

Chapter 27.53 RCW
ARCHAEOLOGICAL SITES AND RESOURCES

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Department of archaeology and historic preservation: Chapter 43.334 RCW.

RCW 27.53.010 Declaration. The legislature hereby declares that the public has an interest in the conservation, preservation, and protection of the state's archaeological resources, and the knowledge to be derived and gained from the scientific study of these resources. [1975 1st ex.s. c 134 s 1.]

RCW 27.53.020 Archaeological resource preservation—Designation of department of archaeology and historic preservation—Cooperation among agencies. The discovery, identification, excavation, and study of the state's archaeological resources, the providing of information on archaeological sites for their nomination to the state and national registers of historic places, the maintaining of a complete inventory of archaeological sites and collections, and the providing of information to state, federal, and private construction agencies regarding the possible impact of construction activities on the state's archaeological resources, are proper public functions; and the department of archaeology and historic preservation, created under the authority of chapter 43.334 RCW, is hereby designated as an

appropriate agency to carry out these functions. The director shall provide guidelines for the selection of depositories designated by the state for archaeological resources. The legislature directs that there shall be full cooperation amongst the department and other agencies of the state. [2005 c 333 s 19; 2002 c 211 s 2; 1986 c 266 s 16; 1977 ex.s. c 195 s 12; 1975-'76 2nd ex.s. c 82 s 1; 1975 1st ex.s. c 134 s 2.]

Purpose—2002 c 211: "The purpose of this act is to give the *department of community, trade, and economic development the authority to issue civil penalties to enforce the provisions of permits issued under RCW 27.53.060 and to take into consideration prior penalties issued under chapter 27.53 RCW and under comparable federal laws when issuing permits. Additionally, this act provides guidance to state agencies and political subdivisions of the state when approving archaeological activities on public lands." [2002 c 211 s 1.]

***Reviser's note:** The "department of community, trade, and economic development" was renamed the "department of commerce" by 2009 c 565.

Severability—1986 c 266: See note following RCW 38.52.005.

Severability—1977 ex.s. c 195: "If any provision of this 1977 amendatory act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected." [1977 ex.s. c 195 s 20.]

RCW 27.53.030 Definitions. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Amateur society" means any organization composed primarily of persons who are not professional archaeologists, whose primary interest is in the archaeological resources of the state, and which has been certified in writing by two professional archaeologists.

(2) "Archaeological object" means an object that comprises the physical evidence of an indigenous and subsequent culture, including material remains of past human life, including monuments, symbols, tools, facilities, and technological by-products.

(3) "Archaeological site" means a geographic locality in Washington, including but not limited to, submerged and submersible lands and the bed of the sea within the state's jurisdiction, that contains archaeological objects.

(4) "Archaeology" means systematic, scientific study of humankind's past through material remains.

(5) "Department" means the department of archaeology and historic preservation, created in chapter 43.334 RCW.

(6) "Director" means the director of the department of archaeology and historic preservation, created in chapter 43.334 RCW.

(7) "Field investigation" means an on-site inspection by a professional archaeologist or by an individual under the direct supervision of a professional archaeologist employing archaeological inspection techniques for both the surface and subsurface identification of archaeological resources and artifacts resulting in

a professional archaeological report detailing the results of such inspection.

(8) "Historic" means peoples and cultures who are known through written documents in their own or other languages. As applied to underwater archaeological resources, the term "historic" shall include only those properties which are listed in or eligible for listing in the Washington state register of historic places (RCW 27.34.220) or the national register of historic places as defined in the national historic preservation act of 1966 (Title 1, Sec. 101, Public Law 89-665; 80 Stat. 915; 16 U.S.C. Sec. 470) as now or hereafter amended.

(9) "Historic archaeological resources" means those properties which are listed in or eligible for listing in the Washington state register of historic places (RCW 27.34.220) or the national register of historic places as defined in the national historic preservation act of 1966 (Title 1, Sec. 101, Public Law 89-665; 80 Stat. 915; 16 U.S.C. Sec. 470) as now or hereafter amended.

