

**WSR 18-04-003**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**

[Order 18-11—Filed January 24, 2018, 4:04 p.m., effective January 24, 2018, 4:04 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: Amends recreational harvest rules for razor clams.

Citation of Rules Affected by this Order: Repealing WAC 220-330-16000L; and amending WAC 220-330-160.

Statutory Authority for Adoption: RCW 77.04.012, 77.04.020, and 77.12.047.

Under RCW 34.05.350 the agency for good cause finds that immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.

Reasons for this Finding: This emergency rule is needed to open the recreational razor clam season. Survey results show that adequate clams are available for harvest in Razor Clam Areas 1, 3, 4 and 5 for recreational harvest. Washington department of health has certified clams from this beach to be safe for human consumption. Razor clam beaches are closed by permanent rules unless opened by an emergency rule. There is insufficient time to adopt permanent rules.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at the Request of a Non-governmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 1, Amended 0, Repealed 1.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: January 24, 2018.

J. W. Unsworth  
 Director

NEW SECTION

**WAC 220-330-16000L Razor clams—Areas and seasons.** Notwithstanding the provisions of WAC 220-330-160, it is unlawful to take, dig for or possess razor clams taken for personal use from any beaches in any razor clam area except as provided for in this section:

(1) Effective 12:01 p.m. January 31, 2018 through 11:59 p.m. February 3, 2018, razor clam digging is permissible in Razor Clam Area 1. Digging is permissible from 12:01 p.m. to 11:59 p.m. each day only.

(2) Effective 12:01 p.m. January 30, 2018 through 11:59 p.m. February 3, 2018, razor clam digging is permissible in Razor Clam Area 3. Digging is permissible from 12:01 p.m. to 11:59 p.m. each day only.

(3) Effective 12:01 p.m. January 29, 2018 through 11:59 p.m. January 29, 2018 and January 31, 2018 through 11:59 p.m. January 31, 2018 and February 2, 2018 through 11:59 p.m. February 2, 2018, razor clam digging is permissible in Razor Clam Area 4. Digging is permissible from 12:01 p.m. to 11:59 p.m. each day only.

(4) Effective 12:01 p.m. January 28, 2018 through 11:59 p.m. January 28, 2018 and January 30, 2018 through 11:59 p.m. January 30, 2018 and February 1, 2018 through 11:59 p.m. February 1, 2018 and February 3, 2018 through 11:59 p.m. February 3, 2018, razor clam digging is permissible in Razor Clam Area 5. Digging is permissible from 12:01 p.m. to 11:59 p.m. each day only.

(5) It is unlawful to dig for razor clams at any time in the Twin Harbors and Copalis Beach Clam sanctuaries defined in WAC 220-320-130.

REPEALER

The following section of the Washington Administrative Code is repealed effective 12:01 a.m. February 4, 2018:

WAC 220-330-16000L Razor clams—Areas and seasons.

**WSR 18-04-015**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**

[Order 18-10—Filed January 26, 2018, 1:57 p.m., effective February 1, 2018]

Effective Date of Rule: February 1, 2018.

Purpose: Amends freshwater fishing rules for the Snake and Tucannon rivers.

Citation of Rules Affected by this Order: Repealing WAC 220-312-05000X and 220-312-05000A; and amending WAC 220-312-050.

Statutory Authority for Adoption: RCW 77.04.012, 77.04.020, 77.12.045, and 77.12.047.

Under RCW 34.05.350 the agency for good cause finds that immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.

Reasons for this Finding: This emergency rule is needed to extend the fishery and increase the daily limit of hatchery steelhead in the Tucannon River to remove more hatchery-origin steelhead. There is insufficient time to adopt permanent rules.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at the Request of a Non-governmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 1, Amended 0, Repealed 2.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: January 26, 2018.

J. W. Unsworth  
Director

### NEW SECTION

**WAC 220-312-05000A Freshwater exceptions to statewide rules—Eastside.** Notwithstanding the provisions of WAC 220-312-050, effective February 1 through April 15, 2018, the following rules apply: Unless otherwise amended, all permanent rules remain in effect.

(1) **Snake River** - through March 31, 2018, from the mouth of the Snake River (Burbank to Pasco railroad bridge at Snake River mile 1.25) to the Washington/Idaho State line, at Clarkston Washington.

(a) Daily limit of two hatchery steelhead.

(b) Release all steelhead 28 inches or greater in length.

(2) **Snake River** - through March 31, 2018, from the Idaho/Washington state line at (Clarkston Washington) upstream to the Couse Creek Boat Ramp.

(a) Daily limit of two hatchery steelhead.

(b) Release all steelhead 28 inches or greater in length.

(3) **Snake River** - through March 31, 2018, from Couse Creek Boat Ramp upstream to the Idaho/Oregon state line.

(a) Daily limit of two hatchery steelhead.

(b) No maximum size limit for hatchery steelhead.

(4) **Tucannon River**

(a) Daily limit of three hatchery steelhead.

(b) Mandatory hatchery steelhead retention is required.

(c) Barbless hooks are required while fishing for steelhead.

(d) Release all other species.

(e) The area from Tucannon Hatchery Road Bridge upstream is closed to fishing.

### REPEALER

The following section of the Washington Administrative Code is repealed effective February 1, 2018:

WAC 220-312-05000X Freshwater exceptions to statewide rules—Eastside. (17-317)

The following section of the Washington Administrative Code is repealed effective April 16, 2018:

WAC 220-312-05000A Freshwater exceptions to statewide rules—Eastside.

### WSR 18-04-022 EMERGENCY RULES DEPARTMENT OF FISH AND WILDLIFE

[Order 18-12—Filed January 29, 2018, 12:33 p.m., effective January 31, 2018, 5:30 p.m.]

Effective Date of Rule: January 31, 2018, 5:30 p.m.

Purpose: Amends Puget Sound commercial crab fishery.

Citation of Rules Affected by this Order: Repealing WAC 220-340-42000C and 220-340-45500G; and amending WAC 220-340-420 and 220-340-455.

Statutory Authority for Adoption: RCW 77.04.012, 77.04.020, 77.12.045, and 77.12.047.

