AMENDATORY SECTION (Amending Order 98-252, filed 12/16/98, effective 1/16/99)

WAC 220-110-020 Definitions. As used in this chapter, unless the context clearly requires otherwise:

(1) "Abandoning an excavation site" means not working an excavation site for forty-eight hours or longer.

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

((~~(2)~~)) (3) "Aquatic beneficial plant" means native and nonnative aquatic plants not prescribed by RCW 17.10.010(10), and that are of value to fish life.

((~~(3)~~)) (4) "Aquatic noxious weed" means an aquatic weed on the state noxious weed list as prescribed by RCW 17.10.010(10).

((~~(4)~~)) (5) "Aquatic plant" means any aquatic noxious weed and aquatic beneficial plant that occurs within the ordinary high water line of waters of the state.

((~~(5)~~)) (6) "Artificial materials" means clean, inert materials that you use to construct diversion structures for mineral prospecting.

(7) "Bank" means any land surface above the ordinary high water line that adjoins a body of water and contains it except during floods. Bank also includes all land surfaces of islands above the ordinary high water line that adjoin a ((~~water~~)) body of water and that are below the flood elevation of their surrounding ((~~water~~)) body of water.

((~~(6)~~)) (8) "Beach area" means the beds between the ordinary high water line and extreme low tide.

((~~(7)~~)) (9) "Bed" means the land below the ordinary high water lines of state waters. This definition shall not include irrigation ditches, canals, storm water run-off devices, or other artificial watercourses except where they exist in a natural watercourse that has been altered by man.

((~~(8)~~)) (10) "Bed materials" means naturally occurring material, including, but not limited to, gravel, cobble, rock, rubble, sand, mud and aquatic plants, found in the beds of state waters. Bed materials may be found in deposits or bars above the wetted perimeter of water bodies.

((~~(9)~~)) (11) "Biodegradable" means material that is capable of being readily decomposed by biological means, such as by bacteria.

((~~(10)~~)) (12) "Bioengineering" means project designs or construction methods which use live woody vegetation or a combination of live woody vegetation and specially developed natural or synthetic materials to establish a complex root grid within the existing bank which is resistant to erosion, provides bank stability, and maintains a healthy riparian environment with habitat features important to fish life. Use of wood structures or

limited use of clean angular rock may be allowable to provide stability for establishment of the vegetation.

((~~(11)~~)) (13) "Bottom barrier or screen" means synthetic or natural fiber sheets of material used to cover and kill plants growing on the bottom of a watercourse.

((~~(12)~~)) (14) "Boulder" means a stream substrate particle larger than ten inches in diameter.

((~~(13)~~)) (15) "Bulkhead" means a vertical or nearly vertical erosion protection structure placed parallel to the shoreline consisting of concrete, timber, steel, rock, or other permanent material not readily subject to erosion.

((~~(14)~~)) (16) "Classify" means to sort aggregate through a screen, grizzly, or similar device to remove the larger material and concentrate the remaining aggregate.

(17) "Cofferdam" means a temporary enclosure used to keep water from a work area.

(18) "Complete written application" means any document that serves as application for a written hydraulic project approval under WAC 220-110-030 which is signed and dated by the applicant and authorized agent, and contains general plans for the overall project, complete plans and specifications for the proposed construction or work waterward of the MHHW line in salt water, or waterward of the ordinary high water line in fresh water, complete plans and specifications for the proper protection of fish life, and notice of compliance with any applicable requirements of the State Environmental Policy Act, unless otherwise provided for in chapter 77.55 RCW.

(19) "Concentrator" means a device used to physically or mechanically separate and enrich the valuable mineral content of aggregate. ((~~Pans, sluice boxes and mini-rocker boxes are examples of concentrators.~~

~~(15) "Cofferdam" means a temporary enclosure used to keep water from a work area.~~

~~(16)~~)) (20) "Control" means level of treatment of aquatic noxious weeds as prescribed by RCW 17.10.010(5).

((~~(17)~~)) (21) "Crevicing" means removing aggregate from cracks and crevices using hand-held mineral prospecting tools or water pressure.

(22) "Department" means the Washington department of fish and wildlife.

((~~(18)~~)) (23) "Diver-operated dredging" means the use of portable suction or hydraulic dredges held by SCUBA divers to remove aquatic plants.

((~~(19)~~)) (24) "Drawdown" means decreasing the level of standing water in a watercourse to expose bottom sediments and rooted plants.

((~~(20)~~)) (25) "Dredging" means removal of bed material using other than hand-held tools.

((~~(21)~~)) (26) "Early infestation" means an aquatic noxious weed whose stage of development, life history, or area of coverage makes one hundred percent control and eradication as prescribed by RCW 17.10.010(5) likely to occur.

((~~(22)~~)) (27) "Emergency" means an immediate threat to life, public or private property, or an immediate threat of serious environmental degradation, arising from weather or stream flow conditions, other natural conditions, or fire.

((~~(23)~~)) (28) "Entrained" means the entrapment of fish into a watercourse diversion without the presence of a screen, into high velocity water along the face of an improperly designed screen, or into the vegetation cut by a mechanical harvester.

((~~(24)~~)) (29) "Equipment" means any device powered by internal combustion; hydraulics; electricity, except less than one horsepower; or livestock used as draft animals, except saddle horses; and the lines, cables, arms, or extensions associated with the device.

((~~(25)~~)) (30) "Eradication((~~.~~))": See "control."

((~~(26)~~)) (31) "Established ford" means a crossing place in a watercourse that was in existence and annually used prior to 1986 or subsequently permitted by the department, and((~~,~~)) has identifiable approaches on the banks.

((~~(27)~~)) (32) "Excavation site" means the pit, furrow, or hole from which ((~~aggregate is being removed for the processing and recovery of~~)) you remove aggregate in order to process and recover minerals.

((~~(28)~~)) (33) "Extreme low tide" means the lowest level reached by a receding tide.

((~~(29)~~)) (34) "Farm and agricultural land" means those lands identified as such in RCW 84.34.020.

((~~(30)~~)) (35) "Filter blanket" means a layer or combination of layers of pervious materials (organic, mineral, or synthetic) designed and installed in such a manner as to provide drainage, yet prevent the movement of soil particles due to flowing water.

((~~(31)~~)) (36) "Fish life" means all fish species, including but not limited to food fish, shellfish, game fish, and other nonclassified fish species and all stages of development of those species.

((~~(32)~~)) (37) "Fishway" means any facility or device that is designed to enable fish to effectively pass around or through an obstruction without undue stress or delay.

((~~(33)~~)) (38) "Food fish" means those species of the classes Osteichthyes, Agnatha, and Chondrichthyes that shall not be fished for except as authorized by rule of the director of the Washington department of fish and wildlife.

((~~(34)~~)) (39) "Frequent scour zone" means the area between the wetted perimeter and the toe of the slope, comprised of aggregate, boulders, or bedrock. Organic soils are not present in the frequent scour zone.

(40) "Freshwater area" means those state waters and associated beds below the ordinary high water line that are upstream of river mouths including all lakes, ponds, and streams.

((~~(35)~~)) (41) "Game fish" means those species of the class Osteichthyes that shall not be fished for except as authorized by rule of the Washington fish and wildlife commission.

((~~(36)~~)) (42) "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 within the flow of water and aggregate.

(43) "General provisions" means those provisions that are contained in every HPA.

((~~(37)~~)) (44) "*Gold and Fish* pamphlet" means a document that details the rules for conducting small-scale and other prospecting and mining activities, and which serves as the hydraulic project approval for certain mineral prospecting and mining activities in Washington state.

(45) "Habitat improvement structures or stream channel improvements" means natural or human-made materials placed in or next to water bodies to make existing conditions better. Rock flow deflectors, engineered logjams, and artificial riffles are examples.

(46) "Hand cutting" means the removal or control of aquatic plants with the use of hand-held tools or equipment, or equipment that is carried by a person when used.

((~~(38) "Hand-held tools" means tools that are held by hand and are not powered by internal combustion, hydraulics, pneumatics, or electricity. Some examples of hand-held tools are shovels, rakes, hammers, pry bars and cable winches.~~

~~(39)~~)) (47) "Hand-held mineral prospecting tools" means:

(a) Tools that you hold by hand and are not powered by internal combustion, hydraulics, or pneumatics. Examples include metal detectors, shovels, trowels, rakes, hammers, pry bars, hand-operated winches, and battery-operated pumps specific to prospecting; and

(b) Vac-pacs.

(48) "Hatchery" means any water impoundment or facility used for the captive spawning, hatching, or rearing of fish and shellfish.

((~~(40) "Highbanker" means a stationary concentrator capable of being operated outside the wetted perimeter of the water body from which water is removed, and which is used to separate gold and other minerals from aggregate with the use of water supplied by hand or pumping, and consisting of a sluice box, hopper, and water supply. Aggregate is supplied to the highbanker by means other than suction dredging. This definition excludes mini-rocker boxes.~~

~~(41) "Highbanking" means the use of a highbanker for the recovery of minerals.~~

~~(42)~~)) (49) "High-banker" means a stationary concentrator that you can operate 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. You supply aggregate to the high-banker by means other than suction dredging. This definition excludes rocker boxes. See Figure 1.

Figure 1: Highbanker

---

(50) "High-banking" means using a high-banker to recover minerals.

(51) "Hydraulic project" means construction or performance of other work that will use, divert, obstruct, or change the natural flow or bed of any of the salt or fresh waters of the state. Hydraulic projects include forest practice activities, conducted pursuant to the forest practices rules (Title 222 WAC), that involve construction or performance of other work in or across the ordinary high water line of:

(a) Type 1-3 waters; or

(b) Type 4 and 5 waters with identifiable bed or banks where there is a hatchery water intake within two miles downstream; or

(c) Type 4 and 5 waters with identifiable bed or banks within one-fourth mile of Type 1-3 waters where any of the following conditions apply:

(i) Where the removal of timber adjacent to the stream is likely to result in entry of felled trees into flowing channels;

(ii) Where there is any felling, skidding, or ground lead yarding through flowing water, or through dry channels with identifiable bed or banks with gradient greater than twenty percent;

(iii) Where riparian or wetland leave trees are required and cable tailholds are on the opposite side of the channel;

(iv) Where road construction or placement of culverts occurs in flowing water;

(v) Where timber is yarded in or across flowing water;

(d) Type 4 and 5 waters with identifiable bed or banks that are likely to adversely affect fish life, where the HPA requirement is noted by the department in response to the forest practice application.

Hydraulic projects and associated permit requirements for specific project types are further defined in other sections of this chapter.

((~~(43) "Hydraulic project application" means a form provided by and submitted to the department of fish and wildlife accompanied by plans and specifications of the proposed hydraulic project.~~

~~(44)~~)) (52) "Hydraulic project approval" (HPA) means:

(a) A written approval for a hydraulic project signed by the director of the department of fish and wildlife, or the director's designates; or

(b) A verbal approval for an emergency hydraulic project from the director of the department of fish and wildlife, or the director's designates; or

(c) The following printed pamphlet approvals ((~~and any supplemental approvals to them. See "supplemental approval"~~)):

(i) A "*Gold and Fish*" pamphlet issued by the department, which identifies and authorizes specific minor hydraulic project activities for mineral prospecting and placer mining; or

(ii) An "Irrigation and Fish" pamphlet issued by the department, which identifies and authorizes specific minor hydraulic project activities; or

(iii) An "*Aquatic Plants and Fish*" pamphlet and any supplemental approvals to it issued by the department, which identifies and authorizes specific aquatic noxious weed and aquatic beneficial plant removal and control activities.

((~~(45) "Hydraulicing" means the use of water spray or water under pressure to dislodge minerals and other material.~~

~~(46)~~)) (53) "Job site" means the space of ground including and immediately adjacent to the area where work is conducted under the authority of ((~~a hydraulic project approval~~)) an HPA. For mineral prospecting and placer mining projects, the job site includes the excavation site.

