

WSR 18-10-002
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 18-72—Filed April 18, 2018, 2:41 p.m., effective May 1, 2018]

Effective Date of Rule: May 1, 2018.

Purpose: Amends recreational fishing rules for the Chehalis River.

Citation of Rules Affected by this Order: Repealing WAC 220-312-02000Z; and amending WAC 220-312-020.

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 forecasted abundance of spring Chinook returning to the Chehalis River Basin is sufficient to support this fishery. This emergency rule is needed to open this fishery which will provide for additional angling opportunity. 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Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at the Request of a Non-governmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 1, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.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: April 18, 2018.

Joe Stohr
 Director

NEW SECTION

WAC 220-312-02000Z Freshwater exceptions to statewide rules—Chehalis River. Notwithstanding the provisions of WAC 220-312-02000Y and WAC 220-312-020, effective May 1 through June 30, 2018, it is permissible to fish for salmon in the waters of the Chehalis River from the mouth (Highway 101 Bridge) to the Highway 6 Bridge in the town of Adna. Daily limit of one Chinook salmon, minimum size 12 inches in length. Release all other salmon.

REPEALER

The following section of the Washington Administrative Code is repealed effective July 1, 2018:

WAC 220-312-02000Z Freshwater exceptions to statewide rules—Chehalis River.

WSR 18-10-004
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 18-77—Filed April 19, 2018, 1:11 p.m., effective April 19, 2018, 1:11 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: Closes the commercial sea urchin fisheries in Puget Sound for the 2017-2018 season.

Citation of Rules Affected by this Order: Repealing WAC 220-340-75000E.

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 close the 2017-2018 commercial sea urchin fishery. The red and green sea urchin quotas in all sea urchin districts 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 0, 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: April 19, 2018.

Joe Stohr
 Director

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 220-340-75000E Commercial sea urchin fisheries. (18-41)

WSR 18-10-005
EMERGENCY RULES
HEALTH CARE AUTHORITY

Wendy Barcus
 Rules Coordinator

[Filed April 19, 2018, 2:02 p.m., effective April 19, 2018, 2:02 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: Effective January 1, 2018, the agency began covering all emergency and nonemergency ambulance services provided to apple health clients through fee-for-service, including those transports for clients enrolled in an agency-contracted managed care organization. The agency also removed all references to managed care from appropriate sections within chapter 182-546 WAC.

Citation of Rules Affected by this Order: Amending WAC 182-546-0150 and 182-546-0400.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160.

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: In order for the agency to finalize a separate rule making filed under WSR 15-24-129 for ground emergency medical transportation (GEMT) to implement HB 2007, subsection (10), Laws of 2015, 64th legislature, 2015 regular session, WAC 182-546-0150 and 182-546-0400 must be revised. HB 2007 (GEMT) required approval from the Centers for Medicare and Medicaid Services (CMS) before implementing. CMS approved the state plan amendment for GEMT (HB 2007) with the stipulation that the agency begin paying for all ground ambulance services through fee-for-service by January 1, 2018. This emergency fulfills that stipulation by removing references to managed care for ground ambulance services.

The agency filed WAC 182-546-0150 and 182-546-0400 under emergency rule making on December 21, 2017 (WSR 18-02-023) and began the permanent rule-making process. The agency completed the external stakeholder review and filed the proposed rule making under WSR 18-09-114 on April 18, 2018. The public hearing is scheduled for May 22, 2018. The emergency rules filed under WSR 18-02-023 are set to expire on April 20, 2018. This second emergency filing is required while the permanent rule-making process is completed.

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 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 2, 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 2, Repealed 0.

Date Adopted: April 19, 2018.

AMENDATORY SECTION (Amending WSR 14-07-042, filed 3/12/14, effective 4/12/14)

WAC 182-546-0150 Client eligibility for ambulance transportation. (1) Except for persons in the Family Planning Only and TAKE CHARGE programs, fee-for-service clients are eligible for ambulance transportation to covered services with the following limitations:

(a) Persons in the following Washington apple health (WAH) programs are eligible for ambulance services within Washington state or bordering cities only, as designated in WAC 182-501-0175:

(i) Medical care services (MCS) as described in WAC 182-508-0005;

(ii) Alien emergency medical (AEM) services as described in chapter 182-507 WAC.

(b) Persons in the WAH categorically needy/qualified medicare beneficiary (CN/QMB) and WAH medically needy/qualified medicare beneficiary (MN/QMB) programs are covered by medicare and medicaid, with the payment limitations described in WAC 182-546-0400(5).

(2) Persons enrolled in an agency-contracted managed care organization (MCO) must coordinate:

(a) Ground ambulance services through ~~((their designated MCO, subject to the MCO coverage and limitations))~~ the agency under fee-for-service, subject to the coverage and limitations within this chapter; and

(b) Air ambulance services through the agency under fee-for-service, subject to the coverage and limitations within this chapter.

(3) Persons enrolled in the agency's primary care case management (PCCM) program are eligible for ambulance services that are emergency medical services or that are approved by the PCCM in accordance with the agency's requirements. The agency pays for covered services for these persons according to the agency's published medicaid provider guides and provider notices.

(4) Persons under the Involuntary Treatment Act (ITA) are not eligible for ambulance transportation coverage outside the state of Washington. This exclusion from coverage applies to individuals who are being detained involuntarily for mental health treatment and being transported to or from bordering cities. See also WAC 182-546-4000.

(5) See WAC 182-546-0800 and 182-546-2500 for additional limitations on out-of-state coverage and coverage for persons with other insurance.

(6) The agency does not pay for ambulance services for jail inmates and persons living in a correctional facility, including persons in work-release status. See WAC 182-503-0505(5).

AMENDATORY SECTION (Amending WSR 13-16-006, filed 7/25/13, effective 8/25/13)

WAC 182-546-0400 General limitations on payment for ambulance services. (1) In accordance with WAC 182-502-0100(8), the agency pays providers the lesser of the provider's usual and customary charges or the maximum allow-

able rate established by the agency. The agency's fee schedule payment for ambulance services includes a base rate or lift-off fee plus mileage.

(2) The agency:

(a) ~~((Does not))~~ Pays providers under fee-for-service for ground ambulance services provided to a client who is enrolled in an agency-contracted managed care organization (MCO). ~~((Payment in such cases is the responsibility of the client's agency-contracted MCO;))~~

(b) Pays providers under fee-for-service for air ambulance services provided to a client who is enrolled in an agency-contracted MCO.

(3) The agency does not pay providers for mileage incurred traveling to the point of pickup or any other distances traveled when the client is not on board the ambulance. The agency pays for loaded mileage only as follows:

(a) The agency pays ground ambulance providers for the actual mileage incurred for covered trips by paying from the client's point of pickup to the point of destination.

(b) The agency pays air ambulance providers for the statute miles incurred for covered trips by paying from the client's point of pickup to the point of destination.

(4) The agency does not pay for ambulance services if:

(a) The client is not transported;

(b) The client is transported but not to an appropriate treatment facility; or

(c) The client dies before the ambulance trip begins (see the single exception for ground ambulance providers at WAC 182-546-0500(2)).

(5) For clients in the categorically needy/qualified medicare beneficiary (CN/QMB) and medically needy/qualified medicare beneficiary (MN/QMB) programs the agency's payment is as follows:

(a) If medicare covers the service, the agency will pay the lesser of:

(i) The full coinsurance and deductible amounts due, based upon medicaid's allowed amount; or

(ii) The agency's maximum allowable for that service minus the amount paid by medicare.

(b) If medicare does not cover or denies ambulance services that the agency covers according to this chapter, the agency pays its maximum allowable fee; except the agency does not pay for clients on the qualified medicare beneficiaries (QMB) only program.

WSR 18-10-013

EMERGENCY RULES

DEPARTMENT OF

FISH AND WILDLIFE

[Order 18-80—Filed April 20, 2018, 5:10 p.m., effective April 20, 2018, 5:10 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: Amend recreational fishing rules for the Skagit and Sauk rivers.

Citation of Rules Affected by this Order: Repealing WAC 220-312-04000G and 220-312-03000H [220-312-04000H]; and amending WAC 220-312-040.

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 add a night closure to WSR 18-09-041. The Skagit River Steelhead Fishery Resource Management Plan has received formal federal approval allowing the fishery to proceed. 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: April 20, 2018.

Nate Pamplin
for Joe Stohr
Director

NEW SECTION

WAC 220-312-04000H Freshwater exceptions to statewide rules—Puget Sound. Notwithstanding the provisions of WAC 220-312-04000E and WAC 220-312-040, effective immediately through April 29, 2018:

(1) Skagit River, from The Dalles Bridge in the town of Concrete to the Cascade River Road Bridge in Marblemount:

(a) Open for gamefish April 14-15; 18-22; and 25-29:

(I) All species catch and release only, except daily limit two hatchery steelhead and no daily limit for Atlantic salmon.

