

Template for Writing a Resource Damage Assessment

Updated 8/17/22

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HISTORY: This template originated from the FLETC training program. Like all good things, it renders itself available for constant improvement. This is my most recent version in which the more strident language of the original has been replaced by what I hope to be a more user-friendly, instructive, and by all means flexible template. It is, again like any good thing, the product of those with whom I teach, have taught and taught with, even the few that went to prison that were also unknowing instructors in the process. I don't "own" this in any way apart from my commitment to it and the successful outcomes I hope it will bring to those who use it.

caven

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The author will need to double check to ensure that the proper regulatory language and laws for your bureau are cited. I suggest that you "make this your own" so that you don't have to check this every time.

This is the bread-and-butter of what the cultural resource professional will do in an ARPA case: taking the data from the field damage assessment and putting it in this (or similar) framework that systematically addresses the elements of ARPA and determines the costs and values of ARPA. While this template is very useful and should be followed wherever possible, recognize that there will be cases requiring modifications due to complexity with more use of appendices and/or specialized analysis.

Another reason that this template is important is the need to present a more uniform product nationally, both within and across agency/tribal boundaries. Disparity in presentation, omitting important elements, presenting poorly organized and confusing damage assessments will not endear us to the courts.

Remember the Rule of First Use when it comes to acronyms! Also, remember that as an editorial rule every table, figure, and appendix used in your report MUST be referenced in the text in the most appropriate place.

As a general rule use terms as they appear in ARPA, such as Archeological Resource, Archeological Interest, etc. (I don't have strong feelings on which spelling of the word "archeology" you use.) The exception to this is to employ as appropriate terms that appear in federal sentencing guidelines including the following:

Cultural heritage resource

National park system
National Historic Landmark
National monument
National memorial
National marine sanctuary
National cemetery
Veteran's memorial
Museum
World Heritage List

Similarly, utilize NAGPRA and other nomenclature as appropriate, including the following:

Human remains
Funerary object
Sacred object
Cultural property (n.b., tribes are not keen on this, but it's in the sentencing guidelines)
Designated archeological or ethnological material (n.b., definition of "designated" could be problematical)
A pre-Columbian monumental or architectural sculpture or mural

DO NOT cite or refer to federal sentencing guidelines at any point in your RDA. By using these terms, you have afforded the Case Agent and the Court a somewhat easier task to match your case with the sentencing guidelines and consider point enhancement. Remember: you are not telling the Court what to do or even making suggestions.

All text below highlighted in yellow is my commentary to assist writing the RDA and should be deleted. I have not put in any formatting (headers, page breaks, etc.) since that would likely be a problem down the line.

[NOTE: BOTH THE DEPARTMENT OF AGRICULTURE (TITLE 36 C.F.R. 296) AND THE DEPARTMENT OF THE INTERIOR (43 C.F.R. 7) CITATIONS FOR THE ARPA UNIFORM REGULATIONS ARE PROVIDED IN THE FOLLOWING TEXT. THE DEPARTMENT OF DEFENSE CITATION FOR THESE REGULATIONS IS 32 C.F.R. 229. OTHER FEDERAL AGENCIES (TENNESSEE VALLEY AUTHORITY, etc. HAVE THEIR OWN UNIFORM REGULATION CITATION. USE THE APPROPRIATE CITATION FOR YOUR AGENCY. IN THIS TEMPLATE ALL FURTHER REFERENCES ARE TO THE DOI REGULATIONS]

SO, HERE'S WHERE IT ACTUALLY BEGINS

COVER PAGE

TITLE (should include the site or place name used throughout the report)
CASE/INCIDENT NUMBER (assigned by the Case Agent)
AUTHOR (single author)

DATE (of final submitted draft)
DRAFT WATERMARK (on this and all subsequent pages)

SUMMARY

Brief overview of case including elements, and costs/values

The following damage assessment values were determined as a result of this unauthorized activity.

Archaeological Value	\$ _____
Commercial Value	\$ _____
Restoration and Repair	\$ _____

As per the prohibited acts and criminal penalties section of ARPA (16 United States Code 470ee, hereinafter referred to as “16 U.S.C. 470ee”), the cost of restoration and repair can be combined with either the archaeological or commercial values involved in the violation to comprise the total value of the archaeological resource damage. The monetary damage amount is determined by combining (1) the commercial value and the cost of restoration and repair of these resources \$ _____ or (2) the archaeological value and the cost of restoration and repair of the resource \$ _____.

