

WSR 21-06-075
PROPOSED RULES
PARKS AND RECREATION
COMMISSION

[Filed March 1, 2021, 11:15 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 20-18-102A.

Title of Rule and Other Identifying Information: WAC 352-37-340 Small-scale beach prospecting and placer mining, the proposal would update seashore conservation area rules governing equipment and the transport of sand for mineral prospecting.

Hearing Location(s): On April 15, 2021, at 9:00 a.m., state parks and recreation commission meeting. Meeting will be held remotely. A link for public comment will be posted on the Washington state parks and recreation commission (WSPRC) website.

Date of Intended Adoption: April 15, 2021.

Submit Written Comments to: Lisa Lantz, 1111 Israel Road S.W., Olympia, WA, email lisa.lantz@parks.wa.gov, fax 360-586-6647, by April 8, 2021.

Assistance for Persons with Disabilities: Contact Becki Ellison, phone 360-902-8502, fax 360-586-0355, TTY 711, email becki.ellison@parks.wa.gov, by April 5, 2021.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposed rule change would eliminate language in WAC 352-37-340 regarding allowable mineral prospecting equipment in the seashore conservation area and defer to equipment allowed by the Washington department of fish and wildlife in chapter 220-660 WAC. This change would eliminate any potential inconsistencies in equipment allowed by the two agencies. The proposed rule would also allow for the transport of ten gallons of sand per person per day, which would allow mineral prospectors to process material off-site. Current rule only permits the transport of concentrate.

Reasons Supporting Proposal: WAC 352-37-340 is being amended to incorporate requirements in ESHB 1261 (chapter 10, Laws of 2020), which made changes to the laws regulating motorized or gravity siphon mining. The proposal would update WAC-352-37-340 to align with these new statutory requirements, as well as revised hydraulic code rules under WAC 220-660-300 (Gold and Fish Pamphlet) that govern mineral prospecting.

Statutory Authority for Adoption: RCW 79A.05.030.

Statute Being Implemented: RCW 79A.05.165 and 79A.05.615.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: WSPRC, governmental.

Name of Agency Personnel Responsible for Drafting: Lisa Lantz, Olympia, 360-902-8641; Implementation and Enforcement: Matt Niles, Olympia, 360-725-9761.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is not required under RCW 34.05.328. RCW 34.05.328 (5)(a)(i) does not identify the WSPRC as one of the agencies required to prepare a cost-benefit analysis.

This rule proposal, or portions of the proposal, is exempt from requirements of the Regulatory Fairness Act because the proposal:

Is exempt under RCW 19.85.025(3) as the rules are adopting or incorporating by reference without material change federal

statutes or regulations, Washington state statutes, rules of other Washington state agencies, shoreline master programs other than those programs governing shorelines of statewide significance, or, as referenced by Washington state law, national consensus codes that generally establish industry standards, if the material adopted or incorporated regulates the same subject matter and conduct as the adopting or incorporating rule; and rule content is explicitly and specifically dictated by statute.

March 1, 2021
Valeria Veasley
Management Analyst

OTS-2928.2

AMENDATORY SECTION (Amending WSR 19-04-075, filed 2/1/19, effective 3/4/19)

WAC 352-37-020 Definitions. Whenever used in this chapter the terms below mean the following, unless the context clearly indicates otherwise:

"Access road" means a road designated by a city, county, or the state for the purpose of accessing the ocean beaches.

~~("Aggregate" means a mixture of minerals separable by mechanical or physical means.)~~

"Aircraft" means any machine designed to travel through the air, whether heavier or lighter than air; airplane, dirigible, balloon, helicopter, etc. The term aircraft does not include paraglider.

"Campfires" means any open flame from a wood source.

"Camping" means erecting a tent or shelter or arranging bedding, or both, between the hours of 11:00 p.m. and 6:00 a.m.; or parking a recreation vehicle or other vehicle for the purpose of remaining overnight.

"Commission" means the Washington state parks and recreation commission.

"Concentrate" means the valuable mineral content separated from aggregate.

~~("Concentrator" means a device used to physically or mechanically separate the valuable mineral content from aggregate.)~~

"Director" means the director of the Washington state parks and recreation commission or the director's designee.

"Driveable beach" means that area of the ocean beaches lying between the upper or landward limit of the hard sand area and the clam beds.

"Dry sand area" means that area lying above and to the landward side of the hard sand area as defined in this section.

"Excavation site" means the pit, furrow, or hole from which aggregate is removed to process and recover minerals or into which wastewater is discharged to settle out sediments.