Under RCW 34.05.350 the agency for good cause finds that immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.

Reasons for this Finding: The provisions of this rule will maintain the opening of all commercial crab harvest areas in Puget Sound with the exception of Region 2 East and 2 West. Region 2 East closed at 5:30 p.m. on January 16, 2018, when landings reached the full state allocation. Region 2 West will close at 5:30 p.m. on January 31, 2018, when the state is currently projected to reach the current allocation. There is sufficient allocation available in all of the other commercial regions to accommodate a continued fishery. These provisions are in conformity with agreed management plans with applicable tribes. These management plans are entered into as required by court order. The Puget Sound commercial season is structured to meet harvest allocation objectives negotiated with applicable treaty tribes and outlined in the management plans. There is insufficient time to adopt permanent rules.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at the Request of a Non-governmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 2, Amended 0, Repealed 2.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: January 29, 2018.

J. W. Unsworth  
Director

### NEW SECTION

**WAC 220-340-42000E Commercial crab fishery—Unlawful acts.** Notwithstanding the provisions of WAC 220-340-420:

(1) Effective 5:30 pm, January 31, 2018, until further notice, ALL of Crab Management Region 2 West is CLOSED. This region includes Marine Fish-Shellfish Catch Reporting Areas 25B, 25D and 26A West.

(2) Effective immediately, until further notice, ALL of Crab Management Region 2 East is CLOSED. This region includes Marine Fish-Shellfish Catch Reporting Areas 24A, 24B, 24C, 24D and 26A East.

(3) Effective immediately, until further notice, it is unlawful for any person to fish for crabs for commercial purposes with more than 35 pots per license per buoy tag number in Crab Management Region 1. This region includes Marine Fish-Shellfish Management and Catch Reporting Areas 20A, 20B, 21A, 21B, 22A, and 22B.

(4) Effective immediately, until further notice, it is unlawful for any person to fish for crabs for commercial purposes with more than 50 pots per license per buoy tag number in Crab Management Region 3-1, Region 3-2, Region 3-3 East or 3-3 West. These regions include Marine Fish-Shellfish Management and Catch Reporting Areas 23A, 23B, 23C, 23D, 25A, 25E and 29.

(5) All remaining buoy tags per license per region must be onboard the designated vessel and available for immediate inspection.

(6) Additional area gear limits. The following Marine Fish-Shellfish Management and Catch Reporting Areas are restricted in the number of pots fished, operated, or used by a person or vessel, and it is unlawful for any person to use, maintain, operate, or control pots in excess of the following limits: No commercial gear is allowed in that portion of Marine Fish-Shellfish Management and Catch Reporting Area 25A west of the 123°7.0' longitude line projected from the new Dungeness light true south to the shore of Dungeness Bay.

#### NEW SECTION

**WAC 220-340-45500H Commercial crab fishery—Seasons and areas—Puget Sound.** Notwithstanding the provisions of WAC 220-340-455:

(1) Effective immediately, until further notice, it is permissible to fish for Dungeness crab for commercial purposes in the following areas:

(a) Those waters of Marine Fish-Shellfish Management and Catch Reporting Area 20A between a line from the boat ramp at the western boundary of Birch Bay State Park to the western point of the entrance of the Birch Bay Marina and a line from the same boat ramp to Birch Point.

(b) Those waters of Marine Fish-Shellfish Management and Catch Reporting Area 22B in Fidalgo Bay south of a line projected from the red number 4 entrance buoy at Cape Sante Marina to the northern end of the eastern most oil dock.

(c) Those waters of Marine Fish-Shellfish Management and Catch Reporting Area 22A in Deer Harbor north of a line projected from Steep Point to Pole Pass.

(2) Effective immediately, until further notice, the following areas are closed to commercial crab fishing:

(a) That portion of Marine Fish-Shellfish Management and Catch Reporting Area 25A west of the 123°7.0' longitude

line projected from the new Dungeness light true south to the shore of Dungeness Bay.

(b) That portion of Marine Fish-Shellfish Management and Catch Reporting Area 23D west of a line from the eastern tip of Ediz Hook to the ITT Rayonier Dock.

#### REPEALER

The following sections of the Washington Administrative code are repealed at 5:30 pm, January 31, 2018:

WAC 220-340-42000C Commercial crab fishery—Unlawful acts. (18-06)

WAC 220-340-45500G Commercial crab fishery—Seasons and areas—Puget Sound. (18-06)

**WSR 18-04-035**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**

[Order 18-14—Filed January 30, 2018, 3:28 p.m., effective February 1, 2018]

Effective Date of Rule: February 1, 2018.

Purpose: Amends commercial smelt harvest rules.

Citation of Rules Affected by this Order: Repealing WAC 220-358-06000A; and amending WAC 220-358-060.

Statutory Authority for Adoption: RCW 77.04.012, 77.04.020, 77.12.045, and 77.12.047.

Under RCW 34.05.350 the agency for good cause finds that immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.

Reasons for this Finding: Sets a limited Columbia River commercial fishery for eulachon smelt. The regulation is consistent with a reduced level one fishery as described in the "Washington and Oregon Eulachon Management Plan" for the Columbia River. The expected return of eulachon to the Columbia River in 2018 is expected to be similar to or slightly less than the run of 2017. The fishery serves as an important test fishery to monitor run strength and timing and to collect biological data. NOAA Fisheries concurs that the limited fishery is consistent with recovery of eulachon smelt. Rule is consistent with Columbia River Compact action of January 30, 2018. There is insufficient time to adopt permanent regulations.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at the Request of a Non-governmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 1, Amended 0, Repealed 1.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: January 30, 2018.

J. W. Unsworth  
Director

#### NEW SECTION

##### **WAC 220-358-06000A Smelt—Areas and seasons.**

Notwithstanding the provisions of WAC 220-358-060, the Columbia River and Washington tributaries are closed to fishing for eulachon smelt except as provided below:

**Open Dates:** February 1 through February 26, 2018, open Mondays and Thursdays only, 7:00 a.m. to 2:00 p.m. (7-hour periods).

