congress in 1991, 10 U.S.C. 114, to provide DoD with an opportunity to enhance the management of DoD stewardship resources. The U.S. Naval Historical Center's (NHC) Office of Underwater Archeology is the DON command responsible for managing the DON's ship and aircraft wrecks under the guidelines of the Federal Archeological Program. Under the National Historic Preservation Act of 1966 as amended (NHPA), 16 U.S.C. 470 (1999), DON is obligated to protect historic properties, including ship and aircraft wrecks, for which it has custodial responsibilities. The NHPA directs federal agencies to manage their cultural resource properties in a way that emphasizes preservation and minimizes the impact of undertakings that might adversely affect such properties. Management of DON cultural resources such as ship and aircraft wrecks is not only a matter of preservation. The issues of gravesites, unexploded ordnance, and potential military usage of recovered weapons systems must also be addressed in wrecksite management.

**Custody and Management of DON Ship and Aircraft Wrecksites**

a. DON ship and aircraft wrecks are government property in the custody of DON. These seemingly abandoned wrecks remain government property until specific formal action is taken to dispose of them. DON custody of its wrecks is based on the property clause of the U.S. Constitution and international maritime law, and is consistent with Articles 95 and 96 of the Law of the Sea Convention. These laws establish that right, title, or ownership of Federal property is not lost to the government due to the passage of time. Department of the Navy ships and aircraft cannot be abandoned without formal action as authorized by Congress. Aircraft and ships stricken from the active inventory list are not considered formally disposed of or abandoned. Through the sovereign immunity provisions of admiralty law, DON retains custody of all its naval vessels and aircraft, whether lost in U.S., foreign, or international boundaries.

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b. Divers may dive on DON wrecks at their own risk; however, Federal property law dictates that no portion of a government wreck may be disturbed or removed. The DON strongly encourages cooperation with other agencies and individuals interested in preserving our maritime and aviation heritage. Diving on sunken DON ships and aircraft located in units of the national park system or the national marine sanctuary system may be prohibited unless authorized by a Federal land manager.

c. The diving public is encouraged to report the location of underwater ship and aircraft wrecksites to the NHC. Documentation of these wreck locations allows the DON to evaluate and preserve important sites for the future. Under no circumstances will salvage of DON aircraft or shipwrecks be undertaken without prior and specific written approval by the NHC.

d. Wrecksites that are not entire aircraft or ships, but are parts strewn in a debris field, are considered potential archeological sites. Such sites still contain DON property and must be managed by the DON in accordance with the NHPA, the Secretary of the Interior's Standards and Guidelines on Archeology and Historic Preservation, 48 FR 44716 (1983), and departmental regulations. Permits for recovery of DON ship or aircraft wrecks will be considered only for educational or scientific reasons. It is unlikely DON will recommend the disposal and sale of a DON ship or aircraft wreck that is eligible for listing on the National Register of Historic Places. The DON maintains a policy of not disposing of wrecked ships and aircraft for the following reasons:

1. Congress has mandated through the NHPA that DON make every effort to preserve its historic cultural resources;
2. The remains of crewmembers, if any, deserve respect and should remain undisturbed unless proper retrieval and burial become necessary;
3. There is a possibility that live explosives or ordnance may still be associated with the vessel or aircraft;
4. The arbitrary disposal and sale of wrecks may foster commercial exploitation of cultural resources and;
5. The abandonment of wrecks could deplete a finite inventory of significant cultural resources.

#### Matters of Regulatory Procedure

*Executive Order 12866, Regulatory Planning and Review.* This rule does not meet the definition of "significant regulatory action" for purposes of E.O. 12866.

*Executive Order 13132, Federalism.* It has been determined that this rule does not have sufficient Federalism implications to warrant the preparation of a Federalism Assessment. The provisions contained in this rule will have little or no direct effect on States or local governments.

*Regulatory Flexibility Act.* This rule will not have a significant economic impact on a substantial number of small entities for purposes of the Regulatory Flexibility Act (5 U.S.C. Chapter 6).

*Paperwork Reduction Act.* This rule does not impose collection of information requirements for purposes of the Paperwork Reduction Act (44 U.S.C. Chapter 35, 5 CFR part 1320).

#### List of Subjects in 32 CFR Part 767

Aircraft, Archeology, Educational research, Government property, Government property management, Historic preservation, Research, Vessels.

For the reasons stated in the preamble, the Department of the Navy adds 32 CFR part 767 to read as follows:

### PART 767—APPLICATION GUIDELINES FOR ARCHEOLOGICAL RESEARCH PERMITS ON SHIP AND AIRCRAFT WRECKS UNDER THE JURISDICTION OF THE DEPARTMENT OF THE NAVY

#### Subpart A—Regulations and Obligations

##### Sec.

- 767.1 Purpose.  
767.2 Definitions.  
767.3 Policy.

#### Subpart B—Permit Guidelines

##### Sec.

- 767.4 Application for permit.  
767.5 Evaluation of permit application.  
767.6 Credentials of principal investigator.  
767.7 Conditions of permits.  
767.8 Requests for amendments or extensions of active permits.  
767.9 Content of permit holder's final report.  
767.10 Monitoring of performance.  
767.11 Violations of permit conditions.  
767.12 References for submission of permit application to conduct archeological research.

Authority: 5 U.S.C. 301; 16 U.S.C. 470.

#### Subpart A—Regulations and Obligations

##### § 767.1 Purpose.

(a) The purpose of this part is to establish the requirement and procedural guidelines for permits to conduct research on and/or recover Department of the Navy (DON) ship and aircraft wrecks.

(b) The U.S. Naval Historical Center's (NHC) Office of Underwater Archeology is the DON command responsible for

managing DON ship and aircraft wrecks under the guidelines of the Federal Archeological Program. In order for the NHC's management policy to be consistent with the Federal Archeology Program, and the goals of the NHPA, DON has implemented a permitting process applicable to DON property consistent with and applying the Archeological Resources Protection Act of 1979 as amended (ARPA), 16 U.S.C. 470aa-mm, permitting criteria. Department of the Navy policies regarding its ship and aircraft wrecks are consistent with ARPA permitting requirements. Department of the Navy application of ARPA permitting criteria promotes consistency among federal agencies and meets DON's responsibilities under the NHPA while allowing qualified non-federal and private individuals and entities access to DON historic ship and aircraft wrecks.

(c) To assist NHC in managing, protecting, and preserving DON ship and aircraft wrecks.

##### § 767.2 Definitions.

*Aircraft wreck* means the physical remains of an aircraft, intact or otherwise, its cargo, and other contents. Aircraft wrecks are classified as either historic structures or archeological sites.

*Archeological site* means the location of an event, a prehistoric or historic occupation or activity, or a building or structure, whether standing, ruined, or vanished, where the location itself maintains historical or archeological value regardless of the value of any existing structure. A ship or aircraft wreck, along with its debris field, is an archeological site when it lacks the structural integrity of an intact aircraft or vessel and when it and its location retain archeological or historical value regardless of the value of any existing remains.

*Artifact* means any object or assemblage of objects, regardless of age, whether in situ or not, that may carry archeological or historical information that yields or is likely to yield information to the scientific study of culture or human history.

*Cultural resource* means any prehistoric or historic district, site, building, structure, or object, including artifacts, records, and material remains related to such a property or resource. Historic aircraft wrecks or shipwrecks are classified as either archeological sites or historic structures.

*Gravesite* means any natural or prepared physical location, whether

originally below, on, or above the surface of the earth, where individual human remains are deposited.

*Historic structure* means a structure made up of interdependent and interrelated parts in a definite pattern or organization. Constructed by humans, it is often an engineering project large in scale. An aircraft wreck or shipwreck is a historic structure when it is relatively intact and when it and its location retain historical, architectural, or associative value.

*Permit holder* means any person authorized and given the exclusive right by the NHC to conduct any activity under these regulations.

*Permitted activity* means any activity that is authorized by the NHC under the regulations in this part.

*Research vessel* means any vessel employed for scientific purposes under the regulations in this part.

*Ship wreck* means the physical remains of a vessel, intact or otherwise, its cargo, and other contents.

Shipwrecks are classified as either historic structures or archeological sites.

*Wrecksite* means the location of a ship or aircraft that has been sunk, crashed, ditched, damaged, or stranded. The wreck may be intact or scattered, may be on land or in water, and may be a structure or a site. The site includes the physical remains of the wreck and all other associated artifacts.

#### § 767.3 Policy.

(a) The Naval Historical Center's policy has been to evaluate each DON ship and aircraft wreck on an individual basis. In some cases, the removal of DON ship and aircraft wrecks may be necessary or appropriate to protect the cultural resource and/or to fulfill other NHC goals, such as those encompassing research, education, public access, and appreciation. Recovery of DON ship and aircraft wrecks may be justified in specific cases where the existence of a cultural resource may be threatened. Therefore, recovery of some or all of a cultural resource may be permitted for identification and/or investigation to answer specific questions; or the recovery presents an opportunity for public research or education.

(b) Generally, DON ship and aircraft wrecks will be left in place unless artifact removal or site disturbance is justified and necessary to protect DON ship and aircraft wrecks, to conduct research, or provide public education and information that is otherwise inaccessible. While NHC prefers non-destructive, in situ research on DON ship and aircraft wrecks, it recognizes that site disturbance and/or artifact recovery is sometimes necessary. At

such times, site disturbance and/or archeological recovery may be permitted, subject to conditions specified by NHC.

#### Subpart B—Permit Guidelines

##### § 767.4 Application for permit.

(a) To request a permit application form, please write to: Department of the Navy, U.S. Naval Historical Center, Office of the Underwater Archeologist, 805 Kidder Breese St. SE, Washington Navy Yard, DC 20374-5060. Telefax number: 202-433-2729.

(b) Applicants must submit three copies of their completed application at least 120 days in advance of the requested effective date to allow sufficient time for evaluation and processing. Requests should be sent to the Department of the Navy, U.S. Naval Historical Center, Office of the Underwater Archeologist, 805 Kidder Breese St. SE, Washington Navy Yard, DC 20374-5060.

(c) If the applicant believes that compliance with one or more of the factors, criteria, or procedures in the guidelines contained in this part is not practicable, the applicant should set forth why and explain how the purposes of NHC are better served without compliance with the specified requirements. Permits are valid for one year from the issue date.

##### § 767.5 Evaluation of permit application.

(a) Permit applications for archeological research are reviewed for completeness, compliance with program policies, and adherence to the guidelines of this subpart. Incomplete applications will be returned to the applicant for clarification. Complete applications are reviewed by NHC personnel and, when necessary, outside experts. In addition to the criteria set forth in § 767.6, applications are also judged on the basis of: relevance or importance; archeological merits; appropriateness and environmental consequences of technical approach; and qualifications of the applicants.

(b) Under certain circumstances, it may be necessary to consult with the State Historic Preservation Officer (SHPO) and the Advisory Council on Historic Preservation (ACHP) about the need to comply with section 106 of the NHPA. A section 106 review may require the NHC to consult with the appropriate SHPO and the ACHP. The ACHP review can take up to 60 days beyond the NHC's required 120-day review. Therefore, the entire review process may take up to 180 days.

(c) The NHC shall send applications for research at sites located in units of

the national park system, national wildlife refuge system, and national marine sanctuary system to the appropriate Federal land manager for review. The Federal land manager is responsible for ensuring that the proposed work is consistent with any management plan or established policy, objectives or requirements applicable to the management of the public lands concerned. NHC shall send applications for research at sites located on state bottomlands to the appropriate state agency for review. The burden of obtaining any and all additional permits or authorizations, such as from a state or foreign government or agency, private individual or organization, or from another federal agency, is on the applicant.

(d) Based on the findings of the NHC evaluation, the NHC Underwater Archeologist will recommend an appropriate action to the NHC Director. If approved, NHC will issue the permit; if denied, applicants are notified of the reason for denial and may appeal within 30 days of receipt of the denial. Appeals must be submitted in writing to: Director of Naval History, Naval Historical Center, 805 Kidder Breese St. SE, Washington Navy Yard, DC 20374-5060.

##### § 767.6 Credentials of principal investigator.

A resume or curriculum vitae detailing the professional qualifications and professional publications and papers of the principal investigator (PI) must be submitted with the permit application. The PI must have: a graduate degree in archeology, anthropology, maritime history, or a closely related field; at least one year of professional experience or equivalent specialized training in archeological research, administration or management; at least four months of supervised field and analytic experience in general North American historic archaeology and maritime history; the demonstrated ability to carry research to completion; and at least one year of full-time professional experience at a supervisory level in the study of historic marine archeological resources. This person shall be able to demonstrate ability in comprehensive analysis and interpretation through authorship of reports and monographs.

##### § 767.7 Conditions of permits.

(a) Upon receipt of a permit, permit holders must counter-sign the permit and return copies to the NHC and the applicable SHPO, Federal or State land manager, or foreign government official prior to conducting permitted activities

on the site. Copies of countersigned permits should also be provided to the applicable federal land manager when the sunken vessel or aircraft is located within a unit of the national park system, the national wildlife refuge system, or the national marine sanctuary system.

(b) Permits must be carried aboard research vessels and made available upon request for inspection to regional preservation personnel or law enforcement officials. Permits are non-transferable. Permit holders must abide by all provisions set forth in the permit as well as applicable state or Federal regulations. Permit holders should abide by applicable regulations of a foreign government when the sunken vessel or aircraft is located in foreign waters. To the extent reasonably possible, the environment must be returned to the condition that existed before the activity occurred.

(c) Upon completion of permitted activities, the permit holder is required to submit to NHC a working and diving log listing days spent in field research, activities pursued, and working area positions.

(d) The permit holder must prepare and submit a final report as detailed in § 767.9, summarizing the results of the permitted activity.

(e) The permit holder must agree to protect all sensitive information regarding the location and character of the wreck site that could potentially expose it to non-professional recovery techniques, looters, or treasure hunters. Sensitive information includes specific location data such as latitude and longitude, and information about a wreck's cargo, the existence of armaments, or the knowledge of gravesites.

(f) All recovered DON cultural resources remain the property of the United States. These resources and copies of associated archaeological records and data will be preserved by a suitable university, museum, or other scientific or educational institution and must meet the standards set forth in 36 CFR part 79, Curation of Federally Owned and Administered Archeological Collections, at the expense of the applicant. The repository shall be specified in the permit application.

#### § 767.8 Requests for amendments or extensions of active permits.

(a) Requests for amendments to active permits (e.g., a change in study design or other form of amendment) must conform to the regulations in this part. All necessary information to make an objective evaluation of the amendment

should be included as well as reference to the original application.

(b) Permit holders desiring to continue research activities must reapply for an extension of their current permit before it expires. A pending extension or amendment request does not guarantee extension or amendment of the original permit. Therefore, you must submit an extension request to NHC at least 30 days prior to the original permit's expiration date. Reference to the original application may be given in lieu of a new application, provided the scope of work does not change significantly.

Applicants may apply for one-year extensions subject to annual review.

(c) Permit holders may appeal denied requests for amendments or extensions to the appeal authority listed in § 767.5.

#### § 767.9 Content of permit holder's final report.

The permit holder's final report shall include the following:

(a) A site history and a contextual history relating the site to the general history of the region;

(b) A master site map;

(c) Feature map(s) of the location of any recovered artifacts in relation to their position within the wrecksite;

(d) Photographs of significant site features and significant artifacts both in situ and after removal;

(e) If applicable, a description of the conserved artifacts, laboratory conservation records, and before and after photographs of the artifacts at the conservation laboratory;

(f) A written report describing the site's historical background, environment, archeological field work, results, and analysis;

(g) A summary of the survey and/or excavation process; and

(h) An evaluation of the completed permitted activity that includes an assessment of the permit holder's success of his/her specified goals.

#### § 767.10 Monitoring of performance.

Permitted activities will be monitored to ensure compliance with the conditions of the permit. NHC on-site personnel, or other designated authorities, may periodically assess work in progress by visiting the study location and observing any activity allowed by the permit or by reviewing any required reports. The discovery of any potential irregularities in performance under the permit will be promptly reported and appropriate action will be taken. Permitted activities will be evaluated and the findings will be used to evaluate future applications.

#### § 767.11 Violations of permit conditions.

The Director of Naval History, the Underwater Archeologist for DON, or his/her designee may, amend, suspend, or revoke a permit in whole or in part, temporarily or indefinitely, if in his/her view the permit holder has acted in violation of the terms of the permit or of other applicable regulations, or for other good cause shown. Any such action will be communicated in writing to the permit holder and will set forth the reason for the action taken. The permit holder may appeal the action to the appeal authority listed in § 767.5.

#### § 767.12 References for submission of permit application to conduct archeological research.

(a) National Historic Preservation Act of 1966, as amended (NHPA), 16 U.S.C. 470 *et seq.* (1999), and Protection of Historic Properties, 36 CFR part 800. These regulations govern the Section 106 Review Process established by the NHPA.

(b) Secretary of the Interior's Standards and Guidelines for Archeology and Historic Preservation published on September 29, 1983 (48 FR 44716). These guidelines establish standards for the preservation planning process with guidelines on implementation.

(c) Archeological Resources Protection Act of 1979, as amended (ARPA), 16 U.S.C. 470aa-mm, and the Uniform Regulations, 43 CFR part 7, subpart A. These regulations establish basic government-wide standards for the issuance of permits for archeological research, including the authorized excavation and/or removal of archeological resources on public lands or Indian lands.

(d) Secretary of the Interior's regulations, Curation of Federally-Owned and Administered Archeological Collections, 36 CFR part 79. These regulations establish standards for the curation and display of federally-owned artifact collections.

(e) Antiquities Act of 1906, Public Law 59-209, 34 Stat. 225 (codified at 16 U.S.C. 431 *et seq.* (1999)).

(f) Executive Order 11593, 36 FR 8291, 3 CFR, 1971-1975 Comp., p. 559 (Protection and Enhancement of the Cultural Environment).

(g) Department of Defense Instruction 4140.21M (DoDI 4120.21M, August 1998). Subject: Defense Disposal Manual.

(h) Secretary of the Navy Instruction 4000.35 (SECNAVINST 4000.35, 17 August 1992). Subject: Department of the Navy Cultural Resources Program.

(i) Naval Historical Center Instruction 5510.4. (NAVHISTCENINST 5510.4, 14

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December 1995). Subject: Disclosure of Information from the Naval Shipwreck Database.

Dated: April 26, 2000.

J. L. Roth,

*Lieutenant Commander, Judge Advocate  
General's Corp, Federal Register Liaison  
Officer.*

[FR Doc. 00-12076 Filed 5-15-00; 8:45 am]

BILLING CODE 3810-FF-P

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## DEPARTMENT OF THE INTERIOR

## National Park Service

## 36 CFR Part 79

## Curation of Federally-Owned and Administered Archeological Collections

AGENCY: National Park Service, Interior.

ACTION: Final rule.

**SUMMARY:** This final rule establishes definitions, standards, procedures and guidelines to be followed by Federal agencies to preserve collections of prehistoric and historic material remains, and associated records, that are recovered in conjunction with Federal projects and programs under certain Federal statutes. This action should ensure that federally-owned and administered collections of prehistoric and historic material remains, and associated records, are deposited in repositories that have the capability to provide adequate long-term curatorial services. Issuance of this rule fulfills the Secretary of the Interior's obligations under the National Historic Preservation Act of 1966 and the Archeological Resources Protection Act of 1979 to issue such regulations.

**EFFECTIVE DATES:** Copies of this final rule have been transmitted to the Committee on Energy and Natural Resources of the U.S. Senate and to the Committee on Interior and Insular Affairs of the U.S. House of Representatives. This final rule will take effect on October 12, 1990.

**FOR FURTHER INFORMATION CONTACT:** Michele C. Aubry (Departmental Consulting Archeologist's office) at 202-343-1876 or FTS 343-1876, or Francis P. McManamom (Chief, Archeological Assistance Division) at 202-343-4101 or FTS 343-4101.

**SUPPLEMENTARY INFORMATION:****Background**

This final rule being issued under the authority of section 101(a)(7)(A) of the National Historic Preservation Act (16 U.S.C. 470a) and section 5 of the Archeological Resources Protection Act (16 U.S.C. 470dd). The National Historic Preservation (NHPA) directs the Secretary of the Department of the Interior to issue regulations ensuring that significant prehistoric and historic artifacts, and associated records, recovered under section 110 of the NHPA (16 U.S.C. 470h-2), the Reservoir Salvage Act<sup>1</sup> (16 U.S.C. 469-469c), and

the Archeological Resources protection Act (16 U.S.C. 470aa-mm) are deposited in an institution with adequate long-term curatorial capability.

The Archeological Resources Protection Act (ARPA) authorizes the Secretary to issue regulations providing for the exchange, where appropriate, between suitable universities, museums or other scientific or educational institutions, of archeological resources removed from public and Indian lands pursuant to ARPA. In addition, the regulations are to provide for the ultimate disposition of such resources and other resources removed under the Reservoir Salvage Act or the Antiquities Act (16 U.S.C. 431-433). Any exchange or ultimate disposition of resources that are excavated or recovered from Indian lands are subject to the consent of the Indian or Indian tribe that owns or has jurisdiction over the said lands.

**Preparation of the Rulemaking**

On October 11, 1985, the National Park Service published a notice of intent to propose the rulemaking and a request for comments in the Federal Register (50 FR 41527). Thirty-seven commenters submitted ideas and suggestions that were considered and included, as appropriate, in development of the proposed rule. All commenters were supportive of the proposed regulation and the topics identified in the notice of intent.

In an effort to provide affected parties with an opportunity to provide comments during the early stages of regulatory development, on September 26, 1986, the National Park Service distributed a draft of the proposed regulation to a wide range of interested parties. Copies of the draft were sent to State and Federal agencies, national professional archeological and museum organizations, national Native American organizations, and numerous public and private repositories across the nation.

Fifty-six agencies, organizations, repositories, businesses and individuals submitted comments. As is generally the case, the comments received on this early draft were not summarized in the preamble to the proposed rule that subsequently was published in 1987. However, all comments on the draft

<sup>1</sup> Historic Preservation Act (Pub. L. 93-291, May 24, 1974). The amendment expanded application of the Act beyond Federal reservoir projects to include any Federal construction project or federally licensed or funded activity or program. The Act was further amended by Public Law 95-625 (Nov. 10, 1978). This amendment extended the Act's funding authorities. The amended Act sometimes is referred to as the Archeological Recovery Act or the Moss-Bennett Act. Both titles are merely descriptive names, and are not official short titles.

were considered and most contributed substantially to the rulemaking process.

The proposed rule (36 CFR part 79) for the curation of federally-owned and administered archeological collections was published in the Federal Register on August 28, 1987 (52 FR 32740). Public comment was invited for a 60-day period, ending on October 27, 1987. Copies of the proposed rule were distributed to Federal and State agency Historic Preservation Officers; Federal and State agency chief archeologists; the chairmen of Indian tribes, Alaska Native villages and corporations recognized by the Secretary of the Interior; national professional archeological and museum organizations; national Native American organizations; Native American museums located in the United States that are listed in the "Native American Directory," published by the National Native American Co-operative; museums listed in the "Guide to Departments of Anthropology," published by the American Anthropological Association; and repositories listed in ARPA permits that were issued by the National Park Service in 1984 and 1985.

Written comments were received from 41 sources, including 10 from Federal agencies, eight from museums, seven from Indian tribes, seven from State agencies, five from professional scholarly and conservation associations, and one each from a national Native American organization, an electric company association, an oil company and an individual.

Comments were addressed to all of the 10 sections and two appendices of the proposed rule. Comments ranged from as few as three to as many as 83 on a given section. Sections 79.6 and 79.4 drew the greatest volume of comments, receiving 83 and 80 comments, respectively. Sections 79.6, 79.5, 79.3, 79.7 and 79.9 drew the next largest number of comments, receiving 65, 58, 43, 27, and 26 comments, in that order. No other section drew more than 16 comments.

All comments were fully considered when revising the proposed rule for publication as a final rulemaking. In addition, the findings, conclusions and recommendations of the General Accounting Office (GAO), as reflected in its report entitled "Cultural Resources: Problems Protecting and Preserving Federal Archeological Resources" (GAO/RCED-88-3; Dec. 1987), were considered.<sup>2</sup>

<sup>2</sup> The purposes of the study were to determine (1) To what extent archeological resources on public

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Valid concerns were addressed to the extent of the National Park Service's legal authorities. Some suggestions were not included because they either were beyond the scope of this regulation or were inconsistent with Federal historic preservation and property management statutes and regulations. Some comments pointed out vague and unclear language so clarifying and explanatory language was added to the rule and the preamble.

Given the volume of comments, it is impractical to respond in detail in the preamble to every question raised or suggestion offered. Some commenters pointed out errors in spelling, syntax and minor technical matters. Those errors have been corrected, and are not mentioned further in the preamble. In addition, many commenters made similar suggestions or criticisms, or repeated the same suggestion on different sections of the proposed rule. In the interest of reducing unnecessary paperwork, comments that are similar in nature have been grouped and are discussed in the most relevant section in the preamble.

#### Changes in Response to Public Comments

One commenter felt that the rule did not consistently or clearly differentiate those sections or paragraphs that are mandatory from those that are discretionary. In response, the word "shall" is used throughout the rule to indicate which are mandatory; the word "should" is used to indicate which are discretionary. Where appropriate, headings have been added within the sections of the rule to identify whether the paragraphs that follow are standards, guidelines or procedures.

#### Section 79.1 Purpose

This section received relatively few comments. In response to one commenter's suggestion, the order of the items listed in paragraphs (a) and (b) in this section has been changed to reflect the sequence in which the respective sections and appendices appear in the rule.

One commenter asked that this section mention repatriation of sacred

lands are being looted for artifacts. (2) what Federal land managing agencies are doing to protect archeological resources on their lands from looting, and (3) whether the artifacts that were recovered from public lands between 1940 and 1985 are being properly preserved. Although the problems are nationwide in scope and involve all major Federal land management agencies, the GAO limited its examination to Arizona, Colorado, New Mexico, and Utah, and to the three major Federal land managing agencies in that area (i.e., the Bureau of Land Management, the Forest Service and the National Park Service).

materials to Indians as a form of disposition. In addition, the commenter asked that this section mention that Indians can impose conditions on the treatment of collections that are removed from Indian lands. The commenter also asked that reference be made to provisions for agreements between the U.S. and Indian Governments regarding the recovery, return and treatment of collections.

This section presents the purpose of the rule in a general manner. It is not meant to include references to particular methods of disposition or to procedures for determining the disposition of a collection. Specific language regarding those matters is included in appropriate sections of the rule. Thus, the suggestions have not been incorporated.

Another commenter pointed out that most repositories have standard short-term loan forms, and asked if the sample short-term loan form contained in appendix A to the proposed rule had to be used. A new paragraph (b)(5) has been added to this section to clarify that preexisting forms that are consistent with this regulation may be used in lieu of developing new ones.

One commenter suggested adding an example of a form that could be used when a non-Federal party who holds title to material remains recovered in connection with a Federal project donates those remains to the Federal agency. In response, a new appendix (renumbered App A) has been added to present an example of a deed of gift.

#### Section 79.2 Authority

This section received relatively little comment, and stands as proposed with only minor rewording.

One commenter suggested that use of the term "significant" in paragraph (a) of this section was inappropriate and misleading in that it inaccurately implies that the rule applies only to collections that are recovered from archeological resources that meet the criteria for listing on the National Register of Historic Places. The language in paragraph (a) is drawn from section 101(a)(7)(A) of NHPA, which directs the Secretary of the Interior to promulgate this regulation. Because the term "significant" is used in the authorizing legislation, it has been retained in paragraph (a). Section 79.3 of this rule clarifies which collections are subject to this part (i.e., the rule applies to collections recovered under the authority of certain statutes, notwithstanding the eligibility of the excavated resource for listing in the National Register of Historic Places).

One commenter recommended revising the language in paragraph (b) of this section to track the language contained in section 5 of ARPA. The paragraph has been changed accordingly.