((~~(47)~~)) (54) "Joint aquatic resources project application" or "JARPA" means a form provided by the department and other agencies which an applicant submits when requesting a written HPA for a hydraulic project.

(55) "Lake" means any natural or impounded body of standing freshwater, except impoundments of the Columbia and Snake rivers.

((~~(48)~~)) (56) "Large woody material" means trees or tree parts larger than four inches in diameter and longer than six feet, and rootwads, wholly or partially waterward of the ordinary high water line.

((~~(49)~~)) (57) "Mean higher high water" or "MHHW," means the tidal elevation obtained by averaging each day's highest tide at a particular location over a period of nineteen years. It is measured from the MLLW = 0.0 tidal elevation.

((~~(50)~~)) (58) "Mean lower low water" or "MLLW," means the 0.0 tidal elevation. It is determined by averaging each ((~~days'~~)) day's lowest tide at a particular location over a period of nineteen years. It is the tidal datum for vertical tidal references in the saltwater area.

((~~(51)~~)) (59) "Mechanical harvesting and cutting" means the partial removal or control of aquatic plants with the use of aquatic mechanical harvesters, which cut and collect aquatic plants, and mechanical cutters, which only cut aquatic plants.

((~~(52) "Mineral prospecting equipment" means any natural or manufactured device, implement, or animal other than the human body used in any aspect of prospecting for or recovering minerals.~~

~~Classifications of mineral prospecting equipment are as follows:~~

~~(a) Class 0 - nonmotorized pans.~~

~~(b) Class I.~~

~~(i) Pans.~~

~~(ii) Nonmotorized sluice boxes, concentrators and mini-rocker boxes with a riffle area not exceeding ten square feet, and not exceeding fifty percent of the width of the wetted perimeter of the stream.~~

~~(c) Class II.~~

~~(i) Suction dredges with a maximum nozzle size of four inches inside diameter.~~

~~(ii) Highbankers or suction dredge/highbanker combinations with a maximum water intake size of two and one-half inches inside diameter, when operated wholly below the ordinary high water line.~~

~~(d) Class III.~~

~~(i) Highbankers supplied with water from a pump with a maximum water intake size of two and one-half inches inside diameter, when used to process aggregate at locations two hundred feet or greater landward of the ordinary high water line.~~

~~(ii) Suction dredge/highbanker combinations supplied with water from a pump with a maximum water intake size of two and one-half inches inside diameter, when used to process aggregate at locations two hundred feet or greater landward of the ordinary high water line.~~

~~(iii) Other concentrators supplied with water from a pump with a maximum water intake size of two and one-half inches inside diameter, when used to process aggregate at locations two hundred feet or greater landward of the ordinary high water line.~~

~~(53)~~)) (60) "Mineral prospect" means to excavate, process, or classify aggregate using hand-held mineral prospecting tools and mineral prospecting equipment.

(61) "Mineral prospecting equipment" means any natural or manufactured device, implement, or animal (other than the human body) that you use in any aspect of prospecting for or recovering minerals.

(62) "Mini high-banker" means a high-banker with a riffle area of three square feet or less. See Figure 2.

Figure 2: Mini high-banker

(63) "Mini((-))rocker box" means a ((~~nonmotorized concentrator operated with a rocking motion and consisting of a hopper attached to a cradle and a sluice box with a riffle area not exceeding ten square feet. The mini-rocker box shall only be supplied with water by hand and be capable of being carried by one individual. A mini-rocker box shall not be considered a highbanker.~~

~~(54)~~)) rocker box with a riffle area of three square feet or less. See Figure 3.

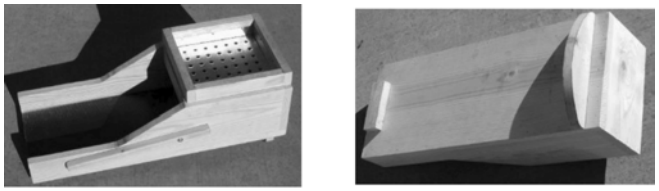

Figure 3: Mini rocker box (top view and bottom view)

(64) "Mining" means the production activity that follows mineral prospecting.

(65) "Mitigation" means actions ((~~which~~)) that shall be required as provisions of the HPA to avoid or compensate for impacts to fish life resulting from the proposed project activity. The type(s) of mitigation required shall be considered and implemented, where feasible, in the following sequential order of preference:

(a) Avoiding the impact altogether by not taking a certain action or parts of an action;

(b) Minimizing impacts by limiting the degree or magnitude of the action and its implementation;

(c) Rectifying the impact by repairing, rehabilitating, or restoring the affected environment;

(d) Reducing or eliminating the impact over time by preservation and maintenance operations during the life of the action;

(e) Compensating for the impact by replacing or providing substitute resources or environments; or

(f) Monitoring the impact and taking appropriate corrective measures to achieve the identified goal.

For projects with potentially significant impacts, a mitigation agreement may be required prior to approval. Replacement mitigation may be required to be established and functional prior to project construction.

((~~(55)~~)) (66) "Natural conditions" means those conditions ((~~which~~)) that arise in or are found in nature. This is not meant to include artificial or manufactured conditions.

((~~(56)~~)) (67) "No-net-loss" means:

(a) Avoidance or mitigation of adverse impacts to fish life; or

(b) Avoidance or mitigation of net loss of habitat functions necessary to sustain fish life; or

(c) Avoidance or mitigation of loss of area by habitat type. Mitigation to achieve no-net-loss should benefit those organisms being impacted.

((~~(57)~~)) (68) "Ordinary high water line" means the mark on the shores of all waters that will be found by examining the bed and banks and ascertaining where the presence and action of waters are so common and usual and so long continued in ordinary years, as to mark upon the soil or vegetation a character distinct from that of the abutting upland((~~:~~)), provided((~~,~~)) that in any area where the ordinary high water line cannot be found, the ordinary high water line adjoining saltwater shall be the line of ((~~mean higher high water~~)) MHHW, and the ordinary high water line adjoining freshwater shall be the elevation of the mean annual flood.

((~~(58)~~)) (69) "Pan" means ((~~the following equipment used to separate gold or other metal from aggregate by washing:~~

~~(a) An open, metal or plastic dish operated by hand; or~~

~~(b) A motorized rotating open, metal or plastic dish without pumped or gravity-fed water supplies.~~

~~(59)~~)) an open metal or plastic dish that you operate by hand to separate gold or other minerals from aggregate by washing the aggregate. See Figure 4.

Figure 4: Pan

---

(70) "Panning" means ((~~the use of~~)) using a pan to wash aggregate.

((~~(60)~~)) (71) "Person" means an individual or a public or private entity or organization. The term "person" includes local, state, and federal government agencies, and all business organizations.

((~~(61)~~)) (72) "Placer" means a glacial or alluvial deposit of gravel or sand containing eroded particles of minerals.

((~~(62)~~)) (73) "Pool" means a portion of the stream with reduced current velocity, often with water deeper than the surrounding areas.

((~~(63)~~)) (74) "Power sluice" means "high-banker."

(75) "Power sluice/suction dredge combination" means a machine that can be used as a power sluice, or with minor modifications, as a suction dredge. See Figure 5.

Figure 5: Power sluice/suction dredge combination

(76) "Process aggregate" or "processing aggregate" means the physical or mechanical separation or enrichment of the valuable mineral content within aggregate.

(77) "Prospecting" means the exploration for minerals and mineral deposits.

(78) "Protection of fish life" means prevention of loss or injury to fish or shellfish, and protection of the habitat that supports fish and shellfish populations.

((~~(64)~~)) (79) "Purple loosestrife" means Lythrum salicaria and Lythrum virgatum as prescribed in RCW 17.10.010(10) and defined in RCW 17.26.020 (5)(b).

((~~(65)~~)) (80) "Redd" means a nest made in gravel, consisting of a depression dug by a fish for egg deposition, and associated gravel mounds. See Figure 6.

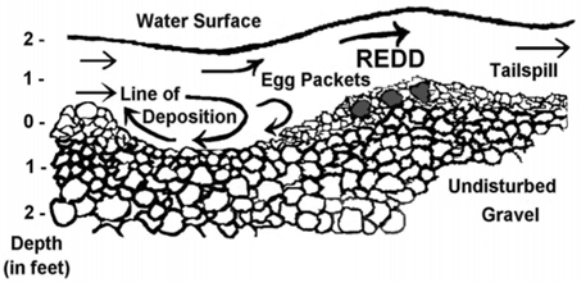

Figure 6: Cross section of a typical redd

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

((~~(66)~~)) (82) "River or stream." See "watercourse."

((~~(67)~~)) (83) "Rocker box" means a nonmotorized concentrator consisting of a hopper attached to a cradle and a sluice box that you operate with a rocking motion. See Figure 7.

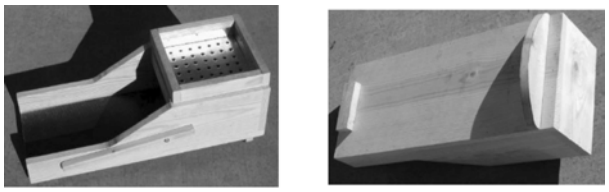

Figure 7: Rocker box (top view and bottom view)

(84) "Rotovation" means the use of aquatic rotovators which have underwater rototiller-like blades to uproot aquatic plants as a means of plant control.

((~~(68)~~)) (85) "Saltwater area" means those state waters and associated beds below the ordinary high water line and downstream of river mouths.

((~~(69)~~)) (86) "Shellfish" means those species of saltwater and freshwater invertebrates that shall not be taken except as authorized by rule of the director of the department of fish and wildlife. The term "shellfish" includes all stages of development and the bodily parts of shellfish species.

((~~(70)~~)) (87) "Slope" means:

(a) Any land surface above the frequent scour zone and wetted perimeter that adjoins a body of water. Slope also includes land surfaces of islands above the frequent scour zone that adjoin a body of water; or

(b) A stretch of ground forming a natural or artificial incline.

(88) "Sluice ((~~box~~))" means a trough equipped with riffles across its bottom, ((~~used to recover gold and other minerals with the use of water.~~

~~(71) "Sluicing" means the use of a sluice box for the recovery of gold and other minerals.~~

~~(72) "Small scale mineral prospecting equipment" encompasses the equipment included in "mineral prospecting equipment, Class I."~~

~~(73)~~)) which you use to recover gold and other minerals with the use of flowing water. See Figure 8.

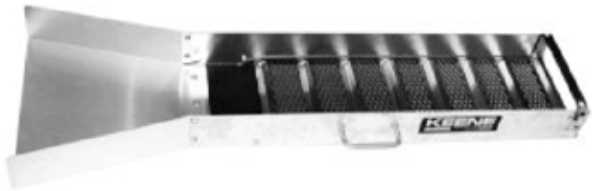

Figure 8: Sluice

(89) "Spartina" means Spartina alterniflora, Spartina anglica, Spartina x townsendii, and Spartina patens as prescribed in RCW 17.10.010(10) and defined in RCW 17.26.020 (5)(a).

((~~(74)~~)) (90) "Special provisions" means those conditions that are a part of the HPA, but are site- or project-specific, and are

used to supplement or amend the technical provisions.

((~~(75)~~)) (91) "Spiral wheel" means a battery powered rotating pan that you use to recover gold and minerals with the help of water. See Figure 9.

Figure 9: Spiral wheel

---

(92) "Stream-bank stabilization" means those projects which prevent or limit erosion, slippage, and mass wasting((~~,~~)), including, but not limited to, bank resloping, log and debris relocation or removal, planting of woody vegetation, bank protection (physical armoring of banks using rock or woody material, or placement of jetties or groins), gravel removal, or erosion control.