**Open Area:** Columbia River - SMCRA 1A, 1B, 1C.

**Gear:** It is unlawful to use anything other than gillnets. Gillnets must meet the following specifications per WAC 220-358-060: mesh size not to exceed 2 inches stretch measure; not to exceed 1,500 feet in length along the cork line. Use of monofilament nets is permissible.

**Allowable sales:** Smelt.

**Other:** 24-hour quick-reporting is required for Washington wholesale dealers, as provided in WAC 220-352-180.

#### REPEALER

The following section of the Washington Administrative Code is repealed effective 2:01 p.m. February 26, 2018:

WAC 220-358-06000A Smelt—Areas and seasons.

#### **WSR 18-04-036**

##### **EMERGENCY RULES**

##### **DEPARTMENT OF**

##### **FISH AND WILDLIFE**

[Order 18-13—Filed January 30, 2018, 3:32 p.m., effective February 1, 2018]

Effective Date of Rule: February 1, 2018.

Purpose: Amends harvest rules for hardshell clams and oysters.

Citation of Rules Affected by this Order: Amending WAC 220-330-110 and 220-330-140.

Statutory Authority for Adoption: RCW 77.04.012, 77.04.020, and 77.12.047.

Under RCW 34.05.350 the agency for good cause finds that immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.

Reasons for this Finding: A comprehensive review of pollution conditions and marine water quality data has

prompted a department of health change in classification for Duckabush. Duckabush is classified by department of health as conditionally open with an annual harvest closure from May 1 through October 31 each year. Based on analysis of historical and projected sport effort, the season at Kopachuck State Park is being changed to April 1 through May 31 for clams and oysters. At the request of Washington state parks, Joemma Beach State Park will be closed until further notice for clam and oyster harvest in response to conservation concerns. Based on recent analysis of native clam populations and projected effort and harvest, Port Townsend Ship Canal/Portage Beach will close for clam and oyster harvest on May 31, 2018. There is insufficient time to adopt permanent rules.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at the Request of a Non-governmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 2, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: January 30, 2018.

J. W. Unsworth  
Director

#### NEW SECTION

**WAC 220-330-11000D Clams other than razor clams—Areas and seasons.** Notwithstanding the provisions of WAC 220-330-110, effective immediately until further notice, it is unlawful to take, dig for and possess clams, cockles, and mussels taken for personal use from the following public tidelands except during the open periods specified herein:

- (1) Duckabush: Open through April 30, 2018.
- (2) Kopachuck State Park: Open April 1 through May 31, 2018.
- (3) Joemma Beach State Park: Closed immediately until further notice.
- (4) Point Whitney Tidelands (excluding Point Whitney Lagoon): Open through April 30, 2018.
- (5) Port Townsend Ship Canal/Portage Beach: Open through May 31, 2018.

#### NEW SECTION

**WAC 220-330-14000D Oysters—Areas and seasons.** Notwithstanding the provisions of WAC 220-330-140, effective immediately until further notice, it is unlawful to take and possess oysters taken for personal use from the following

public tidelands except during the open periods specified herein:

- (1) Duckabush: Open through April 30, 2018.
- (2) Kopachuck State Park: Open April 1, 2018 through May 31, 2018.
- (3) Joemma Beach State Park: Closed immediately until further notice.
- (4) Port Townsend Ship Canal/Portage Beach: Open through May 31, 2018.

**WSR 18-04-041**  
**EMERGENCY RULES**  
**HEALTH CARE AUTHORITY**

[Filed January 31, 2018, 11:31 a.m., effective January 31, 2018, 11:31 a.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: WAC is being amended to implement Title V, Sec. 5007 the 21st Century Cures Act to allow for a person to create his or her own D4A special needs trust. The agency is also fixing references to incorrect WAC citations in WAC 182-516-0100.

Citation of Rules Affected by this Order: Amending WAC 182-516-0100.

Statutory Authority for Adoption: Statutory authority for adoption: RCW 41.05.021, 41.05.160, 21st Century Cures Act, Title V - Savings, Sec. 5007 Fairness in Medicaid supplemental needs trusts (Section 1917 (d)(4)(A) of the Social Security Act/42 U.S.C. 1396p (d)(4)(A)).

Under RCW 34.05.350 the agency for good cause finds that state or federal law or federal rule or a federal deadline for state receipt of federal funds requires immediate adoption of a rule.

Reasons for this Finding: To incorporate changes prompted by Title V - Savings, Sec. 5007 Fairness in Medicaid supplemental needs trusts of the 21st Century Cures Act, signed on December 13, 2016. This emergency is necessary to continue the current emergency rule filed under WSR 17-20-104, set to expire on February 1, 2018. The agency completed the permanent rule-making process and filed the permanent rules under WSR 18-04-037 on January 30, 2018. The permanent rules are effective on March 2, 2018.

In the permanent rules, the changes related to the 21st Century Cures Act were relocated from WAC 182-516-0100 (as filed in this emergency) to a new section WAC 182-516-0120 (as filed under WSR 17-24-082 and 18-04-037).

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 1, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at the Request of a Non-governmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 1, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making:

New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 1, Repealed 0.

Date Adopted: January 31, 2018.

Wendy Barcus  
Rules Coordinator

AMENDATORY SECTION (Amending WSR 13-01-017, filed 12/7/12, effective 1/1/13)

**WAC 182-516-0100 Trusts.** (1) The department determines how trusts affect eligibility for medical programs.

(2) The department disregards trusts established, on or before April 6, 1986, for the sole benefit of a client who lives in an intermediate care facility for the mentally retarded (ICMR).

(3) For trusts established on or before August 10, 1993, the department counts the following:

(a) If the trust was established by the client, client's spouse, or the legal guardian, the maximum amount of money (payments) allowed to be distributed under the terms of the trust is considered available income to the client if all of the following conditions apply:

(i) The client could be the beneficiary of all or part of the payments from the trust;

(ii) The distribution of payments is determined by one or more of the trustees; and

(iii) The trustees are allowed discretion in distributing payments to the client.