Another commenter asked that the term "Indian owner" be used in paragraph (b) of this section and in other sections of the rule rather than the phrase "Indian or Indian tribe that owns or has jurisdiction over such lands." This suggestion has not been adopted because it is not in keeping with the language contained in section 5 of ARPA.

The same commenter asked that a new paragraph be added to this section that would refer to the American Indian Religious Freedom Act (42 U.S.C. 1996) and the First Amendment of the Constitution of the United States, and state that the statutory policies that the rule is meant to implement must sometimes yield to constitutionally protected interests. This suggestion has not been adopted because this section is meant to reference only those authorities that authorize the Secretary of the Interior to promulgate this rulemaking.

#### Section 79.3 Applicability

Paragraph (a) of this section states that this rulemaking applies to collections that are excavated or removed under the authority of the Antiquities Act, the Reservoir Salvage Act, section 110 of NHPA, or ARPA. One commenter suggested that the rule be expanded to apply to collections recovered pursuant to the National Environmental Policy Act (42 U.S.C. 4341). This suggestion has not been adopted because that Act is not among the authorities listed in section 101(a)(7)(A) of NHPA and section 5 of ARPA under which collections subject to this rulemaking are excavated or removed.

However, most Federal and federally authorized surveys, excavations and other studies of prehistoric and historic resources conducted pursuant to the National Environmental Policy Act also generally are conducted under one or more of the authorities listed in section 101(a)(7)(A) of NHPA and section 5 of ARPA. That is, most studies on public lands are conducted under ARPA or the Antiquities Act. In addition, most surveys to identify and evaluate resources are conducted under NHPA, while most excavations to mitigate the effects of a Federal project are conducted under NHPA and the Reservoir Salvage Act. In fact, rarely are surveys and excavations conducted or authorized by

a Federal agency under authorities other than the Antiquities Act, the Reservoir Salvage Act, section 110 of NHPA, or ARPA. For all practical purposes, this rulemaking applies to most collections generated as a result of a Federal action, assistance, license, or permit.

One commenter recommended that the rule be expanded to apply to paleontological collections recovered in connection with a Federal or federally authorized activity. Another commenter recommended that the rule be expanded to apply to ethnographic collections. As previously mentioned, this rulemaking applies to collections excavated or removed under the authority of the Antiquities Act, the Reservoir Salvage Act, section 110 of NHPA, or ARPA. Any paleontological and ethnographic collections recovered under one of those authorities are subject to this part; otherwise, the rule does not apply.

However, this does not relieve Federal agencies of responsibilities they have under other Federal statutes and regulations to preserve and protect other kinds of federally-owned property, including museum collections, not subject to this rule. The Federal Property and Administrative Services Act (40 U.S.C. 484), its implementing regulation (41 CFR part 101), and several agency-specific statutes and regulations direct Federal agencies to manage and protect such collections. In carrying out these responsibilities, Federal agencies are encouraged to apply and adapt the standards, procedures and guidelines established in this rulemaking to other kinds of collections under their jurisdiction.

Paragraph (a)(1) of this section states that material remains generally are the property of the landowner. Several commenters asked for further clarification on the ownership of material remains excavated or removed under the Antiquities Act, the Reservoir Salvage Act, section 110 of NHPA, or ARPA. For example, some commenters felt that material remains from public lands that once were included in the aboriginal territory of an Indian tribe belong to that tribe rather than to the U.S. Government. Others said that material remains from Indian allotted lands may be the communal property of the Indian tribe that has jurisdiction over such lands rather than the personal property of the individual Indian landowner. The commenters said that, when a question exists, ownership should be determined according to tribal laws, traditions and customs.

Further clarification has not been provided for several reasons. First, common law concerning abandoned, lost and unclaimed property in the

United States has been well developed by the courts. Second, property rights concerning archeological resources on public and Indian lands are specified in section 4(b)(3) of ARPA and in § .13 of ARPA's uniform regulations (43 CFR part 7, 36 CFR part 296, 18 CFR part 1312, and 32 CFR part 229). Third, it is beyond the scope of this rulemaking to determine rights of ownership on Indian lands.

Several commenters recommended that Federal agencies endeavor to acquire title to material remains that are excavated or removed from non-public lands. Another commenter asked for clarification on a Federal agency's responsibilities when title to the lands from which a collection is excavated or removed changes. We agree in principle that the Federal Agency Official should seek title to material remains that are recovered from non-public lands pursuant to one of the agency's projects or programs, particularly when the lands are to be subsequently acquired by the Federal agency, or when the owner does not have the capability or the desire to provide long-term curatorial services. However, this is beyond the scope of this rulemaking.

Several commenters asked that the rulemaking clarify who owns the data that are generated as a result of a Federal or federally authorized archeological study. A new paragraph (a)(2) has been added to this section to clarify this.

Several commenters asked if preexisting collections, meaning those collections that are placed in repositories prior to the effective date of this regulation, are subject to this rulemaking. Neither the NHPA nor ARPA, which authorize this rulemaking, provides an exemption for preexisting collections. It is important to note that Federal land managing agencies have been responsible since 1906, when the Antiquities Act was passed, for the long-term management and preservation of collections recovered from lands owned or controlled by the U.S. Government. Other Federal historic preservation and property management statutes, enacted between the 1930s and the 1970s, reaffirmed these responsibilities and expanded their application to non-land managing agencies.

The GAO discusses these statutory responsibilities and the adequacy of curation of preexisting, federally-owned collections in its report entitled "Cultural Resources: Problems Protecting and Preserving Federal Archeological Resources" (GAO/RCED-88-3, Dec. 1987). The GAO found that Federal agencies generally were doing little to ensure that the artifacts

removed from their lands in the past and sent to curatorial facilities were accounted for and being properly preserved. The GAO recommended prompt issuance of this rulemaking to ensure that the artifacts are properly preserved.

It is beyond the scope of this rulemaking either to change statutory responsibilities of Federal agencies to preserve collections or to authorize a lesser level of care for preexisting collections. Accordingly, a new paragraph (b) clarifies that the rule applies to preexisting and new collections that meet the requirements of paragraph (a) of this section. In addition, paragraph (a) in § 79.5 of the final rulemaking establishes procedures to ensure that preexisting collections are properly managed and preserved.

Another commenter asked whether this rulemaking would cause Federal agencies to breach or modify material terms and conditions contained in any contract, grant, license, permit, memorandum, or agreement entered into by or on behalf of a Federal agency before or after the effective date of this regulation. The commenter was concerned in particular about instances where a Federal agency may require a non-Federal party such as an oil company, public utility or private developer to secure long-term curatorial services on behalf of the U.S. Government, and the actual curatorial arrangement is between the non-Federal party and the repository.

While the requirements contained in this rulemaking must be reflected in future contracts, grants, licenses, permits, memoranda, and agreements, it is not the intent of this regulation to affect material terms and conditions contained in ones entered into prior to the effective date of this regulation. Paragraph (b) clarifies that Federal agencies are not to apply these regulations in a manner that would supersede or breach material terms and conditions contained in contracts, grants, licenses, permits, memoranda, or agreements entered into by or on behalf of a Federal agency prior to the effective date of this regulation.

In a related matter, several commenters asked whether this rulemaking would alter the terms and conditions contained in Antiquities Act permits or ARPA permits for preexisting collections. This rulemaking does not change those terms and conditions. New paragraphs (c) and (d) clarify that collections excavated or removed pursuant to the Antiquities Act or ARPA remain subject to the relevant Act, its implementing regulations, and the terms

and conditions of the pertinent permit or other approval.

New paragraph (e) states that any repository that is providing curatorial services for a collection subject to the regulations in this part must possess the capability to provide adequate long-term curatorial services, as set forth in this rule, to safeguard and preserve the associated records and any material remains deposited in the repository. Since preexisting collections are not exempt from this rulemaking, this applies equally to repositories that agree after the effective date of this regulation to preserve collections, as well as to repositories that agreed prior to the effective date of this regulation to preserve collections. If a repository's officials decide that they can no longer meet their obligations to provide adequate long-term curatorial services under the pertinent contract, grant, license, permit (including Antiquities Act permits and Archaeological Resources Protection Act permits), memorandum, or agreement, those officials must realize that such a decision on their part may negatively affect the repository's present and future standing to house collections subject to the regulations in this part.

Several commenters asked for clarification on when the rulemaking does not apply. As previously indicated, the rule does not apply to collections that are excavated or removed under authorities other than those listed in paragraph (a).

A number of commenters recommended that human remains and funerary objects be exempt from this rulemaking, and be repatriated and reburied. This recommendation was beyond the scope of this rulemaking since section 3(l) of ARPA specifies that graves, human skeletal materials, or any portion or piece thereof are an archeological resource when they are at least 100 years of age and of archeological interest, as determined under ARPA's uniform regulations.

However, alternatives exist for forms of disposition other than retention in a repository. For example, terms and conditions stipulated in Antiquities Act permits and ARPA permits may specify how human remains and funerary objects are treated. In addition, the Federal Agency Official may determine, in accordance with ARPA's implementing regulations, that they are not or are no longer of archeological interest, thereby making them not subject to this rulemaking.

#### Section 79.4 Definitions

This section received the second largest number of comments. Many

comments were submitted on the term "archeological resource," which was a slightly modified version of the definition for the same term of ARPA's implementing regulations. Commenters pointed out that a variety of terms and definitions are used in other applicable statutes to describe the same kinds of resources, and that using one such term and definition incorrectly implies that the others are not applicable.

Specifically, the term "archeological resource" is defined in section 3(l) of ARPA to mean any material remains of past human life or activities that are at least 100 years of age and of archeological interest, as determined under ARPA's uniform regulations. Section 301(5) of NHPA defines the term "historic property" or "historic resource" to mean any prehistoric or historic district, site, building, structure or object that is included in or eligible for inclusion in the National Register of Historic Places. Such properties or resources typically, but not always, are 50 years or older in age. The Antiquities Act uses, but does not define, the term "historic or prehistoric ruin or monument or object of antiquity." Federal land managing agencies generally interpret the term to mean prehistoric and historic resources that are 50 years or older in age. The Reservoir Salvage Act uses, but does not define, the term "significant scientific, prehistorical, historical, or archeological data." The term generally is interpreted to mean prehistoric and historic resources that meet the criteria for evaluation for inclusion of the National Register of Historic Places.

While the definitions for these various terms differ, with few exceptions, the collections of material remains and associated records that are generated pursuant to each of the cited statutes are subject to this final rulemaking. The subject of this rulemaking is the collection, not the resource from which the collection is excavated or removed. Thus, to eliminate possible confusion and misapplication of this rulemaking, the definition for the term "archeological resource" has been deleted. When reference to the resource from which the collection is excavated or removed is needed, the terms "prehistoric or historic resource" and "site" are used, but are not defined. The decision was made to rely on common meanings and dictionary definitions rather than attempt to define the terms, given the variety of statutory definitions.

A few commenters recommended revising the definitions for the terms "of archeological interest," "Indian lands," "Indian tribe" and "public lands." These terms are defined in ARPA and its

uniform regulations; thus, it is beyond the scope of this rulemaking to alter them. Instead, "Indian lands," "Indian tribe" and "public lands" have been defined by cross-referencing the existing regulatory definitions. The term "of archeological interest" has been deleted.

A number of commenters felt that it is inappropriate to include human remains within the definition for "material remains," and recommended that it be deleted. The recommendation is beyond the scope of this rulemaking because section 3(l) of ARPA defines an archeological resource to include human remains that are at least 100 years of age and of archeological interest, as determined under ARPA's uniform regulations.

Some commenters recommended that the final rule indicate that human remains and funerary objects are presumed to be sacred objects, and that material remains directly associated with human remains be identified as grave goods within the definition for "material remains." It is beyond the scope of this rulemaking to predetermine the religious or sacred importance that an Indian tribe or other group may ascribe to particular object. Such determinations are made by the Federal Agency Official in consultation with appropriate Indian tribes or other groups. This has been so indicated in the revised definition for "religious remains."

A separate listing for grave goods has not been added to the definition for "material remains" because material remains that are found in direct association with human remains ordinarily consist of artifacts of human manufacture and natural objects used by humans, both of which already are listed under the definition.

Consistent with section 3(l) of ARPA and § -3(a)(4) of ARPA's uniform regulations, the definition for "material remains" has been revised to clarify that it includes paleontological specimens that are found in direct physical relationship with a prehistoric or historic resource.

One commenter recommended that the definition for "associated records" be revised to exclude copies of public or archival records that are studied and duplicated as a result of historical research. The commenter felt it is unnecessary to maintain duplicate copies of original records that are permanently maintained elsewhere. This recommendation has not been incorporated because copies of such records that are essential to understanding the resource should be maintained as a part of the collection.

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Moreover, it is desirable to maintain copies of original public and archival records in case the originals are stolen, lost, damaged or destroyed. Paragraphs (a)(2)(iii) and (a)(2)(iv) of this section have been revised accordingly.

One commenter suggested expanding the definition for "associated records" to include copies of administrative records that are related to the survey, excavation and other study of the resource. The commenter felt that it is important for copies of research proposals, contracts for archeological services, antiquities permits and other administrative records to be maintained as a part of the collection. This has been added in a new paragraph (a)(2)(v).

One commenter suggested revising the definition for "associated records" to require that paper printouts be made of computerized records. The commenter felt that paper printouts would serve as a backup in the event that researchers cannot easily or inexpensively access computerized records. Given the rapidity in which computer technology changes, we agree that paper printouts, on acid free paper, of computerized records should be maintained. However, it is beyond the scope of this rulemaking to stipulate in what medium records should be generated. The purpose of this rule is to ensure that whatever records are generated are properly managed and cared for as a part of the collection.

In response to the few comments received on the definition for the term "curation," minor technical revisions have been made. In addition, the term itself has been changed to "curatorial services."

Two comments were received on the definition for the term "Federal Agency Official." One commenter felt that the words "officially designated to represent the \* \* \* agency" would be interpreted to mean that the designation must be in writing. The commenter felt that representation ordinarily is based on the duties and responsibilities assigned to the position held by the person rather than on a written designation from the secretary of the department or the head of the agency. The definition has been revised to accommodate the commenter's concern.

Another commenter recommended revising the definition for "Federal Agency Official" to clarify that the rulemaking applies only to departments, agencies or instrumentalities of the United States that have authority over collections that are subject to this part. The definition has been revised accordingly.

A number of comments were received on the definition for "professional qualifications," which has been changed

to "qualified museum professional." One commenter felt that the rule represented a bias toward archeology, which may not be appropriate in a museum setting. The commenter recommended that training in museum science be mentioned since archeological training alone is not sufficient to qualify a person for collection management positions. One commenter recommended that the definition refer to the Office of Personnel Management's (OPM) "Qualifications Standards for Positions under the General Schedule (Handbook X-118)" (U.S. Government Printing Office, stock No. 906-030-00000-4 (1986)), which establish educational, experience and training requirements for employment with the Federal Government. Another commenter recommended that the definition specify the relevant occupational series, presumably meaning those contained in OPM's "Position Classification Standards for Positions under the General Schedule Classification System" (U.S. Government Printing Office, stock No. 906-028-00000-0 (1981)). Three commenters recommended that the definition refer to the "Secretary of the Interior's Standards and Guidelines for Archeology and Historic Preservation" (48 FR 44716, Sept. 29, 1983), which contain professional qualification standards that are significantly higher than the entry level qualification standards established by OPM. Commenters generally expressed concern that the highest reasonable standards be specified to assure that collections are not lost through improper handling, treatment or storage.

In response to the comments, the definition for "qualified museum professional" has been revised to mean a person who possesses knowledge, experience and demonstrable competence in museum methods and techniques appropriate to the nature and content of the collection under his or her care, and commensurate with the person's duties and responsibilities. Examples of standards that may be used for classifying positions and for evaluating a person's qualifications are listed, including those that have been issued by OPM and the Secretary of the Interior.

Another commenter recommended that the definition for "qualified professional" be expanded to recognize the expertise of individual Indians in administering collections. The commenter noted that such expertise may have been gained through experience or because the Indian individual is recognized by the Indian tribe as an elder.

There is no question that Indian tribal elders and religious leaders have expertise in the management, care and use of material remains that have traditionally been considered of religious or sacred importance by their respective tribes. This expertise is acknowledged in § 79.6(c) of the final rule, which lists Indian tribal elders and religious leaders, the Tribal Historic Preservation Officer, and professionals in Indian tribal museums as sources for technical assistance. In addition, at various points throughout the rule, the Federal Agency Official is encouraged to consult with these experts.

The definition for "religious or sacred object," which has been changed to "religious remains," has been revised to accommodate suggestions that material remains should be considered to be of religious or sacred importance when they traditionally have been so considered by an Indian tribe or other group because of customary use in religious rituals or spiritual activities. The Federal Agency Official makes this determination in consultation with appropriate Indian tribes or other groups.

Three commenters noted that the definition for the term "repository" should be revised to include facilities that are operated by Indian tribes. This has been added.

Another commenter felt that the definition for the term "repository" implies that a particular kind of repository must be used, thereby in undue interference with the private sector. We disagree. The definition states that a repository must be able to provide professional, systematic and accountable curatorial services on a long-term basis. The examples provided (i.e., a facility managed by a university, college, museum or other educational or scientific institution) are taken directly from the Antiquities Act and ARPA. The definition does not exclude a private sector repository that can provide professional, systematic and accountable curatorial services on a long-term basis.

Another commenter felt that the definition for the term "repository" implies that a repository could use consultants in lieu of hiring its own staff. The commenter felt that using only consultants would lead to inadequate care of the collections. Certainly, a repository must have some staff to be able to provide professional, systematic and accountable curatorial services on a long-term basis. However, it also is appropriate for a repository to use consultants from other institutions to provide technical advice, particularly on

non-routine matters such as the conservation of a unique or fragile object. The use of consultants probably would be more prevalent in smaller sized repositories where it is less likely to be cost effective to have a cadre of specialists on staff. The ambiguous language in the definition has been deleted. The commenter's concern is addressed in § 79.9(b)(4) in the final rule.

Two new definitions have been added to the final rule. First, the term "personal property" has been added. The term is defined by cross-referencing the definition contained in 41 CFR part 101-43 on the utilization of personal property. Section 101-43.001-14 of title 41 defined "personal property" to include property of any kind or interest therein, except real property, records of the Federal Government, and certain categories of naval vessels. Collections, equipment (e.g., a specimen cabinet or an exhibit case), materials, and supplies are classes of Federal personal property. Materials and supplies usually are considered to be expendable personal property, while collections and equipment are considered to be accountable personnel property.

Second, the term "Repository Official" has been added. The definition is comparable to the definitions for "Federal Agency Official" and "Tribal Official."

Two commenters asked that a definition be provided for the term "federally-owned or administered." The decision was made to leave the term undefined because § 79.3(a) of this rule clarifies which collections are subject to the rulemaking.

One commenter asked that definitions be provided for the terms "object" and "lot." The decision was made to leave the terms undefined, relying instead on common meanings or dictionary definitions.

*Section 79.5 Minimum Capability Requirements for Repositories (Renumbered § 79.9; Retitled "Standards To Determine When a Repository Possesses the Capability To Provide Adequate Long-term Curatorial Services")*

This section has been revised to clarify the standards that a repository must meet in order for Federal Agency Official to determine that the repository possesses the capability to provide adequate long-term curatorial services. Paragraphs (a) and (b) in this section of the proposed rule have been deleted because the topics are addressed in other sections of the final rule (i.e., in §§ 79.5 and 79.6). Paragraph (c) in this section of the proposed rule has been

divided into two new §§ 79.9 (a) and (b) in the final rulemaking. In addition, paragraphs (c)(1) through (c)(10) in this section of the proposed rule have been slightly reworded, consolidated to accommodate public comments, and reordered. They appear as §§ 79.9 (b)(1) through (b)(9) in the final rule.

One commenter suggested that the Federal Agency Official review and approve a repository's facilities, written curatorial policies and operating procedures. This suggestion has not been adopted because it is beyond the scope of this rulemaking to establish a certification program that would result in a list of federally approved repositories. Moreover, a repository may possess the capability to provide long-term curatorial services for one kind of collection but not another, depending on the nature and content of the collections. Thus, Federal agencies should not presume that a repository that maintains some collections on behalf of the Federal Government is capable of maintaining their particular collections.

One commenter felt that requiring a repository to "substantially comply" with the activities listed under paragraph (b) in the final rule was inadequate guidance, although the commenter did not offer an alternative suggestion. Several other commenters pointed out that the activities required for each collection would differ according to the nature and content of the collection. For example, a collection comprised primarily of lithic materials would require less stringent environmental controls than would a collection comprised primarily of basketry. It would follow that, all else being equal, a repository that lacks a central heating and air conditioning system would possess the capability to provide adequate long-term curatorial services for the former, but not the latter, collection. In response to these concerns, the paragraph has been revised to state that a repository would have to comply with the activities listed, as appropriate to the nature and content of the collection.

One commenter asked whether the intent of paragraph (b)(1)(iv) in the final rule is to require a repository to photograph all collections. This is not the intent of that paragraph. The purpose of paragraph (b) is to assure that a repository has the capability to perform certain activities such as maintaining photographs that are a part of a collection. Any requirements (e.g., photographing a collection) that a Federal agency might want to place on a repository would be identified in the contract, memorandum or agreement

between that agency and the repository for curatorial services.

One commenter felt that it would be unreasonable and costly to require a repository to have an adequate emergency management plan for responding to man-made and natural disasters. We disagree. It is standard operating practice, or should be, for repositories to have such plans. The requirement has been retained, and appears in § 79.9(b)(3)(iv) of the final rule.

Paragraph (b)(5) of the final rule has been revised and expanded to indicate that a collection is to be handled, stored, cleaned, conserved and exhibited in a manner that is appropriate to the nature of the material remains and associated records, and in a manner that preserves data that may be studied in future laboratory analyses. It also acknowledges that, when material remains in a collection are to be treated with chemical solutions or preservatives that will permanently alter the remains, it may not always be possible to retain untreated representative samples of each affected category.

One commenter felt that the Federal Agency Official should approve all proposed treatments before they are performed. This suggestion has not been incorporated into the final rule because any restrictions on treatments, especially routine ones, are to be specified in the contract, memorandum or agreement for curatorial services.

Several commenters asked whether a repository had to store the associated records that are listed in paragraph (b)(6) in the final rule according to one or more of the methods listed. The paragraph has been revised to clarify that the methods listed are merely examples of methods that would protect the records from theft and fire. Other methods not identified in the rulemaking that would accomplish the goal of protecting records from theft and fire would be appropriate as well.

At the request of several commenters, paragraph (b)(6)(iii) in the final rule has been revised and expanded to list other parties that frequently maintain records. Additions include the State museum or university, the Tribal Historic Preservation Officer, the National Technical Information Service and the Defense Technical Information Service.

One commenter suggested revising paragraphs (b)(7) and (b)(8) in the final rule to specify the frequency in which inspections and inventories are to be conducted. This suggestion has not been adopted because the frequency of inspections and inventories is addressed in § 79.11 of the final rule.

A number of commenters pointed out that many repositories that currently house and care for preexisting collections do not possess the capability to provide adequate long-term curatorial services, as specified in this section. Commenters said that increased funding would be required for many of those deficient repositories to meet the requirements of this rulemaking. Some commenters suggested adding a new section that addresses preexisting collections and provides a means for Federal agencies to assist deficient repositories.

We agree that many repositories, including some that are owned and operated by the U.S. Government, do not meet the requirements of this rulemaking. This is to be expected because, in the absence of a governmentwide regulation such as this, Federal agencies and repositories have developed and used different standards, guidelines, policies, procedures, and manuals.

The purpose of this rulemaking is to establish one set of standards that will ensure that collections subject to this part are properly managed and preserved. Preexisting collections are not to receive a lesser standard of care than new collections. The commenters' concerns have been addressed in §§ 79.5 and 79.7 of this final rule. Specifically, § 79.5(a) calls for the Federal Agency Official to evaluate the curatorial services being provided to preexisting collections, and to take certain actions when the services are not adequate. Sections 79.7 (a)(5) and (a)(6) clarify that such activities may be funded by Federal agencies.

#### *Section 79.8 Use of Collections (Renumbered § 79.10)*

One commenter felt that Federal agencies have an obligation to make publicly owned or administered collections available for legitimate study and use. We agree. This section has been revised to say that Federal agencies shall ensure that collections are made available for scientific, educational and religious uses, subject to such terms and conditions as are necessary to protect and preserve the condition, research potential, religious or sacred importance, and uniqueness of the collection.

Several commenters asked who should review and respond to requests to use a collection, the Federal agency or the repository? One commenter recommended that the Federal agency review and approve all requests while another suggested that the Federal agency approve only consumptive uses. One commenter recommended that the

repository be given the authority to review and approve requests. Another commenter saw the involvement of the Federal agency as unnecessary and burdensome, and said that it could unreasonably delay archeologists working under contracts to complete reports within short time frames.

Repositories generally have extensive experience in responding to requests to use collections because the activity is a routine element of providing curatorial services. On the other hand, many, if not most, Federal agencies generally have neither the experience nor qualified professional staff to evaluate such requests. We agree that potential users could be unnecessarily delayed if the repository were required to submit requests to the Federal agency for review and approval.

Therefore, paragraph (a) in this section clarifies that the Repository Official is responsible for making collections available in accordance with any terms and conditions specified in the contract, memorandum or agreement for curatorial services. In addition, paragraph (j) in § 79.8 recommends that the contract, memorandum or agreement for curatorial services specify whether the repository is to approve consumptive uses. Otherwise, the Federal Agency Official should review and approve consumptive uses.

Paragraph (b) in this section discusses scientific and educational uses of collections. Curators, conservators, collection managers and exhibitors have been added to the list of qualified professionals who might use a collection for scientific and educational uses, while students have been deleted from the list. Students may use a collection when under the direction of a qualified professional. The paragraph now requires that copies of any resulting publications be provided to certain parties, and the certain parties be acknowledged in any resulting exhibits and publications.

Paragraph (c) in this section discusses religious uses of collections. A large number of commenters asked that the rule define or provide guidance on who is qualified to use religious remains in a collection. The First Amendment to the U.S. Constitution generally prohibits the Federal Government from determining which persons are appropriate for practicing a particular religion. The concerns raised by commenters have been addressed, to the extent possible, by providing examples of persons who might have an interest in religious remains for use in religious rituals or spiritual activities.

Paragraph (d) in this section specifies restrictions that are to be placed on the

use of collections. The text of paragraph (d)(1) more accurately reflects the language in section 9(a) of ARPA and section 304 of NHPA regarding withholding information relating to the nature, location or character of a prehistoric or historic resource. Paragraph (d)(2) specifies to whom confidential information may be released and how requests for the information are to be made. The text of this paragraph follows the language in section 9(b) of ARPA and § -18 of ARPA's implementing rules regarding the release of confidential information.

Several commenters felt that, until such time as a mechanism of repatriation of human remains and funerary objects is established, exhibition of such materials should be prohibited. Others thought that human remains and funerary objects should be available for exhibitions, research and educational purposes when done sensitively or when there are no known descendants. A few commenters said that Indian owners must consent to uses of collections from Indian lands. Other commenters said that Federal agencies should consult Indian tribes prior to determining how to handle religious remains.

Those concerns have been addressed in paragraphs (e) and (f) of § 79.8 and in paragraphs (d)(3) and (d)(4) of § 79.10. The text of these four paragraphs conform to the requirements of sections 4(c) and 4(g)(2) of ARPA, and §§ -7 and -9 of ARPA's implementing regulations. As a result of these changes, § 79.6(b)(4) in the proposed rule has been deleted.

Specifically, when a collection is from Indian lands, § .8(e) requires that any contract, memorandum or agreement for curatorial services include such terms and conditions as may be requested by the Indian landowner and the Indian tribe having jurisdiction over the lands. In this regard, paragraph 79.10(d)(3) requires the placement of such terms and conditions as may be requested on the use of material remains and on access to associated records.