(10) "Prehistoric" means peoples and cultures who are unknown through contemporaneous written documents in any language.

(11) "Professional archaeologist" means a person with qualifications meeting the federal secretary of the interior's standards for a professional archaeologist. Archaeologists not meeting this standard may be conditionally employed by working under the supervision of a professional archaeologist for a period of four years provided the employee is pursuing qualifications necessary to meet the federal secretary of the interior's standards for a professional archaeologist. During this four-year period, the professional archaeologist is responsible for all findings. The four-year period is not subject to renewal. [2013 c 23 s 45. Prior: 2011 c 219 s 1; 2008 c 275 s 5; 2005 c 333 s 20; 1995 c 399 s 16; 1989 c 44 s 6; 1988 c 124 s 2; 1986 c 266 s 17; 1983 c 91 s 20; 1977 ex.s. c 195 s 13; 1975 1st ex.s. c 134 s 3.]

Reporting requirements—2008 c 275: See note following RCW 68.50.645.

Intent—1989 c 44: See RCW 27.44.030.

Liberal construction—1989 c 44: See RCW 27.44.901.

Intent—1988 c 124: "It is the intent of the legislature that those historic archaeological resources located on state-owned aquatic lands that are of importance to the history of our state, or its communities, be protected for the people of the state. At the same time, the legislature also recognizes that divers have long enjoyed the recreation of diving near shipwrecks and picking up artifacts from the state-owned aquatic lands, and it is not the intent of the legislature to regulate these occasional, recreational activities except in areas where necessary to protect underwater historic archaeological sites. The legislature also recognizes that salvors who invest in a project to salvage underwater archaeological resources on state-owned aquatic lands should be required to obtain a state permit for their operation in order to protect the interest of the people of the state, as well as to protect the interest of the salvors who have invested considerable time and money in the salvage expedition." [1988 c 124 s 1.]

Application—1988 c 124: "This act shall not affect any ongoing salvage effort in which the state has entered into separate contracts or agreements prior to March 18, 1988." [1988 c 124 s 13.]

Severability—1986 c 266: See note following RCW 38.52.005.

Effective date—1983 c 91: See RCW 27.34.910.

Severability—1977 ex.s. c 195: See note following RCW 27.53.020.

RCW 27.53.040 Archaeological resources—Declaration. All sites, objects, structures, artifacts, implements, and locations of prehistorical or archaeological interest, whether previously recorded or still unrecognized, including, but not limited to, those pertaining to prehistoric and historic American Indian or aboriginal burials, campsites, dwellings, and habitation sites, including rock shelters and caves, their artifacts and implements of culture such as projectile points, arrowheads, skeletal remains, grave goods, basketry, pestles, mauls and grinding stones, knives, scrapers, rock carvings and paintings, and other implements and artifacts of any material that are located in, on, or under the surface of any lands or waters owned by or under the possession, custody, or control of the state of Washington or any county, city, or political subdivision of the state are hereby declared to be archaeological resources. [1975 1st ex.s. c 134 s 4.]

RCW 27.53.045 Abandoned archaeological resources—Declaration. All historic archaeological resources abandoned for thirty years or more in, on, or under the surface of any public lands or waters owned by or under the possession, custody, or control of the state of Washington, including, but not limited to all ships, or aircraft, and any part or the contents thereof, and all treasure trove is hereby declared to be the property of the state of Washington. [1988 c 124 s 3.]

Intent—Application—1988 c 124: See notes following RCW 27.53.030.

RCW 27.53.060 Disturbing archaeological resource or site—Permit required—Conditions—Exceptions—Penalty. (1) On the private and public lands of this state it shall be unlawful for any person, firm, corporation, or any agency or institution of the state or a political subdivision thereof to knowingly remove, alter, dig into, or excavate by use of any mechanical, hydraulic, or other means, or to damage, deface, or destroy any historic or prehistoric archaeological resource or site, or remove any archaeological object from such site, except for Indian graves or cairns, or any glyptic or painted record of any tribe or peoples, or historic graves as defined in chapter 68.05 RCW, disturbances of which shall be a class C felony punishable under chapter 9A.20 RCW, without having obtained a written permit from the director for such activities.