"Fire" means any open flame from any source or device including, but not limited to, recreational fires, campfires, stoves, candles, torches, barbecues and charcoal.

"Fishtailing" means to swerve or skid from side to side.

~~(("Ganged equipment" means two or more pieces of mineral prospecting equipment coupled together to increase efficiency. An example is adding a second sluice to a high banker.))~~

"Geocache" means geocaches, letterboxes, and related activities. Geocaching is an outdoor treasure hunting game in which participants (called geocachers) use a Global Positioning System receiver or other navigational techniques to hide and seek containers (called "geocaches" or "caches").

~~(("Hand-held mineral prospecting tools" means tools that are held by hand and are not powered by internal combustion, hydraulic, or pneumatics. Examples include metal detectors, shovels, picks, trowels, hammers, pry bars, hand-operated winches, and battery-operated pumps specific to prospecting; and vac-paes.))~~

"Hard sand area" means that area over which the tide ebbs and flows on a daily basis; and which is sufficiently hard or firm to support the weight of, and to provide unhindered traction for, an ordinary passenger vehicle.

~~(("High banker" means a stationary concentrator that can be operated outside the wetted perimeter of the body of water from which the water is removed, using water supplied by hand or by pumping. A high banker consists of a sluice box, hopper, and water supply. Aggregate is supplied to the high banker by means other than suction dredging. This definition excludes rocker boxes.))~~

"Hovercraft" means a powered vehicle supported by a cushion of air capable of transporting persons.

"Intimidate" means to engage in conduct which would make a reasonable person fearful.

"Long Beach Peninsula" means that area of the ocean beaches as defined in this section lying between Cape Disappointment on the south and Leadbetter Point on the north.

"Mineral prospecting (~~(equipment)~~) tools" means any natural or manufactured device, implement, or animal (other than the human body) that can be used in any aspect of prospecting for or recovering minerals.

"Motor vehicle" means every vehicle that is self-propelled. For the purposes of this chapter, a motor vehicle must be approved for highway use in accordance with Title 46 RCW.

"North Beach" means that area of the ocean beaches as defined in this section lying between Damon Point on the south and Cape Flattery on the north.

"Obstruct pedestrian or vehicular traffic" means to walk, stand, sit, lie, or place an object in such a manner as to block passage by another person or a vehicle, or to require another person or a driver of a vehicle to take evasive action to avoid physical contact. Acts authorized as an exercise of one's constitutional right to picket or to legally protest, and acts authorized by a permit issued pursuant to WAC 352-32-165 does not constitute obstruction of pedestrian or vehicular traffic.

"Ocean beaches" means all lands fronting on the Pacific Ocean between Cape Disappointment and Leadbetter Point; between Toke Point and the south jetty on Point Chehalis; and between Damon Point and the Mahah Indian Reservation, and occupying the area between the line of ordinary high tide and the line of extreme low tide, as these lines now are or may hereafter be located, and, where applicable, between the Seashore Conservation Line, as established by survey of the commission and the line of extreme low tide, as these lines now are or may here-

after be located, or as defined in RCW 79A.05.605, provided, that the ocean beaches does not include any lands within the established boundaries of any Indian reservation.

~~(("Pan" means an open metal or plastic dish that can be operated by hand to separate gold or other minerals from aggregate by washing the aggregate.))~~

"Parasail" means a parachute-type device attached to a rope pulled by a motor vehicle, resulting in the participant being lifted from the ground by the force of the wind.

"Person" means all natural persons, firms, partnerships, corporations, clubs, and all associations or combinations of persons whenever acting for themselves or by an agent, servant, or employee.

"Placer" means a glacial or alluvial deposit of gravel or sand containing eroded particles of minerals.

~~(("Power sluice" means high banker.~~

~~"Power sluice/suction dredge combination" means a machine that can be used as a power sluice, or with minor modifications as a suction dredge.))~~

"Prospecting" means the exploration for minerals and mineral deposits.

~~(("Riffle" means the bottom of a concentrator containing a series of interstices or grooves to catch and retain a mineral such as gold.~~

~~"Rocker box" means a nonmotorized concentrator consisting of a hopper attached to a cradle and a sluice box that can be operated with a rocking motion.))~~

"Seashore conservation area" means all lands now or hereafter under state ownership or control as defined in RCW 79A.05.605.