(b) If an irrevocable trust doesn't meet the conditions under ~~((subsection (3)))~~(a) of this subsection then it is considered either:

(i) An **unavailable** resource, if the client established the trust for a beneficiary other than the client or the client's spouse; or

(ii) An **available** resource in the amount of the trust's assets that:

(A) The client could access; or

(B) The trustee distributes as actual payments to the client and the department applies the transfer of assets rules of WAC ~~((388-513-1363, 388-513-1364 or 388-513-1365))~~ 182-513-1363.

(c) If a revocable trust doesn't meet the description under ~~((subsection (3)))~~(a) of this subsection:

(i) The full amount of the trust is an available resource of the client if the trust was established by:

(A) The client;

(B) The client's spouse, and the client lived with the spouse; or

(C) A person other than the client or the client's spouse only to the extent the client had access to the assets of the trust.

(ii) Only the amount of money actually paid to the client from the trust is an available resource when the trust was established by:

(A) The client's spouse, and the client did not live with the spouse; or

(B) A person other than the client or the client's spouse; and

(C) Payments were distributed by a trustee of the trust.

(iii) The department considers the funds a resource, not income.

(4) For trusts established on or after August 11, 1993:

(a) The department considers a trust as if it were established by the client when:

(i) The assets of the trust, as defined under WAC 388-470-0005, are at least partially from the client;

(ii) The trust is not established by will; and

(iii) The trust was established by:

(A) The client or the client's spouse;

(B) A person, including a court or administrative body, with legal authority to act in place of, or on behalf of, the client or the client's spouse; or

(C) A person, including a court or administrative body, acting at the direction of or upon the request of the client or the client's spouse.

(b) Only the assets contributed to the trust by the client are available to the client when part of the trust assets were contributed by any other person.

(c) The department does not consider:

(i) The purpose for establishing a trust;

(ii) Whether the trustees have, or exercise, any discretion under the terms of the trust;

(iii) Restrictions on when or whether distributions may be made from the trust; or

(iv) Restrictions on the use of distributions from the trust.

(d) For a revocable trust established as described under ~~((subsection (4))~~(a) of this ~~((section))~~ subsection:

(i) The full amount of the trust is an available resource of the client;

(ii) Payments from the trust to or for the benefit of the client are income of the client; and

(iii) Any payments from the trust, other than payments described under ~~((subsection (4))~~(d)(ii) of this subsection, are considered a transfer of client assets.

(e) For an irrevocable trust established as described under ~~((subsection (4))~~(a) of this ~~((section))~~ subsection:

(i) Any part of the trust from which payment can be made to or for the benefit of the client is an available resource. When payment is made from such irrevocable trusts, we will consider the payments as:

(A) Income to the client when payment is to or for the client's benefit; or

(B) The transfer of an asset when payment is made to any person for any purpose other than the client's benefit;

(ii) A trust from which a payment cannot be made to or for the client's benefit is a transfer of assets. For such a trust, the transfer of assets is effective the date:

(A) The trust is established; or

(B) The client is prevented from receiving benefit, if this is after the trust is established.

(iii) The value of the trust includes any payments made from the trust after the effective date of the transfer.

(5) For trusts established on or after August 1, 2003:

(a) The department considers a trust as if it were established by the client when:

(i) The assets of the trust, as defined under WAC 388-470-0005, are at least partially from the client or the client's spouse;

(ii) The trust is not established by will; and

(iii) The trust was established by:

(A) The client or the client's spouse;

(B) A person, including a court or administrative body, with legal authority to act in place of, or on behalf of, the client or the client's spouse; or

(C) A person, including a court or administrative body, acting at the direction of or upon the request of the client or the client's spouse.

(b) Only the assets contributed other than by will to the trust by either the client or the client's spouse are available to the client or the client's spouse when part of the trust assets were contributed by persons other than the client or the client's spouse.

(c) The department does not consider:

(i) The purpose for establishing a trust;

(ii) Whether the trustees have, or exercise, any discretion under the terms of the trust;

(iii) Restrictions on when or whether distributions may be made from the trust; or

(iv) Restrictions on the use of the distributions from the trust.

(d) For a revocable trust established as described under ~~((subsection (5))~~(a) of this ~~((section))~~ subsection:

(i) The full amount of the trust is an available resource of the client;

(ii) Payments from the trust to or for the benefit of the client are income of the client; and

(iii) Any payments from the trust, other than payments described under ~~((subsection (5))~~(d)(ii) of this subsection, are considered a transfer of client assets.

(e) For an irrevocable trust established as described under ~~((subsection (5))~~(a) of this ~~((section))~~ subsection:

(i) Any part of the trust from which payment can be made to or for the benefit of the client or the client's spouse is an available resource. When payment is made from such irrevocable trusts, the department will consider the payment as:

(A) Income to the client or the client's spouse when payment is to or for the benefit of either the client or the client's spouse; or

(B) The transfer of an asset when payment is made to any person for any purpose other than the benefit of the client or the client's spouse;

(ii) A trust from which a payment cannot be made to or for the benefit of the client or client's spouse is a transfer of assets. For such a trust, the transfer of assets is effective the date:

(A) The trust is established; or

(B) The client or client's spouse is prevented from receiving benefit, if this is after the trust is established.

(iii) The value of the trust includes any payments made from the trust after the effective date of the transfer.

(6) Trusts established on or after August 11, 1993, are not considered available resources if they contain the assets of either:

(a) A person sixty-four years of age or younger who is disabled as defined by SSI criteria (as described in WAC ~~((388-475-0050))~~ 182-512-0050) and the trust:

(i) Is established for the sole benefit of this person by their parent, grandparent, legal guardian, or a court; and

(ii) Stipulates that the state will receive all amounts remaining in the trust upon the death of the client, up to the amount of medicaid spent on the client's behalf; or

(b) A person regardless of age, who is disabled as defined by SSI criteria (as described in WAC ((~~388-475-0050~~) 182-512-0050)), and the trust meets the following criteria:

(i) It is irrevocable;

(ii) It is established and managed by a nonprofit association;

(iii) A separate account is maintained for each beneficiary of the trust but for purposes of investment and management of funds the trust pools the funds in these accounts;

(iv) Accounts in the trust are established solely for the benefit of the disabled individual as defined by the SSI program;

(v) Accounts in the trust are established by:

(A) The individual;

(B) The individual's spouse, where the spouse is acting in the place of or on behalf of the individual;

(C) The individual's parent, grandparent, legal guardian;

(D) A person, including a court or administrative body, with legal authority to act in place of or on behalf of the individual or the individual's spouse; or

(E) A person, including a court or administrative body, acting at the direction or upon the request of the individual or the individual's spouse.