(2) The director must obtain the consent of the private or public property owner or agency responsible for the management thereof, prior

to issuance of the permit. The property owner or agency responsible for the management of such land may condition its consent on the execution of a separate agreement, lease, or other real property conveyance with the applicant as may be necessary to carry out the legal rights or duties of the public property landowner or agency.

(3) The director, in consultation with the affected tribes, shall develop guidelines for the issuance and processing of permits.

(4) Such written permit and any agreement or lease or other conveyance required by any public property owner or agency responsible for management of such land shall be physically present while any such activity is being conducted.

(5) The provisions of this section shall not apply to the removal of artifacts found exposed on the surface of the ground which are not historic archaeological resources or sites.

(6) When determining whether to grant or condition a permit, the director may give great weight to the final record of previous civil or criminal penalties against either the applicant, the parties responsible for conducting the work, or the parties responsible for carrying out the terms and conditions of the permit, either under this chapter or under comparable federal laws. If the director denies a permit, the applicant may request a hearing as provided for in chapter 34.05 RCW. [2002 c 211 s 3; 1989 c 44 s 7; 1988 c 124 s 4; 1986 c 266 s 18; 1977 ex.s. c 195 s 14; 1975-'76 2nd ex.s. c 82 s 2; 1975 1st ex.s. c 134 s 6.]

Purpose—2002 c 211: See note following RCW 27.53.020.

Intent—1989 c 44: See RCW 27.44.030.

Liberal construction—1989 c 44: See RCW 27.44.901.

Intent—Application—1988 c 124: See notes following RCW 27.53.030.

Severability—1986 c 266: See note following RCW 38.52.005.

Severability—1977 ex.s. c 195: See note following RCW 27.53.020.

RCW 27.53.070 Field investigations—Communication of site or resource location to department. (1) It is the declared intention of the legislature that field investigations on privately owned lands should be conducted by professional archaeologists in accordance with both the provisions and spirit of this chapter. Persons having knowledge of the location of archaeological sites or resources are encouraged to communicate such information to the department. Such information shall not constitute a public record which requires disclosure pursuant to the exception authorized in chapter 42.56 RCW to avoid site depredation.

(2) Nothing in this chapter shall be interpreted to allow trespassing on private property. [2011 c 219 s 2. Prior: 2005 c 333 s 21; 2005 c 274 s 243; 1975-'76 2nd ex.s. c 82 s 3; 1975 1st ex.s. c 134 s 7.]

RCW 27.53.080 Archaeological activities upon public lands—Entry—Agreement—Approval of activities—Information regarding results of studies and activities. (1) *Qualified or professional archaeologists, in performance of their duties, may enter upon public lands of the state of Washington and its political subdivisions after first notifying the entity responsible for managing those public lands, at such times and in such manner as not to interfere with the normal management thereof, for the purposes of doing archaeological resource location and evaluation studies, including site sampling activities. The results of such studies shall be provided to the state agency or political subdivision responsible for such lands and the department and are confidential unless the director, in writing, declares otherwise. Scientific excavations are to be carried out only after appropriate agreement has been made between a professional archaeologist or an institution of higher education and the agency or political subdivision responsible for such lands. A copy of such agreement shall be filed with the department.

(2) Amateur societies may engage in such activities by submitting and having approved by the responsible agency or political subdivision a written proposal detailing the scope and duration of the activity. Before approval, a proposal from an amateur society shall be submitted to the department for review and recommendation. The approving agency or political subdivision shall impose conditions on the scope and duration of the proposed activity necessary to protect the archaeological resources and ensure compliance with applicable federal, state, and local laws. The findings and results of activities authorized under this section shall be made known to the approving agency or political subdivision approving the activities and to the department. [2005 c 333 s 22; 2002 c 211 s 5; 1986 c 266 s 19; 1977 ex.s. c 195 s 15; 1975 1st ex.s. c 134 s 8.]