(II) Selective Gear Rules in effect. Night closure is in effect.

(III) It is prohibited to fish from a boat that is under power.

(2) Sauk River, from the mouth to the Sauk Prairie Road Bridge in Darrington:

(a) Open for gamefish April 14-15; 18-22; and 25-29:

(I) All species catch and release only, except daily limit two hatchery steelhead and no daily limit for Atlantic salmon.

(II) Selective Gear Rules in effect. Night closure is in effect.

(III) It is prohibited to fish from a boat equipped with an internal combustion motor.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 220-312-04000G Freshwater exceptions to statewide rules—Puget Sound, (18-67)

The following section of the Washington Administrative Code is repealed effective April 30, 2018:

WAC 220-312-04000H Freshwater exceptions to statewide rules—Puget Sound.

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 18-10-017**EMERGENCY RULES****HEALTH CARE AUTHORITY**

[Filed April 23, 2018, 10:21 a.m., effective April 23, 2018, 10:21 a.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: The agency is revising WAC 182-531A-0800 Applied behavior analysis (ABA)—Provider requirements, to align with new credentialing for ABA providers through the Washington state department of health under chapter 246-805 WAC.

Citation of Rules Affected by this Order: Amending WAC 182-531A-0800.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160.

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: WAC 182-531A-0800 needs to be amended to align with SSB 5488 of 2015 and Washington state department of health's recently filed rules under chapter 246-805 WAC, which create new credentials for behavior analysts, ABAs, and behavior technicians, effective July 1, 2017. As soon as chapter 246-805 WAC became effective, the agency began the permanent rule-making process under WSR 17-11-029 filed May 10, 2017. The permanent rules were filed on April 12, 2018, under WSR 18-09-036, and are effective on May 13, 2018. This emergency filing is necessary to continue the current emergency rules (filed under WSR 18-02-063, which are set to expire on April 28, 2018) until the permanent rules become effective.

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 1, 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 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 1, Repealed 0.

Date Adopted: April 23, 2018.

Wendy Barcus
Rules Coordinator

AMENDATORY SECTION (Amending WSR 15-19-121, filed 9/21/15, effective 10/22/15)

**WAC 182-531A-0800 Applied behavior analysis (ABA)—Provider requirements.
Center of excellence.**

(1) A center of excellence (COE) may be an entity or an individual. The COE's evaluating and prescribing providers must function as a multidisciplinary care team.

(2) The COE must employ:

(a) A person licensed under Title 18 RCW who is experienced in the diagnosis and treatment of autism spectrum disorders and is:

- (i) An advanced registered nurse practitioner (ARNP);
- (ii) A developmental pediatrician;
- (iii) A neurologist;
- (iv) A pediatric neurologist;
- (v) A pediatric psychiatrist;
- (vi) A psychiatrist; or
- (vii) A psychologist; or

(b) A qualified medical provider who meets qualifications in subsection (3) of this section (~~and~~), who has been designated by the agency as a COE, and who has successfully completed the agency's approved COE training.

(3) The COE must be prequalified by the agency as meeting or employing people who meet the following criteria:

(a) ARNPs, physicians, and psychologists must have demonstrated expertise in diagnosing an autism spectrum disorder by:

- (i) Using a validated diagnostic tool;
- (ii) Confirming the diagnosis by observing the client's behavior and interviewing family members; or
- (iii) Reviewing the documentation available from the client's primary care provider, individualized education plan, or individualized family service plan;

(b) ARNPs, physicians, and psychologists must understand the medically necessary use of applied behavior analysis (ABA); and

(c) ARNPs, physicians, and psychologists must be sufficiently qualified to conduct and document a comprehensive diagnostic evaluation, and develop a multidisciplinary clinical treatment plan under WAC 182-531A-0500(2).

(4) The COE must be enrolled with the agency or the client's managed care organization, unless the client has third-party insurance.

(5) Examples of providers who can qualify as a designated COE include:

- (a) Multidisciplinary clinics;
- (b) Individual qualified provider offices; and
- (c) Neurodevelopmental centers.

(6) All ABA providers must meet the specified minimum qualifications and comply with applicable state laws.

Lead behavior analysis therapist.

(7) The lead behavior analysis therapist (LBAT) must ~~((be))~~:

(a) ~~Be licensed by the department of health (DOH) to practice independently as ((an ARNP, physician, psychologist, or licensed mental health practitioner))~~ a behavior analyst or assistant behavior analyst with supervision from a licensed behavior analyst under Title 18 RCW~~((, or credentialed as a certified counselor or certified counselor advisor under Title 18 RCW,))~~ and be an eligible provider according to chapter 182-502 WAC; or

~~(b) ((Employed by or contracted with an agency that is enrolled as a participating provider and licensed by DOH as a hospital, a residential treatment facility, or an in-home services agency and be licensed by DOH to practice independently as an ARNP, physician, psychologist, licensed mental health practitioner, or credentialed as a counselor, under Title 18 RCW, and be an eligible provider according to chapter 182-502 WAC; or~~

~~(c) Employed or contracted with an agency that is enrolled as a participating provider and licensed by the department of social and health services' division of behavioral health and recovery (DBHR) with certification to provide ABA services, and be able to meet the staff requirements specified in chapter 388-877A WAC;))~~ Be a DOH-licensed mental health counselor, DOH-licensed marriage and family therapist, DOH-licensed independent clinical social worker, DOH-licensed advanced social worker, or psychologist with a signed attestation regarding certification as a board-certified behavior analyst (BCBA) or an assistant behavior analyst (BCaBA) on file with the agency (see chapter 246-805 WAC).

(8) The LBAT must enroll as a servicing provider, be authorized to supervise ancillary providers, and be:

(a) A ~~((board-certified behavior analyst (BCBA) with proof of board certification through the Behavior Analysis Certification Board (BACB))~~ DOH-licensed behavior analyst (LBA) (see WAC 246-805-100); or

~~(b) ((Eligible to sit for board certification under standards set by the BACB; or~~

~~(c) Certified by the BACB as an assistant behavior analyst (BCaBA) and practice according to the scope and responsibilities defined by the BACB))~~ A DOH-licensed assistant behavior analyst (LABA) (see WAC 246-805-200).

(9) If the LBAT's role is filled by a ~~((BCaBA))~~ LABA, the responsibilities below must be fulfilled by both the ~~((BCaBA))~~ LABA and the supervising ~~((BCBA))~~ LBA, as required by ~~((the BACB))~~ DOH. The LBAT must:

(a) Develop and maintain an ABA therapy treatment plan that is comprehensive, incorporating treatment provided by other health care professionals, and that states how all treatment will be coordinated; and

(b) Supervise at least five percent of the total direct care provided by the ~~((therapy assistant))~~ certified behavior technician per week.

~~((Therapy assistant.))~~ Certified behavior technician.

(10) The ~~((therapy assistant (TA))~~ certified behavior technician (CBT) must ~~((be))~~:

(a) ~~Be able to practice independently by being ((licensed))~~ certified by DOH as a ~~((licensed mental health practitioner or credentialed as a counselor))~~ certified behavior technician under Title 18 RCW in good standing with no license restrictions; or

~~(b) ((Employed by or contracted with an agency enrolled as a participating provider and licensed by DOH as a hospital, a residential treatment facility, or an in-home services agency with a home health service category to provide ABA services, and be able to practice independently by being licensed by DOH as a licensed mental health practitioner or credentialed as a counselor under Title 18 RCW in good standing with no license restrictions; or~~

~~(c) Employed by or contracted with an agency enrolled as a participating provider and licensed by DBHR as a community mental health agency with certification to provide ABA services, and be able to meet the staff requirements specified in chapter 388-877A WAC;))~~ Be a DOH-licensed mental health counselor, DOH-licensed marriage and family therapist, DOH-licensed independent clinical social worker, DOH-licensed advanced social worker, or psychologist with a signed attestation regarding ABA qualifications on file with the agency (see chapter 246-805 WAC).

(11) The ~~((TA))~~ CBT must enroll as a performing or servicing provider and have:

(a) Sixty hours of ABA training that includes applicable ABA principles and techniques, services, and caring for a client with core symptoms of autism; and

(b) A letter of attestation signed by the lead LBAT, documenting that the ~~((TA))~~ CBT has demonstrated competency in implementing ABA therapy treatment plans and delivering ABA services.

(12) The ~~((TA))~~ CBT must:

(a) Deliver services according to the ABA therapy treatment plan; and

(b) Be supervised by an LBAT who meets the requirements under subsection (7)(~~(;))~~ and (8)(~~(, and (9))~~) of this section; and

(c) Review the client's progress with the LBAT at least every two weeks to confirm that the ABA therapy treatment plan still meets the client's needs. If changes are clinically indicated, they must be made by the LBAT.