((~~(76)~~)) (93) "Suction dredge" means a machine ((~~equipped with an internal combustion engine or electric motor powering a water pump which is used~~)) that you can use to move submerged ((~~bed materials by means of~~)) aggregate via hydraulic suction. ((~~These bed materials are processed~~)) You process the aggregate through an attached sluice box for the recovery of gold and other minerals. See Figure 10.

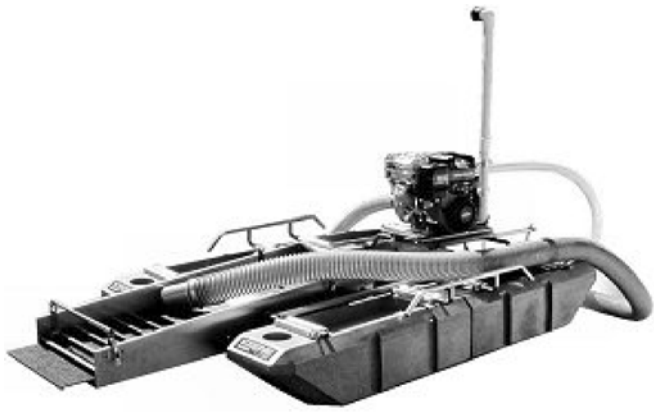

Figure 10: Suction dredge

((~~(77)~~)) (94) "Suction dredging" means ((~~the use of~~)) using a suction dredge for the recovery of gold and other minerals.

((~~(78)~~)) (95) "Supplemental approval" means a written addendum issued by the department to ((~~a~~)) an *Aquatic Plants and Fish* pamphlet HPA for approved exceptions to conditions of that pamphlet

HPA or for any additional authorization by the department when required by ((~~a~~)) the pamphlet HPA. See "hydraulic project approval."

((~~(79)~~)) (96) "Tailings" means the waste material ((~~remaining~~)) that remains after ((~~processing~~)) you process aggregate for minerals.

((~~(80)~~)) (97) "Technical provisions" means those conditions that are a part of the HPA and apply to most projects of that nature.

((~~(81)~~)) (98) "Toe of the bank" means the distinct break in slope between the stream bank or shoreline and the stream bottom or marine beach or bed, excluding areas of sloughing. For steep banks that extend into the water, the toe may be submerged below the ordinary high water line. For artificial structures, such as jetties or bulkheads, the toe refers to the base of the structure, where it meets the stream bed or marine beach or bed.

((~~(82)~~)) (99) "Toe of the slope" means the base or bottom of a slope at the point where the ground surface abruptly changes to a significantly flatter grade.

(100) "Unstable slope" means a slope with visible evidence of slumping, sloughing or other movement. Evidence of unstable slopes includes landslides, uprooted or tilted trees, exposed soils, water-saturated soils, and mud, or the recent erosion of soils and sediment. Woody vegetation is typically not present on unstable slopes.

(101) "Vac-pac" means a motorized, portable vacuum used for prospecting. See Figure 11.

Figure 11: Vac pac

(102) "Viable" means that any plant or plant part is capable of taking root or living when introduced into a body of water.

((~~(83)~~)) (103) "Watercourse" and "river or stream" means any portion of a channel, bed, bank, or bottom waterward of the ordinary high water line of waters of the state, including areas in which fish may spawn, reside, or ((~~through which they may~~)) pass,

and tributary waters with defined bed or banks, which influence the quality of fish habitat downstream. This includes watercourses which flow on an intermittent basis or which fluctuate in level during the year and applies to the entire bed of such watercourse whether or not the water is at peak level. This definition does not include irrigation ditches, canals, storm water run-off devices, or other entirely artificial watercourses, except where they exist in a natural watercourse ((~~which~~)) that has been altered by humans.

((~~(84)~~)) (104) "Water right" means a certificate of water right, a vested water right or a claim to a valid vested water right, or a water permit, pursuant to Title 90 RCW.

((~~(85)~~)) (105) "Waters of the state" or "state waters" means all salt waters and fresh waters waterward of ordinary high water lines and within the territorial boundaries of the state.

((~~(86)~~)) (106) "Water type" means water categories as defined in WAC 222-16-030 of the forest practice rules and regulations.

((~~(87)~~)) (107) "Weed rolling" means the use of a mechanical roller designed to control aquatic plant growth.

((~~(88)~~)) (108) "Wetted perimeter" means the areas of a watercourse covered with flowing or nonflowing water((~~, flowing or nonflowing~~)).

(109) "Woody vegetation" means perennial trees and shrubs having stiff stems and bark. Woody vegetation does not include grasses, forbs, or annual plants.

AMENDATORY SECTION (Amending Order 94-160, filed 11/14/94, effective 12/15/94)

WAC 220-110-030 Hydraulic project approvals--Procedures. (1) A person shall obtain an HPA before conducting a hydraulic project.

(2) ((~~A person seeking an HPA shall submit~~)) Receipt by the department of any one of the following documents constitutes an application for a written HPA:

(a) A joint aquatic resources permit application (JARPA) submitted to the department;

(b) A forest practice application submitted to the department of natural resources, if the hydraulic project is part of a forest practice as defined in WAC 222-16-010; or

(c) A section 10 or 404 public notice circulated by the United States Army Corps of Engineers or United States Coast Guard.

(3) You shall request a written HPA by submitting a complete written application to the department. ((~~The~~)) You shall request a pamphlet HPA by following the procedures in WAC 220-110-031. Your application for a written HPA shall contain general plans for the overall project, complete plans and specifications for the proposed construction or work waterward of the ((~~mean higher high water~~)) MHHW line in salt water, or waterward of the ordinary high

water line in fresh water, ((~~and~~)) complete plans and specifications for the proper protection of fish life, and notice of compliance with any applicable requirements of the State Environmental Policy Act, unless otherwise provided for in chapter 77.55 RCW. You and your agent must sign and date the application ((~~shall be signed and dated by the applicant or their agent.~~

~~(3) Receipt of any one of the following documents constitutes application for an HPA:~~

~~(a) A completed hydraulic project application submitted to the department;~~

~~(b) A completed forest practice application submitted to the department of natural resources, if the hydraulic project is part of a forest practice as defined in WAC 222-16-010; or~~

~~(c) A section 10 or 404 public notice circulated by the United States Army Corps of Engineers or United States Coast Guard~~)).

(4) The department shall grant or deny approval within forty-five calendar days of the receipt of a complete written application ((~~and notice of compliance with any applicable requirements of the State Environmental Policy Act (SEPA) (chapter 43.21C RCW)~~)). The department shall strive to issue HPAs in less than thirty days. The forty-five day requirement shall be suspended if:

(a) ((~~An incomplete application is received;~~

~~(b)~~)) The site is physically inaccessible for inspection;

((~~(c)~~)) (b) You or your agent remains unavailable or unable to arrange for a timely field evaluation of the proposed project after ten working days of the department's receipt of the application((~~, the applicant remains unavailable or unable to arrange for a timely field evaluation of the proposed project~~));

((~~(d) The applicant~~)) (c) You or your agent requests a delay;

(d) The department is issuing a permit for a storm water discharge and is complying with the requirements of RCW 77.55.161 (3)(b); or

(e) The department is reviewing the application as part of a multiagency permit streamlining effort and all participating permitting agencies and the permit applicant agree to an extended timeline longer than forty-five calendar days.

(5) Immediately upon determination that the forty-five day period is suspended, the department shall notify the applicant in writing of the reasons for the delay.

(6) The department or the county legislative authority may determine an imminent danger exists. The county legislative authority shall notify the department, in writing, if it determines that an imminent danger exists. In cases of imminent danger, the department shall issue an expedited written permit, upon request, for work to remove any obstructions, repair existing structures, restore banks, protect fish resources, or protect property.

(7) The department may issue an expedited written HPA in those instances where normal processing would result in ((~~unanticipated extreme~~)) significant hardship for the applicant, or unacceptable environmental damage would occur. ((~~An expedited HPA may be granted upon request for work to repair existing structures, move obstructions, restore banks, protect property, or protect fish~~

~~resources that are subject to imminent danger by weather, flow, or other natural conditions.~~))

(8) Expedited HPA requests require a complete written application and shall take precedence over other nonemergency applications ((~~and~~)). These will ((~~normally~~)) be issued within ((~~ten~~)) fifteen calendar days of ((~~request~~)) receipt of a complete written application. ((~~All SEPA requirements shall be met prior to issuance of an expedited HPA.~~)) The provisions of the State Environmental Policy Act, chapter 43.21C RCW, are not required for expedited written HPAs.

((~~(7)~~)) (9) The county legislative authority or the department may declare an emergency or continue an existing declaration of an emergency where there is an immediate threat to life, the public, property, or of environmental degradation. Upon the declaration of an emergency, the department shall grant verbal approval ((~~shall be granted~~)) immediately upon request for ((~~emergency work to repair existing structures, move obstructions, restore banks, or protect property that is subject to immediate danger by weather, flow, or other natural conditions. Verbal approval shall be granted immediately upon request for driving across a stream during an emergency, as defined in WAC 220-110-020~~)) a stream crossing, or work to remove any obstructions, repair existing obstructions, restore streambanks, protect fish life, or protect property threatened by the stream or a change in the stream flow. The verbal approval shall be obtained prior to commencing emergency work and the department must issue a written HPA reflecting the conditions of the verbal approval within thirty days. The provisions of the State Environmental Policy Act, chapter 43.21C RCW, are not required for emergency HPAs.

((~~(8)~~)) (10) The department may accept written or verbal requests for time extensions, renewals, or alterations of an existing HPA. The request must be processed within forty-five calendar days of receipt of the request. Approvals of such requests shall be in writing. Transfer of an HPA to a new permittee requires written request by the original permittee or their agent and such request shall include the HPA number. This written request shall be in a form acceptable to the department and shall ((~~contain an affirmation by~~)) include a statement that the new permittee ((~~that he/she~~)) agrees to be bound by the conditions ((~~on~~)) in the HPA. ((~~Project activity~~)) The new permittee shall not ((~~be conducted by the new permittee~~)) conduct any project activities until ((~~approval has been issued by~~)) the department has issued approval.

((~~(9)~~)) (11) Each HPA is usually specific to a watercourse, stating the exact location of the project site, and usually consists of general, technical, and special provisions.

((~~(10)~~)) (12) The written HPA, or clear reproduction, shall be on the project site when work is being conducted and shall be immediately available for inspection.

((~~(11) All~~)) (13) The department may grant HPAs ((~~may be granted~~)) for a period of up to five years. Permittees shall demonstrate substantial progress on construction of that portion of

the project relating to the (HPA) within two years of the date of issuance. The following types of HPAs issued under RCW ((~~75.20.103~~)) 77.55.021 shall remain in effect without the need for periodic renewal, provided the permittee notifies the department before commencing ((~~the~~)) work each year((~~.~~)):

(a) Work of a seasonal nature that diverts water for irrigation or stock watering purposes((~~.~~)); and

(b) Stream-bank stabilization projects if the problem causing the erosion occurs on an annual or more frequent basis as demonstrated by the applicant. Evidence of erosion may include, but is not limited to, history of permit application, approval, or photographs. Periodic ((~~flood waters~~)) floodwaters by themselves do not constitute ((~~the~~)) a problem that requires ((~~a~~)) an HPA.

((~~(12) A hydraulic project application~~)) (14) An HPA shall be denied when, in the judgment of the department, the project will result in direct or indirect harm to fish life, unless adequate mitigation can be assured by conditioning the HPA or modifying the proposal. If approval is denied, the department shall provide the applicant, in writing, a statement of the specific reason(s) why and how the proposed project would adversely affect fish life.

((~~(13)~~)) (15) Protection of fish life shall be the only grounds upon which the department may deny or condition an HPA ((~~may be denied or conditioned~~)).

((~~(14)~~)) (16) The department may place specific time limitations on project activities in HPAs ((~~may have specific time limitations on project activities~~)) to protect fish life.