(vi) It stipulates that either:

(A) The state will receive all amounts remaining in the client's separate account upon the death of the client, up to the amount of medicaid spent on the client's behalf; or

(B) The funds will remain in the trust to benefit other disabled beneficiaries of the trust.

(7) Trusts established on or after August 1, 2003, are not considered available resources if they contain the assets of either:

(a) A person sixty-four years of age or younger who is disabled as defined by SSI criteria (as described in WAC ((~~388-475-0050~~) 182-512-0050)) and the trust:

(i) Is irrevocable;

(ii) Is established for the sole benefit of this person by ~~((their))~~ the person's parent, grandparent, legal guardian, ~~((or))~~ a court, or after December 13, 2016, the person; and

(iii) Stipulates that the state will receive all amounts remaining in the trust upon the death of the client, the end of the disability, or the termination of the trust, whichever comes first, up to the amount of medicaid spent on the client's behalf; or

(b) A person regardless of age, who is disabled as defined by SSI criteria (as described in WAC ((~~388-475-0050~~) 182-512-0050)), and the trust meets the following criteria:

(i) It is irrevocable;

(ii) It is established and managed by a nonprofit association;

(iii) A separate account is maintained for each beneficiary of the trust but for purposes of investment and management of funds the trust pools the funds in these accounts;

(iv) Accounts in the trust are established solely for the benefit of the disabled individual as defined by the SSI program;

(v) Accounts in the trust are established by:

(A) The individual;

(B) The individual's spouse, where the spouse is acting in the place of or on behalf of the individual;

(C) The individual's parent, grandparent, legal guardian;

(D) A person, including a court or administrative body, with legal authority to act in place of or on behalf of the individual or the individual's spouse; or

(E) A person, including a court or administrative body, acting at the direction or upon the request of the individual or the individual's spouse.

(vi) It stipulates that either:

(A) The state will receive all amounts remaining in the client's separate account upon the death of the client, the end of the disability, or the termination of the trust, whichever comes first, up to the amount of medicaid spent on the client's behalf; or

(B) The funds will remain in the trust to benefit other disabled beneficiaries of the trust.

(8) Trusts described in subsections (6)(a) and (7)(a) of this section continue to be considered an unavailable resource even after the individual becomes age sixty-five. However, additional transfers made to the trust after the individual reaches age sixty-five would be considered an available resource and would be subject to a transfer penalty.

(9) The department does not apply a penalty period to transfers into a trust described in subsections (6)(b) and (7)(b) of this section if the trust is established for the benefit of a disabled individual under age sixty-five as described in WAC ((~~388-513-1363 and 388-513-1364~~) 182-513-1363) and the transfer is made to the trust before the individual reaches age sixty-five.

(10) The department considers any payment from a trust to the client to be unearned income. Except for trusts described in subsection (6) of this section, the department considers any payment to or for the benefit of either the client or client's spouse as described in subsections (4)(e) and (5)(e) of this section to be unearned income.

(11) The department will only count income received by the client from trusts and not the principal, if:

(a) The beneficiary has no control over the trust; and

(b) It was established with funds of someone other than the client, spouse or legally responsible person.

(12) This section does not apply when a client establishes that undue hardship exists.

(13) WAC ((~~388-513-1363, 388-513-1364, 388-513-1365, and 388-513-1366~~) 182-513-1363) apply under this section when the department determines that a trust or a portion of a trust is a transfer of assets.

**WSR 18-04-045**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**

[Order 18-16—Filed January 31, 2018, 2:53 p.m., effective January 31, 2018, 2:53 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: Amends Columbia River recreational sturgeon rules.

Citation of Rules Affected by this Order: Repealing WAC 220-312-06000W; and amending WAC 220-312-060.

Statutory Authority for Adoption: RCW 77.04.012, 77.04.020, 77.12.045, and 77.12.047.

Under RCW 34.05.350 the agency for good cause finds that immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.

Reasons for this Finding: This rule is needed to preserve recreational sturgeon harvest opportunities for a summer fishery in Bonneville Pool and also to avoid recreational sturgeon harvest exceeding current guidelines of one hundred five fish in John Day Pool. This action is consistent with decisions made by the states of Washington and Oregon on January 30, 2018. There is insufficient time to adopt permanent regulations.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at the Request of a Non-governmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 1, Amended 0, Repealed 1.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: January 30, 2018.

J. W. Unsworth  
 Director

**NEW SECTION**

**WAC 220-312-06000X Freshwater exceptions to statewide rules—Columbia River.** Notwithstanding the provisions of WAC 220-312-060, the following rules apply:

(1) Effective immediately until further notice, retention of white sturgeon is prohibited in the Dalles Pool. Catch and release continues to be allowed in the Dalles Pool.

(2) Effective February 4, 2018, until further notice, retention of white sturgeon is prohibited in Bonneville Pool. Catch and release continues to be allowed in Bonneville Pool.

(3) Effective February 12, 2018, until further notice, retention of white sturgeon is prohibited in John Day Pool. Catch and release continues to be allowed in John Day Pool.

**Reviser's note:** The typographical errors in the above section occurred in the copy filed by the agency and appear in the Register pursuant to the requirements of RCW 34.08.040.

**REPEALER**

The following section of the Washington Administrative Code is repealed:

WAC 220-312-06000W Freshwater exceptions to statewide rules—Columbia River. (18-09)

**WSR 18-04-048**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**

[Order 18-18—Filed January 31, 2018, 4:00 p.m., effective February 1, 2018, 6:00 a.m.]

Effective Date of Rule: February 1, 2018, 6:00 a.m.

Purpose: The purpose of this rule making is to provide for treaty Indian fishing opportunity in the Columbia River while protecting salmon listed as threatened or endangered under the Endangered Species Act (ESA). This rule making implements federal court orders governing Washington's relationship with treaty Indian tribes and federal law governing Washington's relationship with Oregon.