When a collection is from a site on public lands that the Federal Agency Official has determined is of religious or cultural importance to any Indian tribe having aboriginal or historic ties to such lands, paragraph 79.8(f) requires that any contract, memorandum or agreement for curatorial services include such terms and conditions as may have been developed pursuant to § -7 of ARPA's uniform regulations. In this regard, § 79.10(d)(4) requires the placement of such terms and conditions as may have been developed on the use

of material remains and on access to associated records.

Paragraph (e) in this section requires a written loan agreement between the Repository Official and the borrower. Sections 79.10 (e)(1) through (e)(6) specify the minimum contents of a loan agreement.

Paragraph (f) in this section says that the Federal agency in to ensure that the repository maintains administrative records that document approved scientific, educational and religious uses of the collection.

Paragraph (g) in this section says that repositories may charge reasonable user fees. Several commenters noted that repositories generally have standard fee structures associated with the use of collections. They pointed out that fee structures ordinarily are determined based on the repository's internal operating procedures. For example, enabling legislation, charters or bylaws may specify whether fees may be charged and how the fees are to be determined. Another commenter questioned the authority of the U.S. Government to influence a repository's fee structure. As a result of these comments, the statement that "Fees should be determined in consultation with the Federal Agency Official" has been deleted.

Two other commenters suggested that Indian owners and tribal members be exempt from paying fees when they use collections from Indian lands or when they use religious remains in religious rituals or spiritual activities. As previously indicated, repositories ordinarily base fee structures on internal operating procedures. Certainly, when such fees are charged they should be of a reasonable nature for the purpose of recovering actual costs incurred in connection with making collections available. When a repository does charge a user fee, any desired exemptions should be written into the contract, memorandum or agreement for curatorial services.

*Section 79.7 Contracts and Agreements (Renumbered § 79.8; Retitled "Terms and Conditions To Include in Contracts, Memoranda and Agreements for Curatorial Services")*

Paragraph (a) in this section of the proposed rule has been deleted because it relates to activities that take place prior to the conduct of field work that generates a collection, a subject that is beyond the scope of this rulemaking. However, it is extremely important for Federal Agency Officials to consult with curators, collections managers and conservators at the repository that will be receiving the anticipated collection.

regarding the repository's procedures, and to instruct field personnel in those procedures, so that the collection may be properly prepared in the field for submittal to the repository. For example, field personnel should be made aware of the repository's procedures for cleaning, labeling, cataloging, documenting, conserving and packaging material remains. They also should be made aware of the repository's procedures for preparing, handling, organizing and processing associated records. The importance of this should not be underestimated because, when a collection is not properly prepared in the field, a repository often will require more funds to process the collection.

Paragraph (b) in this section of the proposed rule has been revised to say that Federal agencies are to ensure that any contract, memorandum, agreement or other appropriate written instrument for curatorial services includes the terms and conditions contained in this section. The paragraph appears in the final rule as the introductory statement to this section.

Paragraphs (a) through (q) in the final rule list the terms and conditions to be included. Some paragraphs appeared in the proposed rule as paragraphs (b)(1) through (b)(10). Several new paragraphs have been added to accommodate suggestions from commenters.

A new paragraph (a) requires that any contract, memorandum, agreement or other appropriate written instrument for curatorial services contain a statement that identifies the collection or group of collections to be covered.

Paragraph (b) requires a statement that identifies who owns and has jurisdiction over the collection.

New paragraphs (c) and (d) require statements that describes the work to be performed by the repository, and the responsibilities of the Federal agency and any other appropriate party.

Paragraph (e) requires a statement that, when the collection is from Indian lands, the Indian landowner and the Indian tribe having jurisdiction over the lands consent to the disposition. It also requires the inclusion of such terms and conditions as may be requested by the Indian landowner and the Indian tribe.

Several commenters noted that, when a collection is from a site on public lands that the Federal Agency Official has determined is of religious or cultural importance to any Indian tribe having aboriginal or historic ties to such lands, any contract, memorandum or agreement for curatorial services must contain such terms and conditions as may have been developed during consultations between the Federal agency and the pertinent Indian tribe.

One of those commenters pointed out that this would be particularly important to ensure that religious remains are treated in a manner that will not place a burden on religious beliefs and practices. A new paragraph (f) addresses those comments.

Paragraph (g) requires that the term of the contract, memorandum or agreement; and procedures for modification, suspension, extension, and termination be specified.

One commenter voiced concern about the Federal Government entering into contracts, memoranda and agreements for curatorial services that have a finite term. The commenter was concerned that, when a repository declines to renew such an arrangement, the Federal Government would have to pay costs associated with transporting and processing the collection into another repository, and that this scenario could be repeated time and time again.

It certainly is possible that the scenario described by the commenter could happen. However, we believe that it is unlikely to occur, particularly on any regular basis because, when a repository agrees to house and maintain a collection, it generally does so because its professional staff have a research interest in the collection. Typically, researchers prefer to retain collections within their own facility on a long-term, if not a permanent, basis so that the collections within their own facility on a long-term, if not a permanent, basis so that the collections are readily available for study and restudy. In any event, when a Federal agency is providing funds to a repository to maintain a contract, memorandum or agreement for curatorial services, there must be a finite term because Federal agencies cannot obligate future year monies until appropriated by the U.S. Congress. In such instances, agencies should include amounts necessary for maintaining contracts, memoranda and agreements for curatorial services in annual requests for appropriations and in annual operating budgets.

One commenter recommended adding a statement to paragraph (g) that Indian owners of collections be notified in the event of termination or suspension of a contract. Another commenter recommended adding a statement that specifies the responsibilities of the repository when it, rather than the Federal agency, terminates a contract. The commenter was concerned about situations where the Federal Government had provided the repository with funds to build additional, permanent storage areas, and wondered

how the Federal Government would be compensated.

The procedures for modifying, suspending, extending, and terminating the contract, memorandum or agreement should address these concerns, as appropriate. This is implicit in paragraph (g), which purposefully is written in a generic manner. Thus, the suggestions have not been added.

Paragraph (h) requires a statement that identifies costs associated with the contract, memorandum or agreement; the funds or services to be provided by the repository, the Federal agency and any other appropriate party; and the schedule for any payments.

Paragraph (i) requires inclusion of any special procedures and restrictions for handling, storing, inspecting, inventorying, cleaning, conserving and exhibiting the collection.

Paragraph (j) requires inclusion of instructions and any terms and conditions for making the collection available for scientific, educational and religious uses. The paragraph has been revised to remove awkward language that was contained in the proposed rule.

Paragraph (k) requires inclusion of instructions for restricting access to information relating to the nature, location and character of the prehistoric or historic resource from which the material remains are excavated or recovered.

One commenter suggested adding a requirement that the Federal Agency Official be notified whenever a collection under the agency's jurisdiction is used for research since the results of the research could benefit the agency. Certainly, Federal agencies may benefit from the results of such studies, and should receive copies of any resulting publications. A new paragraph (1) requires that copies of such publications be provided to the Federal Agency Official and other pertinent parties. If a Federal agency or other pertinent party would like to be notified each time that a collection under its jurisdiction is used, this should be stipulated in the contract, memorandum or agreement for curatorial services. We believe that such notification should be discretionary and, therefore, have not included it as a requirement in this final rulemaking.

One commenter suggested revising § 79.7(b)(4) in the proposed rule to require that inspections and inventories be conducted at least every three years. This suggestion has not been incorporated because the frequency will vary according to the nature and content of the collection. Section 79.11 of the final rule sets forth requirements and guidance for determining the frequency

that is appropriate for a particular collection.

Whatever frequency is determined to be appropriate is to appear in the contract, memorandum or agreement for curatorial services for that collection. This is reflected in § 79.8(m) in the final rulemaking.

One commenter was concerned that a repository might respond directly to a request for transfer or repatriation of a collection without the approval of the Federal Agency Official. In response, a new paragraph (n) requires the Repository Official to redirect any such request to the Federal agency and, when the Federal agency is administering the collection on behalf of a non-Federal owner, to the owner. Paragraph (o) prohibits the Repository Official from transferring, repatriating or discarding a collection without the written permission of the Federal agency and, when the collection is not federally-owned, the owner.

Paragraph (p) requires a statement that the Repository Official shall not sell the collection, while paragraph (q) requires a statement that the repository shall provide curatorial services in accordance with the regulations in this part.

One commenter suggested that the collection being received by a repository under a contract, memorandum or agreement should enhance or be in line with the museum's mission statement. We agree with the basic concept upon which this suggestion is based. That is, a repository that has expertise in maintaining certain kinds of collections would be more likely to provide adequate, long-term care for similar collections than would a repository that lacks such expertise. This concept is reflected in § 79.6(b) of the final rule, which presents guidelines for selecting a repository.

*Section 79.8 Disposition of Collections (Divided Into Two Sections, as Follows: Renumbered § 79.5, Retitled "Management and Preservation of Collections"; and Renumbered § 79.6, Retitled "Methods To Secure Curatorial Services")*

This section received more comments than any other section. In response, it has been substantially revised and divided into two sections. Renumbered § 79.5 establishes Federal agency responsibilities for the long-term management and preservation of collections that are subject to this part. Renumbered § 79.6 identifies a variety of methods that can be used by Federal agencies to secure curatorial services.

Renumbered § 79.5. Section 79.5(a) in the final rulemaking sets forth

procedures by which Federal agencies ensure that preexisting collections are being properly managed and preserved. Federal agencies are to review and evaluate the curatorial services that are being provided by repositories to preexisting collections. When an agency determines that the services are inadequate, the agency may either work cooperatively with the repository and other appropriate parties to eliminate the inadequacies within a reasonable time frame and schedule, or move the collections to another repository that does have the capability to provide adequate long-term curatorial services. Prior to moving collections, Federal agencies should determine if it may be more cost effective to provide funds or services to the repository to assist in eliminating the inadequacies.

The time frame and schedule to eliminate inadequacies will vary according to the specific actions to be taken and the level of funds or services to be provided by the various parties. Ten or more years may be appropriate in some cases while one or two years may be appropriate in other cases. Deficient repositories that are unwilling or unable to take steps to eliminate inadequacies must realize that such a decision on their part may negatively affect their facility's present and future standing to house collections subject to these regulations.

Section 79.5(b) of the final rulemaking sets forth procedures by which Federal agencies are to deposit collections in a repository. Much of the substance has been taken from § 79.8(a) in the proposed rule. However, § 79.8(a)(1) in the proposed rule has been deleted to remove the implication that a Federal agency is to select a repository in consultation with other parties such as the State Historic Preservation Officer. Although a Federal agency may consult with experts such as those listed in § 79.6(c) of this final rule for technical assistance, the Federal Agency Official is the decisionmaker in regard to selecting a repository.

Section 79.5(c) of the final rulemaking identifies certain administrative records that Federal agencies are to maintain on the disposition of each collection. It contains what was listed in § 79.8(f) in the proposed rule. These records are not to be confused with associated records, as defined in § 79.4 of this part, which are maintained by the repository as a component of the collection.

Several commenters questioned the need for Federal agencies to maintain administrative records on the disposition of their collections. We disagree. The GAO reported (GAO/

RCED-88-3, Dec. 1987) that the Federal agencies it had studied lack records and systems for maintaining accountability over their collections. Unfortunately, this is the case with many Federal agencies. It is all too common for an agency not to know the location or contents of its collections, let alone know what collections it owns. The requirement to maintain administrative records has been retained in the final rulemaking.

A number of commenters recommended that pertinent non-Federal parties receive copies of certain associated records. For example, each State has officials who are responsible for developing and implementing the State's historic preservation plan, and for maintaining the State's site files. Many Indian tribes also have officials who carry out comparable activities for the tribe. Commenters said that these officials need to be provided with information about prehistoric and historic resources that are within their respective States and reservations, including information on the disposition of collections that are excavated or removed from those resources.

We agree that pertinent State and Tribal Officials and other appropriate parties should be provided with certain information and documentation. However, because this matter was not addressed in the proposed rule that was published on August 28, 1987 (52 FR 32740), it cannot be addressed in this final rulemaking. Proposed amendments to this part that would call for the distribution of records to other parties appear in 90-21349 published elsewhere in this issue of the Federal Register.

A number of commenters suggested that the rule provide a process for the repatriation of human remains and funerary objects to the pertinent Indian tribes for religiously prescribed treatment. One of those commenters felt that any repatriation rule must be developed in consultation with Indian tribes and traditional religious leaders.

Since the inception of the discipline in the nineteenth century, archeologists have excavated, studied and preserved human remains and objects found in unmarked graves at prehistoric and historic sites. The study of such materials can yield important information on a wide variety of topics, including human evolution and migrations; the social customs and values of past societies; dietary practices, social organization, subsistence strategies and health of past societies; and the epidemiology of diseases. Today, however, many Indian groups object to the excavation, study

and retention of such materials in museums for future study.

Many different and often conflicting points of view have been expressed by Indian tribes, the scientific community, and State and Federal agencies on the repatriation of human remains, funerary objects and other material remains found in archeological sites and collections that may be of religious or sacred importance. The extreme positions in this debate are: (1) Human remains and funerary objects are sacred and should be reburied; they are not scientific specimens or property that can be owned by any person, museum or government agency; and (2) human remains and objects excavated or removed from unmarked graves at prehistoric and historic sites are scientific specimens that should be studied and preserved in a museum so that they will be available in the future for additional research when new analytical techniques are developed. There are many positions between these extremes.

During the past decade, the number of requests made by Indian tribes to museums and Federal and State Governments for repatriation and reburial of human remains and funerary objects has increased. A few Indian organizations have issued resolutions and statements urging the repatriation and reburial of all materials in the nation's museums that the organizations consider to be of religious or sacred importance. Several national archeological and museum organizations have adopted policies for their memberships to follow when excavating or storing human remains and objects that may be of religious or sacred importance. Many State Governments have enacted legislation to address the excavation and reburial of human remains located on State lands. A number of Federal agencies have adopted agency-specific policies and procedures to respond to requests for repatriation of human remains and funerary objects excavated or removed from public lands. In addition, during sessions of the 100th and 101st U.S. Congress, a number of bills have been introduced that would address the issue at a national level.

The issue is a complex one that requires sensitivity, patience and compromise by all parties involved. Experience has shown that all parties can benefit when requests for repatriation and reburial are handled on a case by case basis, using existing authorities, regulations, policies and procedures (e.g., by placing terms and conditions in an ARPA permit).

In any event, a procedure that would call for the release of human skeletal remains, funerary objects and other religious remains cannot be included in the final rulemaking because this matter was not addressed in the proposed rule that was published on August 28, 1987 (52 FR 32740). A procedure for releasing particular human skeletal remains and objects excavated, or removed from public lands into the custody of the pertinent Indian tribe or other Native American group is being drafted by the Departments of the Interior, Agriculture, Defense, and the Tennessee Valley Authority as part of an amendment to ARPA's uniform regulations. In addition, the Department of the Interior is revising its "Guidelines for the Disposition of Archeological and Historical Human Remains," issued on July 23, 1982. Both documents would be subject to public review and comment.

Many commenters said that § 79.8(e) of the proposed rule, which prohibits the Federal Agency Official from discarding a collection, is too restrictive. Commenters felt that the rule should provide a mechanism to discard material remains that were indiscriminately collected or have no scientific value. Others said that material remains that consist of bulky, highly redundant, non-diagnostic items (e.g., unmodified shell, bricks and fire-cracked rock) are valuable and should be collected, analyzed and reported upon. However, because of the sheer volume of these types of remains and their limited potential for future research, the commenters said that, after analysis and reporting is complete, only a sample should be retained for future research.

We agree that Federal agencies should be able to discard, under certain circumstances, particular material remains. However, because procedures that would provide for the discard of material remains were not included in the proposed rule that was published on August 28, 1987 (52 FR 32740), such procedures cannot be included in the final rulemaking. Proposed amendments to this part that would establish procedures for discarding material remains appear in 90-21349 published elsewhere in this issue of the Federal Register.

*Renumbered § 79.6.* Section 79.8(d) of the proposed rule, which lists methods that can be used by Federal agencies to secure curatorial services, has been revised and appears as paragraph (a) of renumbered § 79.6. Two methods that appeared in the proposed rule have been deleted and one method has been clarified.

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Several commenters questioned the authority of a Federal agency to transfer title (whether by donation or exchange) to a federally-owned collection to a non-Federal party. After examining applicable statutes and accompanying regulations and legislative histories, it is clear that Federal agencies do not have such authority. As a result, the method of transferring a collection by donation from a Federal agency to a non-Federal party has been deleted. For the same reason, the method of exchanging collections has been deleted.

The applicable authorities include the Antiquities Act and 43 CFR part 3, which state that collections that are recovered under that Act are to be deposited in a public museum and, when the museum ceases to exist, in the proper national depository. ARPA and its implementing rules also state that collections that are excavated or removed from public lands pursuant to that Act are to remain the property of the U.S. Government. Furthermore, because collections increase in value (e.g., scientific, interpretive or commercial) over time, they would not be categorized as surplus Federal personal property that could be transferred by donation to a non-Federal party under the Federal Property and Administrative Services Act (40 U.S.C. 484) and 41 CFR part 101.

The legislative history accompanying ARPA provides further clarification in regard to the intent of the term "exchange" as used in section 5 of the Act. Specifically, on page 10 of Senate Report No. 96-179, the U.S. Senate's Committee on Energy and Natural Resources says that " \* \* \* those establishments or agencies that maintain exhibition artifacts should be able, as they have in the past, to exchange their cultural resources with other establishments or agencies for the scientific and educational benefit of the public." On page 9 of House Report No. 96-311, the U.S. House of Representatives' Committee on Interior and Insular Affairs says that " \* \* \* all archaeological resources removed from public lands and copies of the associated records and data will remain the property of the United States and be preserved in a suitable location, such as a museum or university \* \* \* and that the " \* \* \* subsequent storage or display of these artifacts should not, however, be narrowly construed and may include private as well as public museums or institutions which have adequate resources to protect the artifacts and to provide a public, educational, or interpretive service." Clearly, the intent is for the Federal Government to

maintain title to collections recovered from public lands, and that those collections are to be stored or loaned to institutions that will exhibit and interpret them for the public.

One commenter expressed confusion over the meaning of § 79.8(d)(2) of the proposed rule, which says that Federal agencies could include curatorial requirements in an initial permit or contract for archeological services. This was meant to apply to archeological activities permitted under ARPA, the Antiquities Act or other authority, where the Federal land manager could require the archeological permittee to provide for curatorial services as a condition to the issuance of the archeological permit. This has been clarified in renumbered § 79.6(a)(6).

Section 79.8(b) in the proposed rule, which provides guidelines to assist Federal agencies in selecting a repository, appears as renumbered paragraph 79.6(b) in the final rule. While the paragraph has been shortened by removing redundant language, the substance remains the same.

Several commenters felt that, by following the guidelines in this paragraph, costs for curatorial services would be higher. For example, one commenter said that Federal agencies would have to move preexisting collections such as those in repositories that are located far from the site or project area. Another commenter said that licensees and permittees such as an electric utility are required to seek lowest cost bids, and was not convinced that the guidelines would reduce curatorial costs.

We disagree. The guidelines in § 79.6(b) are suggestions, not requirements. Federal agencies are not under any obligation to move preexisting collections if the repositories that are caring for those collections have the capability to provide adequate long-term curatorial services, as set forth in this regulation. When contracting for curatorial services, Federal agencies consider the cost proposal as well as the technical proposal. To receive a contract, the repository's technical proposal must respond to the scope of work and the cost proposal must be within the limits set in the request for proposal. The guidelines contained in this rulemaking are based on the assumption that a repository that has been maintaining collections from a particular site, project location, geographic region or cultural area generally is more likely to be able to provide curatorial services for an additional collection from the same site, location, region or area at a lower cost

than a repository that does not have such expertise.

Section 79.8(c) in the proposed rule, which identifies sources for technical assistance, appears as renumbered § 79.6(c) in the final rule. In response to several comments, it has been expanded to include Tribal Historic Preservation Officers, staff at Indian tribal museums, Indian tribal elders and religious leaders. When a collection contains remains of tribal religious or sacred importance, consultations with such persons would be particularly important to ensure that appropriate terms and conditions are included in the contract, memorandum or agreement for curatorial services. For example, it may be appropriate for tribal elders and religious leaders to conduct certain ceremonies prior to the placement of the collection in the repository or to perform periodic ceremonies in the repository.

*Section 79.9 Periodic Inspections (Renumbered Section 79.11; Retitled "Conduct of Inspections and Inventories")*

One commenter suggested that the process of conducting periodic inspections and inventories would generate a lot of unnecessary work and documentation that would not be cost-effective. Another commenter felt that inspections are redundant and unnecessarily burdensome. We disagree. By law, Federal agencies are accountable for property that is owned by the U.S. Government. Periodic inspections and inventories of Federal personal property, which includes collections subject to this part, must be conducted and documented to comply with Federal statutes and regulations governing the management of Federal property. Such activities also are standard practice within the museum profession. This requirement has been clarified in § 79.11(a) of the final rule.

Section 79.11(b) of the final rule states that the Federal Agency Official is responsible for ensuring that the Repository Official performs certain inspections and inventory activities on behalf of the Federal agency. This revision has been made to clarify that the Federal agency, not the repository, is responsible for complying with Federal statutes and regulations on the management of Federal property. The activities listed in this paragraph appeared in § 79.9(a) in the proposed rule. References to collections from Indian lands and to the participation of Indian tribal representatives in inspections and inventories have been added, where appropriate.

One commenter felt that many repositories would cancel curatorial agreements with Federal agencies if they are required to inventory collections on an annual basis at no cost to the Federal agency. Another commenter stated that Federal agencies should pay costs associated with inspections and inventories. A third commenter asked who would pay for the inspections.

The rulemaking does not require that collections be inventoried annually. It requires that collections be inventoried periodically, with the frequency to be mutually agreed upon, in writing, by the Federal Agency Official and the Repository Official. In addition, the rule does not require that repositories conduct inventories and inspections at no cost to the U.S. Government. Section 79.7(a)(5) of the final rule states that costs associated with inventories and inspections may be funded by Federal agencies.

Section 79.11(c), which appeared as § 79.9(b) in the proposed rule, specifies that certain inspections are to be conducted by Federal agency staff. One commenter suggested that these inspections be delegated to other parties because a Federal agency may not have the expertise or resources to perform the inspection. These particular inspections cannot be delegated to non-Federal parties. However, recognizing that the level of curatorial expertise varies greatly among the different Federal agencies, Federal agencies that lack sufficient staff expertise should consult with persons such as those listed in § 79.6(c) who do have expertise in curatorial matters. Alternatively, agencies should enter into an interagency agreement with another Federal agency, as provided in § 79.11(e), that does have the necessary staff expertise.

Several commenters suggested that the rule establish time frames for the conduct of inspections and inventories. One commenter suggested that the repository inspect the physical plant at least annually and that the Federal agency inspect the repository at least every three years. Another commenter suggested that a maximum time period such as three years be specified for all inspections. One commenter was concerned that, if a term of years is not stated in the rule, there is opportunity for Federal agencies, through neglect, to permanently relinquish their curatorial responsibilities. Another commenter felt that the frequency and methods for conducting inspections and inventories should not be based on the nature and content of the collection, but did not

suggest alternative criteria for determining the frequency and methods.

None of those suggestions have been adopted because the frequency of inspections should be determined on a case by case basis. Factors that would affect the frequency of inspections would include the nature and content of the collection, any terms and conditions developed in regard to collections from Indian lands and to collections from public lands that contain religious remains, the security and environmental control features of the repository, and the repository's standard inspection and inventory practices. By requiring the Federal Agency Official and the Repository Official to agree, in writing, on the frequency and methods, the regulation removes any opportunity for a Federal agency, through neglect, to relinquish its curatorial responsibilities.

Two commenters provided technical advice on the conduct of inspections and inventories. One noted that fragile or nonlithic materials should be closely monitored because they are susceptible to deterioration and damage. The other noted that more frequent handling of fragile materials during inspections and inventories would accelerate the breakdown of the materials. The commenter recommended that material remains be viewed but handled as little as possible during such inspections. These comments have been incorporated into new §§ 79.11 (d)(3) and (d)(4).

One commenter recommended that Federal agencies pass management checks and responsibilities to one Federal agency with curatorial experience, such as the National Park Service. Another commenter asked an Office of Curatorial Inspection would be established to oversee inspections. These suggestions have not been adopted because Federal historic preservation statutes and regulations clearly indicate that Federal agencies have the responsibility to manage and preserve historic properties, including collections, under their control or jurisdiction. However, when two or more Federal agencies deposit collections in the same repository, the Federal Agency Officials should enter into interagency agreements for the purpose of coordinating inspections and inventories. Such cooperation should reduce the number of inspections that are conducted by both Federal agency and repository staff. It also should ensure consistency in the conduct of inspections and inventories. Section 79.11(e) of the final rule, which was § 79.9(d) of the proposed rule, recommends that Federal agencies enter

into interagency agreements for such purposes.

Two commenters agreed that it was desirable to encourage Federal agencies to cooperate with each other in conducting inspections. However, one commenter stated that it may be difficult to accomplish because agencies may not know that a repository contains collections that are owned by other Federal agencies. In addition, the same commenter stated that agencies that have existing agreements with repositories may be reluctant to change either the inspection period or inventory standards.

Section 79.11(e) sets forth a recommendation, not a requirement, to coordinate inspections and inventories. To the extent possible, coordinating inspections and inventories would be economically advantageous to Federal agencies and repositories alike because it would reduce staff time and travel associated with such activities. We would encourage Federal agencies to ask repositories if other federally-owned or administered collections are in their care, and to modify existing agreements, as appropriate, with those repositories to coordinate inspections and inventories.

Another commenter recommended including reference to Indian tribes and individuals as being qualified to conduct the inspections required of Federal agencies pursuant to § 79.11(e). The inspections referenced in this paragraph are to determine whether the repository substantially complies with the minimum standards set forth in this part and to evaluate the performance of the repository in providing curatorial services under any contract, memorandum, agreement or other appropriate written instrument. As previously mentioned, those inspections cannot be delegated to non-Federal parties, although non-Federal parties are not excluded from participating. The commenter's concern that Indian tribes and individuals be able to participate in inspections is acknowledged in §§ 79.11(b)(10)(ii) and (b)(10)(iii).

*Section 79.10 Funding (Renumbered Section 79.7; Retitled "Methods To Fund Curatorial Services")*

Many commenters identified insufficient funding by Federal agencies as the major obstacle toward providing adequate, long-term care of collections. Most commenters recommended that explicit language be added to this section of the rule stating that Federal agencies have an affirmative responsibility to provide sufficient funds

to cover curatorial costs for their collections.

We agree that Federal agencies generally have provided insufficient monies to carry out curatorial activities, whether they use Federal or non-Federal repositories. Clearly, Federal agencies may fund a variety of curatorial activities using monies appropriated annually by the U.S. Congress, subject to any specific statutory authorities or limitations applicable to a particular agency. Sections 79.7(a)(1) through (a)(6) contain a non-inclusive list of curatorial activities that may be funded, as appropriate, by Federal agencies.

Three activities that were not contained in the proposed rule have been added: (1) Activities associated with the conduct of inspections and inventories required under the rulemaking; (2) activities that would assist repositories in eliminating deficiencies; and (3) activities associated with the removal of collections from repositories that can no longer provide adequate long-term curatorial services. Providing funds or services to assist deficient non-Federal repositories oftentimes may be more economical than moving a collection, particularly when the repositories have been storing preexisting collections for long periods of time at no cost to the U.S. Government.