((~~(15)~~)) (17) HPAs do not exempt the applicant from obtaining other appropriate permits and following the rules or regulations of local, federal, and other Washington state agencies.

((~~(16) Administration of~~)) (18) The department shall administer this chapter ((~~shall be conducted~~)) in compliance with SEPA, chapter 43.21C RCW, and chapters 197-11, 220-100, and 232-19 WAC.

((~~(17) All HPAs issued pursuant to RCW 75.20.100 and 75.20.160 may be subject to additional restrictions, conditions, or revocation if the department determines that new biological or physical information indicates the need for such action. The permittee has the right to request an informal or formal appeal in accordance with chapter 34.05 RCW. All HPAs issued pursuant to RCW 75.20.103 may be modified by the department due to changed conditions after consultation with the permittee: Provided however, That modifications of HPAs issued pursuant to RCW 75.20.103 and 75.20.160 shall be subject to appeal to the hydraulic appeals board established in RCW 75.20.130.~~)) (19) The department may, after consultation with the permittee, modify an HPA due to changed conditions. The modification becomes effective unless appealed to the department or the hydraulic appeals board as specified in RCW 77.55.021(4), 77.55.301(5), WAC 220-110-340 and 220-110-350.

AMENDATORY SECTION (Amending Order 98-252, filed 12/16/98, effective 1/16/99)

WAC 220-110-031 Pamphlet hydraulic project approvals--Procedures. (1) In those instances where a pamphlet is the equivalent of ((~~an HPA~~)) a hydraulic project approval (HPA) as defined in WAC 220-110-020((~~(44)~~)) (52), a person shall obtain a pamphlet HPA issued by the department, which identifies and authorizes specific minor hydraulic project activities before conducting a hydraulic project.

(2) You may submit requests for pamphlet HPAs to the department verbally or in writing.

(3) The department may grant exceptions to a pamphlet HPA if you apply for a written HPA as described in WAC 220-110-030, or for supplemental approvals to the *Aquatic Plants and Fish* pamphlet HPA as defined in WAC 220-110-020((~~(44)~~)) (52) and 220-110-020((~~(78)~~)) (95). Exceptions to a pamphlet HPA shall require written authorization by the department.

((~~(3)~~)) (4) You may submit applications ((~~submitted to the department~~)) for *Aquatic Plants and Fish* pamphlet supplemental approvals ((~~may be verbal or written~~)) verbally or in writing to the department.

(a) Your supplemental approval application((~~s~~)) shall specify the requested exception or request for additional authorization and shall include ((~~the applicant's~~)) your name, address and phone number. You shall sign and date written applications ((~~shall be signed and dated~~)).

(b) The department shall grant or deny a request for a supplemental approval within forty-five calendar days of the receipt of a request for supplemental approval.

((~~(4) The supplemental approval shall be attached to the pamphlet HPA and shall be on the job site when work is being conducted and shall be immediately available for inspection.~~))

(5) Except as provided in WAC 220-110-201, you shall have the pamphlet HPA, ((~~or clear reproduction, shall be~~)) and any supplemental approvals to it on the job site when work is being conducted and shall ((~~be~~)) make them immediately available for inspection upon request.

(6) ((~~The pamphlet HPA shall be conditioned to ensure protection of fish life.~~

~~(7)~~)) Pamphlet HPAs do not exempt ((~~the applicant~~)) you from obtaining other appropriate permits and following the rules ((~~or~~)) and regulations of local, federal, and other Washington state agencies.

((~~(8) Administration of this chapter shall be conducted in compliance with SEPA, chapter 43.21C RCW, and chapters 197-11, 220-100, and 232-19 WAC.~~))

AMENDATORY SECTION (Amending Order 98-252, filed 12/16/98, effective 1/16/99)

WAC 220-110-200 Mineral prospecting ((~~technical provisions~~)). WAC 220-110-201 through ((~~220-110-205~~)) 220-110-206 set forth ((~~technical provisions~~)) the rules necessary to protect fish life that ((~~shall~~)) apply to mineral prospecting and placer mining projects ((~~as necessary to protect fish life. Additional special provisions may be included in written HPAs as necessary to address site-specific conditions. Written HPAs shall also have specific time limitations on project activities to protect fish life. Timing limitations for projects conducted under authority of the *Gold and Fish* pamphlet are found in WAC 220-110-206 through 220-110-209. Saltwater provisions may be applied to tidally influenced areas upstream of river mouths and the mainstem Columbia River downstream of Bonneville Dam where applicable in written HPAs.~~)) Timing limitations for projects conducted under authority of the *Gold and Fish* pamphlet are found in WAC 220-110-206. A copy of the current *Gold and Fish* pamphlet is available from the department, and it contains the rules which you must follow when mineral prospecting under its authority. You may request exceptions to the *Gold and Fish* pamphlet by applying for an individual written HPA as indicated in WAC 220-110-031. The department may incorporate mitigation measures necessary to address site-specific conditions and protect fish life when authorizing individual written HPAs for mineral prospecting. The department may prohibit activities when prospecting and mining impacts adversely affect fish habitat for which no proven mitigation methods are available. The department may apply saltwater provisions to written HPAs for tidally influenced areas upstream of river mouths and the mainstem Columbia River downstream of Bonneville Dam where applicable.

AMENDATORY SECTION (Amending Order 98-252, filed 12/16/98, effective 1/16/99)

WAC 220-110-201 ((~~Common~~)) mineral prospecting ((~~technical provisions~~)) without timing restrictions. ((~~A copy of the current *Gold and Fish* pamphlet available from the department shall serve as an HPA, unless otherwise indicated, and be on the job site at all times. Mineral prospecting and placer mining projects authorized through a written HPA may incorporate additional mitigation measures as necessary to achieve no-net-loss of productive capacity of fish and shellfish habitat. Project activities may be prohibited where project impacts adversely affect fish habitats for which no proven mitigation methods are available. The following technical provisions shall apply to all mineral prospecting and placer mining projects.~~

~~(1) Excavation, collection and processing of aggregate from~~

~~the bed shall comply with the timing and location restrictions specified in WAC 220-110-206 through 220-110-209. Excavation, collection and processing of aggregate within the wetted perimeter shall only occur between 5:00 a.m. and 11:00 p.m.~~

~~(2) Excavation sites shall be separated by at least two hundred feet.~~

~~(3) There shall be no excavation, collection or processing of aggregate within four hundred feet of any fishway, dam or hatchery water intake.~~

~~(4) Except as specified in WAC 220-110-203, aggregate collected from outside the bed shall not be washed, sluiced, processed or deposited within two hundred feet landward of the ordinary high water line.~~

~~(5) A maximum of five individuals eight years of age and over may collect and process aggregate from any excavation site. No more than one pit, furrow or pothole at a time shall be excavated by any one individual.~~

~~(6) Excavations shall not occur between the ordinary high water line and two hundred feet landward of the ordinary high water line. Excavations between the ordinary high water line and the toe of the bank shall not result in undercutting below the ordinary high water line or in disturbance of land surfaces above the ordinary high water line.~~

~~(7) There shall be no disturbance of live rooted vegetation of any kind. Woody debris jams and large woody material shall not be disturbed in any manner.~~

~~(8) With the exception of aggregate excavated by a suction dredge, all excavations of aggregate shall only be performed by hand or with hand-held tools. A maximum of one hand-operated cable, chain or rope winch may be used to move bed material below the ordinary high water line. Additional safety cables, chains or ropes may be attached to this material provided they do not offer a mechanical advantage and are used solely to hold material in place. The use of horses, other livestock or motorized mineral prospecting equipment, except those specifically authorized under WAC 220-110-203 through 220-110-205, is prohibited. Materials too large to be moved with a single hand-operated cable, chain or rope winch shall not be disturbed.~~

~~(9) Boulders may be moved only to facilitate collection of aggregate underneath them. Boulders shall be immediately replaced in their original location prior to working another excavation site or leaving the excavation site. Not working the excavation site for more than sixteen hours constitutes leaving the site.~~

~~(10) Only equipment, methods, locations and timing for processing aggregate specified in WAC 220-110-201 through 220-110-209 are authorized. Exceptions shall require additional authorization from the department in the form of a supplemental approval to the *Gold and Fish* pamphlet or a written HPA. A written HPA shall be required for exceptions in cases where "submit application" or "closed" is listed for state waters in WAC 220-110-206 through 220-110-209. Only the following exceptions may be authorized through a supplemental approval to the *Gold and Fish*~~

pamphlet:

(a) Timing and location only for Class I and Class II mineral prospecting equipment.

(b) Location only for Class III mineral prospecting equipment.

(11) With the exception of sieves for classifying aggregate, mineral prospecting equipment shall not be combined in series, joined or ganged with additional mineral prospecting equipment to increase the riffle area or efficiency of mineral recovery of a single piece of mineral prospecting equipment.

(12) There shall be no damming or diversion of the flowing stream except as provided in WAC 220-110-203 (4)(d).

(13) Prior to working another excavation site or leaving the excavation site, tailings of aggregate collected from below the ordinary high water line shall be returned to the location from which the aggregate was originally collected. Sand and lighter material washed away by the streamflow during aggregate processing and tailings resulting from suction dredging may be left where processed.

(14) Except as required in subsection (13) of this section, tailings shall not be deposited in existing pools.

(15) Incubating fish eggs or fry shall not be disturbed. If fish eggs or fry are encountered during excavation of the bed, operations shall immediately cease and the department shall be notified immediately. No further excavations shall occur until all eggs and fry have emerged from the gravel. Further approval shall be required by the department prior to resuming mineral prospecting or placer mining activities in that stream.

(16) Beds containing live freshwater mussels shall not be disturbed. If live mussels are encountered during excavation of the bed, operations shall immediately cease and shall be relocated a minimum of two hundred feet from them.

(17) All pits, furrows, tailing piles, and potholes created during excavation or processing of aggregate shall be leveled or refilled with bed materials or tailings prior to working another excavation site or leaving the excavation site. Not working the excavation site for more than sixteen hours constitutes leaving the site. No more than one pit, furrow or pothole at a time shall be excavated.

(18) Fish entrapped within pits, furrows or potholes created during excavation or processing of aggregate shall immediately be safely collected and returned to flowing waters and the pits, furrows or potholes leveled or filled.

(19) At no time shall mining or prospecting activity create a blockage or hindrance to either the upstream or downstream passage of fish.

(20) If at any time as a result of project activities or water quality problems, fish life are observed in distress or a fish kill occurs, operations shall cease and both the department and the department of ecology shall be notified of the problem immediately. Work shall not resume until further approval is given by the department. Additional measures to mitigate impacts may be required.

~~(21) No motorized, tracked, or wheeled vehicles shall be:~~

~~(a) Operated or allowed below the ordinary high water line of the stream; or~~

~~(b) Be operated so as to affect the bed or flow of waters of the state in any way.~~

~~(22) Entry onto private property or removal of minerals from an existing mining claim or state-owned lands without the permission of the landowner or claim holder is not authorized. The permittee is responsible for determining land ownership, land status (i.e., open to entry under the mining laws) and the status and ownership of any mining claims.~~

~~(23) Mercury and other hazardous materials shall not be used on the job site for amalgamating minerals.~~

~~(24) Mercury, lead and other hazardous materials removed from aggregate or collected in concentrators during processing of aggregate shall not be returned to waters of the state and shall be disposed of as specified by the department of ecology. Contact the department of ecology for direction on disposal.~~

~~(25) Once mining or prospecting at a job site is completed, or mining or prospecting is not conducted at the job site for more than one week, the job site shall be restored to preproject conditions, all disturbed areas shall be protected from erosion and revegetated with native plants, and all pits, furrows, tailing piles, and potholes shall be leveled or refilled as required in subsection (17) of this section.~~)) You may mineral prospect year-round in all waters of the state, except lakes or salt waters. You must follow the rules listed below, but you do not need to have the rules with you or on the job site.