Citation of Rules Affected by this Order: Amending WAC 220-359-020.

Statutory Authority for Adoption: RCW 77.04.012, 77.04.020, 77.04.130, 77.12.045, and 77.12.047.

Other Authority: *United States v. Oregon*, Civil No. 68-513-KI (D. Or.), Order Adopting 2008-2017 *United States v. Oregon* Management Agreement (Aug. 12, 2008) (Doc. No. 2546); *Northwest Gillnetters Ass'n v. Sandison*, 95 Wn.2d 638, 628 P.2d 800 (1981); Washington fish and wildlife commission policies concerning Columbia River fisheries; 40 Stat. 515 (Columbia River Compact).

Under RCW 34.05.350 the agency for good cause finds that immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.

Reasons for this Finding: Opens the treaty winter fishery for commercial sales to Washington wholesale buyers and the public. The Columbia River treaty tribes have delayed the use of gillnets in SMCRA 1F, however sales of fish caught with platform/hook and line gear in that area is allowed (as described in subsection (2)(c)). Harvestable sturgeon are available under the current harvest guidelines for each pool. The season is consistent with the 2008-2017 Management Agreement and the associated biological opinion. Rule is consistent with action of the Columbia River Compact on January 30, 2018. Conforms state rules with tribal rules.

There is insufficient time to promulgate permanent regulations.

The Yakama, Warm Springs, Umatilla, and Nez Perce Indian tribes have treaty fishing rights in the Columbia River and inherent sovereign authority to regulate their fisheries. Washington and Oregon also have some authority to regulate fishing by treaty Indians in the Columbia River, authority that the states exercise jointly under the congressionally ratified Columbia River Compact. *Sohappy v. Smith*, 302 F. Supp. 899 (D. Or. 1969). The tribes and the states adopt parallel regulations for treaty Indian fisheries under the supervision of the federal courts. A court order sets the current parameters. *United States v. Oregon*, Civil No. 68-513-KI (D. Or.), Order Adopting 2008-2017 *United States v. Oregon* Management Agreement (Aug. 12, 2008) (Doc. No. 2546). Some salmon and steelhead stocks in the Columbia River are listed as threatened or endangered under the federal ESA. On May 5, 2008, the National Marine Fisheries Service issued a biological opinion under 16 U.S.C. § 1536 that allows for some incidental take of these species in the fisheries as described in the 2008-2017 *U.S. v. Oregon* Management Agreement.

Columbia River fisheries are monitored very closely to ensure consistency with court orders and ESA guidelines. Because conditions change rapidly, the fisheries are managed almost exclusively by emergency rule. As required by court order, the Washington (WDFW) and Oregon (ODFW) departments of fish and wildlife convene public hearings and invite tribal participation when considering proposals for new emergency rules affecting treaty fishing rights. *Sohappy*, 302 F. Supp. at 912. WDFW and ODFW then adopt regulations reflecting agreements reached.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at the Request of a Non-governmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 1, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: January 31, 2018.

Joe Stohr  
for J. W. Unsworth  
Director

#### NEW SECTION

**WAC 220-359-02000M Columbia River salmon seasons above Bonneville Dam.** Notwithstanding the provisions of WAC 220-359-010, WAC 220-359-020, WAC 220-359-030, and WAC 220-359-090, effective immediately until further notice, it is unlawful for a person to take or possess salmon, steelhead, sturgeon, shad, carp, catfish, walleye,

bass, or yellow perch taken for commercial purposes in Columbia River Salmon Management and Catch Reporting Areas 1F, 1G, and 1H. However, those individuals possessing treaty fishing rights under the Yakima, Warm Springs, Umatilla, and Nez Perce treaties may fish for salmon, steelhead, sturgeon, shad, carp, catfish, walleye, bass, or yellow perch under the following provisions:

(1) Open Areas: SMCRA 1G and 1H (The Dalles Pool and John Day Pool):

(a) Season: 6:00 a.m. February 1 through 6:00 p.m. February 16, 2018.

(b) Gear: Gill nets with no minimum mesh restriction.

(c) Allowable sale: Salmon (any species), steelhead, shad, yellow perch, bass, walleye, catfish and carp may be sold or retained for subsistence. Sturgeon from 43 to 54 inches fork length may be sold only when caught during open periods for that pool. Legal-sized sturgeon may be kept for subsistence purposes. Live release of all oversize and under-size sturgeon is required.

(2) Open Areas: SMCRA 1F, 1G, and 1H (Zone 6):

(a) Season: 6:00 a.m. February 1 through 6:00 p.m. March 21, 2018.

(b) Gear: Hoop nets, dip bag nets, and rod and reel with hook and line.

(c) Allowable sale: Salmon (any species), steelhead, shad, yellow perch, bass, walleye, catfish, and carp may be sold or retained for subsistence. Sturgeon from 38 to 54 inches fork length in Bonneville Pool and from 43 to 54 inches fork length in The Dalles and John Day Pools may be sold only when caught during open periods for that pool. Legal sized sturgeon may be kept for subsistence purposes. Live release of all oversize and under-size sturgeon is required.

(3) 24-hour quick reporting is required for Washington wholesale dealers for all areas as provided in WAC 220-352-180, except that all landings from treaty fisheries described above must be reported within 24-hours of completing the fish ticket (not 24-hours after the period concludes).

(4) Fish caught during the open period may be sold after the period concludes.

**Reviser's note:** The unnecessary underscoring in the above section occurred in the copy filed by the agency and appears in the Register pursuant to the requirements of RCW 34.08.040.

**Reviser's note:** The typographical error in the above section occurred in the copy filed by the agency and appears in the Register pursuant to the requirements of RCW 34.08.040.

**WSR 18-04-064**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**

[Order 18-17—Filed February 1, 2018, 2:59 p.m., effective February 5, 2018]

Effective Date of Rule: February 5, 2018.