- TABLE OF CONTENTS**
- LIST OF FIGURES**
- LIST OF TABLES**

INTRODUCTION

A very short description of the activities that led to the involvement of the RDA author (and team), such as when notified and by whom, your response actions up to and including when you first arrived at the crime scene.

OWNERSHIP

The lands where the incident took place is held in fee simple interest by the United States and managed as part of the _____ (national park, forest, refuge, etc). The cadastral location is _____.

This section will provide the information required to meet the element of “public or Indian lands”. Whatever sources you draw upon to show that the lands are held in fee simple by the federal government or the definition of “Indian lands” found in ARPA section 3. This is also where you will begin to place your maps, using the telescoping principle, to clearly indicate the location of the crime scene. Clarity of image and use of administrative/ownership boundaries is very important here.

The previous version of this RDA Template titled this subsection "JURISDICTION" which is a different thing altogether and has no business here. Jurisdiction comes in two flavors: administrative and legislative which must be addressed in the Case Jacket but not in the RDA.

FIELD DAMAGE ASSESSMENT

Describe, for a lay audience, what actions you did as part of the investigative team, such as mapping, photographing, documenting damaged areas, etc. Remember to stay away from CSI.

ARCHAEOLOGICAL RESOURCE

ARPA states that, "the term "archaeological resource" means any material remains of past human life or activities which are of archaeological interest ... at least 100 years of age" (16 U.S.C. 470bb(1)). In the ARPA Uniform Regulations, the term "material remains" is defined as, "... 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)).

The following classes of material remains (and illustrative examples) (43 C.F.R. 73 (a)(3)(i-x)) if they are at least 100 years of age, are of archaeological interest and shall be considered archaeological resources unless determined otherwise pursuant to paragraph (a)(4) paleontological resources (i) or paragraph (a)(5) coins, bullets and minerals (ii) of this section:

- (i) Surface or subsurface structures, shelters, facilities, or features (including, but not limited to, domestic structures, storage structures, cooking structures, ceremonial structures, artificial mounds, earthworks, fortifications, canals, reservoirs, horticultural/agricultural gardens or fields, bedrock mortars or grinding surfaces, rock alignments, cairns, trails, borrow pits, cooking pits, refuse pits, burial pits or graves, hearths, kilns, post molds, wall trenches, middens);
- (ii) Surface or subsurface artifact concentrations or scatters;
- (iii) Whole or fragmentary tools, implements, containers, weapons and weapon projectiles clothing, and ornaments (including, but not limited to, pottery and other ceramics, cordage, basketry and other weaving, bottles and other glassware, bone, ivory, shell, metal, wood, hide, feathers, pigment, and flaked, ground or pecked stone);
- (iv) By-products, waste products, or debris resulting from the manufacture or use of human-made or natural materials;

- (v) Organic waste (including, but not limited to, vegetal and animal remains, coprolites);
- (vi) Human remains (including, but not limited to, bone, teeth, mummified flesh, burials, cremations);
- (vii) Rock carvings, rock paintings, intaglios and other works of artistic or symbolic representation;
- (viii) Rockshelters and caves or portions thereof containing any of the above material remains;
- (ix) All portions of shipwrecks (including, but not limited to, armaments, apparel, tackle, cargo);
- (x) Any portion or piece of any of the foregoing.”

Insert a sentence stating which of the above categories are involved in your case. Give specific, but brief, examples.

ARCHEOLOGICAL INTEREST

Part of the definition of an Archeological Resources under ARPA includes Archeological Interest. The ARPA Uniform Regulations state that, “‘of 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)).

The _____ site was first recorded in _____ by _____, and described as _____ (Figure _____ map showing site boundaries) (you may want to consider including copies of site forms in an appendix).

OR

This site was unrecorded prior to this incident. (Follow with a description of the site based on what you learned from the field damage assessment). You don’t need a state site number for ARPA, a field number will do just fine. Be prepared to answer in court the question: “Why wasn’t this site previously recorded?”

Discuss past human behavior represented at the archeological site and/or represented by the artifacts, structures, or other associated features. The ARPA Uniform Regulations uses two terms: “scientific” and “humanistic” values. The scientific values you present

here will also be present in the later section on Archeological Value (SAA Standards) so keep this in mind when constructing this section to avoid redundancy and use appropriate terminology understandable to a nonprofessional audience.

Determining “humanistic” values as they pertain to Native American cultural resources requires consultation with the appropriate tribes. These are not values ascribed by the archeologist or other cultural resource professional, but by the persons with a cultural and historical affiliation to the affected resources. This is where information on tribal notification, their response, and any discussion of humanistic values should be placed. Actual copies of consultation correspondence are better placed in an appendix.