(1) You may use only hand-held mineral prospecting tools and the following mineral prospecting equipment when mineral prospecting without timing restrictions:

(a) Pans;

(b) Spiral wheels;

(c) Sluices, concentrators, mini rocker boxes, and mini high-bankers with riffle areas totaling three square feet or less, including ganged equipment.

(2) You may not use vehicle-mounted winches. You may use one motorized winch and one hand-operated winch to move boulders and large woody material that is not embedded, and additional cables, chains, or ropes to stabilize them.

(3) You may not disturb fish life or redds. If you observe or encounter fish life, redds, or actively spawning fish when collecting or processing aggregate, you must relocate your operations.

(4) Rules for excavating:

(a) You may excavate only by hand or with hand-held mineral prospecting tools.

(b) You may not excavate, collect, or remove aggregate from within the wetted perimeter. See Figures 1 and 2.

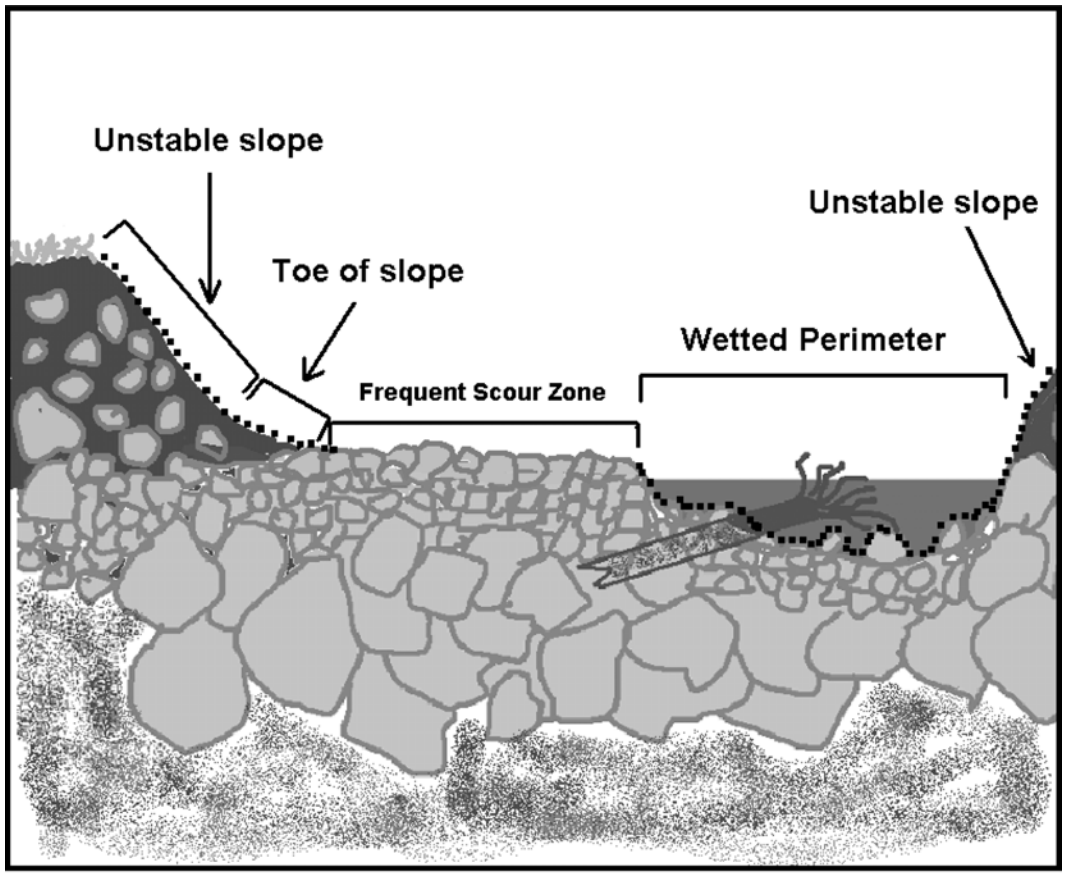

Figure 1: Cross section of a typical body of water, showing areas where excavation is not permitted under rules for mineral prospecting without timing restrictions. Dashed lines indicate areas where excavation is not permitted.

(c) Only one excavation site per individual is allowed. However, you may use a second excavation site as a settling pond. Multiple individuals may work within a single excavation site.

(d) You may not stand within, or allow aggregate to enter, the wetted perimeter when collecting or excavating aggregate.

(e) You must fill all excavation sites and level all tailing piles prior to moving to a new excavation site or abandoning an excavation site. If you move boulders, you must return them, as best as you can, to their approximate, original location.

(f) You may not undermine, move, or disturb large woody material embedded in the slopes or located wholly or partially within the wetted perimeter. You may move large woody material and boulders located entirely within the frequent scour zone, but you must keep them within the frequent scour zone. You may not cut large woody material. See Figure 2.

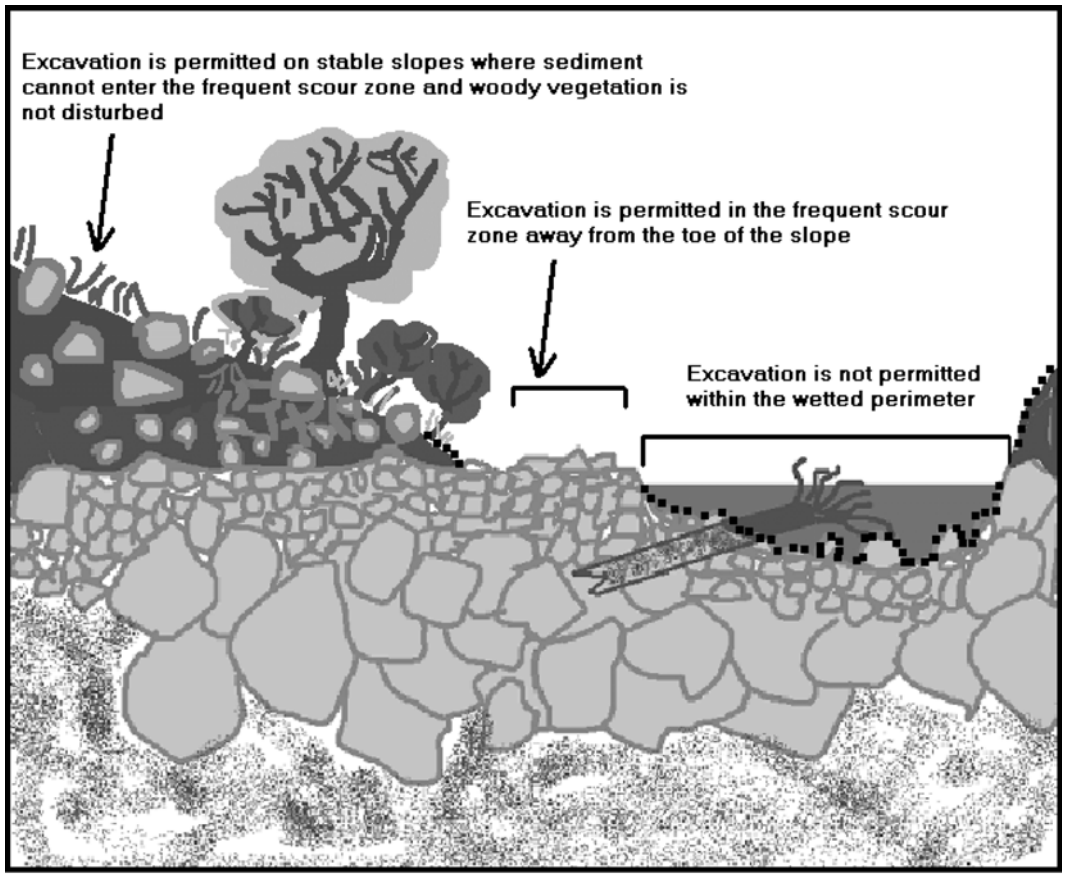

Figure 2: Permitted and prohibited excavation sites in a typical body of water under rules for mineral prospecting without timing restrictions. Dashed lines indicate areas where excavation is not permitted.

(g) You may not undermine, cut, or disturb live, rooted woody vegetation of any kind.

(h) You may not excavate or collect aggregate from an unstable slope, the toe of the slope, or a portion of the slope that delivers, or has the potential to deliver, sediment to the wetted perimeter or frequent scour zone. See Figures 3 and 4.

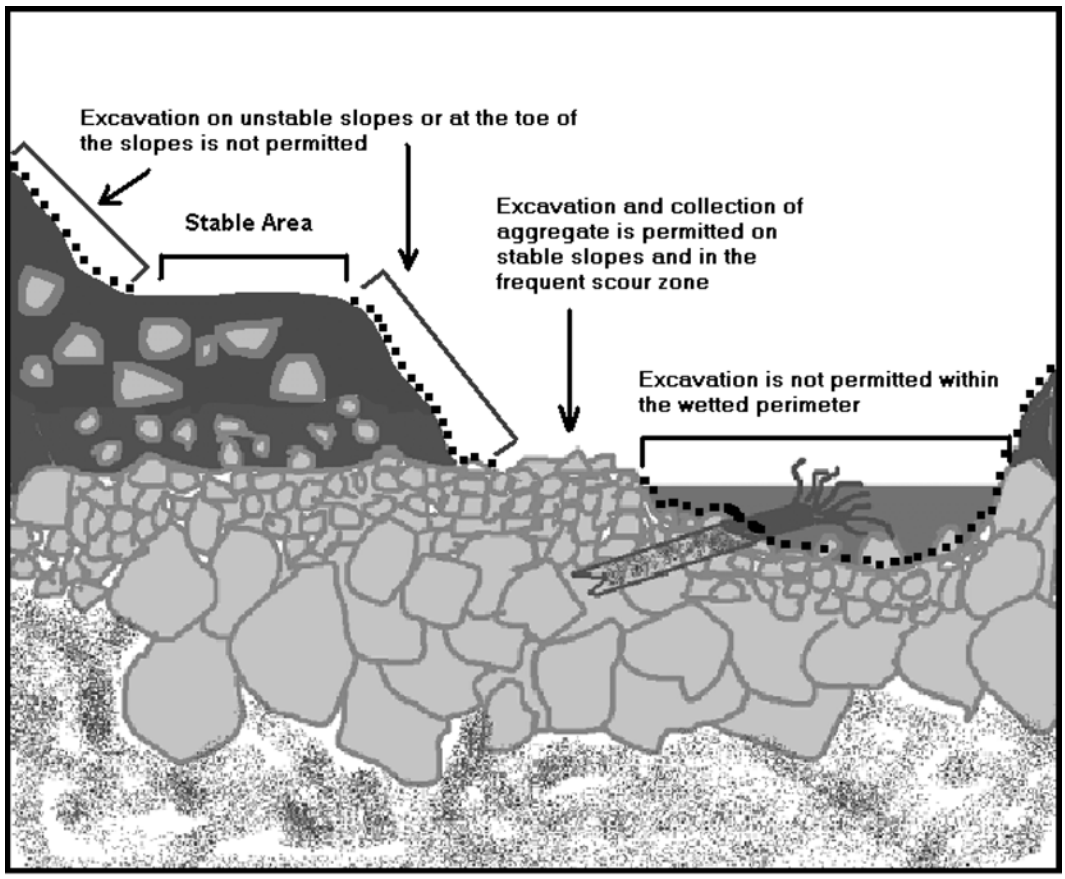

Figure 3: Cross section of a typical body of water, showing unstable slopes, stable areas, and permissible or prohibited excavation sites under rules for mineral prospecting without timing restrictions. Dashed line indicates areas where excavation is not permitted.