Facility-based day program.

(13) All facility-based day program providers must meet the requirements under WAC 182-531A-0600 (3)(a), and meet the following licensure requirements:

(a) Outpatient hospital facilities must meet the applicable DOH licensure requirements;

~~(b) ((A clinic or nonhospital-based facility must be licensed as a community mental health agency by DBHR under chapter 388-877A WAC;~~

(e)) A provider rendering direct ABA services must meet the qualifications and applicable licensure or certification requirements as described in this subsection, as applicable; and

((e)) (c) Any provider serving as a member of the multidisciplinary care team must be licensed or certified under Title 18 RCW.

WSR 18-10-019
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 18-73—Filed April 23, 2018, 1:39 p.m., effective May 5, 2018]

Effective Date of Rule: May 5, 2018.

Purpose: Amends recreational harvest rules for Puget Sound shrimp.

Citation of Rules Affected by this Order: Repealing WAC 220-330-07000H; and amending WAC 220-330-070.

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 regulation is needed to ensure an orderly fishery, manage the fishery within court-ordered sharing requirements, and ensure conservation. Harvestable amounts of spot shrimp are available, but only enough recreational shares exist for a limited number of open days in the marine areas listed in this section. In addition, this emergency regulation opens the Marine Area 4, 5, 6 and 7 seasons one hour before sunrise (at 4:40 a.m.), which is the default daily start time for those areas the remainder of the season. 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: April 23, 2018.

Amy H. Windrope
for Joe Stohr
Director

NEW SECTION

WAC 220-330-07000H Shrimp—Areas and seasons.

Notwithstanding the provisions of WAC 220-330-070, effective immediately through May 31, 2018, it is unlawful to fish for or possess shrimp taken for personal use in all waters of Marine Areas 4 (east of the Bonilla-Tatoosh line), 5, 6, 7, 8-1, 8-2, 9, 10, 11, 12, 13 and the Discovery Bay Shrimp District, except as provided for in this section:

(1) Marine Areas 4 (east of the Bonilla-Tatoosh line), 5, 6 (excluding the Discovery Bay Shrimp District) and 7 West: Open 4:40 a.m. May 5 through May 31.

(2) Marine Areas 7 East and 7 South:

(a) Open 4:40 a.m. May 5; and

(b) Open May 9 through May 12;

(c) Open May 23 through May 26.

(3) Marine Areas 8-1 and 8-2:

(a) Open May 5 from 7:00 a.m. through 1:00 p.m., and May 9 from 8:00 a.m. through 2:00 p.m.

(b) Divers may take shrimp by hand or hand-held device from 7:00 p.m. until midnight on those open days in Marine Area 8-2.

(4) Marine Area 9: Open May 5 from 7:00 a.m. through 11:00 a.m., and May 9 from 9:00 a.m. through 1:00 p.m.

(5) Marine Area 10 west of a line from West Point to Alki Point: Open May 5 from 7:00 a.m. through 11:00 a.m.

(6) Marine Area 10 east of a line from West Point to Alki Point: Open May 5 from 7:00 a.m. through 1:00 p.m.

(7) Marine Area 11: Open May 5 from 7:00 a.m. through 11:00 a.m.

(8) Marine Area 12: Open May 5, 9, 12 and 23 from 9:00 a.m. through 1:00 p.m.

(9) Marine Area 13: Open May 5 from 7:00 a.m. through 11:00 a.m., and May 9 from 9:00 a.m. through 1:00 p.m.

(10) Discovery Bay Shrimp District: Open May 5, 9, 12 and 23 from 7:00 a.m. through 3:00 p.m.

REPEALER

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

WAC 220-330-07000H Shrimp—Areas and seasons.

WSR 18-10-022
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 18-76—Filed April 23, 2018, 4:29 p.m., effective April 23, 2018, 4:29 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: Amends recreational bottomfish possession limits.

Citation of Rules Affected by this Order: Repealing WAC 220-314-02000C; and amending WAC 220-314-020.

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 areas where canary rockfish can be retained to provide for additional recreational angling opportunity and correct a previous 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: April 23, 2018.

Amy H. Windrope
for Joe Stohr
Director

NEW SECTION

WAC 220-314-02000D Possession limits—Bottomfish. Notwithstanding the provisions of WAC 220-314-020, it is unlawful to violate the provisions, provided that unless otherwise amended, all permanent rules remain in effect:

(1) In Catch Record Card Areas 1 through 3, and 4 west of the Bonilla-Tatoosh line: three flatfish (except Pacific halibut) may be retained in addition to the aggregate daily bottomfish limit.

(2) In Catch Record Card Areas 1 and 2: two canary rockfish may be retained as part of the rockfish daily limit.

(3) In Catch Record Card Areas 3 and 4 west of the Bonilla-Tatoosh line; effective May 9: two canary rockfish may be retained as part of the rockfish daily limit.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 220-314-02000C Possession limits—Bottomfish.
(18-69)

WSR 18-10-031 EMERGENCY RULES DEPARTMENT OF REVENUE

[Filed April 25, 2018, 9:04 a.m., effective April 27, 2018]

Effective Date of Rule: April 27, 2018.

Purpose: This new section will provide the option of a brief adjudicative proceeding to those impacted by specific agency actions of the department of revenue in the administration of unclaimed property, RCW 63.29.340 Interest and penalties.

Citation of Rules Affected by this Order: New WAC 458-65A-10001 Brief adjudicative proceedings for matters related to penalties and interest imposed under the Uniform Unclaimed Property Act, chapter 63.29 RCW.

Statutory Authority for Adoption: RCW 63.29.370.

Other Authority: RCW 34.05.350.

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 will allow for the immediate appeal of actions by the department of revenue while it proceeds with the adoption of a permanent rule.

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: April 25, 2018.

Erin T. Lopez
Rules Coordinator

Chapter 458-65A WAC

UNCLAIMED PROPERTY

NEW SECTION

WAC 458-65A-10001 Brief adjudicative proceedings for matters related to penalties and interest imposed under the Uniform Unclaimed Property Act, chapter 63.29 RCW. (1) **Introduction.** The department of revenue (department) conducts adjudicative proceedings pursuant to chapter 34.05 Revised Code of Washington (RCW), the Administrative Procedure Act (APA). The department will use a brief adjudicative proceeding as provided in RCW

34.05.482 through 34.05.494 to determine the following issues:

(a) Whether a holder is liable for accrued interest for failure to pay or deliver property to the department (RCW 63.29.340(1));

(b) Whether a holder is subject to the ten percent penalty for failure to timely file a report or pay or deliver any amounts or property due under a report (RCW 63.29.340(2));

(c) Whether a holder is subject to the ten percent penalty for an assessment following an examination, of amounts unpaid or property not delivered (RCW 63.29.340(3));

(d) Whether a holder is subject to the five percent penalty for failure to timely pay or deliver property due under an assessment (RCW 63.29.340(4)); and

(e) Whether a holder is subject to the five percent penalty for failing to electronically file a report or pay electronically (RCW 63.29.340(7)).

(2) **Multiple penalties.** The assessment of more than one type of penalty against a holder will be determined in a single brief adjudicative proceeding if those penalties were assessed in the same notice of assessment.

(3) **Holder defined.** Holder, as applied throughout this rule means a person obligated to report, or to deliver, property that is subject to chapter 63.29 RCW, the Uniform Unclaimed Property Act of 1983.

(4) **Record in brief adjudicative proceedings.** The record with respect to a holder's petition for review per RCW 34.05.482 through 34.05.485 will consist of:

(a) The holder's unclaimed property report and electronic confirmation of report (RCW 63.29.170);

(b) Application for penalty and interest waiver (RCW 63.29.340 and 63.29.191);

(c) Application for refund of property, interest, or penalty (RCW 63.29.192);

(d) The holder's unclaimed property petition for review (RCW 63.29.193);

(e) Request for relief from electronic filing and payment requirements (RCW 63.29.170 (5)(a) and 63.29.190 (1)(a));

(f) Department's letter of denial for refund or return of property (RCW 63.29.193); and

(g) All correspondence between the holder and the department regarding the penalty, interest, or refund in question.

(5) **Conduct of brief adjudicative proceedings.**

(a) If the department assesses penalties and interest under chapter 63.29 RCW, it will notify the holder of the penalties and interest in writing and state the reason for the penalties and interest. To initiate a review of the department's assessment of penalties and interest, the holder must file a written petition for review no later than thirty days after service of the department's written notice that the holder has been assessed penalties and interest. See RCW 63.29.193.

