

“GREEN SHEET”

Meeting: August 17, 2012 Conference Call

Agenda Item A: Recreational Rock Collecting on State Public Lands Petition - Decision

Prepared By: Paul Dahmer, Land Stewardship & Operations Section Manager, Wildlife Program

Presented By: Paul Dahmer, Land Stewardship & Operations Section Manager, Wildlife Program

Background:

The Commission will consider a petition for rulemaking, pursuant to RCW 34.05.330, received on June 22, 2012, from several rock collecting enthusiasts requesting a rule change related to rock collecting on Washington State public lands.

The petition requests a change to Washington Department of Fish and Wildlife (WDFW) regulations and the Washington Administrative Code (WAC) specific to allowing the following recreational collection activities:

- 250 lbs person per day (in aggregate), and 25 lbs per day for petrified wood
- Use of hand tools only (no mechanized/motor-powered machinery or explosives)
- For non-commercial use

WAC 232-12-251 allows the removal of petrified wood, minerals, fossils, wood products, and artifacts from department lands only with a permit issued by the director. Currently, the director/department issues these permits for minerals for educational or research purposes.

Policy Issue(s) you are bringing to the Commission for consideration:

- Variety of resource and legal concerns; please refer to the Justification section for the recommendation to deny the petition.
-

Public involvement process used and what you learned:

N/A

Action requested (identify the specific Commission decisions you are seeking):

The petition requests a change to Washington Department of Fish and Wildlife (WDFW) regulations and the Washington Administrative Code (WAC), specific to allowing the following recreational collection activities:

- 250 lbs person per day (in aggregate), and 25 lbs per day for petrified wood
- Use of hand tools only (no mechanized/motor-powered machinery or explosives)
- For non-commercial use

Department staff request that the Commission deny the petition.

Draft motion language:

I move to deny the petition to revise regulations and Washington Administrative Code to allow recreational rock collecting on WDFW lands.

Justification for Commission action:

The proposed denial of this petition is based on several concerns described below including mineral right issues, compliance with land acquisition grant agreements, and resource and cultural resource damage.

- 1) The state of Washington does not own the mineral rights on the majority of WDFW public lands. Each deed would need to be reviewed to determine if WDFW owns the surface minerals. Further, it is very common for mineral rights reservations to reserve fossils. There is, therefore, a concern about the unpermitted removal of minerals, including fossils, where they may not be owned by the state.
- 2) Resource impacts from digging would be in conflict with limitations stipulated in acquisition grant agreements where lands are purchased to protect habitat. Allowance of such activity could be in conflict with the funding source(s) and thus would put us into grant conversion.
- 3) Resource damage is also a significant concern. Digging on public lands could degrade fish and wildlife habitat. Talus slopes, cliffs, riparian habitats, and other areas are critical for priority fish and wildlife species.
- 4) To comply with federal and state laws, WDFW is required to do an evaluation before disturbing soils for activities such as digging post holes for fencing or even digging holes for planting trees. This site specific evaluation typically includes consultation with federal, state, and tribal entities. Although allowing individuals to dig on state lands does not in and of itself threaten cultural resources, the likelihood of cultural resource damage is very real. Tribal concerns may exist because of the potential for the exposure and damage of cultural resources.
- 5) The removal of non-renewable resources such as petrified wood and other minerals like columnar basalt can diminish the recreational, educational, and research opportunities for others.
- 6) Other public land management agencies addressing this issue:
 - National Parks for the most part do not allow this activity.
 - Oregon Department of Fish and Wildlife requires a permit to remove minerals, but cultural resource protections require surveys and consultation with tribes, so permits for this activity would be very difficult to get.
 - Idaho Fish and Game does not allow removal of soils, gravel, or minerals.
 - California Fish and Game does not allow the removal of any humus, soil, sand, gravel or rock on state wildlife areas.
- 7) Inability to enforce rock collection activities.

Communications plan:

N/A

A



State of Washington
Department of Fish and Wildlife

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DEPARTMENT MISSION: SOUND STEWARDSHIP OF FISH AND WILDLIFE

July 6, 2012

Dear Recreational Rock Collecting Enthusiast:

On June 22, 2012, the Fish and Wildlife Commission received your petition requesting a rule change relating to recreational rock collecting on state public lands.

The Commission will formally consider your petition as one of our agenda items during a meeting by telephone conference call scheduled for Friday, August 17, 2012, beginning at 8:30 a.m.

No public input will be accepted during the conference call. This meeting will be recorded and the audio will be available for listening on the Internet the following week. You will be sent a letter with information about the outcome immediately following the Commission's decision.

Please note that the Commissioners participate in these calls via telephone and are not on location. The Commission Office does not have adequate meeting space for a large number of people to attend to listen to this call unless prior arrangements have been made by calling (360) 902-2267.

Pursuant to RCW 34.05.330, the Department has 60 days from receipt of a "Petition for Adoption, Amendment or Repeal of a State Administrative Rule," to either:

(a) Deny the petition in writing, stating the reasons for the denial, specifically addressing the concerns raised by the petitioner, and where appropriate, the alternative means by which it will address the concerns raised by the petitioner;

-or-

(b) Initiate rule-making proceedings.

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To access the audio recording of the proceedings on the Internet visit the Commission's web page at: <http://www.wdfw.wa.gov/commission/meetings.html> and select the "audio transcripts" for the meeting. If you'd like a copy of the audio recording mailed to you on a CD, please contact the Commission Office at (360) 902-2267 with your request.

Thank you for bringing your concerns forward and proposing solutions through the rule making process. Feel free to call me if you have any questions.

Sincerely,



Tami Lininger, Executive Assistant
Washington Fish and Wildlife Commission

- cc: Fish and Wildlife Commission
- Phil Anderson, Director
- Lori Preuss, Rules Coordinator
- Nate Pamplin, Assistant Director, Wildlife Program
- Jennifer Quan, Lands Division Manager
- Peggy Murphy, Department of Natural Resources
- Bill Frymire, Assistant Attorney General

PETITION
**Recreation Rock Collecting
In
Washington State**

We, the undersigned, support a change to Washington State Department of Fish and Wildlife (WDFW) and Washington State Department of Natural Resources regulations which prohibit recreational rock collecting on Washington State Public lands. We also support a change to the Washington Administrative Code (WAC) to require this change. The changes we support are for recreational rock collecting. Which is defined as:

1. 250 lbs per person perday (in aggregate) 25 lbs per day for petrified wood
2. Use of hand tools only(no mechanized/motor-powered machinery or explosives)
3. For non-commercial use

Name

Address

Signature

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