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STATE OF WASHINGTON

WASHINGTON STATE PARKS AND RECREATION COMMISSION

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April 15, 2021

Item E-1: Seashore Conservation Area Mining Rule Amendment – Requested Action

EXECUTIVE SUMMARY: This item asks the Washington State Parks and Recreation Commission to amend Chapter 352-37 WAC to reflect changes made to state statute during the 2020 legislative session. This item advances the Commission’s strategic goal: “Customer Experience: Provide exceptional recreation, cultural and interpretive opportunities that all visitors enjoy and support.”

SIGNIFICANT BACKGROUND INFORMATION: During its 2008 session, the Washington State Legislature established a two-year pilot program to examine the impacts of small-scale mineral prospecting on ocean beaches. The report on the pilot project did not identify any significant user conflicts or natural resource impacts. Based on these results, the Commission asked staff to draft rules that would allow small-scale mineral prospecting and placer mining in the Seashore Conservation Area (SCA). Staff worked with the Washington Department of Fish and Wildlife (WDFW) and stakeholders to draft rules, which were adopted by the Commission in August 2011. Over the past decade, a small number of prospecting enthusiasts have participated in this activity in the SCA, and park staff has not noted any significant issues related to the activity.

In 2020, the Legislature passed Engrossed Substitute House Bill 1261, which made changes to the laws regulating motorized or gravity siphon mining. Specifically, the bill prohibits motorized or gravity siphon aquatic mining or discharge of effluent from such an activity to waters of the state that have been designated under the Endangered Species Act as critical habitat for salmon, steelhead, or bull trout. Staff is proposing that the Commission amend Chapter 352-37 WAC to align with these new statutory requirements and revised hydraulic code rules governing mineral prospecting adopted by WDFW (WAC 220-660-300).

Brief explanations of the proposed changes are listed below. A full version of proposed amendments to Chapter 352-37 WAC is included in Appendix 1.

WAC 352-37-010 Definitions

Several definitions related to allowable mining equipment are proposed for deletion. Proposed changes to WAC 352-37-340 eliminate mention of equipment types, so the definitions are no longer needed.

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

The proposed rule change would eliminate language regarding allowable mineral prospecting equipment in the SCA and defer to equipment allowed by WDFW in WAC 220-660. This change would address 2020 statutory changes and 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.

STAFF RECOMMENDATION: Staff recommends that the Commission adopt the proposed amendments to Chapter 352-37 WAC as included in Appendix 1. The updated language will align SCA rules with new statutory requirements, as well as revised hydraulic code rules under WAC 220-660-300 (Gold and Fish Pamphlet).

LEGAL AUTHORITY: RCW 79A.05.030, RCW 79A.05.610, and RCW 79A.05.615

SUPPORTING INFORMATION:

Appendix 1: Full Text of Proposed Changes to Chapter 352-37 WAC Ocean Beaches

REQUESTED ACTION OF COMMISSION:

That the Washington State Parks and Recreation Commission

1. Declare this meeting to be a public hearing for amending WAC 352-37.
2. Consider the data, views, and arguments submitted by any person on the proposed rules as published in the Washington State Register and as further modified herein.
3. Formally amend WAC 352-37.
4. Authorize the Director to file the regulations and to comply with all necessary procedural requirements.

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Reviewer(s):

Jessica Logan, SEPA REVIEW: Following review, staff has determined that the action proposed for the Commission by staff is exempt from the State Environment Policy Act (SEPA) pursuant to WAC 197-11-800 (19).

Van Church, Fiscal Impact Statement: Approval of this requested action has no fiscal impact at this time.

Andy Woo, Assistant Attorney General: Reviewed 3/26/2021

Peter Herzog, Assistant Director- Parks Development

Approved for Transmittal to Commission



Peter M. Mayer, Director

APPENDIX 1
Full Text of Proposed Changes to Chapter 352-37 WAC
Ocean Beaches

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, barbeques 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-pacs.))~~

"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 Makah 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 hereafter 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.]