(b) A form notice of petition for review is available at dor.wa.gov or by calling 1-800-647-7706. The completed form must be mailed, emailed, or faxed to the department at:

Mail:

Washington State Department of Revenue
Special Programs, Unclaimed Property Section
P.O. Box 47477
Olympia, WA 98504-7477

Email: UCP@dor.wa.gov

Fax: 360-534-1498

(c) At the time the petition is filed, the holder must submit to the special programs, unclaimed property section, all arguments and any evidence or written material relevant to the matter that the party wishes the presiding officer to consider. No witnesses may offer testimony.

(d) A presiding officer, who will be the unclaimed property operations manager of the special programs division or such other person as designated by the director of the department, will conduct brief adjudicative proceedings. The presiding officer for brief adjudicative proceedings will have agency expertise in the subject matter but will not otherwise have participated in the assessment of penalties on the holder.

(e) In addition to the record, the presiding officer for brief adjudicative proceedings may employ agency expertise as a basis in making a decision.

(f) Within twenty-one days of receipt of the holder's petition for review, the presiding officer will enter an initial order, including a brief explanation of the decision per RCW 34.05.485. All orders will be in writing. The initial order will become the department's final order unless a timely petition for review is filed with the department's administrative review and hearings division as provided in subsection (6) of this rule.

(6) **Review of initial orders from brief adjudicative proceeding.**

(a) A holder may request a review by the department of an initial order issued per subsection (5) of this rule by filing a written petition for review with the department's administrative review and hearings division within twenty-one days of service of the initial order on the holder. See RCW 34.05.-488. At the time the petition is filed, the holder must submit to the administrative review and hearings division all arguments and any evidence or written material relevant to the matter that the party wishes the reviewing officer to consider.

(b) An unclaimed property petition for review of an initial order per subsection (5) of this rule is available at dor.wa.gov. The petition must be sent to one of the following:

Mail:

Washington State Department of Revenue
Administrative Review and Hearings Division
P.O. Box 47460
6400 Linderson Way S.W.
Olympia, WA 98504-7460

Email: DORARHDadmin@dor.wa.gov

Fax: 360-534-1340

(c) A reviewing officer, who will be either the assistant director of the administrative review and hearings division or such other person as designated by the director, will conduct a brief adjudicative proceeding and determine whether the department's initial order issued per subsection (5) of this rule was correctly based on the criteria set forth in RCW 63.29.-340. The reviewing officer will review the record and, if needed, convert the proceeding to a formal adjudicative proceeding in accordance with subsection (7) of this rule.

(d) The agency record need not constitute the exclusive basis for the reviewing officer's decision. The reviewing officer will have the authority of a presiding officer.

(e) The reviewing officer will issue a written order that includes a brief statement of the reasons for the decision, within twenty days of the date the petition for review was filed. The order will include a notice that judicial review may be available. The order of the reviewing officer represents the final decision of the department.

(f) A request for review is deemed denied if the department does not issue an order on review within twenty days after the petition for review is filed, unless a continuance is issued under subsection (11) of this rule. See RCW 34.05-491(5).

(7) **Conversion of a brief adjudicative proceeding to a formal proceeding.** The presiding officer or reviewing officer may convert the brief adjudicative proceeding to a formal proceeding at any time on motion of the holder, the department, or the presiding or reviewing officer's own motion.

(a) The presiding or reviewing officer will convert the proceeding when it finds that the use of the brief adjudicative proceeding violates any provision of law, the protection of the public interest requires the agency to give notice to and an opportunity to participate to persons other than the holder and department, or when the issues and interests involved warrant the use of the procedures of RCW 34.05.413 through 34.05-479.

(b) When a proceeding is converted from a brief adjudication to a formal proceeding, the director may become the reviewing officer or may designate a replacement reviewing officer to conduct the formal proceedings upon notice to the holder and the department.

(c) In the conduct of the formal proceedings, WAC 458-20-10002(2) will apply to the proceedings.

(8) **Court appeal.**

(a) A holder may appeal a final order of the department under Part V, chapter 34.05 RCW, when a review of the initial decision has been requested under subsection (6) of this rule and all other administrative remedies have been exhausted. See RCW 34.05.534.

(b) A holder who has already paid or delivered property to the department may appeal directly to the superior court of Thurston County for a refund of such payment or property instead of appealing to the department. See RCW 63.29.194.

(9) **Computation of time.** In computing any period of time prescribed by this rule, the day of the act or event after which the designated period is to run is not to be included. The last day of the period is to be included, unless it is a Saturday, Sunday or a legal holiday, in which event the period runs until the next day which is not a Saturday, Sunday or legal holiday. When the period of time prescribed is less than seven days, intermediate Saturdays, Sundays and holidays are excluded in the computation. Service as discussed in subsection (10) of this rule is deemed complete upon mailing.

(10) **Service.** All notices and other pleadings or papers filed with the presiding or reviewing officer must be served on the holder, their representatives/agents of record, and the department's representative.

(a) Service is made by one of the following methods:

- (i) In person;
- (ii) By first-class, registered or certified mail;
- (iii) By fax and same-day mailing of copies;
- (iv) By commercial parcel delivery company; or

(v) By electronic delivery.

(b) Service by mail is regarded as completed upon deposit in the United States mail properly stamped and addressed.

(c) Service by electronic fax is regarded as completed upon the production by the fax machine of confirmation of transmission.

(d) Service by commercial parcel delivery is regarded as completed upon delivery to the parcel delivery company, properly addressed with charges prepaid.

(e) Service by electronic delivery is regarded as completed on the date that the department electronically sends the information to the parties or electronically notifies the parties that the information is available to be accessed by them.

(f) Service to a holder and to their representative/agent of record must be to the address(es) shown on the petition for review.

(g) Service to the department's representative and to the presiding officer must be to the special programs division unclaimed property section at the address shown in subsection (5) of this rule.

(h) Service to the reviewing officer must be to the administrative review and hearings division at the address shown in subsection (6) of this rule.

(i) Where proof of service is required, the proof of service must include:

- (i) An acknowledgment of service; and
- (ii) A certificate, signed by the person who served the document(s), stating the date of service; that the person did serve the document(s) upon all or one or more of the parties of record in the proceeding by delivering a copy to (names); and that the service was accomplished by a method of service as provided in this subsection.

(j) Failure to serve documents on all parties of record in the proceeding in a manner prescribed by this subsection will result in an unlawful ex parte contact. An ex parte contact cannot constitute evidence of any fact at issue in the matter unless the party complies with RCW 34.05.455(5).

(11) **Continuance.** The presiding officer or reviewing officer may grant a request for a continuance by motion of the holder, the department, or on its own motion.

WSR 18-10-039

EMERGENCY RULES

DEPARTMENT OF

FISH AND WILDLIFE

[Order 18-78—Filed April 25, 2018, 3:35 p.m., effective May 1, 2018]

Effective Date of Rule: May 1, 2018.

Purpose: Amends commercial coastal troll rules - sea-sons and areas.

Citation of Rules Affected by this Order: Amending WAC 220-354-300.

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: A harvestable quota of salmon is available for the coastal commercial troll fleet. These rules are adopted at the recommendation of the Pacific Fisheries Management Council, in accordance with preseason fishing 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 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: April 25, 2018.

Joe Stohr
Director

NEW SECTION

WAC 220-354-3000F Coastal salmon troll seasons—Commercial. Notwithstanding the provisions of WAC 220-354-300, effective immediately until further notice, it is unlawful to fish for salmon with troll gear or to land salmon taken with troll gear into a Washington port except during the seasons provided below:

(1) Salmon Management and Catch Reporting Areas 1, 2, 3, and that portion of Area 4 west of 125°05'00" W longitude and south of 48°23'00" N latitude open:

May 1 through June 30, 2018.

(2) In Washington Catch Reporting Areas 1, 3 and 4, landing and possession limit of 50 Chinook per vessel per landing week, defined as Thursday through Wednesday.

(3) In Washington Catch Reporting Area 2, landing and possession limit of 100 Chinook per vessel per landing week, defined as Thursday through Wednesday.

(4) The Cape Flattery and Columbia River Control Zones are closed. The Mandatory Yelloweye Rockfish Conservation Area is closed.

(5) Minimum size for Chinook salmon is 28 inches in length. No minimum size for pink, sockeye or chum salmon. It is unlawful to possess coho salmon.

(5) Lawful troll gear is restricted to all legal troll gear with single point, single shank barbless hooks.