Purpose: This emergency rule will allow nontreaty commercial fishing opportunities in the Columbia River while protecting fish listed as threatened or endangered under the

Endangered Species Act (ESA). This rule implements federal court orders governing Washington's relationship with treaty Indian tribes, federal law governing Washington's relationship with Oregon, and Washington fish and wildlife commission policy guidance for Columbia River fisheries.

Citation of Rules Affected by this Order: Amending WAC 220-358-030.

Statutory Authority for Adoption: RCW 77.04.012, 77.04.020, 77.12.045, and 77.12.047.

Other Authority: *United States v. Oregon*, Civil No. 68-513-KI (D. Or.), Order Adopting 2008-2017 *United States v. Oregon* Management Agreement (Aug. 12, 2008) (Doc. No. 2546); *Northwest Gillnetters Ass'n v. Sandison*, 95 Wn.2d 638, 628 P.2d 800 (1981); Washington fish and wildlife commission policies concerning Columbia River fisheries; 40 Stat. 515 (Columbia River Compact).

Under RCW 34.05.350 the agency for good cause finds that immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.

Reasons for this Finding: Sets the 2018 winter, spring, and summer select area commercial seasons. Impacts to non-local stocks are expected to be minimal and local Chinook stocks reared for the select area sites are available for harvest. The fishery is consistent with the *U.S. v. Oregon* Management Agreement and the associated biological opinion. Conforms Washington state rules with Oregon state rules. Regulation is consistent with compact action of January 30, 2018. There is insufficient time to promulgate permanent rules. Washington and Oregon jointly regulate Columbia River fisheries under the congressionally ratified Columbia River Compact. Four Indian tribes have treaty fishing rights in the Columbia River. The treaties preempt state regulations that fail to allow the tribes an opportunity to take a fair share of the available fish, and the states must manage other fisheries accordingly. *Sohappy v. Smith*, 302 F. Supp. 899 (D. Or. 1969). A federal court order sets the current parameters for sharing between treaty Indians and others. *United States v. Oregon*, Civil No. 68-513-KI (D. Or.), Order Adopting 2008-2017 *United States v. Oregon* Management Agreement (Aug. 12, 2008) (Doc. No. 2546). Some Columbia River Basin salmon and steelhead stocks are listed as threatened or endangered under the federal ESA. On May 5, 2008, the National Marine Fisheries Service issued a biological opinion under 16 U.S.C. § 1536 that allows for some incidental take of these species in treaty and nontreaty Columbia River fisheries governed by the 2008-2017 *U.S. v. Oregon* Management Agreement. The Washington and Oregon fish and wildlife commissions have developed policies to guide the implementation of such biological opinions in the states' regulation of nontreaty fisheries.

Columbia River nontreaty fisheries are monitored very closely to ensure compliance with federal court orders, ESA, and commission guidelines. Because conditions change rapidly, the fisheries are managed almost exclusively by emergency rule. Representatives from the Washington (WDFW) and Oregon (ODFW) departments of fish and wildlife convene public hearings and take public testimony when consid-

ering proposals for new emergency rules. WDFW and ODFW then adopt regulations reflecting agreements reached.

Number of Sections Adopted in Order to Comply with Federal Statute: New 1, Amended 0, Repealed 0; Federal Rules or Standards: New 1, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 1, Amended 0, Repealed 0.

Number of Sections Adopted at the Request of a Non-governmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 1, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: February 1, 2018.

J. W. Unsworth  
Director

#### NEW SECTION

**WAC 220-358-03000L Columbia River seasons below Bonneville.** Notwithstanding the provisions of WAC 220-358-030, WAC 220-358-040, and WAC 220-335-050, it is unlawful for a person to take or possess salmon, sturgeon, and shad for commercial purposes from Columbia River Salmon Management and Catch Reporting Areas 1A, 1B, 1C, 1D, 1E and Select Areas, except during the times and conditions listed below:

**(1) Tongue Point/South Channel**

**(a) Dates:**

Tongue Point and South Channel open:

Winter Season: 7 PM to 7 AM Monday and Thursday nights from February 5 through March 9, 2018; and 5 PM to 9 PM Monday, March 12, 2018.

Spring Season: 10 PM to 2 AM Thursday night April 19, 2018; and 3 PM to 7 PM Tuesday April 24, 2018; and 5 PM to 9 PM Thursday April 26, 2018; and 7 AM to 7 PM Monday and Thursday nights April 30, 2018 until further notice.

South Channel open:

Winter Season: 7 PM to 7 AM from March 15-23, 2018

**(b) Area:**

The winter-spring-summer season Tongue Point Select Area is defined as those waters of the Columbia River bounded by a line from a point at the end of the southernmost (upstream) pier (Pier #1) at the Tongue Point Job Corps facility projecting in a straight line from through flashing red USCG light "6" to the shore of Mott Island, a line from a regulatory marker at the southeast end of Mott Island northeasterly to a regulatory marker on the northwest shore of Lois Island, and a line from a regulatory marker (located at 46.18270 degrees N, -123.74313 degrees W) on the Oregon shore 500 feet north of the railroad bridge crossing the John Day River projecting easterly to a regulatory marker on Lois Island.

The South Channel Select Area is defined as those waters of South Channel bounded by a line from a regulatory

marker on the Oregon shore at John Day point projecting northeasterly to a regulatory marker on Lois Island, and a line from a regulatory marker on Settler Point projecting northwesterly to the flashing red USCG light "10" then westerly to the eastern tip of Burnside Island..

(c) **Gear:** Gillnets.

Winter season: 7-inch minimum mesh size restriction

Spring and Summer seasons: 9 3/4-inch maximum mesh size restriction

In Tongue Point, gear is restricted to a maximum net length of 250 fathoms and weight not to exceed two pounds on any one fathom.

In South Channel, gear is restricted to a maximum net length of 250 fathoms and no weight restriction on leadline. Use of additional weights and/or anchors attached directly to the leadline is allowed. Nets not specifically authorized for use in these areas may be onboard a vessel if properly stored. A properly stored net is defined as a net on a drum that is fully covered by a tarp (canvas or plastic) and bound with a minimum of ten revolutions of rope with a diameter of 3/8 (0.375) inches or greater.

(d) **Miscellaneous:**

Permanent regulations including rules related to transportation and lighted buoys remain in effect.