Section 79.7(b) of the final rule states that Federal agencies may charge licensees and permittees reasonable costs for curatorial activities as a condition to the issuance of a Federal license or permit. One commenter suggested that licensees and permittees be required to provide for curation in lieu of paying for reasonable curatorial costs. This suggestion has not been adopted because it would not have been in keeping with statutory language or Congressional intent.<sup>3</sup>

Another commenter suggested that contractors be required to pay reasonable costs for curatorial activities as a condition to the issuance of the contract. When the U.S. Government contracts for archeological investigations in connection with a

<sup>3</sup> Section 110(g) of NHPA authorizes Federal agencies to charge reasonable costs to Federal licensees and permittees as a condition to the issuance of a license or permit. In addition, section 208(2) of the National Historic Preservation Act Amendments (16 U.S.C. 490) authorizes Federal agencies to charge reasonable costs for identification, surveys, evaluation, and data recovery to Federal licensees and permittees as a condition to the issuance of such license or permit. Reasonable costs are described on pages 38 and 40 of House Report No. 96-1457 as meaning at a rate commensurate with the licensee's or permittee's interest in or benefit from the undertaking that affects historic properties.

Federal action, the contract should provide for curation of the resulting collection when alternative arrangements are not available (e.g., a Federal agency may have a preexisting agreement with a specific repository in which the parties agree that the repository will provide curatorial services for collections generated in the future). In any event, the suggestion is beyond on scope of this rulemaking.

Repositories also have a responsibility to ensure that they have sufficient financial resources to carry out agreements that they enter into with Federal agencies to provide curatorial services. This is especially important when they agree to provide such services at no cost to the U.S. Government. Section 79.7(c) clarifies that when a Federal agency deposits a collection in a repository that agrees to provide curatorial services at no cost to the U.S. Government, the Federal agency should ensure that the repository has sufficient financial resources to support its operations and any needed improvements.

Several commenters indicated that a single, lump sum payment to a repository for curatorial services in perpetuity often only covers initial processing, cataloging and accessioning. In response, some repositories have raised their fees while others have refused to take new collections without a contract or other written agreement for annual payments. Regardless of whether a single, lump sum payment or annual payments are made, Federal agencies must ensure that sufficient funds are provided to repositories to pay for long-term curatorial services.

In response to the concerns voiced by commenters, a new § 79.7(d) has been added to the final rule which states that funds for curatorial services should include costs for initially processing, cataloging, accessioning, storing, inspecting, inventorying, maintaining, and conserving collections. Sections 79.7(d)(1) and (d)(2), which appeared at §§ 79.10 (f) and (g) in the proposed rule, identify those costs that should be included in project planning and mitigation budgets. A new § 79.7(d)(3) identifies those costs that should be included in annual operating budgets.

Section 79.7(e), which was § 79.10(h) in the proposed rule, states how the one percent limitation on data recovery contained in the Archeological and Historic Preservation Act (16 U.S.C. 469-469c) may be waived. One commenter felt that curatorial costs should be included within one percent limitation. We agree. However, section 208(e) of the National Historic Preservation Act

Amendments does authorize Federal agencies to waive the limitation in certain instances.<sup>4</sup> This paragraph merely restates the authority available to Federal agencies to waive the one percent limitation.

One commenter recommended that the rule be revised to contain a provision establishing a central fund to defray curatorial costs. Operating under the misconception that most repositories economically profit from caring Federal collections, the commenter suggested that monies for the fund could be raised by charging an application fee or by requiring a repository to post a performance bond.

We agree that one way of financing curatorial costs would be to establish a central fund. We doubt, however, that sufficient monies would be generated for such a fund by charging an application fee or by requiring that a bond be posted. Moreover, through enactment of the various Federal historic preservation statutes, the U.S. Congress clearly has directed Federal agencies to include preservation costs in project budgets and annual operating budgets, and to charge reasonable costs to licensees and permittees. Therefore, the recommendation has not been adopted.

Another commenter felt that the regulation would cause a significant amount of additional funds to be expended on staffing and on the construction of facilities. This rulemaking does not place any new requirements on Federal agencies. Federal agencies currently are responsible for ensuring that collections resulting from Federal projects and programs are preserved for future research and for the development of public interpretive programs. There is not question that providing for adequate long-term curatorial services will require the expenditure of funds. This rulemaking establishes standards, procedures and guidelines to be followed by Federal agencies to ensure that collections are preserved in an effective and efficient manner. Section 79.6 of the rulemaking identifies a variety of methods, some which are less costly than others, that are available to a Federal agency to secure curatorial services. In addition, §§ 79.8(b) and 79.11(e) in the final rule provide suggestions (e.g., consolidating

<sup>4</sup> House Report No. 96-1457 states that the U.S. Congress expects data recovery costs to exceed the one percent limitation only in unusual cases. Examples provided on page 40 of the report include cases where rich concentrations of historic materials will be destroyed or where the project costs are not commensurate with the necessary data recovery.

collections or coordinating inspections) that would further reduce curatorial costs.

*Appendix A—Example of a Short-term Loan Agreement (Renumbered App. C; Retitled "Example of a Short-term Loan Agreement for a Federally-owned Collection")*

At the suggestion of one commenter, the appendices have been reordered to reflect the natural order of events (i.e., a repository would sign a memorandum of understanding with a Federal agency to provide curatorial services before it would loan items in collection). As a result, the short-term loan agreement appears in appendix C to the final rulemaking.

The short-term loan agreement remains relatively unchanged, having received few comments.

One commenter felt that the collection's owner should approve each request for short-term loan, publication and exhibition. This suggestion has not been incorporated because such involvement would create unnecessary paperwork for the Federal Agency Official, any non-Federal owner and the repository, and would create undue delays for the intended borrower. Section 79.8(j) of this final rulemaking requires that any terms and conditions regarding the loan, study, exhibition or other use of a collection be included in any contract, memorandum of agreement for curatorial services. The short-term loan agreement has been revised to indicate that those terms and conditions should be attached to the loan agreement.

The same commenter asked for examples of appropriate time limits for short-term loans and for clarification on who would collect insurance. Short-term loans generally should not exceed one year in duration, although the length of loans would be dependent on the purpose of the loan. The certificate of insurance should stipulate the recipient of any monies collected under an insurance policy. Generally speaking, the owner of the collection would be the recipient. When a collection is damaged rather than lost, monies collected under any insurance policy should be used to conserve the damaged collection, as directed by the Federal Agency Official.

One commenter recommended that a new appendix be added that presents an example of a deed of gift. A deed of gift would be used when a Federal or federally authorized archeological project takes place on non-public lands, and the non-Federal owner of the materials remains donates or otherwise transfers title to the U.S. Government. In response to this comment, an example of

a deed of gift has been added. It appears in appendix A to the final rulemaking.

*Appendix B—Example of a Memorandum of Understanding for Curatorial Services (Retitled "Example of a Memorandum of Understanding for Curatorial Services for a Federally-Owned Collection")*

Few comments were made on the example of a memorandum of understanding for curatorial services. As such, the memorandum remains relatively unchanged.

One commenter felt that the memorandum of understanding appeared to be far too extensive and cumbersome. We disagree. The memorandum is an example of a typical agreement between a Federal agency and a repository for curatorial services.

One commenter asked if a Federal agency and a repository would have to enter into a new memorandum each time the Federal agency wanted to deposit another collection in the repository. To avoid this, the commenter recommended that the memorandum stipulate volume parameters in lieu of the site numbers of particular sites so that additional collections could be deposited in the future.

This suggestion would be appropriate in those instances when a Federal agency wanted to enter into an open ended agreement with a repository for curatorial services for an as yet undetermined number of collections. The example memorandum presented in Appendix B is merely illustrative. As noted in § 79.1 of this rulemaking, the example memorandum should be revised according to the needs of the Federal agency, the nature and content of the collection, and the type of legal instrument being used.

Two commenters recommended that the memorandum reference qualifications or positions to be assigned responsibility for the collection rather than specify staff by name, thereby avoiding the need to amend the memorandum each time personnel changed. Paragraphs 1(c) and 2(b) of the memorandum have been revised accordingly.

One commenter suggested expanding paragraph 1(i) of the memorandum in the final rule to clarify that the views of pertinent Native American organizations must be considered when requests are made to the repository to borrow religious remains or to study human skeletal remains. Section 79.8 of this rulemaking requires that any contract, memorandum or agreement for curatorial services include certain terms and conditions, including those that may have been developed pursuant to § -7 of

ARPA's implementing regulations concerning archeological resources on public lands that the Federal land manager has determined are of religious or cultural importance to any Indian tribe having aboriginal or historic ties to such lands. Such terms and conditions either would be identified within the body of the contract, memorandum or agreement for curatorial services, or would be appended to it. In the example memorandum, they are appended as attachment C. Either method would be appropriate.

In regard to paragraph 1(j) in the memorandum in the final rule, one commenter stated that it would be impossible for a repository to guarantee that a collection would never be lost, stolen, destroyed or damaged. The commenter recommended adding a disclaimer for acts of God, accidents or other unanticipated circumstances. We agree that a repository would not be liable for actions not under its control. The purpose of the paragraph is to ensure that a repository does not take any action or allow any person to take any action that would cause a collection to be lost, stolen, destroyed or damaged.

Another commenter asked that a statement be added to the memorandum that instructs the repository not to repatriate any of a collection without the prior written permission of the Federal Agency Official, and to redirect any request for repatriation of any of the collection to the Federal Agency Official. This has been reflected in paragraph 1(j) of the memorandum in the final rule.

#### Authorship

The author of this rulemaking is Michele C. Aubry (Archeologist and Program Analyst) in the office of the Departmental Consulting Archeologist, National Park Service, Washington, DC.

#### Compliance With Executive Order 12291 and the Regulatory Flexibility Act

The Department of the Interior has determined that this document is not a major rule under E.O. 12291 and certifies that this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

#### Compliance With the Paperwork Reduction Act

This rule does not contain information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*

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### Compliance With the National Environmental Policy Act

Federal agencies that conduct or authorize archeological investigations are required by law to maintain and preserve the resulting collections of artifacts, specimens and associated records. Issuance of this document will result in more consistent, systematic and professional care of those collections. The National Park Service has determined that this rulemaking will not have a significant effect on the quality of the human environment under the National Environmental Policy Act (42 U.S.C. 4321-4347). In addition, the National Park Service has determined that this rulemaking is categorically excluded from the procedural requirements of the National Environmental Policy Act by Departmental regulations in 516 DM 2. As such, neither an Environmental Assessment nor an Environmental Impact Statement has been prepared.

#### List of Subjects in 36 CFR Part 79

Archeology, Archives and records, Historic preservation, Indians-lands, Museums, Public lands.

Dated: June 28, 1990.

Constance B. Harriman,

Assistant Secretary for Fish and Wildlife and Parks.

For the reasons set forth in the preamble, title 36, chapter I of the Code of Federal Regulations is amended by adding a new part 79 to read as follows:

### PART 79—CURATION OF FEDERALLY-OWNED AND ADMINISTERED ARCHEOLOGICAL COLLECTIONS

#### Sec.

- 79.1 Purpose.  
79.2 Authority.  
79.3 Applicability.  
79.4 Definitions.  
79.5 Management and preservation of collections.  
79.6 Methods to secure curatorial services.  
79.7 Methods to fund curatorial services.  
79.8 Terms and conditions to include in contracts, memoranda and agreements for curatorial services.  
79.9 Standards to determine when a repository possesses the capability to provide adequate long-term curatorial services.  
79.10 Use of collections.  
79.11 Conduct of inspections and inventories.

Appendix A to Part 79—Example of a Deed of Gift

Appendix B to Part 79—Example of a

Memorandum of Understanding for Curatorial Services for a Federally-Owned Collection.

Appendix C to Part 79—Example of a Short-Term Loan Agreement for a Federally-Owned collection

Authority: 15 U.S.C. 470aa-mm. 16 U.S.C. 470 et seq.

#### § 79.1 Purpose.

(a) The regulations in this part establish definitions, standards, procedures and guidelines to be followed by Federal agencies to preserve collections of prehistoric and historic material remains, and associated records, recovered under the authority of the Antiquities Act (16 U.S.C. 431-433), the Reservoir Salvage Act (16 U.S.C. 469-469c), section of the National Historic Preservation Act (16 U.S.C. 470h-2) or the Archeological Resources Protection Act (16 U.S.C. 470aa-mm). They establish:

- (1) Procedures and guidelines to manage and preserve collections;
- (2) Terms and conditions for Federal agencies to include in contracts, memoranda, agreements or other written instruments with repositories for curatorial services;
- (3) Standards to determine when a repository has the capability to provide long-term curatorial services; and
- (4) Guidelines to provide access to, loan and otherwise use collections.

(b) The regulations in this part contain three appendices that provide additional guidance for use by the Federal Agency Official.

(1) Appendix A to these regulations contains an example of an agreement between a Federal agency and a non-Federal owner of material remains who is donating the remains to the Federal agency.

(2) Appendix B to these regulations contains an example of a memorandum of understanding between a Federal agency and a repository for long-term curatorial services for a federally-owned collection.

(3) Appendix C to these regulations contains an example of an agreement between a repository and a third party for a short-term loan of a federally-owned collection (or a part thereof).

(4) The three appendices are meant to illustrate how such agreements might appear. They should be revised according to the:

- (i) Needs of the Federal agency and any non-Federal owner;
- (ii) Nature and content of the collection; and
- (iii) Type of contract, memorandum, agreement or other written instrument being used.

(5) When a repository has preexisting standard forms (e.g., a short-term loan form) that are consistent with the regulations in this part, those forms may be used in lieu of developing new ones.

#### § 79.2 Authority.

(a) The regulations in this part are promulgated pursuant to section 101(a)(7)(A) of the National Historic Preservation Act (16 U.S.C. 470a) which requires that the Secretary of the Interior issue regulations ensuring that significant prehistoric and historic artifacts, and associated records, recovered under the authority of section of that Act (16 U.S.C. 470h-2), the Reservoir Salvage Act (16 U.S.C. 469-469c) and the Archeological Resources Protection Act (16 U.S.C. 470aa-mm) are deposited in an institution with adequate long-term curatorial capabilities.

(b) In addition, the regulations in this part are promulgated pursuant to section 5 of the Archeological Resources Protection Act (16 U.S.C. 470dd) which gives the Secretary of the Interior discretionary authority to promulgate regulations for the:

(1) Exchange, where appropriate, between suitable universities, museums or other scientific or educational institutions, of archeological resources recovered from public and Indian lands under that Act; and

(2) Ultimate disposition of archeological resources recovered under that Act (16 U.S.C. 470aa-mm), the Antiquities Act (16 U.S.C. 431-433) or the Reservoir Salvage Act (16 U.S.C. 469-469c).

(3) It further states that any exchange or ultimate disposition of resources excavated or removed from Indian lands shall be subject to the consent of the Indian or Indian tribe that owns or has jurisdiction over such lands.

#### § 79.3 Applicability.

(a) The regulations in this part apply to collections, as defined in § 79.4 of this part, that are excavated or removed under the authority of the Antiquities Act (16 U.S.C. 431-433), the Reservoir Salvage Act (16 U.S.C. 469-469c), section of the National Historic Preservation Act (16 U.S.C. 470h-2) or the Archeological Resources Act (16 U.S.C. 470aa-mm). Such collections generally include those that are the result of a prehistoric or historic resource survey, excavation or other study conducted in connection with a Federal action, assistance, license or permit.

(1) Material remains, as defined in § 79.4 of this part, that are excavated or removed from a prehistoric or historic resource generally are the property of the landowner.

(2) Data that are generated as a result of a prehistoric or historic resource survey, excavation or other study are recorded in associated records, as defined in § 79.4 of this part. Associated records that are prepared or assembled in connection with a Federal or federally authorized prehistoric or historic resource survey, excavation or other study are the property of the U.S. Government, regardless of the location of the resource.

(b) The regulations in this part apply to preexisting and new collections that meet the requirements of paragraph (a) of this section. However, the regulations shall not be applied in a manner that would supersede or breach material terms and conditions in any contract, grant, license, permit, memorandum, or agreement entered into by or on behalf of a Federal agency prior to the effective date of this regulation.

(c) Collections that are excavated or removed pursuant to the Antiquities Act (16 U.S.C. 431-433) remain subject to that Act, the Act's implementing rule (43 CFR part 3), and the terms and conditions of the pertinent Antiquities Act permit or other approval.

(d) Collections that are excavated or removed pursuant to the Archaeological Resources Protection Act (16 U.S.C. 470aa-mm) remain subject to that Act, the Act's implementing rules (43 CFR part 7, 36 CFR part 296, 18 CFR part 1312, and 32 CFR part 229), and the terms and conditions of the pertinent Archaeological Resources Protection Act permit or other approval.

(e) Any repository that is providing curatorial services for a collection subject to the regulations in this part must possess the capability to provide adequate long-term curatorial services, as set forth in § 79.9 of this part, to safeguard and preserve the associated records and any material remains that are deposited in the repository.

#### § 79.4 Definitions.

As used for purposes of this part:

(a) *Collection* means material remains that are excavated or removed during a survey, excavation or other study of a prehistoric or historic resource, and associated records that are prepared or assembled in connection with the survey, excavation or other study.

(1) *Material remains* means artifacts, objects, specimens and other physical evidence that are excavated or removed in connection with efforts to locate, evaluate, document, study, preserve or

recover a prehistoric or historic resource. Classes of material remains (and illustrative examples) that may be in a collection include, but are not limited to:

(i) Components of structures and features (such as houses, mills, piers, fortifications, raceways, earthworks and mounds);

(ii) Intact or fragmentary artifacts of human manufacture (such as tools, weapons, pottery, basketry and textiles);

(iii) Intact or fragmentary natural objects used by humans (such as rock crystals, feathers and pigments);

(iv) By-products, waste products or debris resulting from the manufacture or use of man-made or natural materials (such as slag, dumps, cores and debitage);

(v) Organic material (such as vegetable and animal remains, and coprolites);

(vi) Human remains (such as bone, teeth, mummified flesh, burials and cremations);

(vii) Components of petroglyphs, pictographs, intaglios or other works of artistic or symbolic representation;

(viii) Components of shipwrecks (such as pieces of the ship's hull, rigging, armaments, apparel, tackle, contents and cargo);

(ix) Environmental and chronometric specimens (such as pollen, seeds, wood, shell, bone, charcoal, tree core samples, soil, sediment cores, obsidian, volcanic ash, and baked clay); and

(x) Paleontological specimens that are found in direct physical relationship with a prehistoric or historic resource.

(2) *Associated records* means original records (or copies thereof) that are prepared, assembled and document efforts to locate, evaluate, record, study, preserve or recover a prehistoric or historic resource. Some records such as field notes, artifact inventories and oral histories may be originals that are prepared as a result of the field work, analysis and report preparation. Other records such as deeds, survey plats, historical maps and diaries may be copies of original public or archival documents that are assembled and studied as a result of historical research. Classes of associated records (and illustrative examples) that may be in a collection include, but are not limited to:

(i) Records relating to the identification, evaluation, documentation, study, preservation or recovery of a resource (such as site forms, field notes, drawings, maps, photographs, slides, negatives, films, video and audio cassette tapes, oral histories, artifact inventories, laboratory reports, computer cards and tapes, computer disks and diskettes, printouts

of computerized data, manuscripts, reports, and accession, catalog and inventory records);

(ii) Records relating to the identification of a resource using remote sensing methods and equipment (such as satellite and aerial photography and imagery, side scan sonar, magnetometers, subbottom profilers, radar and fathometers);

(iii) Public records essential to understanding the resource (such as deeds, survey plats, military and census records, birth, marriage and death certificates, immigration and naturalization papers, tax forms and reports);

(iv) Archival records essential to understanding the resource (such as historical maps, drawings and photographs, manuscripts, architectural and landscape plans, correspondence, diaries, ledgers, catalogs and receipts); and

(v) Administrative records relating to the survey, excavation or other study of the resource (such as scopes of work, requests for proposals, research proposals, contracts, antiquities permits, reports, documents relating to compliance with section 106 of the National Historic Preservation Act (16 U.S.C. 470f), and National Register of Historic Places nomination and determination of eligibility forms).

(b) *Curatorial services*. Providing curatorial services means managing and preserving a collection according to professional museum and archival practices, including, but not limited to:

(1) Inventorying, accessioning, labeling and cataloging a collection;

(2) Identifying, evaluating and documenting a collection;

(3) Storing and maintaining a collection using appropriate methods and containers, and under appropriate environmental conditions and physically secure controls;

(4) Periodically inspecting a collection and taking such actions as may be necessary to preserve it;

(5) Providing access and facilities to study a collection; and

(6) Handling, cleaning, stabilizing and conserving a collection in such a manner to preserve it.

(c) *Federal Agency Official* means any officer, employee or agent officially representing the secretary of the department or the head of any other agency or instrumentality of the United States having primary management authority over a collection that is subject to this part.

(d) *Indian lands* has the same meaning as in § -3(e) of uniform regulations 43 CFR part 7, 36 CFR part

296, 18 CFR part 1312, and 32 CFR part 229.

(e) *Indian tribe* has the same meaning as in § -3(f) of uniform regulations 43 CFR part 7, 36 CFR part 296, 18 CFR part 1312, and 32 CFR part 229.

(f) *Personal property* has the same meaning as in 41 CFR 100-43.001-14. Collections, equipment (e.g., a specimen cabinet or exhibit case), materials and supplies are classes of personal property.

(g) *Public lands* has the same meaning as in § -3(d) of uniform regulations 43 CFR part 7, 36 CFR part 296, 18 CFR part 1312, and 32 CFR part 229.

(h) *Qualified museum professional* means a person who possesses knowledge, experience and demonstrable competence in museum methods and techniques appropriate to the nature and content of the collection under the person's management and care, and commensurate with the person's duties and responsibilities. Standards that may be used, as appropriate, for classifying positions and for evaluating a person's qualifications include, but are not limited to, the following:

(1) The Office of Personnel Management's "Position Classification Standards for Positions under the General Schedule Classification System" (U.S. Government Printing Office, stock No. 906-028-00000-0 (1981)) are used by Federal agencies to determine appropriate occupational series and grade levels for positions in the Federal service. Occupational series most commonly associated with museum work are the museum curator series (GS/GM-1015) and the museum technician and specialist series (GS/GM-1016). Other scientific and professional series that may have collateral museum duties include, but are not limited to, the archivist series (GS/GM-1420), the archeologist series (GS/GM-193), the anthropologist series (GS/GM-190), and the historian series (GS/GM-170). In general, grades GS-9 and below are assistants and trainees while grades GS-11 and above are professionals at the full performance level. Grades GS-11 and above are determined according to the level of independent professional responsibility, degree of specialization and scholarship, and the nature, variety, complexity, type and scope of the work.

(2) The Office of Personnel Management's "Qualification Standards for Positions under the General Schedule (Handbook X-118)" (U.S. Government Printing Office, stock No. 906-030-00000-4 (1986)) establish educational, experience and training requirements for employment with the

Federal Government under the various occupational series. A graduate degree in museum science or applicable subject matter, or equivalent training and experience, and three years of professional experience are required for museum positions at grades GS-11 and above.

(3) The "Secretary of the Interior's Standards and Guidelines for Archeology and Historic Preservation" (48 FR 44718, Sept. 29, 1983) provide technical advice about archeological and historic preservation activities and methods for use by Federal, State and local Governments and others. One section presents qualification standards for a number of historic preservation professions. While no standards are presented for collections managers, museum curators or technicians, standards are presented for other professions (i.e., historians, archeologists, architectural historians, architects, and historic architects) that may have collateral museum duties.

(4) Copies of the Office of Personnel Management's standards, including subscriptions for subsequent updates, may be purchased from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402. Copies may be inspected at the Office of Personnel Management's Library, 1900 E Street NW., Washington, DC, at any regional or area office of the Office of Personnel Management, at any Federal Job Information Center, and at any personnel office of any Federal agency. Copies of the "Secretary of the Interior's Standards and Guidelines for Archeology and Historic Preservation" are available at no charge from the Interagency Resources Division, National Park Service, P.O. Box 37127, Washington, DC 20013-7127.

(i) *Religious remains* means material remains that the Federal Agency Official has determined are of traditional religious or sacred importance to an Indian tribe or other group because of customary use in religious rituals or spiritual activities. The Federal Agency Official makes this determination in consultation with appropriate Indian tribes or other groups.

(j) *Repository* means a facility such as a museum, archeological center, laboratory or storage facility managed by a university, college, museum, other educational or scientific institution, a Federal, State or local Government agency or Indian tribe that can provide professional, systematic and accountable curatorial services on a long-term basis.

(k) *Repository Official* means any officer, employee or agent officially

representing the repository that is providing curatorial services for a collection that is subject to this part.

(l) *Tribal Official* means the chief executive officer or any officer, employee or agent officially representing the Indian tribe.

#### § 79.5 Management and preservation of collections.

The Federal Agency Official is responsible for the long-term management and preservation of preexisting and new collections subject to this part. Such collections shall be placed in a repository with adequate long-term curatorial capabilities, as set forth in § 79.9 of this part, appropriate to the nature and content of the collections.

(a) *Preexisting collections.* The Federal Agency Official is responsible for ensuring that preexisting collections, meaning those collections that are placed in repositories prior to the effective date of this rule, are being properly managed and preserved. The Federal Agency Official shall identify such repositories, and review and evaluate the curatorial services that are being provided to preexisting collections. When the Federal Agency Official determines that such a repository does not have the capability to provide adequate long-term curatorial services, as set forth in § 79.9 of this part, the Federal Agency Official may either:

(1) Enter into or amend an existing contract, memorandum, agreement or other appropriate written instrument for curatorial services for the purpose of:

- (i) Identifying specific actions that shall be taken by the repository, the Federal agency or other appropriate party to eliminate the inadequacies;
- (ii) Specifying a reasonable period of time and a schedule within which the actions shall be completed; and
- (iii) Specifying any necessary funds or services that shall be provided by the repository, the Federal agency or other appropriate party to complete the actions; or

(2) Remove the collections from the repository and deposit them in another repository that can provide such services in accordance with the regulations in this part. Prior to moving any collection that is from Indian lands, the Federal Agency Official must obtain the written consent of the Indian landowner and the Indian tribe having jurisdiction over the lands.

(b) *New collections.* The Federal Agency Official shall deposit a collection in a repository upon determining that:

(1) The repository has the capability to provide adequate long-term curatorial services, as set forth in § 79.9 of this part;

(2) The repository's facilities, written curatorial policies and operating procedures are consistent with the regulations in this part;

(3) The repository has certified, in writing, that the collection shall be cared for, maintained and made accessible in accordance with the regulations in this part and any terms and conditions that are specified by the Federal Agency Official;

(4) When the collection is from Indian lands, written consent to the disposition has been obtained from the Indian landowner and the Indian tribe having jurisdiction over the lands; and

(5) The initial processing of the material remains (including appropriate cleaning, sorting, labeling, cataloging, stabilizing and packaging) has been completed, and associated records have been prepared and organized in accordance with the repository's processing and documentation procedures.

(c) *Retention of records by Federal agencies.* The Federal Agency Official shall maintain administrative records on the disposition of each collection including, but not limited to:

(1) The name and location of the repository where the collection is deposited;

(2) A copy of the contract, memorandum, agreement or other appropriate written instrument, and any subsequent amendments, between the Federal agency, the repository and any other party for curatorial services;

(3) A catalog list of the contents of the collection that is deposited in the repository;

(4) A list of any other Federal personal property that is furnished to the repository as a part of the contract, memorandum, agreement or other appropriate written instrument for curatorial services;

(5) Copies of reports documenting inspections, inventories and investigations of loss, damage or destruction that are conducted pursuant to § 79.11 of this part; and

(6) Any subsequent permanent transfer of the collection (or a part thereof) to another repository.