The same standards should be used in the case of non-Native American resources. Local community groups with an affiliation with the damaged resource should be contacted regarding their “humanistic” values.

Another indicator of the archaeological interest of the _____ site and the archaeological resources it contains is the status of this site relative to inclusion in the National Register of Historic Places. The National Register of Historic Places was created by the National Historic Preservation Act of 1966 (P.L. 89-665; 80 Stat. 915; 54 U.S.C. 470), as amended, as a register of, “... districts, sites, buildings, structures, and objects significant in American history, architecture, archeology, engineering, and culture” (54 U.S.C. 470a(a)(1)(A)).

NRHP: Determine whether or not the affected resource has a) been evaluated for the NRHP, b) nominated for the NRHP, c) has received a Determination of Eligibility from the SHPO, d) has not been evaluated for the NRHP.

If the affected resource has not been evaluated, for any reason, you should probably move on to the next section, since stating that no evaluation has taken place is a potential vulnerability later on.

If the affected resource has been listed, considered, has a DOE, etc., then this information should be summarized here with perhaps fuller documentation as an appendix. Remember that you should not assume that the reader has any familiarity with the NRHP, its history, purpose, process, criteria, etc. This really is the stuff of an appendix since it would bog down the flow of the main body of the text!

A site that is eligible for inclusion in the National Register of Historic Places definitely has archaeological interest as this term is defined by ARPA.

AGE CRITERIA

To be considered an Archeological Resource under ARPA, the site and/or affected resource must be at least 100-years old.

Explain how your affected resources meet this requirement. You will likely have touched on this in the sections above regarding Archeological Resource and Archeological Interest. Nonetheless, since this is one of the defining attributes of Archeological Resource, exactly how the 100-year threshold is met needs to be described. If your resource is hovering on the boundary of 100 years, you should probably look to other statutes,

PERMIT STATUS

The Uniform Regulations state that “any person proposing to excavate and/or remove archeological resources from public lands or Indian lands, and to carry out activities associated with such excavation and/or removal, shall apply to the Federal land manager for a permit...”.

ARPA permits for (agency name) are issued by _____. A records search was requested (on, by). It was determined that no ARPA permit was granted for this location or to the suspect(s). Be sure to keep a copy of the email or memo to substantiate this if requested by the defense. You may want to include a copy of correspondence as an appendix.

REMEMBER: ARPA allows for other types of permitting in lieu of an ARPA Permit, in particular Section 106. If your case is based on a section 106 issue, this must be clearly explained and substantiated.

PROHIBITED ACTS: PHYSICAL DAMAGE TO PROTECTED RESOURCES

The Prohibited Acts and Criminal Penalties Section of ARPA (16 U.S.C. 470ee(a)) states that:

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 ... [an ARPA] permit ...

Introduce the text description of the damage archeological resources as it relates to the prohibited acts. Depending on the nature of the incident, this section can be very short or very lengthy. Editorially you don't want this to bog down the main body, but it must concisely describe and quantify (or summarize quantification provided in an appendix) so that the reader is clear on what was damaged, how it was damaged, and how much was damaged. More maps, line drawings, photographs are important here. If possible, show an image of all damaged resources unless, as in the case of multiple metal detection holes, a “representative” sample may suffice.

VALUE AND COST DETERMINATIONS

The “Prohibited Acts and Criminal Penalties” section of ARPA (16 U.S.C. 470ee) identifies three monetary values that will be considered in relation to the

penalty for the offense. These are the “archaeological value” or the “commercial value” of the archaeological resources involved in the violation and the “cost of restoration and repair” of these resources (54 USC 470ee(d)). Procedures for determining these figures are established in the ARPA Uniform Regulations (43 CFR 7.14).

ARCHAEOLOGICAL VALUE

The ARPA Uniform Regulations define the term “archaeological value” (in relevant part) as follows:

... the archaeological value of any resource involved in a violation ... shall be the value of the information associated with the archaeological resource. This value shall be appraised in terms of the costs of the retrieval of the scientific information which would have been obtainable prior to the violation. These costs may include, but need not be limited to, the cost of preparing a research design, conducting field work, carrying out laboratory analysis, and preparing reports as would be necessary to realize the information potential (43 CFR 7.14(a)).