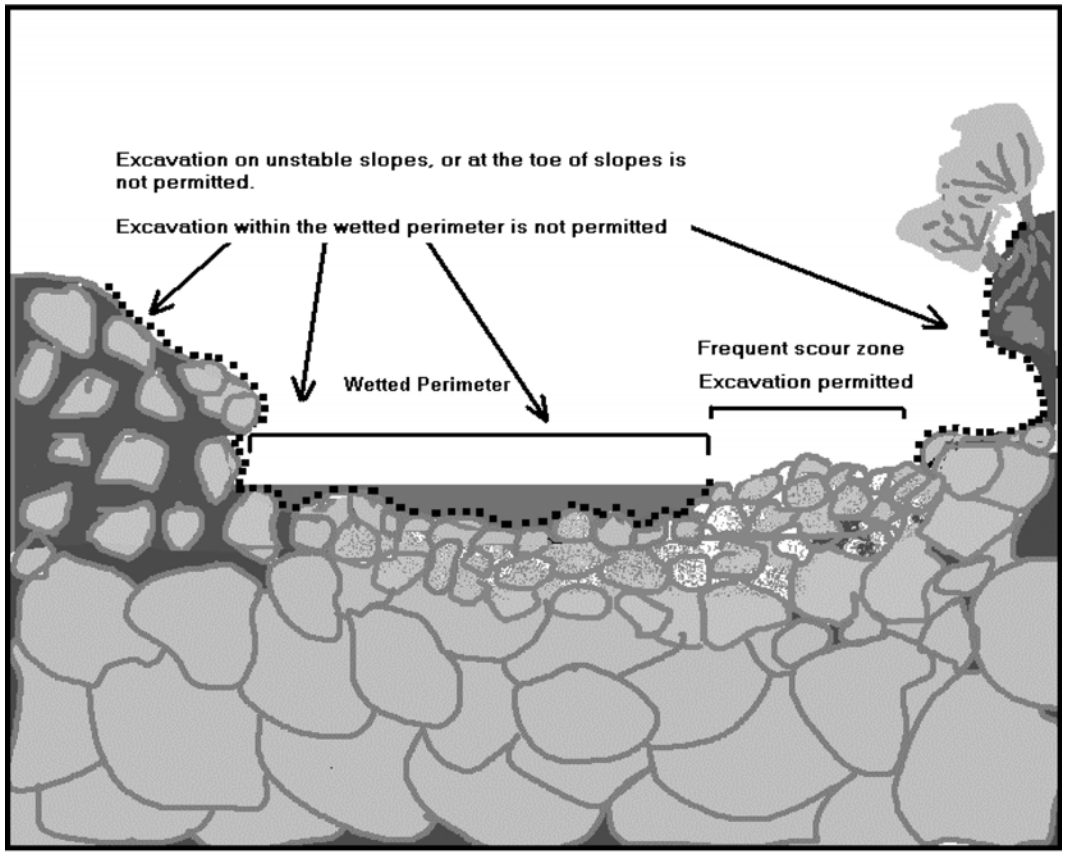

Figure 4: Cross section of a typical body of water showing unstable slopes, stable areas, and permissible or prohibited excavation sites under rules for mineral prospecting without timing restrictions. Dashed line indicates areas where excavation is not permitted.

---

(5) Rules for processing aggregate:

(a) You may not stand within the wetted perimeter when processing aggregate.

(b) You may not level or disturb tailing piles that remain within the wetted perimeter after processing aggregate.

(c) You must classify aggregate at the collection or excavation site prior to processing, if you collected or excavated it outside the frequent scour zone.

(d) You may process only classified aggregate within the wetted perimeter when using a sluice.

(e) You may not process directly on redds or disturb incubating fish life. You may not allow tailings, or a visible sediment plume (visibly muddy water), to enter redds or areas where fish life are located within the bed.

(f) The maximum width of a sluice, measured at its widest point, including attachments, shall not exceed twenty-five percent of the width of the wetted perimeter at the point of placement.

(g) You may process with a sluice only in areas within the wetted perimeter that are composed solely of boulders and bedrock. You must separate sluice locations by at least fifty feet. You may

not place structures within the wetted perimeter to check or divert the water flow.

(h) You may operate mini high-bankers or other concentrators only outside the wetted perimeter. You may only supply water to this equipment by hand or by a battery-operated pump with a screened intake. You may not allow visible sediment or muddy water to enter the wetted perimeter. A second excavation site may be used as a settling pond.

(i) Under RCW 77.57.010 and 77.57.070, any device you use for pumping water from fish-bearing waters must be equipped with a fish guard to prevent passage of fish into a pump intake. To prevent fish life from entering the system, you must screen the pump intake with either:

(i) Six one-hundredths inch (eighteen gauge) woven wire mesh with openings no greater than eighty-seven one-thousandths inches; or

(ii) A perforated plate with openings no greater than ninety-four one-thousandths inch (three thirty-seconds inch); or

(iii) A profile bar with openings no greater than one and seventy-five one-hundredths millimeter (sixty-nine one-thousandths inch).

The screened intake shall consist of a structure with sufficient surface area to ensure that the velocity through the screen is less than four-tenths feet per second. You must maintain screens to prevent injury to or entrapping fish life, and you must keep screens in place whenever water is withdrawn through a pump intake.

For every cubic foot per second (cfs) of water drawn through the pump, you must have at least two and one-half square feet of screen with holes of the correct size and spacing. Check the ratings plate on your pump or in the operator's manual to determine the maximum listed capacity. Size your screen according to that capacity, even if you don't normally run the pump that high. Be sure to use the pump intake rating and not the dredge capacity or water volume through the sluice.

Here are some helpful formulas and standards:

One cubic foot per second (cfs) equals four hundred fifty gallons per minute (gpm).

Minimum screen area = (Maximum pump intake volume in cfs) ÷ (four-tenths feet per second velocity through screen).

Screen must be at least two and one-half square feet per cfs of pump intake capacity.

The following example may help you calculate the minimum screen area for your pump intake:

Example:

- Your dredge pump manufacturer rates its maximum capacity at 250 gpm.
- By dividing 250 gpm by 450 gpm, you know that your pump draws 0.56 cfs.

(j) You may not excavate or process aggregate within four hundred feet of any fishway, dam, or hatchery water intake.

(k) You may not disturb existing habitat improvement structures or stream channel improvements.

(l) If at any time, as a result of project activities, you

observe a fish kill or fish life in distress, you must immediately cease operations and notify the Washington department of fish and wildlife, and the Washington military department emergency management division, of the problem. You may not resume work until the Washington department of fish and wildlife gives approval. The Washington department of fish and wildlife may require additional measures to mitigate the prospecting impacts.

AMENDATORY SECTION (Amending Order 98-252, filed 12/16/98, effective 1/16/99)

WAC 220-110-202 ((~~Use of Class 0 mineral prospecting equipment.~~)) Mineral prospecting with timing restrictions. ((~~A copy of the current *Gold and Fish* pamphlet available from the department contains the rules which shall be followed when using Class 0 mineral prospecting equipment. A copy of the current *Gold and Fish* pamphlet shall be on the job site at all times. Mineral prospecting and placer mining projects authorized through a written HPA may incorporate additional mitigation measures as necessary to achieve no-net-loss of productive capacity of fish and shellfish habitat. Project activities may be prohibited where project impacts adversely affect fish habitats for which no proven mitigation methods are available. The following technical provisions shall apply to all Class 0 mineral prospecting and placer mining projects:~~

~~(1) The common technical provisions as specified in WAC 220-110-201 and the timing and location restrictions as specified in WAC 220-110-209 shall apply to all mineral prospecting and placer mining projects conducted with Class 0 equipment.~~

~~(2) The use of a single hand-operated nonmotorized pan is authorized.~~

~~(3) Collection and processing of aggregate shall be limited to that portion of the bed above the wetted perimeter.~~)) You may mineral prospect only in the waters, during the times, and with the mineral prospecting equipment limitations identified in WAC 220-110-206. You must follow the rules listed below, and you must have the rules with you or on the job site.

(1) You may use only hand-held mineral prospecting tools and the following mineral prospecting equipment when mineral prospecting with timing restrictions:

(a) Pans;

(b) Spiral wheels;

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

(d) Suction dredges that have suction intake hoses with nominal inside diameters of five inches or less as measured at the junction of the nozzle and the hose, or by measuring the inside

diameter of the hose. See Figure 1.

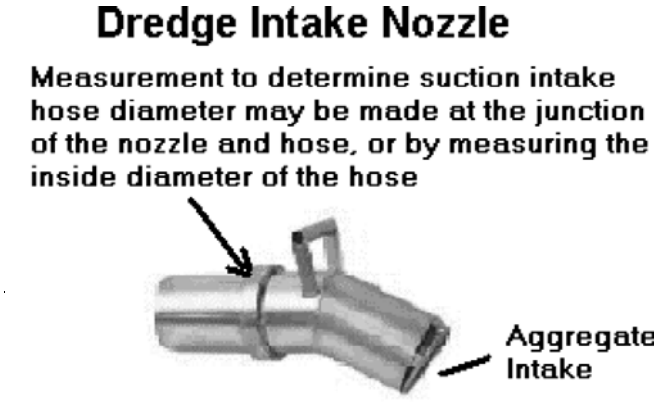

Figure 1: Dredge intake nozzle

(e) Power sluice/suction dredge combinations that have riffle areas totaling ten square feet or less, including ganged equipment, suction intake hoses with nominal inside diameters of five inches or less as measured at the junction of the nozzle and the hose, and pump intake hoses with inside diameters of four inches or less;

(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.

(2) The widest point of a sluice, including attachments, shall not exceed twenty-five percent of the wetted perimeter at the point of placement.

(3) The suction intake hose diameter of suction dredges and power sluice/suction dredge combinations must not exceed the diameter allowed in the listing for the stream or stream reach where you are operating, as identified in WAC 220-110-206.

(4) You may not use vehicle-mounted winches. You may use one motorized winch and one hand-operated winch to move boulders and large woody material that is not embedded, and additional cables, chains, or ropes to stabilize them.

(5) Equipment separation:

(a) With the exception of sluices and rocker boxes with a riffle area exceeding three square feet, suction dredges, power sluice/suction dredge combinations, high-bankers, and power sluices, you may use mineral prospecting equipment as close to other mineral prospecting equipment as desired.

(b) You must separate by a minimum of two hundred feet as measured as a radius from the equipment all sluices and rocker boxes with a riffle area exceeding three square feet, suction dredges, power sluice/suction dredge combinations, high-bankers, and power sluices operating within the wetted perimeter. However, you may locate this equipment closer than two hundred feet if only

one piece of equipment is operating. See Figure 2.

(c) You must separate by a minimum of two hundred feet as measured as a radius from the equipment all sluices and rocker boxes with a riffle area exceeding three square feet, suction dredges, power sluice/suction dredge combinations, high-bankers, and power sluices operating outside of the wetted perimeter that discharges tailings or wastewater to the wetted perimeter. However, you may locate this equipment closer than two hundred feet if only one piece of equipment is operating. See Figure 2.

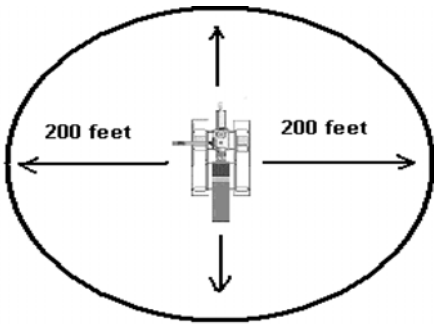

Figure 2: Equipment separation requirement

---

(6) Under RCW 77.57.010 and 77.57.070, any device you use for pumping water from fish-bearing waters must be equipped with a fish guard to prevent passage of fish into a pump intake. To prevent fish life from entering the system, you must screen the pump intake with either:

(a) Six one-hundredths inch (eighteen gauge) woven wire mesh with openings no greater than eighty-seven one-thousandths inches; or

(b) A perforated plate with openings no greater than ninety-four one-thousandths inch (three thirty-seconds inch); or

(c) A profile bar with openings no greater than one and seventy-five one-hundredths millimeter (sixty-nine one-thousandths inch).