(6) Fishers must land and deliver their catch within 24 hours of any closure of a fishery provided for in this section. Vessels in possession of salmon north of the Queets River may not cross the Queets River line without first notifying WDFW by phone at (360) 249-1215 or by email at Wendy.Beehley@dfw.wa.gov with Area fished, total Chinook and

halibut catch aboard, and destination. Vessels in possession of salmon south of the Queets River may not cross the Queets River line without first notifying WDFW by phone at (360) 249-1215 or by email at Wendy.Beehley@dfw.wa.gov with Area fished, total Chinook and halibut catch aboard, and destination. Vessels fishing or in possession of salmon while fishing north of Leadbetter Point must land and deliver their fish within the area and North of Leadbetter Point. Vessels fishing or in possession of salmon while fishing south of Leadbetter Point must land and deliver their fish within the area and south of Leadbetter Point.

(7) The Cape Flattery Control Zone is defined as the area from Cape Flattery (48°23'00" N latitude) to the northern boundary of the U.S. Exclusive Economic Zone, and the area from Cape Flattery south to Cape Alava, 48°10'00" N latitude, and east of 125°05'00" W longitude.

(8) The Columbia Control Zone is defined as an area at the Columbia River mouth, bounded on the west by a line running northeast/southwest between the red lighted Buoy #4 (46°13'35" N. Lat., 124°06'50" W. long.) and the green lighted Buoy #7 (46°15'09" N. lat., 124°06'16" W. long.); on the east, by the Buoy #10 line which bears north/south at 357° true from the south jetty at 46°14'00" N. lat., 124°03'07" W. long., to its intersection with the north jetty; on the north, by a line running northeast/southwest between the green lighted Buoy #7 to the tip of the north jetty (46°15'48" N. lat., 124°05'20" W. long.), and then along the north jetty to the point of intersection with the Buoy #10 line; and, on the south, by a line running northeast/southwest between the red lighted Buoy #4 and tip of the south jetty (46°14'03" N. lat., 124°04'05" W. long.), and then along the south jetty to the point of intersection with the Buoy #10 line.

(9) The Mandatory Yelloweye Rockfish Conservation Area is defined as the area in Washington Marine Catch Area 3 from 48°00.00'N latitude; 125°14.00'W longitude to 48°02.00'N latitude; 125°14.00'W longitude to 48°02.00'N latitude; 125°16.50'W longitude to 48°00.00'N latitude; 125°16.50'W longitude and connecting back to 48°00.00'N latitude; 125°14.00'W longitude.

(10) It is unlawful to fish in Salmon Management and Catch Reporting Areas 1, 2, 3 or 4 with fish on board taken south of Cape Falcon, Oregon and all fish taken from Salmon Management and Catch Reporting Areas 1, 2, 3, and 4 must be landed before fishing south of Cape Falcon, Oregon.

(11) It is unlawful for wholesale dealers and trollers retailing their fish to fail to report their landing by 10:00 a.m. the day following landing. Ticket information can be telephoned in by calling 1-866-791-1279, faxing the information to (360) 902-2949, or e-mailing to trollfishtickets@dfw.wa.gov. Report the dealer name, the dealer license number, the purchasing location, the date of purchase, the fish ticket numbers, the gear used, the catch area, the species, the total number for each species, and the total weight for each species, including halibut.

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 18-10-040
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 18-81—Filed April 25, 2018, 3:39 p.m., effective May 15, 2018]

Effective Date of Rule: May 15, 2018.

Purpose: Amends recreational fishing rules for the Icicle River.

Citation of Rules Affected by this Order: Repealing WAC 220-312-05000H; 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: The number of spring Chinook estimated to return to the Icicle River is barely enough to meet broodstock needs (1,000 spawners) at the Leavenworth National Fish Hatchery. To avoid a potential broodstock shortage and/or reduced hatchery release in 2019 this emergency rule is needed to close the upcoming salmon season at this time. The Washington department of fish and wildlife will monitor spring Chinook salmon returns to the Icicle River and open the season if numbers improve and broodstock collection goals have been met. 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: April 25, 2018.

Joe Stohr
 Director

NEW SECTION

WAC 220-312-05000H Freshwater exceptions to statewide rules—Eastside. Notwithstanding the provisions of WAC 220-312-05000B and WAC 220-312-050, effective May 15 through July 31, 2018, it is unlawful to fish for or possess salmon in the following waters:

(1) Icicle River - from the closure signs located 800 feet upstream of the mouth to 500 feet downstream of the Leavenworth National Fish Hatchery Barrier Dam.

(2) Icicle River - from the shoreline markers where Cyo Road intersects the Icicle River at the Sleeping Lady Resort to the Icicle Peshastin Irrigation Footbridge (approximately 750 feet upstream of the Snow Lakes trailhead parking area).

REPEALER

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

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

WSR 18-10-047
EMERGENCY RULES
DEPARTMENT OF REVENUE

[Filed April 26, 2018, 1:35 p.m., effective April 26, 2018, 1:35 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: WAC 458-20-183 (Rule 183) explains the tax reporting instructions for persons who provide amusement, recreation, and physical fitness services. RCW 82.04.050 is the statute that explains the taxability of these same activities and services. The statute was significantly amended in 2015 due to legislation (HB 1550) which changed the taxability of many of these activities and services. The department began the standard rule-making process in 2017 to reflect these changes, but until the final rule is adopted the department wants the public to be aware that many of the tax reporting instructions in Rule 183 are only valid through December 31, 2015. There are no changes from the previous emergency rule filed January 9, 2018, under WSR 18-03-038.

Citation of Rules Affected by this Order: Amending WAC 458-20-183 Amusement, recreation, and physical fitness services.

Statutory Authority for Adoption: RCW 82.45.150, 82.32.300, 82.01.060.

Other Authority: RCW 34.05.350.

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: Taxpayers providing amusement, recreation, and physical fitness services rely on Rule 183 to assist them in determining their tax reporting requirements. Due to the multiple changes to the statute concerning the taxability of amusement, recreation, and physical fitness services, Rule 183 requires a substantive update using the standard rule-making process. Until the amended rule is adopted, the department wants to ensure the public does not use current Rule 183 to determine their reporting requirements for periods beginning January 1, 2016.

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 1, 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 1, 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: April 26, 2018.

Erin T. Lopez
Rules Coordinator

AMENDATORY SECTION (Amending WSR 95-22-100, filed 11/1/95, effective 12/2/95)

WAC 458-20-183 Amusement, recreation, and physical fitness services. (1) **Introduction.** House Bill 1550 (chapter 169, Laws of 2015) made significant changes to many of the activities addressed in this rule. Readers should not rely on this rule for tax periods beginning January 1, 2016, but instead should refer to RCW 82.04.050 and dor.wa.gov for current tax information. This section provides tax reporting instructions for persons who provide amusement, recreation, and physical fitness services, including persons who receive their income in the form of dues and initiation fees. Section 301, chapter 25, Laws of 1993 sp. sess., amended RCW 82.04.050 to include as a retail sale "physical fitness services." This change became effective July 1, 1993. Physical fitness services were previously taxed under the service and other business activities classification. Amusement and recreation services were retail sales prior to the 1993 law amendment and the tax classification remains unchanged for these activities.

(a) Local governmental agencies that provide amusement, recreation, and physical fitness services should also refer to WAC 458-20-189 (Sales to and by the state of Washington, counties, cities, school districts, and other municipal subdivisions).

(b) Persons engaged in operating coin operated amusement devices should refer to WAC 458-20-187 (Coin operated vending machines, amusement devices and service machines).

(c) Persons engaged in providing camping and outdoor living facilities should refer to WAC 458-20-118 (Sale or rental of real estate, license to use real estate) and WAC 458-20-166 (Hotels, motels, boarding houses, rooming houses, resorts, summer camps, trailer camps, etc.).

(2) **Definitions.** The following definitions apply throughout this section:

(a) "Amounts derived" means gross income from whatever source and however designated. It includes "gross proceeds of sales" and "gross income of the business" as those terms are defined by RCW 82.04.070 and 82.04.080, respectively. It shall also include income attributable to bona fide "initiation fees" and bona fide "dues."

(b) "Amusement and recreation services" include, but are not limited to: Golf, pool, billiards, skating, bowling,

swimming, bungee jumping, ski lifts and tows, basketball, (~~racquet ball~~) racquetball, handball, squash, tennis, and all batting cages. "Amusement and recreation services" also include the provision of related facilities such as basketball courts, tennis courts, handball courts, swimming pools, and charges made for providing the opportunity to dance. The term "amusement and recreation services" does not include instructional lessons to learn a particular activity such as tennis lessons, swimming lessons, or archery lessons.

(c) "Any additional charge" means a price or payment other than bona fide initiation fees or dues, paid by persons for particular goods and services received. The additional charge must be reasonable and any business and/or sales taxes must be paid upon such charges in order to qualify other income denominated as "bona fide dues" or "fees" to be deductible. The reasonableness of any additional charge will be based on one of the following two criteria:

(i) It must cover all costs reasonably related to furnishing the goods or services; or

(ii) It must be comparable with charges made for similar goods or services by other comparable businesses.