The archaeological value of a scientific data retrieval strategy at the ____ site was calculated to be \$ _____. This figure was determined using the Society for American Archaeology’s (SAA) Professional Standards for the Determination of Archaeological Value guidelines (McAllister 2006). The categories below are taken from the SAA Standards and describe the rationale behind each line item:

SAA Standard 1 – Identification of the Archaeological Resources involved in the ARPA violation:

Provide a **very** brief summary of your section on Archeological Resources as defined by ARPA. Refer the reader to that section above. One difference here, though, would be a discussion of what you could potentially learn from this research effort. Introduce specific research questions that put this site in a local and regional context.

SAA Standard 2 – Scale of Scientific Information Retrieval to be Used in Determining Archaeological Value:

Proportionality: The operational word here is “scale”. Be both creative and realistic in determining how you will apply the volume established by the field damage assessment to a scientifically-guided research project.

SAA Standard 3 – Methods of Scientific Information Retrieval

Discuss standard scientific retrieval methods used in your area for your resources. Remember that this will be like a research design but with the caveat that it must be in proportion to the actual damage.

SAA Standard 4 – Scientific Information Retrieval Standards:

Discuss the kinds and quantities of archeological data that would be collected and/or documented scientifically. Proportionality also applies here in the sense that you should remain close to what you actually observed or what has been previously recorded at the site in question.

Below you will present a line-item budget. No line-item budget is complete without a line-item budget explanation. This should be cross checked with the SAA Standards above to make sure every line-item is explained and justified.

Table _____. Archeological Value Budget

The template for this value and for other costs may be found at the end of this document.

COMMERCIAL VALUE

FIRST SENTENCE:

The ARPA Uniform Regulations define the term “commercial value” (in relevant part) as follows:

... the commercial value of any archaeological resource involved in a violation ... shall be its fair market value. Where the violation has resulted in damage to the archeological resource, the fair market value should be determined using the condition of the archaeological prior to the violation, to the extent that its prior condition can be ascertained (43 CFR 7.14(b)).

You will need to create a table listing each object for which a value has been determined. If possible, link to photographs of same. For example:

COMMERCIAL VALUE				
Item Description	Evidence #	Figure #	Cost \$	Source

			TOTAL	\$

COST OF RESTORATION AND REPAIR

The ARPA Uniform Regulations define the term “cost of restoration and repair” (in relevant part) as follows:

... the cost of restoration and repair of archaeological resources damaged as a result of a violation ... shall be the sum of the costs already incurred for emergency restoration or repair work, plus those costs projected to be necessary to complete restoration and repair, which may include, but need not be limited to the costs of the following:

- (1) Reconstruction of the archaeological resource;
- (2) Stabilization of the archaeological resource;
- (3) Ground contour reconstruction and surface stabilization;
- (4) Research necessary to carry out reconstruction or stabilization;
- (5) Physical barriers or other protective devices, necessitated by the disturbance of the archaeological resource, to protect it from further disturbance;
- (6) Examination and analysis of the archaeological resource including recording remaining archaeological information, where necessitated by disturbance, in order to salvage remaining values which cannot be otherwise conserved;
- (7) Reinterment of human remains in accordance with religious custom and State, local, or tribal law, where appropriate, as determined by the Federal land manager;
- (8) Preparation of reports related to any of the above activities (43 CFR 7.14(c)(1)-(8)).

The Cost of Restoration and Repair is separated into three budgets (Tables _____) representing discrete activities associated with the above definition: 1) Emergency Restoration and Repair includes all activities conducted from initial notification, response (preparation, tribal notification, travel, field damage assessment, emergency stabilization or safety measures). 2) The second budget includes all activities associate

with the post field damage assessment (examination, study, analysis of archeological evidence, any emergency artifact stabilization actions, report writing, tribal consultation, and other direct costs required to produce the Resource Damage Assessment). 3) The third and final budget includes Future Restoration and Repair actions (long-term curation, tribal repatriation, tribal and State Historic Preservation Office consultation, site stabilization and/or restoration).

For each table, provide a succinct line-item description and justification that fully explains why this cost is included. Remember: this is where the defense will come after you at sentencing! The use of three budgets is not required but I believe that it makes your job of explaining how CRR works much easier.

The same budget template provided for Archeological Value may be used as the basis for all three CRR budgets.

SUMMARY AND CONCLUSION

Archaeological resource damage to the _____ site was reported to the _____ [INSERT YOUR FOREST/PARK/REFUGE] on _____ [DATE]. The prohibited acts consisted of _____ [EXCAVATION, REMOVAL, DAMAGE, ALTERATION, ETC.] of an archaeological site. The physical evidence of the prohibited acts was documented and assessed, and this report of findings prepared. The monetary damage amount is determined by combining (1) the commercial value and the cost of restoration and repair of these resources \$_____ or (2) the archaeological value and the cost of restoration and repair of the resource \$_____.