The screened intake shall consist of a structure with sufficient surface area to ensure that the velocity through the screen is less than four-tenths feet per second. You must maintain screens to prevent injury to or entrapping fish life, and you must keep screens in place whenever water is withdrawn through a pump intake.

For every cubic foot per second (cfs) of water drawn through the pump, you must have at least two and one-half square feet of screen with holes of the correct size and spacing. Check the ratings plate on your pump or in the operator's manual to determine the maximum listed capacity. Size your screen according to that capacity, even if you don't normally run the pump that high. Be sure to use the pump intake rating and not the dredge capacity or water volume through the sluice.

Here are some helpful formulas and standards:

One cubic foot per second (cfs) equals four hundred fifty

gallons per minute (gpm).

Minimum screen area = (Maximum pump intake volume in cfs) ÷ (four-tenths feet per second velocity through screen).

Screen must be at least two and one-half square feet per cfs of pump intake capacity.

The following example may help you calculate the minimum screen area for your pump intake:

Example:

- Your dredge pump manufacturer rates its maximum capacity at 250 gpm.
- By dividing 250 gpm by 450 gpm, you know that your pump draws 0.56 cfs.

(7) All equipment fueling and servicing must be done so that petroleum products do not get into the body of water. If a petroleum sheen is observed, you must contact the Washington military department emergency management division. You must immediately stop your activities, remove your equipment from the body of water, and correct the source of the petroleum leak. You may not return your equipment to the water until the problem is corrected. You must store fuel and lubricants outside the frequent scour zone, and in the shade when possible.

(8) You may work within the wetted perimeter only from one-half hour before official sunrise to one-half hour after official sunset. If your mineral prospecting equipment exceeds one-half the width of the wetted perimeter of the stream, you must remove the equipment from the wetted perimeter or move it so that a minimum of fifty percent of the wetted perimeter is free of equipment between one-half hour after official sunset to one-half hour prior to official sunrise.

(9) You may not excavate, collect, or process aggregate within four hundred feet of any fishway, dam, or hatchery water intake.

(10) You must not disturb existing habitat improvement structures or stream channel improvements.

(11) You may not undermine, move, or disturb embedded large woody material. You may move large woody material and boulders that are not embedded, provided you return them as close to their original location as possible prior to abandoning the site or working another excavation site. You may not cut large woody material.

(12) You may not undermine, cut, or disturb live, rooted woody vegetation of any kind.

(13) Only one excavation site per individual is permitted. However, you may use a second excavation site as a settling pond. Multiple individuals may work within a single excavation site.

(14) You must fill all excavation sites and level all tailing piles prior to working another excavation site or abandoning the excavation site.

(15) You may not excavate or collect aggregate from an unstable slope, the toe of the slope, or a portion of the slope that delivers, or has the potential to deliver, sediment to the wetted perimeter or frequent scour zone. See Figures 3 and 4.

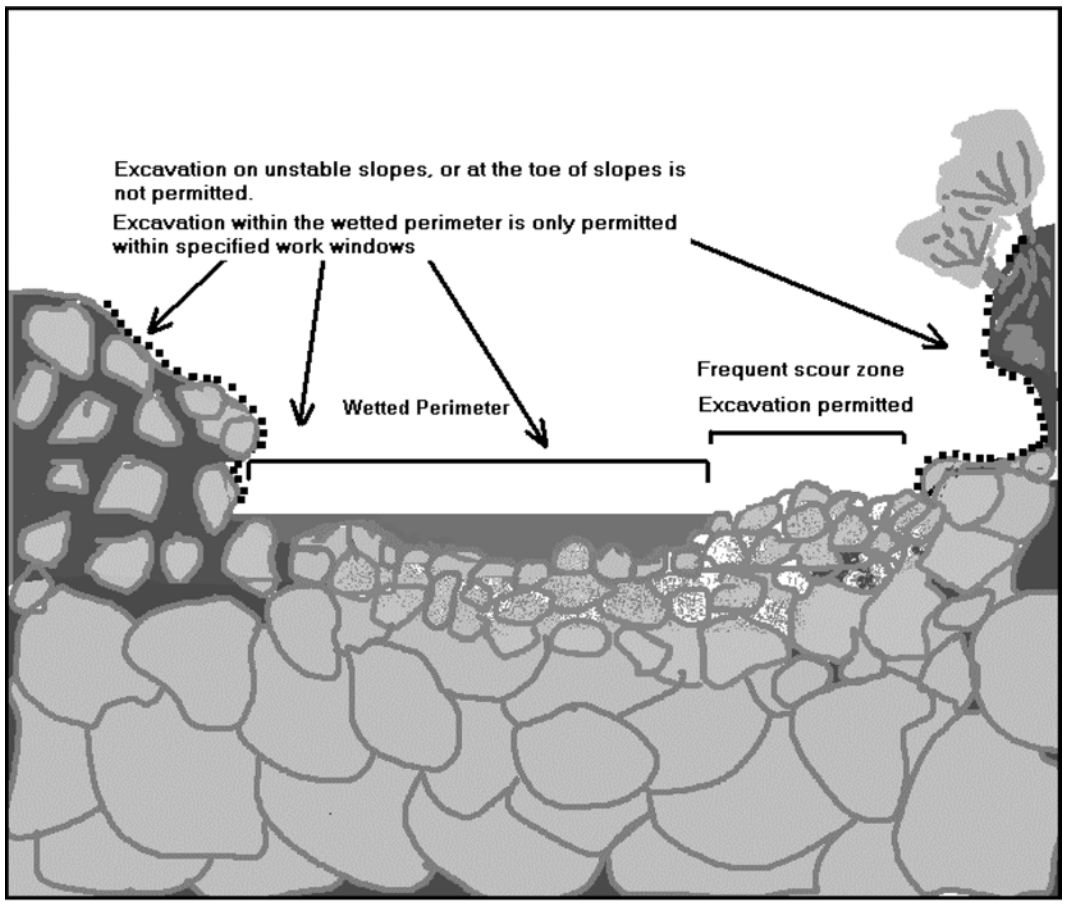

Figure 3: Cross section of a typical body of water showing unstable slopes, stable areas, and permissible or prohibited excavation sites under rules for mineral prospecting with timing restrictions. Dashed line indicates areas where excavation is not permitted.

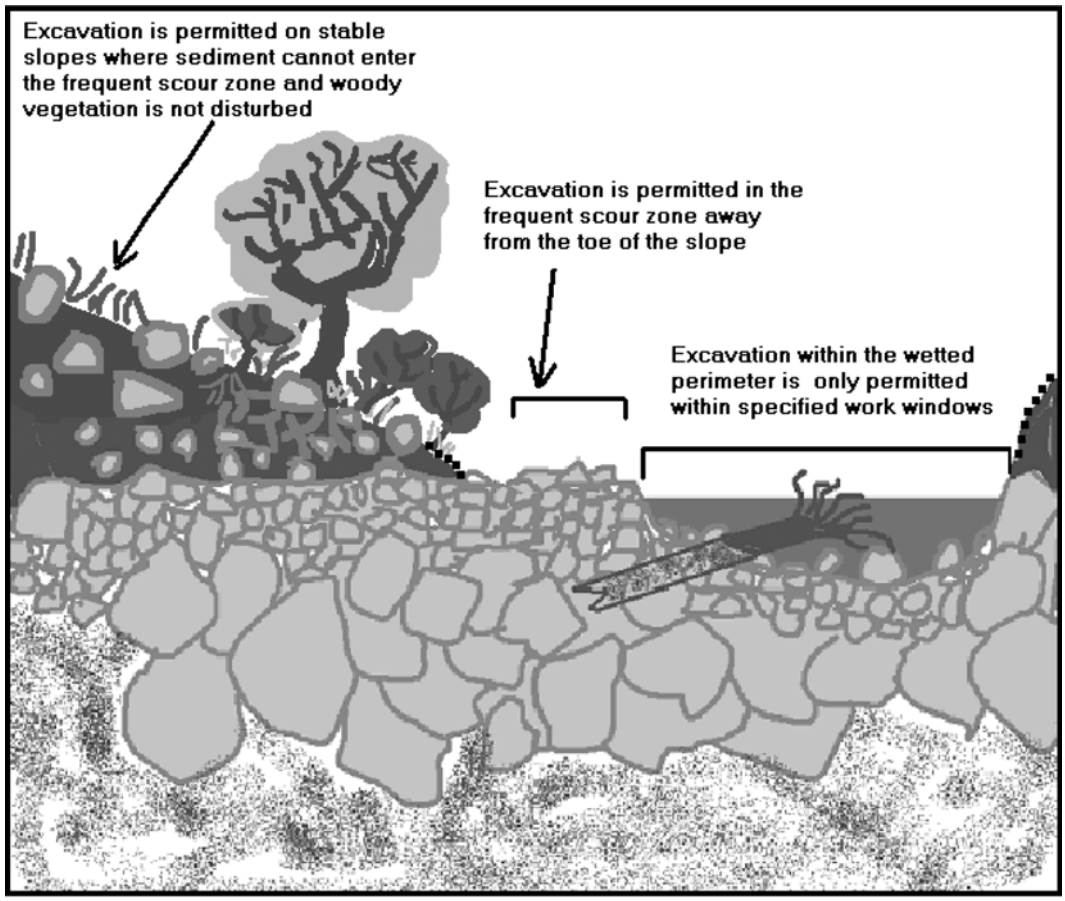

Figure 4: Permitted and prohibited excavation sites in a typical body of water under rules for mineral prospecting with timing restrictions. Dashed lines indicate areas where excavation is not permitted.

---

(16) You may partially divert a body of water into mineral prospecting equipment. However, at no time may the diversion structure be greater than fifty percent of the width of the wetted perimeter, including the width of the equipment. You may not divert the body of water outside of the wetted perimeter.

(17) You may use materials only from within the wetted perimeter, or artificial materials from outside the wetted perimeter, to construct the diversion structure. You must remove artificial materials used in the construction of a diversion structure and restore the site to its approximate original condition prior to abandoning the site.

(18) You may process aggregate collected from the frequent scour zone:

(a) At any location if you use pans; spiral wheels; or sluices, concentrators, rocker boxes, and high-bankers with riffle areas totaling ten square feet or less, including ganged equipment.

(b) Only in the frequent scour zone or upland areas landward of the frequent scour zone if you use power sluice/suction dredge combinations, high-bankers, or power sluices. You may not discharge tailings to the wetted perimeter when using this

equipment. However, you may discharge wastewater to the wetted perimeter as provided in subsection (5) of this section.

(19) You may process aggregate collected from upland areas landward of the frequent scour zone:

(a) At any location if you use pans; spiral wheels; or sluices, concentrators, mini rocker boxes, and mini high-bankers with riffle areas totaling three square feet or less, including ganged equipment. You must classify the aggregate at the excavation site prior to processing with this equipment within the wetted perimeter or frequent scour zone.

(b) Only at an upland location landward of the frequent scour zone if you use power sluice/suction dredge combinations; high-bankers; power sluices; or rocker boxes that have riffle areas totaling more than three, but less than ten, square feet. You may not allow tailings or wastewater to enter the wetted perimeter or frequent scour zone.

(c) Within the wetted perimeter or frequent scour zone with a sluice with a riffle area greater than three square feet. You must classify the aggregate at the excavation site prior to processing with a sluice with a riffle area exceeding three square feet.

(20) You may use pressurized water only for crevicing or for redistributing dredge tailings within the wetted perimeter. No other pressurized water use (jet or nozzle) is permitted.

(21) You may conduct crevicing in the wetted perimeter, in the frequent scour zone, or landward of the frequent scour zone. The hose connecting fittings of crevicing tools may not have an inside diameter larger than three-quarters of an inch. If you crevice landward of the frequent scour zone, you may not discharge sediment or wastewater to the wetted perimeter or the frequent scour zone.