***Reviser's note:** RCW 27.53.030 was amended by 2008 c 275 s 5, removing the definition of "qualified archaeologist."

Purpose—2002 c 211: See note following RCW 27.53.020.

Severability—1986 c 266: See note following RCW 38.52.005.

Severability—1977 ex.s. c 195: See note following RCW 27.53.020.

RCW 27.53.090 Violations—Penalty. Any person, firm, or corporation violating any of the provisions of this chapter shall be guilty of a misdemeanor. Each day of continued violation of any provision of this chapter shall constitute a distinct and separate offense. Offenses shall be reported to the appropriate law enforcement agency or to the director. [1986 c 266 s 20; 1977 ex.s. c 195 s 16; 1975-'76 2nd ex.s. c 82 s 4; 1975 1st ex.s. c 134 s 9.]

Severability—1986 c 266: See note following RCW 38.52.005.

Severability—1977 ex.s. c 195: See note following RCW 27.53.020.

RCW 27.53.095 Knowing and willful failure to obtain or comply with permit—Penalties. (1) Persons found to have violated this

chapter, either by a knowing and willful failure to obtain a permit where required under RCW 27.53.060 or by a knowing and willful failure to comply with the provisions of a permit issued by the director where required under RCW 27.53.060, in addition to other remedies as provided for by law, may be subject to one or more of the following:

(a) Reasonable investigative costs incurred by a mutually agreed upon independent professional archaeologist investigating the alleged violation;

(b) Reasonable site restoration costs; and

(c) Civil penalties, as determined by the director, in an amount of not more than five thousand dollars per violation.

(2) Any person incurring the penalty may file an application for an adjudicative proceeding and may pursue subsequent review as provided in chapter 34.05 RCW and applicable rules of the department.

(3) Any penalty imposed by final order following an adjudicative proceeding becomes due and payable upon service of the final order.

(4) The attorney general may bring an action in the name of the department in the superior court of Thurston county or of any county in which the violator may do business to collect any penalty imposed under this chapter and to enforce subsection (5) of this section.

(5) Any and all artifacts in possession of a violator shall become the property of the state until proper identification of artifact ownership may be determined by the director.

(6) Penalties overturned on appeal entitle the appealing party to fees and other expenses, including reasonable attorneys' fees, as provided in RCW 4.84.350. [2005 c 333 s 23; 2002 c 211 s 4.]

Purpose—2002 c 211: See note following RCW 27.53.020.

RCW 27.53.100 Historic archaeological resources on state-owned aquatic lands—Discovery and report—Right of first refusal. Persons, firms, corporations, institutions, or agencies which discover a previously unreported historic archaeological resource on state-owned aquatic lands and report the site or location of such resource to the department shall have a right of first refusal to future salvage permits granted for the recovery of that resource, subject to the provisions of RCW 27.53.110. Such right of first refusal shall exist for five years from the date of the report. Should another person, firm, corporation, institution, or agency apply for a permit to salvage that resource, the reporting entity shall have sixty days to submit its own permit application and exercise its first refusal right, or the right shall be extinguished. [1988 c 124 s 5.]

Intent—Application—1988 c 124: See notes following RCW 27.53.030.

RCW 27.53.110 Contracts for discovery and salvage of state-owned historic archaeological resources. The director is hereby authorized to enter into contracts with other state agencies or institutions and with qualified private institutions, persons, firms, or corporations for the discovery and salvage of state-owned historic archaeological resources. Such contracts shall include but are not limited to the following terms and conditions:

(1) Historic shipwrecks:

(a) The contract shall provide for fair compensation to a salvor. "Fair compensation" means an amount not less than ninety percent of the appraised value of the objects recovered following successful completion of the contract.