**§ 79.6 Methods to secure curatorial services.**

(a) Federal agencies may secure curatorial services using a variety of methods, subject to Federal procurement and property management statutes, regulations, and any agency-specific statutes and regulations on the

management of museum collections. Methods that may be used by Federal agencies to secure curatorial services include, but are not limited to:

(1) Placing the collection in a repository that is owned, leased or otherwise operated by the Federal agency;

(2) Entering into a contract or purchase order with a repository for curatorial services;

(3) Entering into a cooperative agreement, a memorandum of understanding, a memorandum of agreement or other agreement, as appropriate, with a State, local or Indian tribal repository, a university, museum or other scientific or educational institution that operates or manages a repository, for curatorial services;

(4) Entering an interagency agreement with another Federal agency for curatorial services;

(5) Transferring the collection to another Federal agency for preservation; and

(6) For archeological activities permitted on public or Indian lands under the Archaeological Resources Protection Act (16 U.S.C. 470 *aa-mm*), the Antiquities Act (16 U.S.C. 431-433) or other authority, requiring the archeological permittee to provide for curatorial services as a condition to the issuance of the archeological permit.

(b) *Guidelines for selecting a repository.* (1) When possible, the collection should be deposited in a repository that:

(i) Is in the State of origin;

(ii) Stores and maintains other collections from the same site or project location; or

(iii) Houses collections from a similar geographic region or cultural area.

(2) The collection should not be subdivided and stored at more than a single repository unless such subdivision is necessary to meet special storage, conservation or research needs.

(3) Except when non-federally-owned material remains are retained and disposed of by the owner, material remains and associated records should be deposited in the same repository to maintain the integrity and research value of the collection.

(c) *Sources for technical assistance.* The Federal Agency Official should consult with persons having expertise in the management and preservation of collections prior to preparing a scope of work or a request for proposals for curatorial services. This will help ensure that the resulting contract, memorandum, agreement or other written instrument meets the needs of the collection, including any special needs in regard to any religious remains.

It also will aid the Federal Agency Official in evaluating the qualifications and appropriateness of a repository, and in determining whether the repository has the capability to provide adequate long-term curatorial services for a collection. Persons, agencies, institutions and organizations that may be able to provide technical assistance include, but are not limited to the:

(1) Federal agency's Historic Preservation Officer;

(2) State Historic Preservation Officer;

(3) Tribal Historic Preservation Officer;

(4) State Archeologist;

(5) Curators, collections managers, conservators, archivists, archeologists, historians and anthropologists in Federal and State Government agencies and Indian tribal museum;

(6) Indian tribal elders and religious leaders;

(7) Smithsonian Institution;

(8) American Association of Museums; and

(9) National Park Service.

**§ 79.7 Methods to fund curatorial services.**

A variety of methods are used by Federal agencies to ensure that sufficient funds are available for adequate, long-term care and maintenance of collections. Those methods include, but are not limited to, the following:

(a) Federal agencies may fund a variety of curatorial activities using monies appropriated annually by the U.S. Congress, subject to any specific statutory authorities or limitations applicable to a particular agency. As appropriate, curatorial activities that may be funded by Federal agencies include, but are not limited to:

(1) Purchasing, constructing, leasing, renovating, upgrading, expanding, operating, and maintaining a repository that has the capability to provide adequate long-term curatorial services as set forth in § 79.9 of this part;

(2) Entering into and maintaining on a cost-reimbursable or cost-sharing basis a contract, memorandum, agreement, or other appropriate written instrument with a repository that has the capability to provide adequate long-term curatorial services as set forth in § 79.9 of this part;

(3) As authorized under section 110(g) of the National Historic Preservation Act (16 U.S.C. 470h-2), reimbursing a grantee for curatorial costs paid by the grantee as a part of the grant project;

(4) As authorized under section 110(g) of the National Historic Preservation Act (16 U.S.C. 470h-2), reimbursing a State for curatorial costs paid by the State agency to carry out the historic

preservation responsibilities of the Federal agency;

(5) Conducting inspections and inventories in accordance with § 79.11 of this part; and

(6) When a repository that is housing and maintaining a collection can no longer provide adequate long-term curatorial services, as set forth in § 79.9 of this part, either:

(i) Providing such funds or services as may be agreed upon pursuant to § 79.5(a)(1) of this part to assist the repository in eliminating the deficiencies; or

(ii) Removing the collection from the repository and depositing it in another repository that can provide curatorial services in accordance with the regulations in this part.

(b) As authorized under section 110(g) of the National Historic Preservation Act (16 U.S.C. 470h-2) and section 208(2) of the National Historic Preservation Act Amendments (16 U.S.C. 469c-2), for federally licensed or permitted projects or programs, Federal agencies may charge licensees and permittees reasonable costs for curatorial activities associated with identification, surveys, evaluation and data recovery as a condition to the issuance of a Federal license or permit.

(c) Federal agencies may deposit collections in a repository that agrees to provide curatorial services at no cost to the U.S. Government. This generally occurs when a collection is excavated or removed from public or Indian lands under a research permit issued pursuant to the Antiquities Act (16 U.S.C. 431-433) or the Archaeological Resources Protection Act (16 U.S.C. 470aa-mm). A repository also may agree to provide curatorial services as a public service or as a means of ensuring direct access to a collection for long-term study and use. Federal agencies should ensure that a repository that agrees to provide curatorial services at no cost to the U.S. Government has sufficient financial resources to support its operations and any needed improvements.

(d) Funds provided to a repository for curatorial services should include costs for initially processing, cataloging and accessioning the collection as well as costs for storing, inspecting, inventorying, maintaining, and conserving the collection on a long-term basis.

(1) Funds to initially process, catalog and accession a collection to be generated during identification and evaluation surveys should be included in project planning budgets.

(2) Funds to initially process, catalog and accession a collection to be generated during data recovery

operations should be included in project mitigation budgets.

(3) Funds to store, inspect, inventory, maintain and conserve a collection on a long-term basis should be included in annual operating budgets.

(e) When the Federal Agency Official determines that data recovery costs may exceed the one percent limitation contained in the Archeological and Historic Preservation Act (16 U.S.C. 469c), as authorized under section 208(3) of the National Historic Preservation Act Amendments (16 U.S.C. 469c-2), the limitation may be waived, in appropriate cases, after the Federal Agency Official has:

(1) Obtained the concurrence of the Secretary of the U.S. Department of the Interior by sending a written request to the Departmental Consulting Archeologist, National Park Service, P.O. Box 37127, Washington, DC 20013-7127; and

(2) Notified the Committee on Energy and Natural Resources of the U.S. Senate and the Committee on Interior and Insular Affairs of the U.S. House of Representatives.

**§ 79.8 Terms and conditions to include in contracts, memoranda and agreements for curatorial services.**

The Federal Agency Official shall ensure that any contract, memorandum, agreement or other appropriate written instrument for curatorial services that is entered into by or on behalf of that Official, a Repository Official and any other appropriate party contains the following:

(a) A statement that identifies the collection or group of collections to be covered and any other U.S. Government-owned personal property to be furnished to the repository;

(b) A statement that identifies who owns and has jurisdiction over the collection;

(c) A statement of work to be performed by the repository;

(d) A statement of the responsibilities of the Federal agency and any other appropriate party;

(e) When the collection is from Indian lands:

(1) A statement that the Indian landowner and the Indian tribe having jurisdiction over the lands consent to the disposition; and

(2) Such terms and conditions as may be requested by the Indian landowner and the Indian tribe having jurisdiction over the lands;

(f) When the collection is from a site on public lands that the Federal Agency Official has determined is of religious or cultural importance to any Indian tribe having aboriginal or historic ties to such

lands, such terms and conditions as may have been developed pursuant to § 7 of uniform regulations 43 CFR part 7, 36 CFR part 296, 18 CFR part 1312, and 32 CFR part 229;

(g) The term of the contract, memorandum or agreement; and procedures for modification, suspension, extension, and termination;

(h) A statement of costs associated with the contract, memorandum or agreement; the funds or services to be provided by the repository, the Federal agency and any other appropriate party; and the schedule for any payments;

(i) Any special procedures and restrictions for handling, storing, inspecting, inventorying, cleaning, conserving, and exhibiting the collection;

(j) Instructions and any terms and conditions for making the collection available for scientific, educational and religious uses, including procedures and criteria to be used by the Repository Official to review, approve or deny, and document actions taken in response to requests for study, laboratory analysis, loan, exhibition, use in religious rituals or spiritual activities, and other uses. When the Repository Official to approve consumptive uses, this should be specified; otherwise, the Federal Agency Official should review and approve consumptive uses. When the repository's existing operating procedures and criteria for evaluating requests to use collections are consistent with the regulations in this part, they may be used, after making any necessary modifications, in lieu of developing new ones;

(k) Instructions for restricting access to information relating to the nature, location and character of the prehistoric or historic resource from which the material remains are excavated or removed;

(l) A statement that copies of any publications resulting from study of the collection are to be provided to the Federal Agency Official and, when the collection is from Indian lands, to the Tribal Official and the Tribal Historic Preservation Officer, if any, of the Indian tribe that owns or has jurisdiction over such lands;

(m) A statement that specifies the frequency and methods for conducting and documenting the inspections and inventories stipulated in § 79.11 of this part;

(n) A statement that the Repository Official shall redirect any request for transfer or repatriation of a federally-owned collection (or any part thereof) to the Federal Agency Official, and redirect any request for transfer or

repatriation of a federally administered collection (or any part thereof) to the Federal Agency Official and the owner;

(c) A statement that the Repository Official shall not transfer, repatriate or discard a federally-owned collection (or any part thereof) without the written permission of the Federal Agency Official, and not transfer, repatriate or discard a federally administered collection (or any part thereof) without the written permission of the Federal Agency Official and the owner;

(p) A statement that the Repository Official shall not sell the collection; and

(q) A statement that the repository shall provide curatorial services in accordance with the regulations in this part.

**§ 79.9 Standards to determine when a repository possesses the capability to provide adequate long-term curatorial services.**

The Federal Agency Official shall determine that a repository has the capability to provide adequate long-term curatorial services when the repository is able to:

(a) Accession, label, catalog, store, maintain, inventory and conserve the particular collection on a long-term basis using professional museum and archival practices; and

(b) Comply with the following, as appropriate to the nature and consent of the collection;

(1) Maintain complete and accurate records of the collection, including:

- (i) Records on acquisitions;
- (ii) Catalog and artifact inventory lists;
- (iii) Descriptive information, including field notes, site forms and reports;
- (iv) Photographs, negatives and slides;
- (v) Locational information, including maps;

(vi) Information on the condition of the collection, including any completed conservation treatments;

(vii) Approved loans and other uses;

(viii) Inventory and inspection records, including any environmental monitoring records;

(ix) Records on lost, deteriorated, damaged or destroyed Government property; and

(x) Records on any deaccessions, and subsequent transfers, repatriations or discards, as approved by the Federal Agency Official;

(2) Dedicate the requisite facilities, equipment and space in the physical plant to property store, study and conserve the collection. Space used for storage, study, conservation and, if exhibited, any exhibition must not be used for non-curatorial purposes that

would endanger or damage the collection;

(3) Keep the collection under physically secure conditions within storage, laboratory, study and any exhibition areas by:

(i) Having the physical plant meet local electrical, fire, building, health and safety codes;

(ii) Having an appropriate and operational fire detection and suppression system;

(iii) Having an appropriate and operational intrusion detection and deterrent system;

(iv) Having an adequate emergency management plan that establishes procedures for responding to fires, floods, natural disasters, civil unrest, acts of violence, structural failures and failures of mechanical systems within the physical plant;

(v) Providing fragile or valuable items in a collection with additional security such as locking the items in a safe, vault or museum specimen cabinet, as appropriate;

(vi) Limiting and controlling access to keys, the collection and the physical plant; and

(vii) Inspecting the physical plant in accordance with § 79.11 of this part for possible security weaknesses and environmental control problems, and taking necessary actions to maintain the integrity of the collection;

(4) Require staff and any consultants who are responsible for managing and preserving the collection to be qualified museum professionals;

(5) Handle, store, clean, conserve and, if exhibited, exhibit the collection in a manner that:

(i) Is appropriate to the nature of the material remains and associated records;

(ii) Protects them from breakage and possible deterioration from adverse temperature and relative humidity, visible light, ultraviolet radiation, dust, soot, gases, mold, fungus, insects, rodents and general neglect; and

(iii) Preserves data that may be studied in future laboratory analyses. When material remains in a collection are to be treated with chemical solutions or preservatives that will permanently alter the remains, when possible, retain untreated representative samples of each affected artifact type, environmental specimen or other category of material remains to be treated. Untreated samples should not be stabilized or conserved beyond dry brushing;

(6) Store site forms, field notes, artifacts inventory lists, computer disks and tapes, catalog forms and a copy of

the final report in a manner that will protect them from theft and fire such as:

(i) Storing the records in an appropriate insulated, fire resistant, locking cabinet, safe, vault or other container, or in a location with a fire suppression system;

(ii) Storing a duplicate set of records in a separate location; or

(iii) Ensuring that records are maintained and accessible through another party. For example, copies of final reports and site forms frequently are maintained by the State Historic Preservation Officer, the State Archeologist or the State museum or university. The Tribal Historic Preservation Officer and Indian tribal museum ordinarily maintain records on collections recovered from sites located on Indian lands. The National Technical Information Service and the Defense Technical Information Service maintain copies of final reports that have been deposited by Federal agencies. The National Archeological Database maintains summary information on archeological reports and projects, including information on the location of those reports.

(7) Inspect the collection in accordance with § 79.11 of this part for possible deterioration and damage, and perform only those actions as are absolutely necessary to stabilize the collection and rid it of any agents of deterioration;

(8) Conduct inventories in accordance with § 79.11 of this part to verify the location of the material remains, associated records and any other Federal personal property that is furnished to the repository; and

(9) Provide access to the collection in accordance with § 79.10 of this part.

**§ 79.10 Use of collections.**

(a) The Federal Agency Official shall ensure that the Repository Official makes the collection available for scientific, educational and religious uses, subject to such terms and conditions as are necessary to protect and preserve the condition, research potential, religious or sacred importance, and uniqueness of the collection.

(b) *Scientific and educational uses.* A collection shall be made available to qualified professionals for study, loan and use for such purposes as in-house and traveling exhibits, teaching, public interpretation, scientific analysis and scholarly research. Qualified professionals would include, but not be limited to, curators, conservators, collection managers, exhibitors, researchers, scholars, archeological

contractors and educators. Students may use a collection when under the direction of a qualified professional. Any resulting exhibits and publications shall acknowledge the repository as the curatorial facility and the Federal agency as the owner or administrator, as appropriate. When the collection is from Indian lands and the Indian landowner and the Indian tribe having jurisdiction over the lands wish to be identified, those individuals and the Indian tribe shall also be acknowledged. Copies of any resulting publications shall be provided to the Repository Official and the Federal Agency Official. When Indian lands are involved, copies of such publications shall also be provided to the Tribal Official and the Tribal Historic Preservation Officer, if any, of the Indian tribe that owns or has jurisdiction over such lands.

(c) **Religious uses.** Religious remains in a collection shall be made available to persons for use in religious rituals or spiritual activities. Religious remains generally are of interest to medicine men and women, and other religious practitioners and persons from Indian tribes, Alaskan Native corporations, Native Hawaiians, and other indigenous and immigrant ethnic, social and religious groups that have aboriginal or historic ties to the lands from which the remains are recovered, and have traditionally used the remains or class of remains in religious rituals or spiritual activities.

(d) **Terms and conditions.** (1) In accordance with section 9 of the Archaeological Resources Protection Act (16 U.S.C. 470hh) and section 304 of the National Historic Preservation Act (16 U.S.C. 470 w-3), the Federal Agency Official shall restrict access to associated records that contain information relating to the nature, location or character of a prehistoric or historic resource unless the Federal Agency Official determines that such disclosure would not create a risk of harm, theft or destruction to the resource or to the area or place where the resource is located.

(2) Section -18(a)(2) of uniform regulations 43 CFR part 7, 36 CFR part 296, 18 CFR part 1312, and 32 CFR part 229 sets forth procedures whereby information relating to the nature, location or character of a prehistoric or historic resource may be made available to the Governor of any State. The Federal Agency Official may make information available to other persons who, following the procedures in §-18(a)(2) of the referenced uniform regulations, demonstrate that the disclosure will not create a risk of harm,

theft or destruction to the resource or to the area or place where the resource is located. Other persons generally would include, but not be limited to, archeological contractors, researchers, scholars, tribal representatives, Federal, State and local agency personnel, and other persons who are studying the resource or class or resources.

(3) When a collection is from Indian lands, the Federal Agency Official shall place such terms and conditions as may be requested by the Indian landowner and the Indian tribe having jurisdiction over the lands on:

(i) Scientific, educational or religious uses of material remains; and

(ii) Access to associated records that contain information relating to the nature, location or character of the resource.

(4) When a collection is from a site on public lands that the Federal Agency Official has determined is of religious or cultural importance to any Indian tribe having aboriginal or historic ties to such lands, the Federal Agency Official shall place such terms and conditions as may have been developed pursuant to §-7 of uniform regulations 43 CFR part 7, 36 CFR part 296, 18 CFR part 1312, and 32 CFR part 229 on:

(i) Scientific, educational or religious uses of material remains; and

(ii) Access to associated records that contain information relating to the nature, location or character of the resource.

(5) The Federal Agency Official shall not allow uses that would alter, damage or destroy an object in a collection unless the Federal Agency Official determines that such use is necessary for scientific studies or public interpretation, and the potential gain in scientific or interpretive information outweighs the potential loss of the object. When possible, such use should be limited to unprovenienced, nonunique, nonfragile objects, or to a sample of objects drawn from a larger collection of similar objects.

(e) No collection (or a part thereof) shall be loaned to any person without a written agreement between the Repository Official and the borrower that specifies the terms and conditions of the loan. Appendix C to the regulations in this part contains an example of a short-term loan agreement for a federally-owned collection. At a minimum, a loan agreement shall specify:

(1) The collection or object being loaned;

(2) The purpose of the loan;

(3) The length of the loan;

(4) Any restrictions on scientific, educational or religious uses, including whether any object may be altered, damaged or destroyed;

(5) Except as provided in paragraph (e)(4) of this section, that the borrower shall handle the collection or object being borrowed during the term of the loan in accordance with this part so as not to damage or reduce its scientific, educational, religious or cultural value; and

(6) Any requirements for insuring the collection or object being borrowed for any loss, damage or destruction during transit and while in the borrower's possession.

(f) The Federal Agency Official shall ensure that the Repository Official maintains administrative records that document approved scientific, educational and religious uses of the collection.

(g) The Repository Official may charge persons who study, borrow or use a collection (or a part thereof) reasonable fees to cover costs for handling, packing, shipping and insuring material remains, for photocopying associated records, and for other related incidental costs.

#### §79.11 Conduct of inspections and inventories.

(a) The inspections and inventories specified in this section shall be conducted periodically in accordance with the Federal Property and Administrative Services Act (40 U.S.C. 484), its implementing regulation (41 CFR part 101), any agency-specific regulations on the management of Federal property, and any agency-specific statutes and regulations on the management of museum collections.

(b) Consistent with paragraph (a) of this section, the Federal Agency Official shall ensure that the Repository Official:

(1) Provides the Federal Agency Official and, when the collection is from Indian lands, the Indian landowner and the Tribal Official of the Indian tribe that has jurisdiction over the lands with a copy of the catalog list of the contents of the collection received and accessioned by the repository;

(2) Provides the Federal Agency Official with a list of any other U.S. Government-owned personal property received by the repository;

(3) Periodically inspects the physical plant for the purpose of monitoring the physical security and environmental control measures;

(4) Periodically inspects the collection for the purposes of assessing the condition of the material remains and associated records, and of monitoring

those remains and records for possible deterioration and damage;

(5) Periodically inventories the collection by accession, lot or catalog record for the purpose of verifying the location of the material remains and associated records;

(6) Periodically inventories any other U.S. Government-owned personal property in the possession of the repository;

(7) Has qualified museum professionals conduct the inspections and inventories;

(8) Following each inspection and inventory, prepares and provides the Federal Agency Official with a written report of the results of the inspection and inventory, including the status of the collection, treatments completed and recommendations for additional treatments. When the collection is from Indian lands, the Indian landowner and the Tribal Official of the Indian tribe that has jurisdiction over the lands shall also be provided with a copy of the report;

(9) Within five (5) days of the discovery of any loss or theft of, deterioration and damage to, or destruction of the collection (or a part thereof) or any other U.S. Government-owned personal property, prepares and provides the Federal Agency Official with a written notification of the circumstances surrounding the loss, theft, deterioration, damage or destruction. When the collection is from Indian lands, the Indian landowner and the Tribal Official and the Indian tribe that has jurisdiction over the lands shall also be provided with a copy of the notification; and

(10) Makes the repository, the collection and any other U.S. Government-owned personal property available for periodic inspection by the:

(i) Federal Agency Official;

(ii) When the collection is from Indian lands, the Indian landowner and the Tribal Official of the Indian tribe that has jurisdiction over the lands; and

(iii) When the collection contains religious remains, the Indian tribal elders, religious leaders, and other officials representing the Indian tribe or other group for which the remains have religious or sacred importance.

(c) Consistent with paragraph (a) of this section, the Federal Agency Official shall have qualified Federal agency professionals:

(1) Investigate reports of a lost, stolen, deteriorated, damaged or destroyed collection (or a part thereof) or any other U.S. Government-owned personal property; and

(2) Periodically inspect the repository,

the collection and any other U.S. Government-owned personal property for the purposes of:

(i) Determining whether the repository is in compliance with the minimum standards set forth in § 79.9 of this part; and

(ii) Evaluating the performance of the repository in providing curatorial services under any contract, memorandum, agreement or other appropriate written instrument.

(d) The frequency and methods for conducting and documenting inspections and inventories stipulated in this section shall be mutually agreed upon, in writing, by the Federal Agency Official and the Repository Official, and be appropriate to the nature and content of the collection:

(1) Collections from Indian lands shall be inspected and inventoried in accordance with such terms and conditions as may be requested by the Indian landowner and the Indian tribe having jurisdiction over the lands.

(2) Religious remains in collections from public lands shall be inspected and inventoried in accordance with such terms and conditions as may have been developed pursuant to § -7 of uniform regulations 43 CFR part 7, 36 CFR part 296, 18 CFR part 1312, and 32 CFR part 229.

(3) Material remains and records of a fragile or perishable nature should be inspected for deterioration and damage on a more frequent basis than lithic or more stable remains or records.

(4) Because frequent handling will accelerate the breakdown of fragile materials, material remains and records should be viewed but handled as little as possible during inspections and inventories.

(5) Material remains and records of a valuable nature should be inventoried on a more frequent basis than other less valuable remains or records.

(6) Persons such as those listed in § 79.6(c) of this part who have expertise in the management and preservation of similar collections should be able to provide advice to the Federal Agency Official concerning the appropriate frequency and methods for conducting inspections and inventories of a particular collection.

(e) Consistent with the Single Audit Act (31 U.S.C. 75), when two or more Federal agencies deposit collections in the same repository, the Federal Agency Officials should enter into an interagency agreement for the purposes of:

(1) Requesting the Repository Official to coordinate the inspections and inventories, stipulated in paragraph (b)

of this section, for each of the collections;

(2) Designating one or more qualified Federal agency professionals to:

(i) Conduct inspections, stipulated in paragraph (c)(2) of this section, on behalf of the other agencies; and

(ii) Following each inspection, prepare and distribute to each Federal Agency Official a written report of findings, including an evaluation of performance and recommendations to correct any deficiencies and resolve any problems that were identified. When the collection is from Indian lands, the Indian landowner and the Tribal Official of the Indian tribe that has jurisdiction over the lands shall also be provided with a copy of the report; and

(3) Ensuring consistency in the conduct of inspections and inventories conducted pursuant to this section.

#### Appendix A to Part 79—Example of a Deed of Gift

##### DEED OF GIFT TO THE

(Name of the Federal agency).

*Whereas*, the (name of the Federal agency), hereinafter called the Recipient, is dedicated to the preservation and protection of artifacts, specimens and associated records that are generated in connection with its projects and programs; *Whereas*, certain artifacts and specimens, listed in Attachment A to this Deed of Gift, were recovered from the (name of the prehistoric or historic resource) site in connection with the Recipient's (name of the Recipient's project) project; *Whereas*, the (name of the prehistoric or historic resource) site is located on lands to which title is held by (name of the donor), hereinafter called the Donor, and that the Donor holds free and clear title to the artifacts and specimens; and *Whereas*, the Donor is desirous of donating the artifacts and specimens to the Recipient to ensure their continued preservation and protection; *Now therefore*, the Donor does hereby unconditionally donate to the Recipient, for unrestricted use, the artifacts and specimens listed in Attachment A to this Deed of Gift; and

The Recipient hereby gratefully acknowledges the receipt of the artifacts and specimens.

Signed: (signature of the Donor)

Date: (date)

Signed: (signature of the Federal Agency Official)

Date: (date)

Attachment A: Inventory of Artifacts and Specimens.

**Appendix B to Part 79—Example of a Memorandum of Understanding for Curatorial Services for a Federally-Owned Collection**

**MEMORANDUM OF UNDERSTANDING FOR CURATORIAL SERVICES BETWEEN THE**

(Name of the Federal agency)  
AND THE  
(Name of the Repository)

This Memorandum of Understanding is entered into this (day) day of (month and year), between the United States of America, acting by and through the (name of the Federal agency), hereinafter called the Depositor, and the (name of the Repository), hereinafter called the Repository, in the State of (name of the State).

The Parties do witnesseth that,

*Whereas*, the Depositor has the responsibility under Federal law to preserve for future use certain collections of archeological artifacts, specimens and associated records, herein called the Collection, listed in Attachment A which is attached hereto and made a part hereof, and is desirous of obtaining curatorial services; and

*Whereas*, the Repository is desirous of obtaining, housing and maintaining the Collection, and recognizes the benefits which will accrue to it, the public and scientific interests by housing and maintaining the Collection for study and other educational purposes; and

*Whereas*, the Parties hereto recognize the Federal Government's continued ownership and control over the Collection and any other U.S. Government-owned personal property, listed in Attachment B which is attached hereto and made a part hereof, provided to the Repository, and the Federal Government's responsibility to ensure that the Collection is suitably managed and preserved for the public good; and

*Whereas*, the Parties hereto recognize the mutual benefits to be derived by having the Collection suitably housed and maintained by the Repository;

Now therefore, the Parties do mutually agree as follows:

**1. The Repository shall:**

a. Provide for the professional care and management of the Collection from the (names of the prehistoric and historic resources) sites, assigned (list site numbers) site numbers. The collections were recovered in connection with the (name of the Federal or federally-authorized project) project, located in (name of the nearest city or town), (name of the county) county, in the State of (name of the State).

b. Perform all work necessary to protect the Collection in accordance with the regulation 36 CFR part 79 for the curation of federally-owned and administered archeological collections and the terms and conditions stipulated in Attachment C to this Memorandum.

c. Assign as the Curator, the Collections Manager and the Conservator having responsibility for the work under this Memorandum, persons who are qualified museum professionals and whose expertise is

appropriate to the nature and content of the Collection.

d. Begin all work on or about (month, date and year) and continue for a period of (number of years) years or until sooner terminated or revoked in accordance with the terms set forth herein.

e. Provide and maintain a repository facility having requisite equipment, space and adequate safeguards for the physical security and controlled environment for the Collection and any other U.S. Government-owned personal property in the possession of the Repository.

f. Not in any way adversely alter or deface any of the Collection except as may be absolutely necessary in the course of stabilization, conservation, scientific study, analysis and research. Any activity that will involve the intentional destruction of any of the Collection must be approved in advance and in writing by the Depositor.

g. Annually inspect the facilities, the Collection and any other U.S. Government-owned personal property. Every (number of years) years inventory the Collection and any other U.S. Government-owned personal property. Perform only those conservation treatments as are absolutely necessary to ensure the physical stability and integrity of the Collection, and report the results of inventories, inspections and treatments to the Depositor.

h. Within five (5) days of discovery, report all instances of and circumstances surrounding loss of, deterioration and damage to, or destruction of the Collection and any other U.S. Government-owned personal property to the Depositor, and those actions taken to stabilize the Collection and to correct any deficiencies in the physical plant or operating procedures that may have contributed to the loss, deterioration, damage or destruction. Any actions that will involve the repair and restoration of any of the Collection and any other U.S. Government-owned personal property must be approved in advance and in writing by the Depositor.

i. Review and approve or deny requests for access to or short-term loan of the Collection (or a part thereof) for scientific, educational or religious uses in accordance with the regulation 36 CFR part 79 for the curation of federally-owned and administered archeological collections and the terms and conditions stipulated in Attachment C of this Memorandum. In addition, refer requests for consumptive uses of the Collection (or a part thereof) to the Depositor for approval or denial.

j. Not mortgage, pledge, assign, repatriate, transfer, exchange, give, sublet, discard or part with possession of any of the Collection or any other U.S. Government-owned personal property in any manner to any third party either directly or indirectly without the prior written permission of the Depositor, and redirect any such request to the Depositor for response. In addition, not take any action whereby any of the Collection or any other U.S. Government-owned personal property shall or may be encumbered, seized, taken in execution, sold, attached, lost, stolen, destroyed or damaged.