(22) You must avoid areas containing live freshwater mussels. If you encounter live mussels during excavation, you must relocate your operations.

(23) You may not disturb redds. If you observe or encounter redds, or actively spawning fish when collecting or processing aggregate, you must relocate your operations.

(24) If at any time, as a result of project activities, you observe a fish kill or fish life in distress, you must immediately cease operations and notify the Washington department of fish and wildlife, and the Washington military department emergency management division of the problem. You may not resume work until the Washington department of fish and wildlife gives approval. The Washington department of fish and wildlife may require additional measures to mitigate the prospecting impacts.

AMENDATORY SECTION (Amending Order 98-252, filed 12/16/98, effective 1/16/99)

WAC 220-110-340 Informal appeal of adverse administrative decisions. It is recommended that an aggrieved party contact the local habitat biologist responsible for ((~~the hydraulic permit decision of concern~~)) granting or denying the HPA prior to initiating an informal or formal appeal. Discussion of concerns with the habitat biologist often results in resolution of the problem without the need for an informal or formal appeal. The habitat biologist may request review of your concerns by his or her supervisor.

All parties are encouraged to take advantage of ((~~this~~)) the informal appeal process prior to initiating a formal appeal. However, ((~~this~~)) the informal appeal process is not mandatory, and a person may proceed directly to a formal appeal.

(1) The following procedures shall govern informal appeals of department actions taken ((~~pursuant to~~)) under RCW ((~~75.20.100, 75.20.103, 75.20.106, and 75.20.160~~)) 77.55.021, 77.55.141, 77.55.151, 77.55.161(2), 77.55.181, and 77.55.291. This rule does not apply to the department's decisions regarding whether hydraulic projects qualify for processing under RCW 77.55.181, governing certain fish habitat enhancement projects. This rule also does not apply to any provisions or conditions in pamphlet((~~s~~)) HPA or supplemental approvals as defined in WAC 220-110-020 ((~~(44)~~)) (52)(c) and (95). A person who disagrees with a provision or condition in a pamphlet HPA or its supplemental approval may apply for an individual, written HPA. A person who is aggrieved or adversely affected by the following department actions may request an informal ((~~review~~)) appeal:

(a) The denial or issuance of an HPA, or the conditions or provisions made part of an HPA; or

(b) An order imposing civil penalties.

(2) A request for an informal ((~~review~~)) appeal shall be in writing and shall be received by the department within thirty days of the denial or issuance of an HPA or receipt of an order imposing civil penalties. The thirty-day time requirement may be stayed by the department if negotiations are occurring between the aggrieved party and the habitat biologist and/or their supervisor. Requests for informal ((~~review~~)) appeal shall be mailed to HPA Appeals Coordinator, Department of Fish and Wildlife, Habitat ((~~and Lands Services~~)) Program, 600 Capitol Way, N., Olympia, Washington 98501-1091, or hand-delivered to 1111 Washington Street, S.E., Habitat ((~~and Lands Services~~)) Program, Fifth floor.

(3) The written request for an informal appeal shall be plainly labeled as "Request for Informal Appeal" and shall contain the following:

(a) The name, address, e-mail address (if available), and phone number of the person requesting the appeal;

(b) The specific agency action that the person contests, such as denial of an HPA, a particular condition in an HPA, or an order imposing civil penalties;

(c) Whether the person is the permittee, HPA applicant, landowner, resident, or other basis for the person's interest in the agency action in question;

(d) The date of denial, issuance, or condition of an HPA, or date the department issued the notice of civil penalty;

(e) Specific relief requested; and

(f) The attorney's name, address, e-mail address (if available) and phone number, if the person is represented by legal counsel.

(4) Upon receipt of a written request for informal ((~~agency review~~)) appeal, the department shall initiate a review of the agency decision. ((~~This review~~)) If agreed to by the appellant, and the appellant applied for the HPA, resolution of the appeal may be facilitated through an informal conference. The informal conference is a discussion between the appellant and the area habitat biologist mediated by the biologist's supervisor. The time period for the department to issue a decision on an informal appeal is suspended during the informal conference process. If resolution is not reached through the informal conference, the appellant is not the person who applied for the HPA, or the appeal involves an order imposing civil penalties, an informal appeal hearing shall be conducted by the ((~~regulatory services division manager or the division manager's~~)) HPA appeals coordinator or designee. Upon completion of the ((~~comprehensive review~~)) informal appeal hearing, the ((~~division manager~~)) HPA appeals coordinator, or designee shall recommend a decision to the director or the director's designee. This recommended decision shall be approved or disapproved by the director or the director's designee within sixty days of the date the informal appeal was received by the department, unless an extension of time is agreed to by the appellant. The department shall notify the appellant in writing of the decision of the director or the director's designee.

((~~(4)~~)) (5) If, following this informal ((~~agency review~~)) appeal process, the appellant still wishes to contest the agency action, a formal appeal may be initiated ((~~pursuant to~~)) under WAC 220-110-350. Formal review must be requested within the time periods specified in WAC 220-110-350.

AMENDATORY SECTION (Amending Order 98-252, filed 12/16/98, effective 1/16/99)

WAC 220-110-350 Formal appeal of administrative decisions. (1) The following procedures shall govern formal appeals of department actions taken ((~~pursuant to~~)) under RCW ((~~75.20.100 or 75.20.106~~)) 77.55.021, except as indicated in RCW 77.55.301(5)(a), 77.55.151, 77.55.161(2), or 77.55.291. Subsection (2) of this section addresses appeals before the hydraulic appeals board. This rule does not apply to any provisions or conditions in pamphlets,

or supplemental approvals as defined in WAC 220-110-020 ((~~(44)~~)) (52)(c) and (95). A person who disagrees with a provision or condition in a pamphlet HPA or its supplemental approval may apply for an individual, written HPA. ((~~This rule does not apply to an appeal in which a person contests the denial, conditioning or issuance of an HPA issued pursuant to RCW 75.20.103 or 75.20.160, which shall be heard by the hydraulic appeals board.~~))

(a) A person who is aggrieved or adversely affected by the following department actions may request a formal appeal:

((~~(a)~~)) (i) The denial or issuance of an HPA, or the conditions or provisions made part of an HPA;

((~~(b)~~)) (ii) An order imposing civil penalties; or

((~~(c)~~)) (iii) Any other ((~~"~~))agency action((~~"~~)) by the department's habitat program for which an adjudicative proceeding is required under the Administrative Procedure Act, chapter 34.05 RCW.

((~~(2)~~)) (b) As required by the Administrative Procedure Act, the department shall inform the permittee, HPA applicant or person subject to civil penalty ((~~or~~)) order of the department, of the opportunity for appeal, the time within which to file a written request for an appeal, and the place to file it.

((~~(3)~~)) (c) A request for an appeal shall be in writing and shall be received during office hours by the department within thirty days of the agency action that is being challenged. Requests for appeal shall be mailed to HPA Appeals Coordinator, Department of Fish and Wildlife, Habitat ((~~and Lands Services~~)) Program, 600 Capitol Way, N., Olympia, Washington 98501-1091, or hand-delivered to 1111 Washington Street S.E., Habitat ((~~and Lands Services~~)) Program, Fifth floor. If there is no timely request for an appeal, the agency action shall be final and unappealable.

((~~(4)~~)) (d) The time period for requesting a formal appeal is suspended during consideration of a timely informal appeal. If there has been an informal appeal, the deadline for requesting a formal appeal shall be within thirty days of the date of the department's written decision in response to the informal appeal.

((~~(5)~~)) (e) The written request for an appeal shall be plainly labeled as "Request for Formal Appeal" and shall contain the following:

((~~(a)~~)) (i) The name, address, e-mail address (if available) and phone number of the person requesting the appeal;

((~~(b)~~)) (ii) The specific agency action that the person contests((~~; for example~~)), such as denial of an HPA, a particular condition in an HPA, an order imposing civil penalties, etc.;

((~~(c)~~)) (iii) Whether the person is the permittee, HPA applicant, landowner, resident, or other basis for the person's interest in the agency action in question;

((~~(d)~~)) (iv) The date of denial, issuance, or condition of an HPA, if the person is contesting denial, issuance, or conditioning of an HPA;

((~~(e)~~)) (v) Specific relief requested; and

((~~(f)~~)) (vi) The attorney's name, address, e-mail address (if available) and phone number, if the person is represented by legal

counsel.

((~~(6)~~)) (f) The appeal may be conducted by the director, the director's designee, or by an administrative law judge (ALJ) appointed by the office of administrative hearings. If conducted by an ALJ, the ALJ shall issue an initial order ((~~pursuant to~~)) under RCW 34.05.461. The director or the director's designee shall review the initial order and enter a final order as provided by RCW 34.05.464.

((~~(7)~~)) (g) All hearings conducted by the director, the director's designee, or an ALJ ((~~pursuant to~~)) under subsection (6) of this section, shall comply with the Administrative Procedure Act and the model rules of procedure, chapter 10-08 WAC.

(2) The hydraulic appeals board hears appeals of the following permits:

(a) Under RCW 77.55.021 for the diversion of water for agricultural irrigation or stock watering purposes or when associated with streambank stabilization to protect farm and agricultural land as defined in RCW 84.34.020;

(b) Under RCW 77.55.241 for off-site mitigation proposals;

(c) Under RCW 77.55.141 for single family marine bulkheads or rockwalls;

(d) Under RCW 77.55.181 for fish habitat enhancement project HPA conditions or denials.

The appeal procedures for the board are found in WAC 259-04-060 and chapter 371-08 WAC.

AMENDATORY SECTION (Amending Order 94-160, filed 11/14/94, effective 12/15/94)

WAC 220-110-360 Penalties. (1) ((~~Any person that commences any activity subject to RCW 75.20.100, 75.20.103, or 75.20.160~~)) Under RCW 77.15.300, it is a gross misdemeanor to construct any form of hydraulic project or perform other work on a hydraulic project without having first obtained an HPA from the department, or ((~~any person that fails to comply with any of the requirements or provisions of an HPA, is guilty of a gross misdemeanor~~)), violate any requirements or conditions of the HPA for such construction or work.

(2) The department may impose a civil penalty of up to one hundred dollars per day for a violation ((~~or continuing violation~~)) of ((~~RCW 75.20.100 or 75.20.103, or any provision or condition of an HPA~~)) any provisions of RCW 77.55.021. The department shall impose the civil penalty with an order in writing delivered by certified mail or personal service to the person who is penalized. The notice shall describe the violation, identify the amount of the penalty, identify how to pay the penalty, and identify informal ((~~or~~)) and formal appeal rights for the person penalized. If the violation is an ongoing violation, the penalty shall accrue for

each additional day of violation. For ongoing violations, the civil penalty may continue to accrue during any appeal process unless the accrual is stayed in writing by the department.

(3) If not timely appealed under WAC 220-110-340 or 220-110-350, the civil penalty order is final and unappealable. If appealed, the civil penalty becomes final upon issuance of a final order not subject to any further administrative appeal. When a civil penalty order becomes final, it is due and payable. If the civil penalty is not paid within thirty days after it becomes due and payable, the department may seek enforcement of the order ((~~pursuant to~~)) under RCW ((~~75.20.106~~)) 77.55.291 and 34.05.578.

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 220-110-203	Use of Class I mineral prospecting equipment.
WAC 220-110-204	Use of Class II mineral prospecting equipment.
WAC 220-110-205	Use of Class III mineral prospecting equipment.
WAC 220-110-207	Authorized work times and watercourses for mineral prospecting and placer mining projects in the Columbia and Snake rivers, lakes, salt waters and waters within National Park boundaries using Class I and II equipment.
WAC 220-110-208	Authorized work times and watercourses for mineral prospecting and placer mining projects using Class III equipment only.
WAC 220-110-209	Authorized work times and watercourses for mineral prospecting and placer mining projects using Class 0 equipment only.