~~(("Sluice" means a trough equipped with riffles across its bottom which can be used to recover gold and other minerals with the use of flowing water.))~~

"South Beach" means that area of the ocean beaches as defined in this section lying between Toke Point on the south and the south jetty on Point Chehalis on the north.

~~(("Spiral wheel" means a hand-operated or battery-powered rotating pan that is used to recover gold and minerals with the use of water.~~

~~"Suction dredge" means a machine that is used to move submerged aggregate via hydraulic suction. Aggregate is processed through an attached sluice box for the recovery of gold and other minerals.~~

~~"Wetted perimeter" means the areas of a watercourse covered with flowing or nonflowing water.))~~

"Wind/sand sailer" means a wheeled, wind-driven recreational conveyance.

[Statutory Authority: Chapter 79A.05 RCW. WSR 19-04-075, § 352-37-020, filed 2/1/19, effective 3/4/19; WSR 16-14-020, § 352-37-020, filed 6/24/16, effective 7/25/16. Statutory Authority: RCW 79A.05.030, 79A.05.165, and 79A.05.615. WSR 11-19-015, § 352-37-020, filed 9/8/11, effective 10/9/11. Statutory Authority: Chapter 79A.05 RCW. WSR 07-03-121, § 352-37-020, filed 1/22/07, effective 2/22/07. Statutory Authority: RCW 79A.05.030, 79A.05.035, 79A.05.070, 79A.05.165, 79A.05.605, and 79A.05.610. WSR 05-24-030, § 352-37-020, filed 11/30/05, effective 12/31/05. Statutory Authority: RCW 79A.05.030, 79A.05.035, 79A.05.055, 79A.05.070, and 79A.05.165. WSR 05-01-068, § 352-37-020, filed 12/9/04, effective 1/9/05. Statutory Authority: RCW 43.51.040. WSR 90-07-050, § 352-37-020, filed 3/19/90, effective 4/19/90.]

AMENDATORY SECTION (Amending WSR 11-19-015, filed 9/8/11, effective 10/9/11)

WAC 352-37-340 Small-scale beach prospecting and placer mining.

(1) Small-scale beach prospecting and placer mining is allowed year-round in the seashore conservation area, except within fifty feet on either side of designated ocean beach access roads.

(2) The director may close specific areas to beach prospecting or placer mining when deemed necessary for wildlife protection or public safety.

(3) Only ~~((hand-held))~~ mineral prospecting tools ~~((and the following mineral prospecting equipment))~~ approved for use on ocean beaches by the Washington department of fish and wildlife in chapter 220-660 WAC may be used in the seashore conservation area ~~((+~~

~~(a) Pans;~~

~~(b) Spiral wheels;~~

~~(c) Sluices, concentrators, rocker boxes, and high-bankers with riffle areas totaling ten square feet or less, including ganged equipment;~~

~~(d) Suction dredges that have suction intake nozzles with inside diameters that should be five inches or less, but shall be no greater than five and one-quarter inches to account for manufacturing tolerances and possible deformation of the nozzle. The inside diameter of the dredge hose attached to the nozzle may be no greater than one inch larger than the suction intake nozzle size;~~

~~(e) Power sluice/suction dredge combinations that have riffle areas totaling ten square feet or less, including ganged equipment, suction intake nozzles with inside diameters that should be five inches or less, but shall be no greater than five and one-quarter inches to account for manufacturing tolerances and possible deformation of the nozzle, and pump intake hoses with inside diameters of four inches or less. The inside diameter of the dredge hose attached to the suction intake nozzle may be no greater than one inch larger than the suction intake nozzle size; and~~

~~(f) High-bankers and power sluices that have riffle areas totaling ten square feet or less, including ganged equipment, and pump intake hoses with inside diameters of four inches or less.~~

~~(4) Upon request, other mineral prospecting equipment may be considered by the commission on a pilot basis)).~~

~~((+5)) (4) All trenches, depressions, or holes created in the beach during mining activities must be back-filled before working another excavation site.~~

~~((+6)) (5) Setting up or using mining equipment or conducting mining activities in a manner and/or location that subjects people, personal property, or park resources to injury or damage or impedes traffic on the driveable portion of the beach is prohibited.~~

~~((+7)) (6) A person may possess or transport up to ten gallons of sand or concentrate per day.~~

~~((+8)) (7) Any violation of this section is an infraction under chapter 7.84 RCW.~~

[Statutory Authority: RCW 79A.05.030, 79A.05.165, and 79A.05.615. WSR 11-19-015, § 352-37-340, filed 9/8/11, effective 10/9/11.]