**2. The Depositor shall:**

a. On or about (month, date and year), deliver or cause to be delivered to the

Repository the Collection, as described in Attachment A, and any other U.S. Government-owned personal property, as described in Attachment B.

b. Assign as the Depositor's Representative having full authority with regard to this Memorandum, a person who meets pertinent professional qualifications.

c. Every (number of years) years, jointly with the Repository's designated representative, have the Depositor's Representative inspect and inventory the Collection and any other U.S. Government-owned personal property, and inspect the repository facility.

d. Review and approve or deny requests for consumptively using the Collection (or a part thereof).

3. Removal of all or any portion of the Collection from the premises of the Repository for scientific, educational or religious purposes may be allowed only in accordance with the regulation 36 CFR part 79 for the curation of federally-owned and administered archeological collections; the terms and conditions stipulated in Attachment C to this Memorandum; any conditions for handling, packaging and transporting the Collection; and other conditions that may be specified by the Repository to prevent breakage, deterioration and contamination.

4. The Collection or portions thereof may be exhibited, photographed or otherwise reproduced and studied in accordance with the terms and conditions stipulated in Attachment C to this Memorandum. All exhibits, reproductions and studies shall credit the Depositor, and read as follows: "Courtesy of the (name of the Federal agency)." The Repository agrees to provide the Depositor with copies of any resulting publications.

5. The Repository shall maintain complete and accurate records of the Collection and any other U.S. Government-owned personal property, including information on the study, use, loan and location of said Collection which has been removed from the premises of the Repository.

6. Upon execution by both parties, this Memorandum of Understanding shall be effective on this (day) day of (month and year), and shall remain in effect for (number of years) years, at which time it will be reviewed, revised, as necessary, and reaffirmed or terminated. This Memorandum may be revised or extended by mutual consent of both parties, or by issuance of a written amendment signed and dated by both parties. Either party may terminate this Memorandum by providing 90 days written notice. Upon termination, the Repository shall return such Collection and any other U.S. Government-owned personal property to the destination directed by the Depositor and in such manner to preclude breakage, loss, deterioration and contamination during handling, packaging and shipping, and in accordance with other conditions specified in writing by the Depositor. If the Repository terminates, or is in default of, this Memorandum, the Repository shall fund the packaging and transportation costs. If the Depositor terminates this Memorandum, the

Depositor shall fund the packaging and transportation costs.

7. Title to the Collection being cared for and maintained under this Memorandum lies with the Federal Government.

*In witness whereof*, the Parties hereto have executed this Memorandum.

Signed: (signature of the Federal Agency Official)

Date: (date)

Signed: (signature of the Repository Official)

Date: (date)

Attachment A: Inventory of the Collection

Attachment B: Inventory of any other U.S.

Government-owned Personal Property

Attachment C: Terms and Conditions

Required by the Depositor

**Appendix C to Part 79—Example of a Short-Term Loan Agreement for a Federally-Owned Collection**

**SHORT-TERM LOAN AGREEMENT**

**BETWEEN THE**

**(Name of the Repository)**

**AND THE**

**(Name of the Borrower)**

The (name of the Repository), hereinafter called the Repository, agrees to loan to (name of the Borrower), hereinafter called the Borrower, certain artifacts, specimens and associated records, listed in Attachment A,

which were collected from the (name of the prehistoric or historic resource) site which is assigned (list site number) site number. The collection was recovered in connection with the (name of the Federal or federally authorized project) project, located in (name of the nearest city or town), (name of the county) county in the State of (name of the State). The Collection is the property of the U.S. Government.

The artifacts, specimens and associated records are being loaned for the purpose of (cite the purpose of the loan), beginning on (month, day and year) and ending on (month, day and year).

During the term of the loan, the Borrower agrees to handle, package and ship or transport the Collection in a manner that protects it from breakage, loss, deterioration and contamination, in conformance with the regulation 36 CFR part 79 for the curation of federally-owned and administered archeological collections and the terms and conditions stipulated in Attachment B to this loan agreement.

The Borrower agrees to assume full responsibility for insuring the Collection or for providing funds for the repair or replacement of objects that are damaged or lost during transit and while in the Borrower's possession. Within five (5) days of discovery, the Borrower will notify the Repository of instances and circumstances surrounding any loss of, deterioration and

damage to, or destruction of the Collection and will, at the direction of the Repository, take steps to conserve damaged materials.

The Borrower agrees to acknowledge and credit the U.S. Government and the Repository in any exhibits or publications resulting from the loan. The credit line shall read as follows: "Courtesy of the (names of the Federal agency and the Repository)." The Borrower agrees to provide the Repository and the (name of the Federal agency) with copies of any resulting publications.

Upon termination of this agreement, the Borrower agrees to properly package and ship or transport the Collection to the Repository.

Either party may terminate this agreement, effective not less than (number of days) days after receipt by the other party of written notice, without further liability to either party.

Signed: (signature of the Repository Official)

Date: (date)

Signed: (signature of the Borrower)

Date: (date)

Attachment A: inventory of the Objects being Loaned.

Attachment B: Terms and Conditions of the Loan.

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**MUSEUM PERSPECTIVES:**  
*Collections Security  
and Conservation*

Death Valley National Park

**Overview of Archaeological Protection Law**

000369

## PREFACE

The purpose of this handout is to provide the participants of the Overview of Archeological Protection Law training course with a basic understanding of the importance of curatorial methods, conservation, and museum/artifact storage and security for National Park Service (NPS) museum collections.

To give some form of organization to this material, the information within has been broken down into five distinct and identifiable sections:

- |           |   |
|-----------|---|
| Section 1 | Pertains to what exactly a museum collection is, why it is important, and what laws or regulations govern the management of such collections.                     |
| Section 2 | Discusses the holistic approach to the security of museum collections. Security and safety mechanisms will be cited.  |
| Section 3 | Introduces the reader to artifact requirements. Environmental factors are discussed.  |
| Section 4 | Addresses increased rates of deterioration of objects upon removal from archaeological deposits. Also, the steps towards artifact conservation will be discussed. |
| Section 5 | Examines the use of museum artifacts and role of the museum curator during criminal investigations involving ARPA.  |

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April 1996

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## SECTION 1

### NPS Museum Collections Management

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A museum object is

a material thing possessing functional, aesthetic, cultural, symbolic, and/or scientific value, is usually moveable by nature or design. Museum objects include prehistoric and historic objects, artifacts, works of art, archival materials and natural history specimens that are part of a museum collection. Structural components may be designated museum objects when removed from their associated structures. Large or immovable properties such as monumental statuary, cairns, and rock paintings, are defined as structures or features of a site.

By definition,

museum collection management is a process not a product. It is a systematic approach to the proper preservation and the wise use of museum objects. It includes any activity associated with the acquisition, accountability, documentation, conservation, protection, disposition, and use of museum objects. It involves assessing and planning for the short-term and long-term needs of the collection as well as carrying out the day-to-day activities of caring for objects on exhibit and in storage. The goal of collections management is to make museum collections available to the user for exhibit and study while preserving them for future generations.

Museum collections

are important park resources in their own right as well as being valuable for the information they provide about processes, events, and interactions among people and the environment. Museum objects and their associated records provide baseline data, serving as scientific and historical documentation of the park's resources and purpose. Museum objects used in exhibits, furnished historic structures and other interpretive programs help visitors gain better understanding of the events, activities, and people commemorated by parks.

Although museum objects are sometimes perceived as entities separate from other park resources, they are in fact, inextricably interwoven. For example, archaeological assemblages recovered *in situ* remain resources after their excavation, while their associated records document their relationship to the site. To separate one resource from another diminishes both.

### Mandates and Standards for NPS Museum Collections Management

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The laws that provide the basic legal mandate for the NPS to undertake collection management are listed below:

- Act for the Preservation of American Antiquities, June 8, 1906 (16 USC 431-433)
- Organic Act of 1916 (16 USC 1 *et seq.*)
- Historic Sites Act of 1935 (16 USC 461-467)
- Museum Properties Management of 1955 (16 USC, Sec. 18 [f])
- Archaeological Resources Protection Act of 1979 (16 USC 470aa-mm)
- Reservoir Salvage Act of 1960, as amended (16 USC 469-469C) (see Archaeological and Historic Preservation Act of 1974 below)
- Archaeological and Historic Preservation Act of 1974 (16 USC 469-469C) (see Reservoir Salvage Act of 1960 above)
- National Historic Preservation Act of 1966, as amended (16 USC 470-470t, Sec. 110)

The following laws, regulations, and conventions, apply to NPS cultural museum collections:

- 43 CFR Part 3, "Preservation of American Antiquities"
- American Indian Religious Freedom Act of 1978 (42 USC 1996)
- 43 CFR Part 7, "Protection of Archaeological Resources: Uniform Regulations"
- 36 CFR Part 79, "Curation of Federally Owned and Administered Archaeological Collections"
- Native American Graves Protection and Repatriation Act of 1990 (25 USC 3001-13)
- 36 CFR Part 1228, "Disposition of Federal Records"
- Disposal of Records (44 USC 3301 *et seq.*)
- 1970 UNESCO Convention on the Means of Prohibiting and Preventing Illicit Import, Export, and Transfer of Ownership of Cultural Property (implemented in the United States by P.L. 97-446 in 1983, 19 USC 2601)
- 43 CFR Part 10, "NAGPRA Regulations"

Additional state, local, and tribal statutes that focus upon categories that reinforce or complement Federal laws and regulations may be applicable. Additional laws and regulations relevant to NPS natural history museum collections and Integrated Pest Management also exist.

#### Responsibility for Collections Management

Every National Park unit with museum collections, regardless of size and scope, is part of the broader NPS museum system. The responsibility for managing the NPS museum collections is shared by the following administrative levels:

- Washington Office  
Under the Office of the Associate Director, Cultural Resources Stewardship and Partnerships, the Museum Management Program is responsible for maintaining the NPS National Catalog; Service-wide curatorial training; providing collections management assistance to parks; developing technical information relating to collections conservation and care, and maintaining a centralized museum supply and equipment center. The Museum Management Program Council provides further guidance and assistance.

- **Field Area Offices**

The **Field Director** has line authority over park superintendents and budgets, which includes **accountability** for all cultural and natural resources. The **Field Area Office** also oversees the **System Support Office (SSO)** and maintains decision-making authority on the **allocation** of SSO staff resources and workloads.

- **System Support Offices**

The **SSO** provides assistance for all the parks in the geographic area assigned to it, which are **known** as the cluster. In each SSO, under the **Cultural Resources Team**, the **System Curator** is responsible for providing assistance and planning to parks and centers in **managing** museum collections. The **Cultural Resources Advisory Team** consists of park **specialists** and superintendents, and advises the cluster, its superintendents, and the SSO, on the **programs** and budgets of all cultural resource programs, including museum curation.

- **Parks**

The **responsibility** for day-to-day management of museum collections is at the park. The **Park Superintendent** has the ultimate responsibility for the **accountability**, preservation, protection and use of the unit's museum collections. The day-to-day care of the collection is delegated by the Superintendent or Manager to park staff. Curatorial Staff also **undertake** the responsibility of researching and interpreting the collection. In some parks, **such as** at Death Valley National Park, this responsibility is carried out by museum curators and technicians. In many parks, curatorial responsibility is carried out by **rangers**, interpreters and resource management specialists as a collateral duty.

- **Centers**

There **are** a number of regional centers located throughout the NPS that carry out **specialized** tasks associated with museum collections. **Archaeological Conservation Centers** provide centralized repositories for storing and curating park collections; they may also provide conservation assistance to the parks themselves. **Harpers Ferry Center's** primary responsibility is to plan, design, produce, and reproduce museum exhibits and historic furnished areas. The **Denver Service Center** coordinates major planning, design, and construction programs for the NPS.

## SECTION 2

### Museum Collections Protection and Security

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Whether museum objects are exhibited in cases or in furnished rooms, or, whether they are in storage or transit, their protection against various risks poses unique problems. The general categories of threats to museum collections (e.g., hazards that can destroy, damage, or cause loss of museum objects) are fire, theft, vandalism, natural disasters, improper environmental conditions and careless acts.

A systematic approach to protecting them entails identifying and evaluating threats and risks; conducting and reconciling annual inventories of collections; developing and implementing good operational procedures and practices; evaluating the physical security of spaces housing collections; installing intrusion detection and fire detection systems appropriate to the nature of collections and structures housing them; incorporating the special needs of collections in security plans, structural fire plans, and emergency operations plans; and ensuring that all incidents involving collections are reported.

In general, museum security is the art of protecting collections, information, equipment, physical facilities, visitors and staff from any type of harm. The primary objectives of a museum security program are as follows:

- To provide for the protection and safety of staff and visitors
- To prevent the loss of museum objects from all recognized threats.
- To protect the documentation (e.g., accession records, catalog records, conservation reports, photographs, field data) on the objects in the collection.

A museum collection's protection and security program should be a component of the park's overall security or emergency program. "Protection of museum collections is basic to the NPS's preservation mission and ethic."

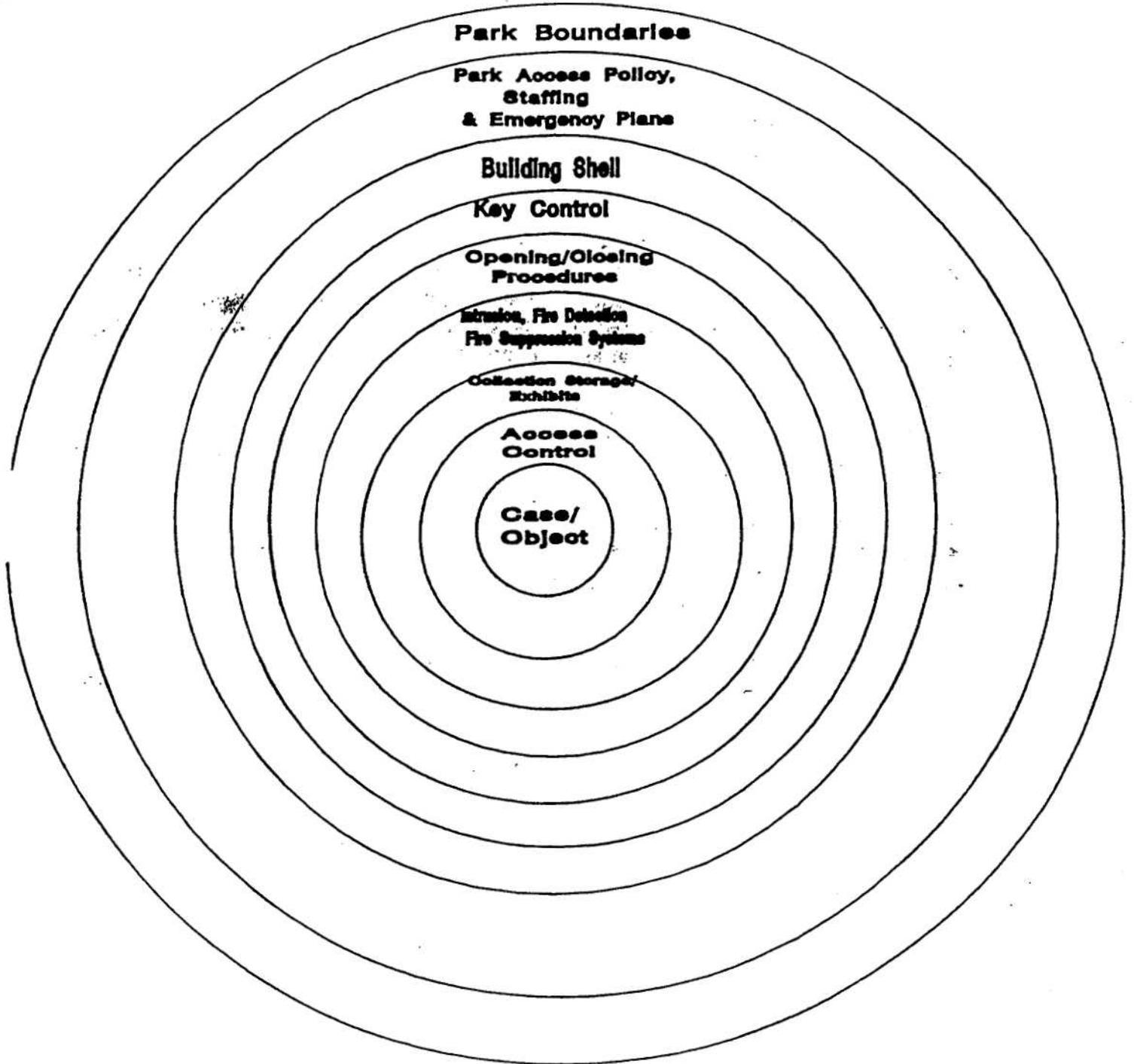
### The Bull's Eye Concept

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Simply stated, the Bull's Eye Concept of security is that as one gets physically closer to a protected object, security precautions tighten. A park's museum collection can be a small, but important, part of the park's overall resources. Assuming that the museum collection is at the center of the bull's eye, then the rest of the park falls into one or another of the rings. By examining the security concerns in all the circles, and making improvements, the park's entire protection system improves. The more effective security is in the outer rings, the less intrusive and complicated countermeasure in the inner circle have to be (see Figure 1).

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Figure 1



Tools for Operational Security include:

- Access control - access policies & procedures
- Key Control - key policies & responsibilities
- Opening & Closing - who, when & how procedures

Tools for Physical Security include:

- Barriers
- Locking Devices
- Lighting
- Human Presence
- Signs
- Facility Design & Layout

Electronic Security Systems examples include:

- Intrusion Detectors - PIRs, photo electric beams, microwave motion detectors, ultrasonic motion detectors, dual technology detectors, contact switches, capacitance motion detectors, pressure mats, vibration or shock detectors, glass break detectors, strain sensors, passive audio or sonic sensors.
- Electronic Access Control
- Closed Circuit TV
- Electronic Exhibit & Case Protection

Prevention, Detection, and Suppression are the three elements of Fire Protection. Tools include:

- Prevention - knowing causes of fire, responsibility for fire prevention, training, monitoring the Fire Protection Program, limiting the spread of fire.
- Detection - smoke detectors, heat detectors, flame detectors.
- Suppression - portable extinguisher, standpipe & hose systems, water sprinkler systems, installed total flooding gaseous agent systems.

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### SECTION 3

The primary goal of museum object conservation is to *preserve objects in as stable a state as possible*. In the NPS, object conservation is an *ongoing process of preventative conservation*, supplemented by *conservation treatment* when necessary.

#### Preventive Conservation of Museum Objects

A preventive conservation program focuses on non-interventive actions taken to prevent damage to and minimize deterioration of museum objects. Such actions include monitoring, recording, and controlling environmental agents such as light, relative humidity, temperature, dust, and gaseous pollution; inspecting and recording the condition of museum objects; establishing an integrated pest management (IPM) program, practicing proper techniques in handling, storage, exhibit, housekeeping, and packing and shipping museum objects; and ensuring that need information and procedures relevant to museum objects are incorporated in the park's emergency operations plan.

Environmental stability of the museum storage facility is of the utmost importance. Various artifacts prefer differing climates to suit their material needs. Relative humidity and temperature are the primary concerns when implementing a storage environment. Most museums lack the capabilities to provide dedicated temperature/relative humidity levels to their various holdings. These facilities then need to find a "happy medium" for their overall collection.

For example, archaeological collection materials (artifacts and their associated records) should be organized and stored according to their environmental requirements and stored accordingly. Applying this preservation approach, archaeological artifacts may be ranked in the following three categories:

#### Category I - Negligibly Climate-Sensitive Materials

- ◆ Materials - Stable fired ceramics & stone; stable inorganics; dry pollen & soil samples; faunal remains
- ◆ Climate requirements - Relative Humidity: 30-65%, mold may become a problem above 65%; Temperature: 0-100°F, temperatures below 70°F are preferable.
- ◆ Storage requirements - should meet minimum overall standards for all NPS storage spaces.

#### Category II - Climate-Sensitive Materials

- ◆ Materials - Stable metal; stable glass; worked bone, antler, and shell; botanical specimens; textiles; wood; skin, leather, and fur; feather and horn; natural gums, resins, and lacquer
- ◆ Climate requirements - Relative Humidity: A stable point determined by the objects environmental history and current regional climatic considerations. Following are broad guidelines:

Semi-arid areas and deserts: 30-40%  
 Central & eastern plains and woodlands: 40-50%  
 Seacoast & lakeshore: 45-55%

Temperature: 50-75°F, temperature may be allowed to drift to keep relative humidity steady, but sudden changes of more than 5° daily should be avoided.

- ◆ Storage requirements - should comply with the optimum standards for all NPS storage spaces.

### Category III - Significantly Climate-Sensitive Materials

- ◆ Materials - Unstable (salt-contaminated) ceramic & stone; unstable (divitrified) glass; unstable metal (esp. iron); mummified human & animal remains; composite objects.
- ◆ Climate requirements - Relative Humidity: These objects require a restricted range of relative humidity and often have no tolerance for fluctuation in ambient conditions. The following are broad guidelines:
 

Metal:	under 30%; best if stored below 15%
Unstable Glass:	30-40%
Naturally mummified animal remains:	15-20%
Unstable ceramics & stone:	below 50%, and stable
- ◆ Storage requirements - specialized micro-climates should be created; use of sorbents.

Another concern that should be monitored with great care is the aspect of lighting. Satisfactory lighting for preservation protects various materials in storage from excessive light levels, heat and ultraviolet exposure that may cause color fading and physical damage. Whether the objects being stored are relatively light insensitive (for instance, metal or stone), moderately light sensitive (such as paintings and furniture), or extremely light sensitive (vegetable-dyed textiles, feathers, and works on paper), they all benefit from proper conservation storage techniques.

Every museum should have a collection of environmental reading equipment to allow for the reading and recording of environmental conditions within the collection storage facility. Tools for monitoring **Environmental Agents** include:

- ◆ Psychrometer
- ◆ Recording Hygrothermograph
- ◆ Visible Light Meter
- ◆ Instruments for measuring gaseous or particulate pollutants
- ◆ Portable Hygrometer
- ◆ Data Logger
- ◆ UV Light Meter

Museum collections are also vulnerable to damage and deterioration caused by **Biological Agents** such as microorganisms, insects and/or vertebrates. An effective IPM program requires the following five steps:

1. Determine biological activity
2. Prevent pests from gaining access and surviving
3. Establish thresholds for pest activity
4. Treatment actions to modify conditions to prevent pest access and survival
5. Take action when infestation is discovered

Studies have found that traditional methods (e.g., use of pesticides) for controlling pests in museums can damage museum objects and can cause health problems for museum staff. Improper application of pesticides has caused insect resistance to some of these chemicals that may have led to a false sense of security that the treatment was effective. IPM is an ecosystem approach to controlling pests that protects museums and their collections from pest damage, and, reduces the amount of pesticide use in museums.

## SECTION 4

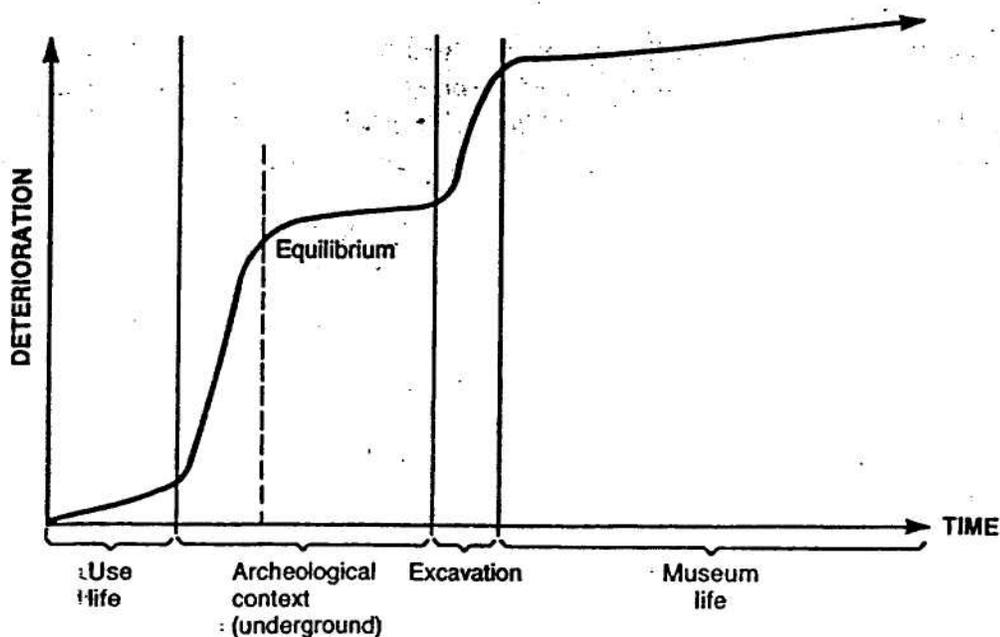
### Pre-Excavation: Environmental Stability Prior to Excavation

The topic as to whether an object is safer above the surface, or below is one of constant debate. The following material, taken from Elizabeth A. Dowan's *Conservation in Field Archaeology*, provides a scientific analysis as to the physical rate of decay when covered by earth and how the level of stability or rate of decay drastically changes when introduced to a new environment. (The following provides guidance only for objects excavated from the ground. Care of collections from wet sites or marine excavations are not addressed.)

Every material has a stable form in relation to the environment in which it exists. When it is buried, an object finds itself in a new microclimate, possibly one vastly different from its previous state. The material of which the object is made will begin to adapt to these new conditions. Assuming these new conditions are reasonable constant, the material will undergo a process of modification to approach a stable relationship, or equilibrium, with the new environment. As the material approaches equilibrium, the rate of change will decrease and eventually stop when equilibrium is actually reached. The stability will remain constant as long as the object remains underground.

Adverse changes will resume as soon as an object is uncovered in the ground and is suddenly exposed to new environmental conditions. From the very moment the object is exposed to air, the process of deterioration and corrosion begin again. The illustration below displays an approximate change in deterioration rates to an above surface relocation (see Figure 2).

Figure 2



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## Post-excavation: Now What Do We Do With It?

As stated above, once the artifact is revealed to the above-ground environment, its microclimate is violated and a rapid and severe form of deterioration may occur. The following information, obtained from *A Conservation Manual for the Field Archaeologist*, written by Catherine Sease, provides a brief insight as to the handling and preservation of an object once uncovered. Such common-thought methods are often overlooked by the "relic hunter", thus shortening the amount of time before the object no longer exists.

An object generally has a better chance of survival if it is handled as carefully but as minimally as possible and is packed and stored properly. Once unearthed, it must always be kept in mind that any treatment applied to an object, including mere cleaning, can contaminate it and invalidate any subsequent analysis, whether it be for dating purposes or elemental analysis. If any kind of analysis will be required at later date, representative samples of the material should be taken carefully and set aside. Even if analysis is not immediately envisaged, it is wise to set aside samples automatically so that testing can be done later. More-over, the experts doing the analysis should be given a copy of the complete conservation record of the object.