(d) "Direct overhead costs" include all items of expense immediately associated with the specific goods or services for which the costs of production method is used. For example, the salary of a swimming pool lifeguard or the salary of a golf club's greenskeeper are both direct overhead costs in providing swimming and golfing respectively.

(e) "Dues" are those amounts periodically paid by members solely for the purpose of entitling those persons to continued membership in the club or similar organization. It shall not include any amounts paid for goods or services rendered to the member by the club or similar organization.

(f) "Entry fees" means those amounts paid solely to allow a person the privilege of entering a tournament or other type of competition. The term does not include any amounts charged for the underlying activity.

(g) "Goods or services rendered" shall include those amusement, recreation, and physical fitness services defined to be retail sales in (m) of this subsection. Also see, WAC 458-20-166 (Hotels, motels, boarding houses, rooming houses, resorts, summer camps, trailer camps, etc.) and WAC 458-20-244 (Food products). The term shall include the total-ity or aggregate of goods or services available to members. It is not determinative that some members actually receive more goods or actually enjoy more services than others so long as the totality of the goods or services offered are made available to members in general.

(h) "Indirect overhead costs" means overhead costs incurred by the service provider that are not immediately associated with the specific goods and services. These costs include a pro rata share of total operating costs, including all executive salaries and employee salaries that are not "direct overhead costs" as that term is defined in (d) of this subsection, as well as a pro rata share of administrative expenses and the cost of depreciable capital assets.

(i) "Initiation fees" means those amounts paid solely to initially admit a person as a member to a club or organization. "Bona fide initiation fees" within the context of this rule shall include only those one-time amounts paid which genuinely represent the value of membership in a club or similar orga-

nization. It shall not include any amount paid for or attributable to the privilege of receiving any goods or services other than mere nominal membership.

(j) "League fees" means those amounts paid solely for the privilege of allowing a person or a person's team to join an association of sports teams or clubs that compete chiefly amongst themselves. The term does not include any amounts charged for the underlying activity.

(k) "Nonprofit youth organization" means a nonprofit organization engaged in character building of youth which is exempt from property tax under RCW 84.36.030.

(l) "Physical fitness services" include, but are not limited to: All exercise classes, whether aerobic, dance, water, jazzercise, etc., providing running tracks, weight lifting, weight training, use of exercise equipment, such as treadmills, bicycles, stair-masters and rowing machines, and providing personal trainers (i.e., a person who assesses an individual's workout needs and tailors a physical fitness workout program to meet those individual needs). "Physical fitness services" do not include instructional lessons such as those for self-defense, martial arts, yoga, and stress-management. Nor do these services include instructional lessons for activities such as tennis, golf, swimming, etc. "Instructional lessons" can be distinguished from "exercise classes" in that instruction in the activity is the primary focus in the former and exercise is the primary focus in the latter.

(m) "Sale at retail" or "retail sale" include the sale or charge made by persons engaged in providing "amusement and recreation services" and "physical fitness services" as those terms are defined in (b) and (l) of this subsection. The term "sale at retail" or "retail sale" does not include: The sale of or charge made for providing facilities where a person is merely a spectator, such as movies, concerts, sporting events, and the like; the sale of or charge made for instructional lessons, or league fees and/or entry fees; charges made for carnival rides where the customer purchases tickets at a central ticket distribution point and then the customer is subsequently able to use the purchased tickets to gain admission to an assortment of rides or attractions; or, the charge made for entry to an amusement park or theme park where the predominant activities in the area are similar to those found at carnivals.

(n) "Significant amount" relates to the quantity or degree of goods or services rendered and made available to members by the organization. "Significant" is defined as having great value or the state of being important.

(o) "Value of such goods or services" means the market value of similar goods or services or computed value based on costs of production.

(3) Business and occupation tax.

(a) **Retailing classification.** Gross receipts from the kind of amusement, recreation, and physical fitness services defined to be retail sales in subsection (2)(m) of this section are taxable under the retailing classification. Persons engaged in providing these activities are also taxable under the retailing classification upon gross receipts from sales of meals, drinks, articles of clothing, or other property sold by them.

(b) **Service and other activities classification.** Gross receipts from activities not defined to be retail sales, such as tennis lessons, golf lessons, and other types of instructional

lessons, are taxable under the service and other activities classification. Persons providing licenses to use real estate, such as separately itemized billings for locker rentals, are also taxable under this classification. See WAC 458-20-118 (Sale or rental of real estate, license to use real estate).

(4) Receiving income in the form of dues and/or initiation fees.

(a) **General principles.** For the purposes of the business and occupation tax, all amounts derived from initiation fees and dues must be reported as gross income which then must be apportioned between taxable and deductible income. The following general principles apply to providing amusement, recreation, and physical fitness services when income is received in the form of dues and/or initiation fees:

(i) RCW 82.04.4282 provides for a business and occupation tax deduction for amounts derived from activities and charges of essentially a nonbusiness nature. The scope of this statutory deduction is limited to situations where no business or proprietary activity (including the rendering of goods or services) is engaged in which directly generates the income claimed for deduction. Many for-profit or nonprofit entities may receive "amounts derived," as defined in this section, which consist of a mixture of tax deductible amounts (bona fide initiation fees and dues) and taxable amounts (payment for significant goods and services rendered). To distinguish between these kinds of income, the law requires that tax exemption provisions be strictly construed against the person claiming exemption. Also, RCW 82.32.070 requires the maintenance of suitable records as may be necessary to determine the amount of any tax due. The result of these statutory requirements is that all persons must keep adequate records sufficient to establish their entitlement to any claimed tax exemption or deduction.

(ii) The law does not contemplate that the deduction provided for by RCW 82.04.4282 should be granted merely because the payments required to be made by members or customers are designated as "initiation fees" or "dues." The statutory deduction is not available for outright sales of tangible personal property or for providing facilities or services for a specific charge. Neither is it available if dues are in exchange for any significant amounts of goods or services rendered by the recipient thereof to members without any additional charge to the member, or if the dues are graduated upon the amount of goods or services rendered. Thus, it is only those initiation fees and dues which are paid solely and exclusively for the express privilege of belonging as a member of a club, organization, or society, which are deductible.

(iii) In applying RCW 82.04.4282, no distinction is made between the kinds of clubs, organizations, associations, or other entities which may be eligible for this deduction. They may be operated for profit or nonprofit. They may be owned by the members, incorporated, or operating as a partnership, limited liability company, joint venture, sole proprietorship, or cooperative group. They may be of a charitable, fraternal, social, political, benevolent, commercial, or other nature. The availability of the deduction is determined solely by the nature of the activity or charge which generates the "amounts derived" as that term is defined in subsection (2)(a) of this section.

(iv) Nonprofit youth organizations, as defined in subsection (2)(k) of this section, may deduct fees or dues received from members even though the members are entitled to use the organization's facilities, including camping and recreational facilities, in return for such payments. (See RCW 82.04.4271.)

(b) **Allocation of income.** Persons who derive income from initiation fees and dues may find that they have incurred business and occupation tax liability under both the retailing and service and other activities classifications. For example, an organization may furnish exercise equipment as well as provide lessons in martial arts to its members in return for payment of dues. The former is a retailing taxable activity while the latter is taxable under the service business tax. These taxes are at different rates. Once the income has been allocated between taxable and deductible amounts, the parts of taxable income attributable to either retailing activities or service activities must be reported on the combined excise tax return under the appropriate classification and under the prevailing tax rates. In addition, state and local retail sales taxes measured by the retailing portions must be separately collected from dues paying members, reported, and remitted with the same excise tax return.

(c) **Alternative methods of reporting.** Persons who receive any "amounts derived" from initiations fees and/or dues may report their tax liabilities and determine the amount of tax reportable under different classifications (retailing or service) by use of two alternative allocation methods. The taxpayer may only change its selected allocation method annually and all changes are prospective only. These mutually exclusive methods are:

(i) **Actual records of facilities usage.**

(A) Persons may allocate their income based upon such actual records of facilities usage as are maintained. This method is accomplished by either: The allocation of a reasonable charge for the specific goods or services rendered; or, the average comparable charges for such goods or services made by other comparable businesses. In no case shall any charges under either method be calculated to be less than the actual cost of providing the respective good or service. When using the average comparable charges method the term "comparable businesses" shall not include subsidized public facilities when used by a private facility.

(B) The actual records of facilities usage method must reflect the nature of the goods or services and the frequency of use by the membership, either from an actual tally of times used or a periodic study of the average membership use of facilities. Actual usage reporting may also be based upon a graduated or sliding fees and dues structure. For example, an organization may charge different initiation fees or dues rates for a social membership than for a playing membership. The difference between such rates is attributable to the value of the goods or services rendered. It constitutes the taxable portion of the "amounts derived" allocable to that particular activity. Because of the broad diversification of methods by which "amounts derived" may be assessed or charged to members, the actual records of usage method of reporting may vary from organization to organization.