Archaeological Value	\$ _____
Cost of Restoration and Repair	\$ _____
Total	\$ _____

OR

Commercial Value	\$ _____
Cost of Restoration and Repair	\$ _____
Total	\$ _____

REFERENCES CITED

As appropriate, but keep it to a minimum. Citations in appendices should be listed in the appendix, not in general references cited for the main body of the RDA

APPENDICES

This can be your best friend! As you develop the RDA, especially sections that can be lengthy or complicated, consider using a brief summary in the main body of the RDA and putting everything else in an appendix. Even as you write the RDA, it's a good idea to keep these sections as separate Word documents until you decide their best fit. Also, if there is content such as images of human remains or other sensitive subjects that may need to be redacted from certain audiences or uses, putting them in an appendix will facilitate that.

Putting something in an appendix doesn't mean it's less important. Everything in an RDA is extremely important. It just makes the main body "accessible" to a nonprofessional reader. But if your case is a "small" one, say three holes, three artifacts, etc., you should probably not use appendices since it would make your main body very small indeed. It's an editorial decision that you can work out with your case team and peer reviewer if you are undecided.

Examples of appendices include:

- Any series of photographs such as damaged areas, artifacts.
- Supporting documentation for Archeological Resource such as copies of site forms, site condition assessments, NRHP nominations, historic maps, historic photos and drawings, pictorial representations of events (e.g., battles).
- Copies of both outgoing and incoming tribal and SHPO correspondence.
- For all Costs & Values, the appendices give you an opportunity to fully explain your numbers.

BUDGET TEMPLATE FOR ARCH VALUE AND COST OF R&R

Line-items may be added/subtracted as necessary to fit your RDA. Remember to use loaded rates for all personal services fees. This template is a guide only. There are certain line items that will be irrelevant to certain cases, and others you will have to add. But clarity of presentation is paramount here because this is where in sentencing, your work will come under very close scrutiny.

DO NOT PUT AV AND CRR ON THE SAME BUDGET. This template works for both but never in combination. The values are combined at the end of the process but not here!

Budget template for AV and CR&R

updated
2/12/20

ACTIVITY	RATE/UNIT	UNITS (hrs)	AMOUNT
Research Design			
Design Archaeological Work			
Archaeologist GS	\$/hr	#	\$
Advance Field Work Preparation			
Archaeological Technician GS			
		Subtotal	
Archaeological Field Work to Survey ___ acres (___ days / PI+crew of ___)			
Metal Detector Survey (crew – days)			
GS			
Establishing Survey Control and Mapping (crew – days)			
Archaeologist GS			
Archaeological Technician GS			
Excavate, Record Finds, Backfill (crew –days)			
Archaeologist GS			
Archaeological Technician GS			
		Subtotal	
Travel (half days / crew)			
Salaries in Transit			
Archaeologist GS			
Archaeological Technician GS			
GSA Vehicle Costs ___ mi @ \$0. ___/mi			

GSA Vehicle Cost ___ days @ \$_____/day			
Lodging @ \$_____/day/person			
Part Per Diem @ \$_____/day/person			
Full Per Diem @ \$_____/day/person			
		Subtotal	
Expendable Supplies (Bags, Forms, Etc.)			
		Total Costs	Field
Laboratory Work			
Specimen Cleaning			
Archaeological Technician GS			
Specimen Analysis			
Archaeological Technician GS			
Specimen Labeling			
Archaeological Technician GS			
Conservation of Metal Specimens			
Archaeologist GS			
		Subtotal	
Curation Costs			
Cataloging			
Archaeological Technician GS			
Curatorial Supplies (pen nibs, forms, bags, etc.)			
In Perpetuity curation fee			
		Subtotal	
Report Preparation			
Compiling, Writing and Editing			
Archaeologist GS			
Archaeologist GS			
Cartographic Production			
Archaeologist GS			
Graphics Production (Digital Photography, Lay-out, Documentation)			
Archaeological Technician GS			
Formatting Report			
Archaeologist GS			
Printing, Collating & Binding Report			
Archaeological Technician GS			
		Subtotal	
		Total Lab Costs	

Tribal Consultation & Reburial			
SHPO Consultation			
		Total Cost	Project

DRAFT