When any conservation treatment is undertaken, whether in the field or in the laboratory, it is imperative to make detailed and accurate records of everything done on the object.

All excavated materials have suffered some degree of deterioration which has weakened them in one way or the another. Important structural components may have been partially or completely leached out or, if still present, may have been rendered unsound through desiccation, corrosion, or attack by biological, chemical or physical agents. No matter what the cause, the important point is that archaeological material is generally in a fragile and weakened condition. It should be handled, therefore with the utmost care at all times.

As a rule, always assume that every excavated object is extremely fragile. The condition of an object is not necessarily readily apparent. Some objects may appear quite robust and strong but can actually be riddled with cracks and fissures hidden by dirt and/or corrosion. Microscopic cracks, although they are not visible to the naked eye, may render some objects extremely brittle and fragile. It is always better, therefore, to err on the side of being overly cautious. Even with this extreme caution, sometimes objects are indeed too fragile and weak to be picked up unaided.

When objects are still in the ground or have just been excavated, avoid the temptation to clean them on the spot by scraping, brushing, rubbing, or washing. Impatience to see the design or color, can result in needless damage to the object: decoration can be removed or added, surfaces can be defaced, and edges can be badly abraded making for poor joints later on.

When an object is found in pieces, make sure all the pieces, including the smallest, most insignificant-looking ones, are lifted and kept together: tiny sherds, flakes and crumbs are worth bothering about. In the hands of a conservator, their places can be found once

major pieces are positioned, resulting in a more complete object. In the hands of the typical "relic hunter", this is almost never the case, and great amounts of information are lost.

### Conservation Treatment of Museum Objects

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Preservation and restoration treatment should be considered supplemental care that some objects may need beyond a good program of preventative conservation. In this context, stabilization treatment is indicated under the following circumstances:

- When preventative measure are not enough to reduce the rate of deterioration to a tolerable level, and, there is a satisfactory treatment available to prolong the life of the objects.
- When deterioration has proceeded to a point where the object is extremely fragile and in danger under any circumstances, and, a satisfactory treatment is available to increase its stability or durability.
- When exhibit or research needs or conditions require corrective work such as cleaning, reassembly of broken parts, or a greater degree of physical stability to allow more handling or permit the object to be exhibited satisfactorily.

In some museum collections, there may be objects considered significant by Native Americans or other people, and/or, the collection contains NAGPRA material. Modern conservation treatment may not be appropriate for these objects since treatment may have an adverse effect on the value or potential function of the objects. There may also be a concern about who performs the treatment: a member of the community or an outsider. These objects need to be identified by a qualified ethnographer. Consultation should be sought to identify significant objects and determine appropriate treatments.

*Object Treatment Proposals* and *Collection Condition Surveys* are the tools used by NPS curators and conservators to determine strategies and estimate costs for conservation treatment. Average fees for NPS conservators are \$25.00 per hour; non-NPS conservators are \$75-125.00 per hour. Costs may vary depending upon object condition and treatment needs.

The following list briefly describes conservation work and costs based on examples drawn from museum collections at Death Valley National Park.

#### **Condition Survey for Historic Documents and Other Paper-Based Materials:**

- \* Conservation Condition Reports for 303 items
- \* Conservation Condition Reports and Proposed Treatment
- \* Reports for 82 items with high associative value, two Death Valley Ranch three-ring binders, and one framed photo collage
- \* General overview of storage conditions for archival material

**Cost:** \$3600.00 (Includes total of four working days on-site, report writing, and travel.)

**Conservation Treatment for Books (Qty of 5):**

- \* Includes condition report and treatment proposal
- \* Photographic and written documentation
- \* Treatment after approval
- \* Construction of rare book box
- \* Final treatment report

**Cost:** \$2650.00 (Includes approximately 49 hours of work by Conservator. Travel costs not included in this figure)

**Conservation Treatment for Historic Automobile:**

- \* Stabilization of 1914 Packard to include current condition report
- \* Treatment proposal
- \* On-site treatment
- \* Photographic documentation
- \* Final treatment report
- \* Recommendations for improvement of housing conditions for historic vehicles

**Cost:** \$12500.00 (Includes 14 working days on-site, report writing, and travel costs)

**Conservation Treatment for Textile:**

- \* Stabilization/repair of textile to include current condition report
- \* Treatment proposal(s)
- \* Treatment
- \* Photographic documentation
- \* Final report

**Cost:** Estimated \$2030.00 (Includes estimate of 45 hours for treatment, \$150.00 for on-site documentation, \$250.00 for wet cleaning treatment, travel)

Figure 3 shows current costs for the curatorial care of federal museum collections.

## An Example of Necessary Conservation Costs

The following descriptions and estimates for conservation treatment are based upon anticipated time needed to treat specific pieces of Shiloh National Military Park's collection as necessary. The conditions survey, from which this list is based, was conducted by a noted conservator working on contract with the NPS. All estimated prices were based upon the "average" fifty dollar an hour fee charged by conservation professionals.

### **Water Color 5"x8"**

Unframe, Photograph Process (before, during, and after), Test Solubilities, Reform Surface Coating, New Frame and Installation on Mat

8 - 12 hours x \$50 per hr. = \$400 to \$600, plus cost of new frame

### **Enfield Rifle and Bayonet**

Photograph Process (before, during, and after), Tarnish/Oxidation Removal, Add Protective Coating

20 hours ("maybe more") x \$50 per hr. = \$1,000 ("maybe more")

### **Leather Wallets (qty. 4)**

Photograph Process (before, during, and after), Humidify and Reform to Original Shape (if possible), Leather Treatments

16 - 20 hours each x 4 = 64 to 80 hours x \$50 per hr. = \$3,200 - \$4,000

### **Cartridge Case**

Photograph Process (before, during, and after), Tarnish/Oxidation Removal, Protective Coating, Leather Treatment

16 hours x \$50 per hr. = \$800

### **Maps (qty. 47)**

Photograph Process (before, during, and after), Superficial Cleaning, Deacidification, Remove Small Amount of "Scotch" Tape

200 hours x \$50 per hr. = \$10,000

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Figure 3

NPS MUSEUM COLLECTION STORAGE COSTS

The following costs and fees are based on the following criteria:

- Box size is equal to 1 cubic foot.
- Material may include archaeological material, archives, natural history specimens, ethnographic material, historic objects, and paleontological specimens.
- Staff salaries, building utility costs (heating, ventilation, security and fire protection) are included.
- Collection case, maintenance and monitoring are based on standards set forth in NPS-28, NPS Museum Handbook, Part I, II, and other applicable federal codes and regulations.
- Collection owner is responsible for delivery to repository.

**OPTION I – OBJECTS ARRIVE FULLY CATALOGED AND IN ARCHIVAL STORAGE CONTAINERS**

**A. Collection Intake/Maintenance Fee: (One time only fee)**

1-5 boxes	\$1000.00 per box	Fee covers:	
6-10 boxes	850.00 per box	- acquisition & loan paperwork	- annual or special inventories
11-20 boxes	700.00 per box	- space allocation/preparation	- research request pull
21-40 boxes	600.00 per box	- object/collection location guide	- condition assessment & monitoring
41 & above	500.00 per box	- detailed inventory	- IPM assessment/fumigation & monitoring

**B. Collection Renewal Fee: (Renewal period - 5 years; fee required at beginning of 5 year term)**

\$200.00 per box	Fee covers:	
	- loan renewal agreements	- collection maintenance

**OPTION II – OBJECTS ARRIVE FULLY CATALOGED BUT REQUIRE UPGRADING/REPACKAGING IN ARCHIVAL STORAGE CONTAINERS**

**A. Collection Intake/Maintenance and Renewal Fees are the same as Option I, A & B.**

**B. Upgrade/Repackage Fee:**

\$11.45 per object/lot	Fee covers:	
	- archival packaging and containers that chemically and physically protect museum objects and natural history specimens.	

**OPTION III – OBJECTS ARRIVE REQUIRING FULL CATALOGING AND UPGRADING/REPACKAGING IN ARCHIVAL STORAGE CONTAINERS**

**A. Collection Intake/Maintenance and Renewal Fees are the same as Option I, A & B.**

**B. Cataloging and Upgrade/Repackage Fees: (rates based on DOI Museum Handbook, Appendix B)**

\$45.00 per archival, historic, ethnographic, and NAGPRA entry	Fee covers:	
\$29.00 per biological, paleontological, geological, and archaeological entry	- computer data entry	- finding aids for archives
	- numbering objects/specimens	- reshelving objects
	- object photodocumentation	- cataloging per NPS standards
	- classification research	- archival packaging & containers

**SPECIAL FEES:** Other services will require additional fees that can be negotiated on a case by case basis. Examples include:

1. Condition survey by conservator.
2. Object conservation.
3. Removal of objects for short-term loans, exhibits, NAGPRA repatriation, etc.
4. Processing for loan termination and withdrawal.
5. Photodocumentation above standard B&W 35mm process and storage (i.e., color, large format, specialized storage, etc.)

## SECTION 5

### Museum Collections and ARPA

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Park curatorial staff should be consulted as appropriate when potential museum objects are seized as a result of enforcing ARPA or other applicable laws. Curatorial staff should be contacted by law enforcement personnel, as well as the Park Archaeologist to discuss established procedures for caring for museum objects. Without compromising the chain of custody regarding archaeological evidence, curatorial staff can assist with the following:

- ◇ **Conduct Object Inventory:** number, document, photograph artifacts
- ◇ **Attach Evidence Tags:** attach or bag artifacts without damaging, changing, or writing on artifact.
- ◇ **Maintain Storage Requirements:** provide proper storage containers/facilities; provide environmental monitoring; assist with shipping and handling.
- ◇ **Handle Artifacts:** provide or use cotton or surgical gloves; assist in the handling of culturally sensitive artifacts
- ◇ **Control Artifact Damage:** assess stabilization, pest, or other decay problems; seek assistance of professional conservator.
- ◇ **Track Archaeological Evidence:** keep track of not only objects, but also samples, dating information, artifact documentation, graphics, maps, photographs, etc.
- ◇ **Disposition of Evidence:** gather all artifacts and associated information for permanent museum storage; provide copies for case files, FOIA requests, and the archaeological record.

During an investigation, curatorial staff are also available to assist law enforcement staff by providing background information from past archaeological activities and make museum collections and archives available for dating and/or authenticating seized artifacts; provide names of or contact qualified individuals for dating and authenticating seized artifacts; provide estimates (or seek estimate from professional appraiser) for commercial value of artifacts; provide cost estimate (or seek estimate from professional conservator) for curation and conservation of artifacts and associated information; provide certain artifacts to agents for intelligence gathering; provide information to agents concerning potential collectors or artifact buying/selling markets.

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**VERMONT ARCHAEOLOGICAL AND HISTORICAL  
RESOURCES PROTECTION PROTOCOL**

**SPRING 1996**

**000388**

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## I. POLICY

Recognizing their custodial responsibility to preserve the historical heritage of Vermont, it is the policy of the federal and state prosecutorial and investigative agencies in Vermont that archaeological and historical resources (hereinafter referred to as "resources") be protected and managed according to law.<sup>1</sup> These agencies agree to mutually cooperate to protect those resources located within the State of Vermont and to combat their becoming involved in unlawful interstate trafficking. The agencies seek to vigorously pursue criminal and civil action against all violators of resource sites on state and federally owned or controlled properties, and, when appropriate, private property, as well as those who traffick in illegally possessed artifacts. The agencies agree to provide assistance to law enforcement agencies outside of Vermont in investigations of resource violations occurring in their respective jurisdictions.

Due to the extremely fragile nature of archaeological sites and artifacts, the primary intent of this protocol is to:

- 1) provide an immediate response to suspected violations;
- 2) stabilize ("freeze") a suspected violated site;
- 3) investigate and, where appropriate, immediately seize suspected contraband and/or items used to facilitate the offense; and,
- 4) prosecute the offender(s), when appropriate.

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<sup>1</sup>This Protocol is not intended to, does not, and may not be relied upon to create any rights, substantive or procedural, enforceable at law by any party in any matter civil or criminal. Nor are any limitations hereby placed on otherwise lawful litigative prerogatives of the U.S. Department of Justice or any prosecuting authority in the State of Vermont.

## II. SCOPE

Archaeological and historical resources are protected by federal and state laws (Appendix A) which will, in turn, apply based upon the facts of a particular violation. The laws prohibit unlawful actions by vandals, looters, dealers, interstate traffickers, and conspirators who conduct their unlawful activities on lands owned by the federal and state governments and on private property.

In Vermont, site-specific offenses will occur either on land or in the waters of lakes and rivers. Because Vermont, New York and Canada share common borders on Lake Champlain, suspected violations, particularly those involving abandoned shipwrecks, may present multi-jurisdictional issues. The largest tracts of federally owned or controlled lands are located within the Green Mountain National Forest and Missisquoi National Wildlife Refuge. Corresponding state lands include, but are not limited to, the individual state parks and forests, wildlife management areas and historic sites, and the lands located under state waters, including Lake Champlain<sup>2</sup>. The balance of the lands are predominately privately owned which, in some cases, may be subject to conservation easements.

Investigations of reported violations of resource laws will be handled by a core, two-person team, consisting of an investigator from the appropriate law enforcement agency<sup>3</sup> and a qualified archaeologist. Civil or criminal prosecution of these violations will be conducted by

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<sup>2</sup>All land under the Connecticut River is within the jurisdiction of New Hampshire authorities.

<sup>3</sup>Whenever possible, an investigator who has received training in the investigation of archaeology-related crimes should be assigned.

either the U.S. Attorney, Vermont Attorney General, or appropriate federal land manager based upon an independent evaluation of each case.

### III. INVESTIGATING VIOLATIONS

#### a. Initiating the Investigation

##### 1. Public Reports

Members of the public who wish to communicate suspected violations of resource laws should do so by contacting the nearest law enforcement office. Should any local police agency be unable to immediately respond, pertinent information should be obtained and provided to the nearest office of the Vermont State Police.

The agency receiving a report of a resource violation should obtain the following information:

1. Description of violation;
2. Date and location of the violation;
3. Identity/description of violator(s), if possible;
4. Description of vehicle and/or vessel used, if available;
5. Name and address of person making report;
6. Agency or owner of resource being affected.

Upon receipt of an initial report indicating that a suspected violation is in progress, the dispatcher will immediately dispatch the nearest available officer to the scene.

If the violation is reported to be occurring in the waters of Lake Champlain, the Vermont State Police Marine Patrol, the duty officer of the U.S. Coast Guard (Burlington station) and the F.B.I. will also be contacted. Violations occurring in any other lakes and waters owned or controlled by the State will be reported to the nearest office of the Vermont State Police.

If the violation occurs on U.S. Forest Service or U.S. Fish and Wildlife lands, an investigator from the appropriate agency will be contacted.

If the violation is reported to be occurring on private lands subject to a conservation easement, the Vermont Division for Historic Preservation (DHP) will be contacted.

## 2. Officer Reports

Violations of historic resources protection laws can be difficult to investigate as few crimes are discovered in progress, and historic sites, both recorded and unknown, are too numerous to monitor intensely. If, while on patrol, an officer discovers a site that is suspected to have been looted, it should be documented and the DHP contacted as soon as practicable. On Lake Champlain and in state waters, officers should be alert to unpermitted divers or others who appear to be disturbing, looting, vandalizing, excavating, or otherwise tampering with an underwater site, particularly shipwrecks. Suspected violations on Lake Champlain should, in addition to DHP, also be reported to the Lake Champlain Maritime Museum (LCMM) and the F.B.I.

Federal or state laws that regulate historic resources may have an effect on private lands. Except when private lands have conservation easements that specifically protect resources, persons excavating, collecting, or otherwise disturbing artifacts in the ground on private property, with the owner's consent, except for burial sites<sup>4</sup>, have committed no offense. However, should an officer encounter persons using metal detectors or other sensing devices and digging tools,

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<sup>4</sup>Virtually all activities, with rare exception, that involve disturbing human remains, burial sites, and graves, are prohibited.

he/she should make a preliminary inquiry and respond accordingly.

If an officer has reason to believe that a violation is of an ongoing nature, he/she may recommend site surveillance either as an alternative to or in addition to an immediate site investigation and damage assessment. The officer, whenever possible, should confer with a trained investigator and archaeologist when making this determination. Prior to implementing such surveillance, the DHP and, where appropriate, LCMM, should be consulted in order to prevent any inadvertent disruption of the surveillance by their personnel. Dissemination of information regarding any surveillance shall be handled strictly on a "need-to-know" basis by all parties concerned.

b. Site Investigation

All reported violations involving archaeological and historical resources shall be treated initially as a criminal violation regarding the preservation of a crime scene, the collection of evidence, the assessment of site damage, and the identification of witnesses and suspects.

Underwater sites containing historic resources have the same status as those on land and the requisite crime scene investigation will be difficult to process. Accordingly, an appropriately trained investigator and material archaeologist should be assigned to handle offenses in these environs.

If the officer conducting the preliminary inspection of the site determines that an investigation is required, he/she will contact an archaeologist (Appendix B), and, whenever possible, an investigator who has received training in archaeology-related crimes. If a delay in initiating the investigation is anticipated, the officer shall secure the site. The officer is responsible

for ensuring that any investigator so assigned to the investigation is aware of the scene's outer perimeter in order to avoid inadvertent interference with crime scene processing.

c. Site Responsibilities

1. **Investigator**

The investigator assigned to the case is responsible for investigating possible criminal activity to include establishing ownership of the property (i.e., federal, state, private, conservation easements), whether or not necessary permit(s) have been issued in the suspect(s) name, securing and examining the immediate scene of the violation, searching the general area of the violation for criminal evidence, ensuring the chain of custody for any criminal evidence discovered, securing property utilized in committing the offense, interviewing witnesses and potential suspects, sketching and photographing the crime scene, and utilizing whatever other criminal investigatory methods may be appropriate under the circumstances.

The investigator is responsible for preparing the investigative report to include the archaeologist's site damage assessment, evidence and photography logs, pertinent maps, drawings and crime scene sketches, witness statements, and other evidentiary items the investigator deems necessary.

If probable cause exists to arrest under any of the statutes cited, the investigator should issue a summons or, if appropriate, physically arrest the suspect(s)<sup>5</sup>, taking all evidence, fruits or tools of the crime into custody. When issuing summonses, the officer should consider use of a

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<sup>5</sup>Whenever possible, the officer should consult with the prosecutor prior to arrest to ensure that time-sensitive issues (i.e., speedy trial concerns and the need to conduct a further and time consuming investigation) are considered.

trespassing offense if no other crime can be charged at that time. Should the suspect(s) be released without a summons, the officer shall obtain as much information as possible to allow the person(s) to be located at a later date. Officers should be aware that these suspect(s) frequently engage in the interstate transportation of artifacts and that there may be locations outside of Vermont where such items are stored. Accordingly, the investigator should consider, if appropriate, the obtaining of a search warrant for these areas.

## **2. Archaeologist**

While the investigator has primary responsibility for management of the crime scene investigation, the investigator and archaeologist shall assist each other as necessary in accomplishing the site investigation and assessment. The archaeologist assigned to assess site damage normally should not begin the assessment until the investigator has conducted a preliminary investigation of the site. This practice will help ensure that no evidence is disturbed. Investigators should be extremely cautious about any of their own activity that may alter or disturb the archaeological site damage to be assessed.

The archaeologist can help to determine the outer perimeter and mapping of the site, the amount of damage, the taking of crime scene photographs, and identifying, collecting, marking, and preserving physical evidence. The archaeologist will also prepare, for violations of federal law, an assessment of damage (archaeological and commercial) and estimated repair, conservation, or restoration of the subject evidence. A narrative report will also be prepared by the archaeologist.

The archaeologists assessment will be combined with the investigation results and, together, will function as the primary report.

#### IV. PROSECUTION

The investigator assigned to handle the case shall, at the earliest possible time, consult with representatives from the Office of the United States Attorney and the Vermont Attorney General. These agencies will then confer to determine whether the case should be pursued further, consistent with available resources, and, if pursued, which forum to proceed in and whether civil or criminal sanctions will be sought. Where appropriate, in consultation with the appropriate public land manager, public agency solicitor, or general counsel, the United States Attorney or Vermont Attorney General will adopt a strategy which considers the widest range of legal recourse available.

## V. ACKNOWLEDGMENT

Many individuals and organizations have been consulted and offered valuable assistance and input in the preparation of this Protocol. They include:

- 1) Office of the United States Attorney - District of Vermont, Burlington, Vermont
- 2) Office of the Attorney General, Montpelier, Vermont
- 3) Federal Bureau of Investigation, Burlington, Vermont
- 4) U.S. Coast Guard, Burlington, Vermont
- 5) National Park Service, Washington, D.C.
- 6) U.S. Department of Agriculture, Rutland, Vermont
- 7) Division for Historic Preservation, Montpelier, Vermont
- 8) Vermont State Police, Waterbury, Vermont
- 9) Tennessee Valley Authority, Knoxville, Tennessee
- 10) Department of Criminal Justice Services, Richmond, Virginia
- 11) Lake Champlain Maritime Museum, Vergennes, Vermont

Suggestions, comments, and recommendations that will further and enhance the goals of this Protocol are always welcome and should be forwarded to:

AUSA Gary G. Shattuck  
Office of the U.S. Attorney  
P.O. Box 10  
Rutland, Vermont 05702  
Phone: 802-773-0231  
Fax: 802-773-0214

## APPENDIX A

### FEDERAL LAWS

#### 1. NATIONAL MONUMENTS

United States Code, Title 16 § 433. American antiquities

Any person who shall appropriate, excavate, injure, or destroy any historic or prehistoric ruin or monument, or any object of antiquity, situate on lands owned or controlled by the Government of the United States, without the permission of the Secretary of the Department of the Government having jurisdiction over the lands on which said antiquities are situated, shall, upon conviction, be fined in a sum of not more than \$500 or be imprisoned for a period of not more than ninety days, or shall suffer both fine and imprisonment, in the discretion of the court.

#### 2. ARCHAEOLOGICAL RESOURCES PROTECTION

United States Code, Title 16 § 470ee. Prohibited Acts and Criminal Penalties

(a) No person may excavate, remove, damage, or otherwise alter or deface or attempt to excavate, remove, damage, or otherwise alter or deface any archaeological resource located on public lands or Indian lands unless such activity is pursuant to a permit issued under section 470cc of this title, a permit referred to in section 470cc(h)(2) of this title, or the exemption contained in section 470cc(g)(1) of this title.

(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 \$500, such person shall be fined not more than \$20,000 or imprisoned 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.

(e) Nothing in subsection (b)(1) of this section shall be deemed applicable to any person with respect to any archaeological resource which was in the lawful possession of such person prior to October 31, 1979.

(f) 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.

### Definitions

**“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 chapter. 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. 16 § 470bb.

**“archeological interest”** means capable of providing scientific or humanistic understandings of past human behavior, cultural adaptation, and related topics through the application of scientific or scholarly techniques such as controlled observation, contextual measurement, controlled collection, analysis, interpretation and explanation. 43 C.F.R. § 7.3(a)(1)

**“material remains”** means physical evidence of human habitation, occupation, use, or activity, including the site, location, or context in which such evidence is situated. 43 C.F.R. § 7.3(a)(2)

### 3. ABANDONED SHIPWRECKS

United States Code, Title 43 § 2105. Rights of ownership

(a) The United States asserts title to any abandoned shipwreck that is --

- (1) embedded in submerged lands of a State;
- (2) embedded in coralline formations protected by a State on submerged lands of a State; or
- (3) on submerged lands of a State and is included in or determined eligible for inclusion in the National Register.

(c) The title of the United States to any abandoned shipwreck asserted under subsection (a) of this section is transferred to the State in or on whose submerged lands the wreck is located.

(d) Any abandoned shipwreck in or on the public lands of the United States is the property of the United States Government. Any abandoned shipwreck in or on any Indian lands is the property of the Indian tribe owning such lands.

The law of salvage and the law of finds shall not apply to abandoned shipwrecks to which section 2105 of this title applies. § 2106

### Definitions

**“abandoned shipwreck”** means any shipwreck to which title voluntarily has been given up by the owner with the intent of never claiming a right or interest in the future and without vesting ownership in any other person. By not taking any action after a wreck incident either to mark and subsequently remove the wrecked vessel and its cargo or to provide legal notice of abandonment to the U.S. Coast Guard and the U.S. Army Corp of Engineers ... an owner shows intent to give up title. Such shipwrecks ordinarily are treated as being abandoned after the expiration of 30 days from the sinking. 55 FR 50116, 50120

**“embedded”** means firmly affixed in the submerged lands or in coralline formations such that the use of tools of excavation is required in order to move the bottom sediments to gain access to the shipwreck, its cargo, and any part thereof. § 2102(a)

**“shipwreck”** means a vessel or wreck, its cargo, and other contents. § 2102(b)

**“submerged lands”** means the lands that are “lands beneath navigable waters” [Lake Champlain] § 2102 §(f)(1)

### Note

Although a sunken warship or other vessel entitled to sovereign immunity often appears to have been abandoned by the flag nation, regardless of its location, it remains the property of the nation to which it belonged at the time of sinking unless that nation has taken formal action to abandon it or to transfer title to another party. Any cargo aboard a vessel entitled to sovereign immunity also generally remains the property of the flag nation unless the cargo had earlier been unlawfully captured by that nation. In such a situation, title to the cargo remains in the nation from which it had been captured. Shipwrecks entitled to sovereign immunity are wrecks of warships and other vessels (such as privately owned vessels chartered or otherwise appropriated by a sovereign nation for military purposes) used only on government noncommercial service at the time of sinking. Examples of vessels entitled to sovereign immunity would include, but not be limited to, U.S. battleships and German U-boats from World War II, confederate gunboats and union ironclads from the Civil War, and British frigates and Colonial privateers from the Revolutionary War. 55 FR 50121

#### 4. INDIANS

United States Code Title 18 § 1170. Illegal trafficking in Native American human remains and cultural items

(a) Whoever knowingly sells, purchases, uses for profit, or transports for sale or profit, the human remains of a Native American without the right of possession to those remains as provided in the Native American Graves Protection and Repatriation Act shall be fined in accordance with this title, or imprisoned not more than 12 months or both, and in the case of a second or subsequent violation, be fined in accordance with this title, or imprisoned not more than 5 years, or both.

(b) Whoever knowingly sells, purchases, uses for profit, or transports for sale or profit any Native American cultural items obtained in violation of the Native American Grave Protection and Repatriation Act shall be fined in accordance with this title, imprisoned not more than one year, or both, and in the case of a second or subsequent violation, be fined in accordance with this title, imprisoned not more than 5 years, or both.

#### 5. PUBLIC MONEY, PROPERTY OR RECORDS

United States Code, Title 18 § 641.

Whoever embezzles, steals, purloins, or knowingly converts to his use or the use of another, or without authority, sells, conveys or disposes of any record, voucher, money, or thing of value of the United States or of any department or agency thereof, ... [s]hall be fined ...

#### 6. GOVERNMENT PROPERTY

United States Code, Title 18 § 1361.

Whoever willfully injures or commits any depredation against any property of the United States, or of any department or agency thereof, [shall be penalized]....

#### 7. TRANSPORTATION OF STOLEN GOODS

United States Code, Title 18 § 2314.

Whoever transports, transmits, or transfers in interstate or foreign commerce any goods, wares, merchandise, securities or money, of the value of \$5,000 or more, knowing the same to have been stolen, converted or taken by fraud; ... [s]hall be fined under this title....

**8. CONSPIRACY TO COMMIT OFFENSE OR TO DEFRAUD UNITED STATES**

United States Code, Title 18 § 371.