24-hour quick reporting required for Washington buyers, pursuant to WAC 220-352-180.

**(2) Blind Slough/Knappa Slough Select Area**

(a) **Dates:** Winter Season: Open Monday, Wednesday, and Thursday nights 7 PM to 7 AM February 5 thru March 23; and 6 PM to 10 PM Monday March 26; and 7 PM to 11 PM Thursday March 29; and 10 PM to 2 AM Monday night April 2.

Spring Season: Open 7 PM to 7 AM Tuesday and Thursday nights from April 19-27; and 7 PM to 7 AM Monday, Wednesday, and Thursday nights from April 30, 2018, until further notice.

(b) **Area:** Winter season:

The Blind Slough Select Area is defined as those waters of Blind Slough and Gnat Creek from a north-south line formed by regulatory markers at the mouth of Blind Slough to a regulatory marker in Gnat Creek located approximately 0.5 miles southeasterly (upstream) of the Barendse Road Bridge.

The Knappa Slough Select Area is defined as those waters of Knappa Slough, Calendar Slough, and Big Creek Slough bounded to the north (upstream) by a line projecting from a regulatory marker on the eastern shore of Karlson Island to the northernmost regulatory marker at the mouth of Blind Slough and bounded to the west (downstream) by a north-south line projecting through the easternmost tip of Minaker Island and markers on Karlson Island the Oregon shore. The area within a 100-foot radius of the mouth of Big Creek is closed.

Beginning April 30, the lower boundary of the Knappa Slough Select Area is extended downstream to a boundary line projecting southerly from a regulatory marker on the southwestern tip of Karlson Island through markers on the western tips of Minaker Island to a marker on the Oregon shore (fall boundary).

(c) **Gear:** Gillnets. Winter season: 7-inch minimum mesh. Spring Season:

Nets restricted to 100 fathoms in length with no weight restriction on leadline. Use of additional weights and/or anchors attached directly to the leadline is allowed. Nets not specifically authorized for use in these areas may be onboard a vessel if properly stored. A properly stored net is defined as a net on a drum that is fully covered by a tarp (canvas or plastic) and bound with a minimum of ten revolutions of rope with a diameter of 3/8 (0.375) inches or greater. .

(d) **Miscellaneous:** Permanent transportation rules in effect. In accordance with WACs 220-352-040 (1)(i) and 220-301-010 (9)(a-b), commercial fishers are expected, and fish dealers are required, to report landings for winter-summer fisheries in Knappa Slough and Blind Slough separately using appropriate zone codes. Fish dealers are requested to keep landings from these two sites separate to aid in sampling.

(3) **Allowable Possession:** Salmon and shad. Retention and sale of sturgeon is prohibited.

(4) **24-hour** quick reporting is in effect for Washington buyers (WAC 220-352-180)). Permanent transportation rules in effect.

(5) **Multi-Net Rule:** Nets not specifically authorized for use in these areas may be onboard a vessel if properly stored (WAC 220-358-030(2)).

(6) **Lighted Buoys:** Nets that are fished at any time between official sunset and official sunrise must have lighted buoys on both ends of the net unless the net is attached to the boat. If the net is attached to the boat, then one lighted buoy on the opposite end of the net from the boat is required.

**Reviser's note:** The typographical errors in the above section occurred in the copy filed by the agency and appear in the Register pursuant to the requirements of RCW 34.08.040.

**Reviser's note:** The unnecessary underscoring in the above section occurred in the copy filed by the agency and appears in the Register pursuant to the requirements of RCW 34.08.040.

**WSR 18-04-079**

**EMERGENCY RULES**

**DEPARTMENT OF**

**FISH AND WILDLIFE**

[Order 18-19—Filed February 2, 2018, 3:09 p.m., effective February 2, 2018, 3:09 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: Amend commercial sea urchin harvest rules.

Citation of Rules Affected by this Order: Repealing WAC 220-340-75000B; and amending WAC 220-340-750.

Statutory Authority for Adoption: RCW 77.04.012, 77.04.020, 77.12.045, and 77.12.047.

Under RCW 34.05.350 the agency for good cause finds that immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.

Reasons for this Finding: This emergency rule is needed to close the commercial harvest of red sea urchins in District 3 and for green sea urchins in Districts 3 and 4 because the quotas have been reached. There is insufficient time to adopt permanent rules.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at the Request of a Non-governmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 1, Amended 0, Repealed 1.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: February 2, 2018.

Joe Stohr  
for J. W. Unsworth  
Director

#### REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 220-340-75000B Commercial sea urchin fisheries.  
(18-08)

#### NEW SECTION

**WAC 220-340-75000C Commercial sea urchin fisheries.** Notwithstanding the provisions of WAC 220-340-750, effective immediately, it is unlawful to take or possess sea urchins taken for commercial purposes except as provided for in this section:

(1) The following areas are open for red sea urchin harvest seven days-per-week: marine fish/shellfish catch areas 23B, 25A, and 25B in Sea Urchin District 2, Sea Urchin District 4 west of a line projected true north from the shoreline at 123 degrees 52.7 minutes west longitude. It is unlawful to fish for, take, or possess red sea urchins smaller than 3.25 inches or larger than 5.0 inches (size is largest test diameter exclusive of spines).

(2) The following areas are open for green sea urchin harvest seven days-per-week: Sea Urchin District 6, and Sea Urchin District 7 except all waters of Hale Passage and Wollochet Bay within the following lines: west of a line projected true south from the shoreline near Point Fosdick at 122° 35 minutes west longitude to 47° 14 minutes north latitude, and thence projected true west to the shoreline of Fox Island, and east of a line projected true south from the shoreline near Green Point at 122° 41 minutes west longitude to 47° 16.5 minutes north latitude, and thence projected true east to the shoreline of Fox Island. It is unlawful to fish for, take, or possess green sea urchins smaller than 2.25 inches (size is largest test diameter exclusive of spines).

(3) The maximum cumulative landings for red and green sea urchins for each weekly fishery opening period is 1,500 pounds per species per valid designated sea urchin harvest license. Each fishery week begins Monday and extends through Sunday.