(b) The salvor may retain objects with a value of up to ninety percent of the appraised value of the total objects recovered, or cash, or a combination of objects and cash. In no event may the total of objects and cash exceed ninety percent of the total appraised value of the objects recovered. A salvor shall not be entitled to further compensation from any state sources.

(c) The contract shall provide that the state will be given first choice of which objects it may wish to retain for display purposes for the people of the state from among all the objects recovered. The state may retain objects with a value of up to ten percent of the appraised value of the total objects recovered. If the state chooses not to retain recovered objects with a value of up to ten percent of the appraised value, the state shall be entitled to receive its share in cash or a combination of recovered objects and cash so long as the state's total share does not exceed ten percent of the appraised value of the objects recovered.

(d) The contract shall provide that both the state and the salvor shall have the right to select a single appraiser or joint appraisers.

(e) The contract shall also provide that title to the objects shall pass to the salvor when the permit is issued. However, should the salvor fail to fully perform under the terms of the contract, title to all objects recovered shall revert to the state.

(2) Historic aircraft:

(a) The contract shall provide that historic aircraft belonging to the state of Washington may only be recovered if the purpose of that salvage operation is to recover the aircraft for a museum, historical society, nonprofit organization, or governmental entity.

(b) Title to the aircraft may only be passed by the state to one of the entities listed in (a) of this subsection.

(c) Compensation to the salvor shall only be derived from the sale or exchange of the aircraft to one of the entities listed in (a) of this subsection or such other compensation as one of the entities listed in (a) of this subsection and the salvor may arrange. The salvor shall not have a claim to compensation from state funds.

(3) Other historic archaeological resources: The director, in his or her discretion, may negotiate the terms of such contracts. [1988 c 124 s 6.]

~~Intent—Application—1988 c 124:~~ See notes following RCW 27.53.030.

RCW 27.53.120 Recovery of property from historic archaeological sites—Mitigation of damage—Refusal to issue salvage permit to prevent destruction of resource. The salvor shall agree to mitigate any archaeological damage which occurs during the salvage operation. The department shall have access to all property recovered from historic archaeological sites for purposes of scholarly research and photographic documentation for a period to be agreed upon by the parties following completion of the salvage operation. The department shall also have the right to publish scientific papers concerning the results of all research conducted as project mitigation.

The director has the right to refuse to issue a permit for salvaging an historic archaeological resource if that resource would be destroyed beyond mitigation by the proposed salvage operation. Any agency, institution, person, firm, or corporation which has been denied a permit because the resource would be destroyed beyond mitigation by their method of salvage shall have a right of first refusal for that permit at a future date should technology be found which would make salvage possible without destroying the resource. Such right of first refusal shall be in effect for sixty days after the director has determined that salvage can be accomplished by a subsequent applicant without destroying the resource.

No person, firm, or corporation may conduct such salvage or recovery operation herein described without first obtaining such contract. [1988 c 124 s 7.]

Intent—Application—1988 c 124: See notes following RCW 27.53.030.

RCW 27.53.130 List of areas requiring permits. The department shall publish annually and update as necessary a list of those areas where permits are required to protect historic archaeological sites on aquatic lands. [1995 c 399 s 17; 1988 c 124 s 10.]

Intent—Application—1988 c 124: See notes following RCW 27.53.030.

RCW 27.53.140 Rule-making authority. The department shall have such rule-making authority as is necessary to carry out the provisions of this chapter. [1995 c 399 s 18; 1988 c 124 s 11.]

Intent—Application—1988 c 124: See notes following RCW 27.53.030.

RCW 27.53.150 Proceeds from state's property—Deposit and use. Any proceeds from the state's share of property under this chapter shall be transmitted to the state treasurer for deposit in the general fund to be used only for the purposes of historic preservation and underwater archaeology. [1988 c 124 s 12.]

Intent—Application—1988 c 124: See notes following RCW 27.53.030.