(C) Organizations which provide more than one kind of "goods or services" as defined in subsection (2)(g) of this sec-

tion, may provide such actual records for each separate kind of goods or services rendered. Based upon this method, the total of apportioned "taxable" income may be subtracted from total gross income to derive the amount of gross income which is entitled to deduction as "bona fide initiation fees and dues" under RCW 82.04.4282; or

(ii) **Cost of production method.**

(A) The cost of production allocation method is based upon the cost of production of goods or services rendered. Persons using this method are advised to seek the department's review of the cost accounting methods applied, in order to avoid possible tax deficiency assessment if records are audited. In such cases, the cost of production shall include all items of expense attributable to the particular facility (goods or services) made available to members, including direct and indirect overhead costs.

(B) No portion of assets which have been fully depreciated will be included in computing overhead costs, nor will there be included any costs attributable to membership recruitment and advertising, or providing members with the indicia of membership (membership cards, certificates, contracts of rights, etc.).

(C) The cost of production method is performed by multiplying gross income (all "amounts derived") by a fraction, the numerator of which is the direct and indirect costs associated with providing any specific goods or service, and the denominator of which is the organization's total operating costs. The result is the portion of "amounts derived" that is allocable to the taxable facility (goods or services rendered). If more than one kind of facility (goods or services) is made available to members, this formula must be applied for each facility in order to determine the total of taxable and deductible amounts and to determine the amount of taxable income to report as either retailing taxable or service taxable. The balance of gross amounts derived is deductible as bona fide initiation fees or dues.

(D) Under very unique circumstances and only upon advance written request and approval, the department will consider variations of the foregoing accounting methods as well as unique factors.

(E) Unless income accounting and reporting are accomplished by one or a combination of methods outlined in this section, or under a unique reporting method authorized in advance by the department, it will be presumed that all "amounts derived" by any person who provides "goods or services" as defined herein, constitute taxable, nondeductible amounts.

(5) **Retail sales tax.**

(a) The retail sales tax must be collected upon charges for admissions, the use of facilities, equipment, and exercise classes by all persons engaged in the amusement, recreation, and physical fitness services that are defined to be retail sales in subsection (2)(m) of this section. The retail sales tax must also be collected upon sales of food, drinks and other merchandise by persons engaging in such businesses. See WAC 458-20-244 (Food products). In the case of persons who receive their income in the form of dues and/or initiation fees, the amount of gross receipts determined to be taxable under the retailing business and occupation classification shall be

used to determine the person's retail sales tax liability under this subsection.

(b) When the charge for merchandise is included within a charge for admission which is not a "sale at retail" as defined herein, the retail sales tax applies to the charge made for both merchandise and admission, unless a proper segregation of such charge is made in the billing to the customer and upon the books of account of the seller.

(c) The retail sales tax applies upon the purchase or rental of all equipment and supplies by persons providing amusement, recreation, and physical fitness services, other than merchandise that is actually resold by them. For example, the retail sales tax applies to purchases of such things as soap or shampoo provided at no additional charge to members of a health club.

(6) **Transitory provisions for nonprofit youth organizations.** The 1993 amendment of RCW 82.04.050 resulted in "physical fitness services" provided by nonprofit youth organizations being classified as retail sales. However, section 1, chapter 85, Laws of 1994, amended RCW 82.08.0291 and thereby exempted from the definition of retail sale, the sale of such services by a nonprofit youth organization to members of the organization. This change became effective July 1, 1994. Therefore, nonprofit youth organizations are only liable for retail sales tax on the sale or charge made for "physical fitness services" from July 1, 1993, to June 30, 1994. Nonprofit youth organizations were previously exempt from the collection of retail sales tax on "amusement and recreation services" (RCW 82.08.0291) and were previously not subject to retailing business and occupation tax on both the provision of "physical fitness services" and "amusement and recreation services" (RCW 82.04.4271). Nonprofit youth organizations, however, may have tax liabilities for other types of activities, such as retail sales of food, retail sales of tangible personal property, or the license to use real estate, as discussed above.

WSR 18-10-048
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 18-82—Filed April 26, 2018, 1:37 p.m., effective May 1, 2018, 8:00 a.m.]

Effective Date of Rule: May 1, 2018, 8:00 a.m.

Purpose: Amends coastal commercial crab rules.

Citation of Rules Affected by this Order: Repealing WAC 220-340-45000E; and amending WAC 220- [220-340-450].

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 opens the Quileute Special Management Area to state fishers and implements a

one hundred pot limit for the first thirty days in the newly opened area as provided in the State-Quileute Harvest Management Agreement. This emergency rule also continues the closure of the Quinalt Special Secondary Management Area to state fishers as provided in the State-Quinalt Harvest Management Agreement. 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: April 26, 2018.

Joe Stohr
Director

NEW SECTION

WAC 220-340-45000F Commercial crab fishery—Seasons and areas—Coastal. Notwithstanding the provisions of WAC 220-340-450, effective immediately until further notice, it is unlawful to fish for Dungeness crab in Washington coastal waters, the Pacific Ocean, Grays Harbor, Willapa Bay, or the Columbia River, except as provided for in this section.

(1) The area from and the U.S./Canada border to the WA/OR border (46°15.00) and Willapa Bay is open.

(2) For the purposes of this section, the waters of Willapa Bay are defined to include the marine waters east of a line connecting 46°44.76 N, 124°05.76 W and 46°38.93 N, 124°04.33 W.

(3) The Quileute Special Management Area (SMA) will open to fishing for Dungeness crab at 8:00 a.m. on May 1, 2018. The SMA includes the area shoreward of a line approximating the 30-fathom depth curve between Destruction Island and Cape Johnson according to the following points:

Northeast Corner (Cape Johnson):	47°58.00 N. Lat.	124°40.40 W. Lon.
Northwest Corner:	47°58.00 N. Lat.	124°49.00 W. Lon.
Southwest Corner:	47°40.50 N. Lat.	124°40.00 W. Lon.
Southeast Corner (Destruction Island):	47°40.50 N. Lat.	124°24.43 W. Lon.

(4) It is unlawful for a vessel to use more than 100 pots in the Quileute SMA from 8:00 a.m. May 1, 2018, until 8:00 a.m. June 1, 2018. Fishers must pre-register with the Department of Fish and Wildlife 24 hours prior to deploying gear in this area by one of the three following methods:

- Fax transmission to Carol Henry at 360-249-1229;
- E-mail to Carol Henry at Carol.Henry@dfw.wa.gov; or
- Telephone call to Carol Henry at 360-249-1296.

(5) The Quinault Secondary Special Management Area (SSMA) remains closed to fishing for Dungeness crab, from the area shoreward of a line approximating the 27-fathom depth curve between the mouth of the Copalis River (47°08.00) and Split Rock (47°24.50). This area will be closed until further notice. This SSMA is described by the following coordinates:

- | | | |
|--|------------------|-------------------|
| • Northeast Corner
(Split Rock): | 47°24.50 N. Lat. | 124°20.00 W. Lon. |
| • Northwest Corner: | 47°24.50 N. Lat. | 124°32.40 W. Lon. |
| • Southwest Corner: | 47°08.00 N. Lat. | 124°25.50 W. Lon. |
| • Southeast Corner
(Copalis River): | 47°08.00 N. Lat. | 124°11.20 W. Lon. |

(6) All other provisions of the permanent rule remain in effect.

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.

REPEALER

The following section of the Washington Administrative Code is repealed 8:00 a.m. May 1, 2018:

WAC 220-340-45000E Commercial crab fishery—Seasons and areas—Coastal. (18-34)

**WSR 18-10-057
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE**

[Order 18-84—Filed April 27, 2018, 9:20 a.m., effective April 28, 2018]

Effective Date of Rule: April 28, 2018.

Purpose: Amends recreational fishing rules for Curl Lake.

Citation of Rules Affected by this Order: Repealing WAC 220-312-05000I; 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: Curl Lake has been utilized by the Washington department of fish and wildlife (WDFW) as an acclimation pond for Endangered Species Act (ESA) listed Tucannon River spring Chinook salmon. Beginning in 2016, WDFW began a short-term acclimation of ESA listed Tucannon River steelhead, after the spring Chinook have been released. The additional time needed to acclimate steel-

head will delay the stocking of rainbow trout into this body of water by a couple of weeks. 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: April 27, 2018.