If two or more persons conspire either to commit any offense against the United States, or to defraud the United States, or any agency thereof in any manner or for any purpose, and one or more of such persons do any act to effect the object of the conspiracy, each shall be fined under this title or imprisoned not more than five years, or both.

**9. PRINCIPALS**

United States Code, Title 18 § 2.

Whoever commits an offense against the United States or aids, abets, counsels, commands, induces or procures its commission, is punishable as a principal.

STATE OF VERMONT  
LAWS APPLICABLE TO ARCHEOLOGICAL RESOURCES

1. PROTECTION OF ARCHEOLOGICAL INFORMATION

Title 22, Section 761. STATE ARCHAEOLOGIST; SURVEY

(a) The state historic preservation officer shall employ a state archeologist through the classified service who shall conduct and maintain a survey of sites of archeological and anthropological specimens located within the state. The state archeologist shall make the survey available to agencies of the state government that, in his or her opinion, may conduct activities which may affect these archaeological or anthropological sites.

(b) All information regarding the location of archeological sites and underwater historic properties shall be confidential except that the state archeologist shall provide this information to qualified individuals or organizations, public agencies and nonprofit organizations for archeological and scientific research or for preservation and planning purposes when the state archeologist determines that the preservation of these properties is not endangered.

Title 22, Section 762. FIELD INVESTIGATION

The state reserves to itself the exclusive right of field investigation on sites owned or controlled by the state in order to protect and preserve archeological and scientific information, matter and objects. All information and objects deriving from state lands shall remain the property of the state and be utilized for scientific or public educational purposes.

Title 22, Section 763. DESIGNATION OF ARCHEOLOGICAL SITES

The state archeologist, with the approval of the state historic preservation officer, may publicly designate an archeological site of significance to the scientific study or public representation of the state's historical, prehistorical or aboriginal past as a "state archeological landmark." All state agencies administering state-owned lands containing state archeological landmarks shall cooperate to insure the protection of these landmarks. State archeological landmarks located on privately-owned land shall not be designated without the written consent of the owner. Upon designation of an archeological site the private owner or affected state agency shall be given written notice of the designation by the state archeologist. Once so designated, no person may conduct field activities without first securing a permit from the director state historic preservation officer and complying with the provisions of section 762 of this title.

Title 22, Section 764. PERMITS FOR EXPLORATION

The director, with the advice of the state archeologist, may issue permits for exploration and field investigations to be undertaken on state lands or within the boundaries of designated state archeological landmarks to an amateur or professional whom the director deems properly qualified to conduct the activity, subject to such rules and regulations as the division may

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prescribe, with a view toward disseminating the knowledge gained through their activities; and, provided that a summary report of the undertakings, containing relevant maps, documents, drawings and photographs be submitted to the division; and, provided further, that all specimens so collected under permit shall be the permanent property of the state and that the state archeologist shall make prior arrangements for the disposition of specimens derived from the activities in an appropriate institution of the state or for the loan of the specimens to qualified institutions in or out of the state.

#### Title 22, Section 765. TRANSFER OF STATE PROPERTY

When transferring real property under its jurisdiction that contains significant archeological, aboriginal or other anthropological resources, the state, may, upon the recommendation of the state historic preservation officer, with the advice of the state archeologist, condition the transfer upon such covenants, deed restrictions or other contractual arrangements as will limit the future use of the property in such a way as will protect those resources.

#### Title 22, Section 767. COOPERATION BETWEEN AGENCIES

All state agencies, departments, institutions and commissions, as well as all municipalities, shall cooperate fully with the state archeologist in the preservation, protection, excavation, and evaluation of specimens and sites; and to that end:

(1) When any state, regional or municipal agency finds or is made aware by an appropriate historical or archeological authority that its operation in connection with any state, state assisted, state licensed, or contracted project, activity, or program adversely affects or may adversely affect scientific, historical, or archeological data, the agency shall notify the state archeologist and shall provide him with information concerning the project, program, or activity. The provisions of this chapter shall be made known to contractors by the state agencies doing the contracting;

(2) The state archeologist, upon notification or determination that scientific, historical, or archeological data including specimens, is or may be adversely affected, shall, after reasonable notice to the responsible agency, conduct or cause to be conducted a survey and other investigations to recover and preserve or otherwise protect such data, including analysis and publication, which in its opinion should be recovered in the public interest;

(3) The division shall initiate actions within 60 days of notification under subdivision (1) of this subsection and within such time as agreed upon in other cases. The responsible agency is authorized and directed to expend agency funds for the purpose of recovering the data, including analysis and publications, and the costs shall be included as part of the contractor's costs if the adverse effect is caused by work being done under contract to a state agency.

#### Title 22, Section 781. RULES AND REGULATIONS

The custodian of underwater historic properties shall be the division which shall administer the preservation and protection of these properties in

accordance with this chapter. The division may prescribe such rules and regulations as are necessary to preserve, protect and recover any or all underwater historic properties.

Title 22, Section 782. ISSUANCE OF PERMITS

Any qualified person desiring to conduct any type of exploration or recovery operations, in the course of which any underwater historic property or part thereof may be removed, displaced or destroyed, shall first make application to the director for a permit to conduct the operations. The director, with the advice of the state archeologist, may grant the applicant a permit for such a period of time and under such conditions as he may deem to be in the best interest of the state. The permit may provide for the fair compensation to the permittee in terms of a percentage of the reasonable cash value of the objects recovered or a fair share of the objects recovered, the fair compensation or share to be determined by the state archeologist. Superior title to all objects recovered shall be retained by the state unless or until they are released to the permittee by the state archeologist. All exploration and recovery operations undertaken under a permit issued under this section shall be carried out under the general supervision of the state archeologist and in such manner that the maximum amount of historic, scientific, archeological and educational information may be recovered and preserved in addition to the physical recovery of items. Permits may be renewed upon or prior to expiration. Holders of permits shall be responsible for obtaining permission of any federal agencies having jurisdiction prior to conducting any recovery operations.

Title 22, Section 791. PENALTY

A person who conducts field investigation activities on or under any land owned or controlled by the state or within the boundaries of any designated state archeological landmark, without first obtaining a permit therefor from the director or any person who appropriates, defaces, destroys, or otherwise alters any archeological site or specimen located on or under state lands or within the boundaries of a designated state archeological landmark, except in the course of activities pursued under the authority of a permit granted by the director, shall be fined not more than \$1,000.00 or imprisoned for not more than six months or both, and in addition, shall forfeit to the state all specimens, objects, and materials collected or excavated, together with all photographs and records relating to that material.

2. OTHER CRIMINAL PROVISIONS

Title 13, Section 3701. UNLAWFUL MISCHIEF

(a) A person who, with intent to damage property, and having no right to do so or any reasonable ground to believe that he has such a right, does any damage to any property which is valued in an amount exceeding \$1,000.00 shall be imprisoned for not more than five years or fined not more than \$5,000.00 or both.

(b) A person who, with intent to damage property, and having no right to do so

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or any reasonable ground to believe that he has such a right, does any damage to any property which is valued in an amount exceeding \$250.00 shall be imprisoned for not more than one year or fined not more than \$1,000.00 or both.

(c) A person who, having no right to do so or any reasonable ground to believe that he has such a right, intentionally does any damage to property of any value not exceeding \$250.00 shall be imprisoned for not more than six months or fined not more than \$500.00 or both.

(d) A person who, with intent to damage property, and having no right to do so or any reasonable ground to believe that he has such a right, does any damage to any property by means of an explosive shall be imprisoned for not more than five years or fined not more than \$5,000 or both.

(e) For the purposes of this section "property" means real or personal property.

(f) A person who suffers damages as a result of a violation of this section may recover those damages together with reasonable attorney's fees in a civil action under this section.

#### Title 13, Section 3705. UNLAWFUL TRESPASS

(a) A person shall be imprisoned for not more than three months or fined not more than \$500.00, or both, if, without legal authority or the consent of the person in lawful possession, he enters or remains on any land or in any place as to which notice against trespass is given by:

(1) Actual communication by the person in lawful possession or his agent or by a law enforcement officer acting on behalf of such person or his agent; or

(2) Signs or placards so designed and situated as to give reasonable notice.

(b) Prosecutions for offenses under subsection (a) of this section shall be commenced within 60 days following the commission of the offense and not thereafter.

(c) A person who enters a building other than a residence, whose normal access is locked, or a residence in violation of an order of any court of competent jurisdiction in this state shall be imprisoned for not more than one year or fined not more than \$500.00, or both.

(d) A person who enters a dwelling house, whether or not a person is actually present, knowing that he is not licensed or privileged to do so shall be imprisoned for not more than three years or fined not more than \$2,000.00, or both.

#### Title 13, Section 3761. UNAUTHORIZED REMOVAL OF HUMAN REMAINS

A person who, not being authorized by law, intentionally excavates, disinters, removes or carries away a human body, or the remains thereof, interred or entombed in this state, or intentionally excavates, disinters, removes or carries away an object interred or entombed with a human body in

this state, or knowingly aids in such excavation, disinterment, removal or carrying away, or is accessory thereto, shall be imprisoned not more than fifteen years or fined not more than \$10,000.00, or both.

Title 13, Section 3764. CEMETERIES AND MONUMENTS -- GRAVE MARKERS AND HISTORICAL TABLETS

A person shall not intentionally and without right or authority excavate, steal, remove, injure or destroy, or procure or cause to be excavated, stolen, removed, injured or destroyed, a gravestone or monument erected to the memory of a deceased person, or erected and intended for such use, or a grave, tomb or burial site, or portion thereof, in which the body or remains of a deceased person is interred, or which is intended for the interment of a deceased person, or a monument, tablet or marker erected for the commemoration of some historical event or place by a historical or patriotic association or society on land on which such association or society has a right to erect the same. (Not more than five years or a fine of not more than \$5,000.00, or both. 13 V.S.A. § 3767.)

Title 13, Section 2501. GRAND LARCENY

A person who steals from the actual or constructive possession of another, other than from his person, money, goods, chattels, bank notes, bonds, promissory notes, bills of exchange or other bills, orders or certificates, or a book of accounts for or concerning money, or goods due or to become due or to be delivered, or a deed or writing containing a conveyance of land, or any other valuable contract in force, or a receipt, release or defeasance, writ, process or public record, shall be imprisoned not more than ten years or fined not more than \$1,000.00, or both, if the money or other property stolen exceeds \$500.00 in value.

Title 13, Section 2502. PETIT LARCENY

Superior and district courts shall have concurrent jurisdiction of the offenses mentioned in section 2501 of this title where the money or other property stolen does not exceed \$500.00 in value, and may sentence the person convicted to imprisonment for not more than one year or to pay a fine of not more than \$500.00, or both.

Title 13, Section 2504. TAKING PARCEL OF REALTY

A person who by a trespass with intent to steal, takes and carries away anything of value which is parcel of the realty, or annexed thereto, and the property of another against his will, shall be imprisoned not more than ten years or fined not more than \$500.00, or both.

Title 18, Section 5211. UNAUTHORIZED BURIAL OR REMOVAL; PENALTY

A person who buries, entombs, transports or removes the dead body of a person without a burial-transit or removal permit so to do, or in any other manner or at any other time or place than as specified in such permit, shall be imprisoned not more than five years or fined not more than \$1,000.00, or both.

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## APPENDIX B

### Law Enforcement

- |   |                                   |
|---|-----------------------------------|
| 1. Federal Bureau of Investigation                      | 802-863-6316                      |
| 2. Vermont State Police                                 | Nearest office or<br>802-244-8727 |
| 3. U.S. Coast Guard (Lake Champlain)                    | 802-862-0376                      |
| 4. U.S. Forest Service (Green Mountain National Forest) | 802-747-6700                      |
| 5. U.S. Fish & Wildlife (Missisquoi Wildlife Refuge)    | 802-951-6259 or 868-4781          |

### Archaeologists

- |   |              |
|---|--------------|
| 1. Giovanna Pebbles, Vermont Division For Historic Preservation             | 802-828-3226 |
| 2. Art Cohn, Lake Champlain Maritime Museum                                 | 802-475-2022 |
| 3. David Skinas, U.S. Department of Agriculture                             | 802-828-4493 |
| 4. David Lacy, U.S. Forest Service (Vermont)                                | 802-747-6719 |
| 5. Karl Roenke, U.S. Forest Service (New Hampshire)                         | 603-528-8773 |
| 6. Kathleen Callum, GEOARCH, Brandon, Vermont                               | 802-247-8127 |
| 7. Sheila Charles, Rutland, Vermont   | 802-747-4533 |
| 8. Douglas Frink, Archaeology Consulting Team, Inc. Essex Junction, Vermont | 802-879-2017 |
| 9. Dr. James B. Petersen, University of Maine Farmington, Maine             | 207-778-7012 |

### Other

- |   |                                 |
|---|---------------------------------|
| 1. U.S. Attorney, District of Vermont   | 802-951-6725 or<br>802-773-0231 |
| 2. Office of the Attorney General, Montpelier, Vermont                              | 802-828-3171                    |
| 3. Archaeology and Ethnography Program<br>National Park Service<br>Washington, D.C. | 202-343-4113                    |
| 4. Federal Law Enforcement Training Center<br>Glynco, Georgia                       | 912-267-3042                    |

DEPARTMENT OF THE INTERIOR  
NATIONAL PARK SERVICE  
Departmental Consulting Archeologist  
Archeology and Ethnography Program  
Briefing May 1, 1996

**Subject: Interagency Archeological Protection Working Group**

**Issue:** The looting and vandalism of archeological sites continues to rob all the citizens of a non-renewable part of their cultural heritage. The National Strategy for Federal Archeology by the Secretary of the Interior stresses three goals which will improve agencies' stewardship capabilities toward archeological resources. They are improved information exchange among law enforcement and cultural resources professionals, improved public awareness programs, and improved information about archeological sites and collections. The Interagency Archeological Protection Working Group (IAPWG) is an informal group, maintained through the National Park Service, whose purpose is to protect archeological resources by completing appropriate interagency tasks cooperatively, as required by the Archeological Resources Protection Act (ARPA). It was organized pursuant to Section 11 of ARPA (16 U.S.C. 470jj), which requires that the Secretary of the Interior take such action as is necessary to improve cooperation among Federal agencies in archeological protection. The members of the IAPWG include the chief law enforcement officers and departmental solicitors of Federal land managing agencies, attorneys from the Department of Justice Criminal, Civil, and Environment and Natural Resources Divisions, and representatives from other law enforcement agencies, including the U.S. Marshals Service, the U.S. Customs Service, and the Federal Bureau of Investigation.

**Status:** Significant progress in nationwide archeological protection initiatives has been made by IAPWG members through technical reviews and subgroup activities conducted in the following areas:

**Training.** The "Overview of Archeological Protection Law" 16-hour training course has been developed and held five times, at Mesa Verde National Park, Shiloh National Military Park, and Yellowstone National Park, Cape Cod National Seashore, and Death Valley National Park. It is conducted for Department of Justice attorneys, Federal agency solicitors and general counsel, Attorneys General, and Tribal attorneys. It is co-sponsored by the National Park Service; the Office of Legal Education, Executive Office of United States Attorneys; and the Criminal Division, Department of Justice.

The "Overview of Archeological Protection Programs" is available in 4, 8, and 12-hour versions. It is conducted for cultural resources and law enforcement program managers at all levels of government. The lesson plans themselves are available to agency personnel who wish to structure their own training opportunities.

**Publications.** Archeological Resources Protection: Federal Prosecution Sourcebook was co-published with the Department of Justice and serves as the principal text for the attorneys' nationwide training course described above. Additionally, it has been distributed to every United States Attorney as well as Federal agency chief law enforcement officers and solicitors. A reprint and further distribution of the latter are planned.

Two Archeological Assistance Program technical publications help improve the abilities of law enforcement and justice activities to conduct archeological protection casework efficiently and effectively. A new technical brief provides guidance on completing civil penalties assessments for violations of the Archeological Resources Protection Act, and a new publication in the Archeological

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Assistance Study series provides reference information on existing State laws which protect archeological resources.

**Information Exchange.** Activities for the LOOT Clearinghouse were expanded, and information on nearly 300 completed cases in archeological protection are now included in the database. The LOOT Clearinghouse also was approved administratively by OMB and cleared for its consistency with Federal legal requirements such as Privacy Act and FOIA issues. This means any Federal agency may adopt the LOOT form as part of their program to comply with Section 14(c) of the Archaeological Resources Protection Act.

The LOOT Clearinghouse is now both a hardcopy file and queriable electronic database. It is possible to analyze available data collected via the LOOT forms and recorded in more than 40 separate computer fields. As such, the LOOT Clearinghouse fulfills an important need to provide information exchange about these types of cases, which are not easily accessible through any other criminal justice statistics program.

*For further information, contact the office of the Departmental Consulting Archeologist, Archeology and Ethnography Program, National Park Service, P.O. Box 37127, Washington, DC 20013-7172; telephone (202) 343-4101; fax (202) 523-1547.*

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U.S. Department of the Interior, National Park Service  
Departmental Consulting Archeologist/Archeological Assistance Division  
Briefing Statement--May 18, 1994

**SUBJECT: Archeological Resources Protection; Archaeological Resources Protection Act (ARPA) Rewards**

Issue: Pursuant to the Archaeological Resources Protection Act of 1979, as amended (ARPA; 16 U.S.C. 470gg), Federal land managers who are concerned parties in ARPA prosecutions may certify to the Department of the Treasury that:

- a. information was furnished in a prosecution; and
- b. the information led to the conviction for violation of ARPA, which prohibits, among other things, the excavation, removal, damage, or defacing of archeological resources on Federal or Tribal land without a permit; and
- c. a fine was paid to the Department of the Treasury a result of the prosecution; and
- d. the Department of the Treasury is directed to pay a reward to the person(s) who furnished the information equal to one-half the penalty/fine or \$500.00, whichever amount is the lower one.

Status: Working in partnership with the Departments of Justice and the Navy, the National Park Service (NPS) recently sought and obtained the first two statutory rewards ever to be provided by the Department of the Treasury under ARPA. NPS is presenting the rewards after the Treasury warranted an appropriation following successful prosecutions of ARPA violators for acts committed at Chickamauga-Chattanooga National Military Park, Tennessee, and on the USS Cumberland and CSS Florida, two Civil War era shipwrecks lying in the James River, off Newport News, Virginia. William C. Lane, Jr. and the Confederate Naval Historical Society are the reward recipients.

In February, 1992, Mr. Lane, a visitor to Chickamauga-Chattanooga National Military Park, reported to the Park that someone was using a metal detector to remove archeological resources from the Civil War battlefield. Lead prosecutor Steven McKnight, the Assistant United States Attorney for the Eastern District of Tennessee, incorporated that information into the criminal prosecution and subsequent conviction in *United States v. Douglas Franklin Dodd*. As part of the sentence, the Court ordered Dodd to forfeit his metal detecting equipment, and pay \$4,000 in restitution to the Park and a \$500 fine.

In 1993, the United States Attorney for the Eastern District of Virginia successfully prosecuted four people -- two watermen and two private collectors -- who pled guilty to interstate trafficking in archeological resources looted from two Civil War era shipwrecks in violation of both Virginia State law and ARPA. The Union ship USS Cumberland and the Confederate raider CSS Florida, both U.S. Navy property, are listed among Virginia's landmarks. The Cumberland sank with more than 100 men onboard following a battle with the Confederate ironclad, Virginia. The Florida was captured by the Union and scuttled in the James River in 1864, a few hundred yards from the Cumberland.

The watermen admitted using hydraulic clam tongs to dredge artifacts from the Cumberland and the Florida during the late 1980s and early 1990. In addition, they admitted providing brass and copper spikes from the Florida to the two private collectors, who melted them down into belt buckles and advertised them for sale in a Civil War collectors' magazine.

Officers of the Confederate Naval Historical Society, a private, non-profit organization, informed the Federal Bureau of Investigation that remains of the Florida were being trafficked interstate. That information led to the recovery of some of the artifacts from the collectors and was incorporated into their subsequent prosecution.

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Navy Lieutenant Anthony Antonellis, a Special Assistant United States Attorney attached to the U.S. Attorney's office, served as the lead prosecutor in *United States v. Fred Larry Stevens* and *United States v. Gary Williams*. Those cases resulted in ARPA criminal convictions, \$1,500 in restitution, and \$1,000 in fines. The National Park Service provided certification to the Treasury for an ARPA reward with the approval of the Department of the Navy, Naval Legal Services Office, Norfolk, Virginia, by Captain C.E. Ellis, Jr., Commanding Officer.

**What is Needed:** The looting and vandalism of archeological sites robs our nation of its non-renewable cultural heritage. Archeological sites do not regenerate nor can they be replaced. The National Park Service recognizes the significance of ARPA as an archeological resources management statute aimed at improving agencies' stewardship capabilities. Only by fully implementing all sections of the statute -- including its reward provision -- will land managers be in a position to accomplish a goal of the Secretary of the Interior's National Strategy for Federal Archeology, which is to "fight looting and preserve the archeological record in place." Incorporating ARPA rewards into resources management, law enforcement, and prosecutorial strategies can help raise public awareness of the looting problem, reward good citizens who have assisted in resource protection, and realize the deterrent effect of efficient casework. For those reasons, the Archeological Assistance Division of the National Park Service can provide assistance to Federal land managing agencies who wish to exercise the ARPA reward provision. For further information, please contact the Departmental Consulting Archeologist, National Park Service, P.O. Box 37127, Washington, D.C. 20013-7127.

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DEPARTMENT OF THE INTERIOR  
NATIONAL PARK SERVICE  
Departmental Consulting Archeologist  
Archeological Assistance Program  
Briefing April 24, 1996

**Subject: Archeological Resource Protection  
Listing of Outlaw Treachery (LOOT) Information Clearinghouse**

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**Issue:** The looting and vandalism of archeological sites robs all the citizens of a non-renewable part of their cultural heritage. Looters destroy information which often is the only way we can ever understand how people lived in the past. Archeological sites do not regenerate, nor can they be replaced. The National Strategy for Federal Archeology presented by the Department of the Interior stresses goals which will improve agencies' stewardship capabilities toward archeological resources. Three of them particularly are important for archeological protection. They are improved information exchange among law enforcement and cultural resources professionals, improved public awareness programs, and improved information about archeological sites and collections. In 1988, significant assistance for improved stewardship was provided by amendments to the Archaeological Resources Protection Act (ARPA, 16 U.S.C. 470aa-mm) which among other things requires Federal land managing agencies to develop documents for reporting suspected violations.

**Status:** Significant progress in conducting archeological law enforcement casework has been made based upon availability of technical information, field methods training through the Federal Law Enforcement Training Center (FLETC), and protection program training through AAP. Since 1987, one of the sources for case information has been the Listing of Outlaw Treachery (LOOT) Information Clearinghouse. The LOOT Clearinghouse contains voluntarily submitted summary records of prosecuted cases in both hardcopy files and computerized database formats. There are nearly 300 cases currently in LOOT.

A standard LOOT form has been developed to systematically organize case information. The form (NPS 10-29) contains data on such things as arrests, indictments, trials, pleas, judgements, sentences, investigative reports, court documents, and archeological resources damage assessments. Federal information collection requirements have been met through administrative review by the Office of Management and Budget, and LOOT has received clearance for its consistency with Federal legal responsibilities such as Privacy Act and FOIA issues. This means any Federal agency may adopt the LOOT form as part of their program to comply with Section 14(c) of the Archaeological Resources Protection Act.

The case information in LOOT has been used by cultural resources, law enforcement, and justice personnel to improve general understanding of archeological resources crime as well as to guide case development. Most recently, the LOOT Clearinghouse served as a primary source for compiling the *Archeological Resources Protection: Federal Prosecution Sourcebook*, which was co-published with the Department of Justice and serves as a principal technical reference for United States Attorneys and departmental solicitors. LOOT also has been used as a source for material in archeological protection training.

**What is Needed:** Through ongoing cooperation of law enforcement and justice personnel in submitting LOOT entries and promoting the participation in LOOT by agency managers, the LOOT Clearinghouse can continue to provide current summary and comparative information about archeological looting and vandalism. Agency press releases sent with LOOT entries are important as well. These press releases are printed in the *Common Ground* which is distributed to nearly 8,000 agencies and professionals involved in cultural resources management and law enforcement. In addition, press releases are mailed to more than 180 editors of other major publications. This kind of information exchange can play a major part in raising public awareness of the looting problem and helping to realize the deterrence effect of efficient casework.

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**Information Provided By:**

Name:

Phone:

Agency/Office:

Date Completed:

**U.S. Attorney/Legal Contact:**

Name:

Phone:

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**Narrative Summary: (Use additional sheets if necessary)**

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**Attachments: (Please attach the following, if not available please give name and phone number of person who has access to those documents)**

- 1. Investigative Reports (Arrest summaries, evidence logs, etc.)**
- 2. Court Documents (Indictments, motions, sentences, etc.)**
- 3. Archeological Damage Assessment**

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**Paperwork Reduction Act and Estimated Burden Statement**

This information is being collected, pursuant to 16 U.S.C. 470mm, to provide the necessary information needed to complete the Secretary's Report to Congress on Federal Archeology Programs, and will be used to allow the National Park Service to evaluate Federal archeological protection programs and assess compliance with the Archaeological Resources Protection Act of 1979 (16 U.S.C. 470). Response to this request is voluntary. No action may be taken against you for refusing to supply the information. The public reporting burden for this form is estimated to average 1 hour per response, including the time for reviewing instructions, gathering and maintaining data, and completing and reviewing the form. Direct comments regarding the burden estimate or any other aspect of this form to Information Collection Clearance Officer, Administrative Services Division, National Park Service, P.O. Box 37127, Washington, D.C. 20013-7127 and the Office of Management and Budget, Paperwork Reduction Project, Washington, D.C. 20503.

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David Tarler  
Archeology and Ethnography Program  
National Park Service  
P.O. Box 37127  
Mail Stop NC2275, Suite 210  
Washington, DC 20013-7127  
  
Telephone: (202) 343-1108  
Fax: (202) 523-1547  
E-mail: david\_tarler@nps.gov

The Departmental Consulting Archeologist's Office at the National Park Service would appreciate your completing a LOOT form for the archeological resources prosecutions in your jurisdiction. Would you please also include any press releases and the following additional information (where applicable):

full name of court that heard the case  
full name of case  
case number assigned by the court to the case  
full name of prosecuting attorney's office and name of prosecutor  
county in which the incident occurred  
residence (city/state) of defendant  
legal code citation number of charge  
legal code citation name of charge  
level of charge (civil, misdemeanor, felony)  
a copy of the charging instrument  
a copy of the sentencing document  
a copy of the opinion (and citation, where published)  
whether rewards were given (and if so, the amount and source of the reward)  
whether the defendant had any prior ARPA convictions  
restoration and repair cost  
archeological value  
commercial value

Strong evidence of damage to the archeological resource is important to a successful prosecution. The total damage to a resource is the amount in \$US which is the higher of either restoration/repair cost + archeological value or restoration/repair cost + commercial value.

Restoration and repair cost is the amount in \$US of costs already incurred for emergency restoration/repair work plus those costs projected to be necessary to complete restoration/repair, including all costs of : reconstruction, stabilization, and curation; research necessary in order to carry out reconstruction, stabilization, and curation; physical barriers/protective devices necessitated by the disturbance; examination and analysis of the resources, including recording of remaining archeological information where necessitated by the disturbance in order to salvage remaining values which cannot otherwise be conserved; reinterment of human remains; preparation of reports relating to any of the above activities; and any other costs for doing the assessment and evaluation, such as travel expenses.

Archeological value is the total cost of retrieving scientific information which would have been available prior to the violation(s). It includes the costs of: preparing a research design; conducting fieldwork; materials; carrying out laboratory analyses; preparing reports as would be necessary to realize the information potential; and any other costs such as travel expenses and salaries.

Commercial value is the fair market value of all archeological resources involved in all violations. If the violation resulted in damage to a resource, fair market value is determined using the condition of the resource prior to the violation, to the extent that its prior condition can be ascertained.

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