Amy H. Windrope
for Joe Stohr
Director

NEW SECTION

WAC 220-312-05000I Freshwater exceptions to statewide rules—Eastside. Notwithstanding the provisions of WAC 220-312-05000B and WAC 220-312-050, effective April 28 through May 25, 2018, it is unlawful to fish in waters of Curl Lake (Columbia Co.)

REPEALER

The following section of the Washington Administrative Code is repealed effective May 26, 2018:

WAC 220-312-05000I Freshwater exceptions to statewide rules.

**WSR 18-10-060
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE**

[Order 18-85—Filed April 27, 2018, 2:45 p.m., effective June 1, 2018]

Effective Date of Rule: June 1, 2018.

Purpose: Amends recreational fishing rules for Marine Areas 1, 2, 3, 4, 5, 6, 7, 8, 9, and 10.

Citation of Rules Affected by this Order: Amending WAC 220-314-030.

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 in line with federal action taken by the Pacific Fisheries Management Council, International Pacific Halibut Commission and the interim final rule adopted by the National Marine Fisheries Service. The recreational halibut quota is sufficient to provide for these seasons. 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 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: April 27, 2018.

Amy H. Windrope
for Joe Stohr
Director

NEW SECTION

WAC 220-314-0300J Halibut—Seasons—Daily and possession limits. Notwithstanding the provisions of WAC 220-314-030, 220-314-040, and 220-314-010, effective immediately until further notice, it is unlawful to fish for or possess halibut taken for personal use, except as provided in this section:

(1) **Catch Record Card Area 1:**

(a) Open May 3, 2018, until further notice, Thursdays, Fridays and Sundays.

(b) It is unlawful during any vessel trip to bring into port or land bottomfish except sablefish, Pacific Cod, or flat fish species when halibut are on board.

(c) Lingcod can be retained when halibut are on board during the month of May when fishing north of the Washington-Oregon border.

(2) **Catch Record Card Area 1 (Nearshore fishery);** Those waters shoreward from 46°38.17'N. lat., 124°15.88'W. long., to the WA/OR border at 46°16.00'N. lat., 24°15.88'W. long. (then connecting to the 40 fathom depth contour in Oregon):

(a) Open May 7, 2018, until further notice, Mondays through Wednesdays.

(b) It is permissible to retain bottomfish while possessing halibut onboard boats in the nearshore area.

(3) **Catch Record Card Area 2:** Open May 11, 13, 25 and May 27, 2018.

(4) **Card Areas 3 and 4:**

(a) Open May 11, 13, 25 and May 27, 2018.

(b) The following area southwest of Cape Flattery is closed to fishing for halibut at all times:

Beginning at 48°18' N., 125°18' W.; thence to 48°18'N., 124°59'W.; thence to 48°11'N., 124°59'W.; thence to 48°11'N., 125°11'W., thence to 48°04'N., 125°11'W.; thence to 48°04'N., 124°59'W.; thence to 48°N., 124°59'W.; thence to 48°N., 125°18'W.; thence to point of origin.

(c) In Marine Areas 3 and 4 (west of the Bonille-Tatoosh Line); effective May 9, 2018: it is unlawful to fish for or possess bottomfish seaward of a line approximating the 20-fathom depth contour except, on days open to the Pacific halibut fishery in these areas, it is permissible to retain lingcod, sablefish and Pacific cod seaward of the 20 fathom depth contour as defined by the following coordinates:

48°23.6'N. lat., 124°44.9'W. long.
48°18.6'N. lat., 124°43.6'W. long.
48°18.6'N. lat., 124°48.2'W. long.
48°10.0'N. lat., 124°48.8'W. long.
48°02.4'N. lat., 124°49.3'W. long.
47°37.6'N. lat., 124°34.3'W. long.
47°31.7'N. lat., 124°32.4'W. long.

(d) In Marine Area 4 (east of the Bonilla-Tatoosh Line) it is unlawful to fish for or possess bottomfish seaward of a line approximating 120-feet (20 fathoms), except, on days open to the Pacific halibut fishery in this area, it is permissible to retain lingcod, and Pacific cod seaward of the 120 feet (20 fathoms) as defined by WAC 220-314-010.

(5) **Catch Record Card Area 5 through 10:**

(a) Open May 11, 13, 25, and May 27, 2018.

(b) It is permissible for halibut anglers to retain lingcod and Pacific cod caught while fishing for halibut in waters deeper than 120 feet on days when halibut fishing is open in Areas 5 and 6.

(6) **Catch Record Card Areas 11, 12 and 13:** Closed.

(7) Daily limit one halibut, no minimum size limit. The possession limit is two daily limits of halibut in any form, except the possession limit aboard the fishing vessel is one daily limit.

(8) It is unlawful to land halibut in a port within an area closed to halibut fishing.

(9) Annual halibut limit is four.

(10) All other permanent rules remain in effect.

Reviser's note: The spelling 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 18-10-072
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 18-83—Filed April 30, 2018, 3:49 p.m., effective June 1, 2018]

Effective Date of Rule: June 1, 2018.

Purpose: Amends recreational fishing rules for the Hoh River.

Citation of Rules Affected by this Order: Repealing WAC 220-312-02000A; and amending WAC 220-312-020.

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 necessary as the Hoh River wild spring/summer Chinook are projected to return in numbers sufficient to allow incidental release impacts on this stock while allowing a June sport fishery to target trout and dip-in hatchery Chinook during June. 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: April 30, 2018.

Joe Stohr
 Director

NEW SECTION

WAC 220-312-02000A Freshwater exceptions to statewide rules—Coast. Notwithstanding the provisions of WAC 220-312-02000Y and WAC 220-312-020, effective June 1 through June 30, 2018:

Hoh River from the Olympic National Park boundary to the boat launch at the DNR's Oxbow Campground:

- (1) Salmon open June 1 through June 30, 2018:
 - (a) Daily limit 1, minimum length 12 inches.
 - (b) Release all salmon other than hatchery Chinook.
- (2) Gamefish open June 1 through June 30, 2018:
 - (a) Trout: daily limit 2, minimum length 14 inches.
 - (b) Release wild rainbow trout and wild steelhead.
- (3) Only 1 barbless hook may be used.

- (4) Bait is prohibited.

REPEALER

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

WAC 220-312-02000A Freshwater exceptions to statewide rules—Coast.

WSR 18-10-101
EMERGENCY RULES
SUPERINTENDENT OF
PUBLIC INSTRUCTION

[Filed May 2, 2018, 9:23 a.m., effective May 2, 2018, 9:23 a.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: Section 513 (4)(d) of ESSB 6032 (2018) authorizes the office of superintendent of public instruction (OSPI) to adopt rules to outline and define the terms for initial grant of the conditional loan for the National Board for Professional Teaching Standards (NBPTS) process for candidates. OSPI is temporarily adopting rules that would align the terms of the conditional loan with the length of candidacy as defined by NBPTS.

Citation of Rules Affected by this Order: New WAC 392-140-976.

Statutory Authority for Adoption: [No information supplied by agency].

Other Authority: ESSB 6032 (2018).

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: Immediate adoption of this rule is necessary because NBPTS has revised its assessment process and now allows candidates to have up to five years to complete certification. The previous assessment process was up to three years. The intent of the conditional loan program provided under section 513(4) is to remove a financial barrier for all teachers to have access to pursue board certification. Requiring teachers to repay the loan mid-candidacy does not fully remove this financial barrier. OSPI is actively undertaking the appropriate procedures to adopt the rule as a permanent rule. Observing the time requirements of notice and opportunity to comment upon adoption of the permanent rule at this time would be contrary to the public interest.

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 1, 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: May 1, 2018.

Chris P. S. Reykdal
State Superintendent
of Public Instruction

NEW SECTION

WAC 392-140-976 Salary bonus for teachers and other certificated instructional staff who hold current certification by the national board—Conditional loan program. (1) During the 2017-18 and 2018-19 school years, and within available funds, certificated instructional staff who have met the eligibility requirements and have applied for certification from the National Board for Professional Teaching Standards may receive a conditional loan of one thousand four hundred twenty-five dollars toward the current assessment fee, not including the initial up-front candidacy payment.

(2) The conditional loan shall be an advance on the first annual bonus provided under RCW 28A.405.415. The conditional loan is provided in addition to compensation received under a district's salary allocation and shall not be included in calculations of a district's average salary and associated salary limitation under RCW 28A.400.200.

(3)(a) Conditional loan recipients who fail to receive national board certification within three years following the completion of their second year of candidacy under the National Board for Professional Teaching Standards must repay the conditional loan.

(b) Repayment shall begin after the candidate has either:

(i) Obtained the national board certification;

(ii) Exhausted all years of eligibility under the National Board for Professional Teaching Standards; or

(iii) Withdrawn their candidacy.

(4) The terms of repayment shall be pursuant to a promissory note or other instrument executed by the conditional loan recipient.