

WSR 23-19-001
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 23-191—Filed September 6, 2023, 2:17 p.m., effective September 7, 2023]

Effective Date of Rule: September 7, 2023.

Purpose: The purpose of this rule is to open the commercial salmon fishery in Willapa Bay Salmon Management and Catch Reporting Areas 2N, 2M, and 2R on September 7, 2023.

Citation of Rules Affected by this Order: Amending WAC 220-354-250.

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 open the commercial fishery in Willapa Bay Salmon Management and Catch Reporting Areas 2N, 2R, and 2M on September 7, 2023. The catch for the 2023 Willapa Bay commercial fishery is lower than preseason predictions. The catch to date is 734 hatchery Chinook (37.8 percent) and 18 coho (48.6 percent) of the preseason projection of 1,943 hatchery Chinook and 37 coho in statistical weeks 34 and 35. The estimated preseason impacts for natural-origin Chinook for statistical weeks 34 and 35 were 69 fish. To date, the fishery has accrued 28 (40.5 percent) natural-origin Chinook impacts of the preseason prediction for these same weeks. Given the availability of hatchery Chinook and hatchery coho and remaining natural-origin Chinook impacts available during this week, additional fishing time is being offered. The commercial fishing opportunity for statistical week 36 will be increased from no days to one eight-hour fishing day using tangle net gear. Managers will continue to assess the fishery each opener and make any changes if warranted. All other rules remain in effect.

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Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at the Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 1, Amended 0, Repealed 0.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: September 6, 2023.

Kelly Susewind
Director

NEW SECTION

WAC 220-354-25000H Willapa Bay salmon fall fishery. Notwithstanding the provisions of WAC 220-354-250, the following seasons for Willapa Bay commercial salmon areas 2N, 2M, and 2R on September 7, 2023, shall be modified as described herein. All other provisions of WAC 220-354-250, not contained herein remain in effect unless otherwise altered by emergency rule:

Gillnet gear may be used to fish for coho salmon, chum salmon, and hatchery Chinook salmon marked with a clipped adipose fin with a healed scar, during dates and times, and in areas listed in the table below:

Area	Time	Date	Maximum Mesh Size
2N, 2M, 2R	8:00 a.m. through 4:00 p.m.	September 7, 2023	4.25"

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WSR 23-19-002
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 23-190—Filed September 6, 2023, 3:12 p.m., effective September 7, 2023]

Effective Date of Rule: September 7, 2023.

Purpose: The purpose of this emergency rule is to close commercial beach seine fisheries in Puget Sound Salmon Management and Catch Area 12C.

Citation of Rules Affected by this Order: Amending WAC 220-354-210.

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 necessary to close Puget Sound Salmon Management and Catch Reporting Area 12C for weeks 36 and 37 as quota for the area has been achieved.

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 Nongovernmental 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: September 6, 2023.

Kelly Susewind
Director

NEW SECTION

WAC 220-354-21000K Puget Sound salmon—Beach seine—Open periods.

Effective the September 7 through September 14, 2023, the following provisions of WAC 220-354-210 regarding commercial Beach Seine open periods for Puget Sound Salmon Management and Catch Reporting Area 12C shall be as described below. All other provisions of WAC 220-354-210 not addressed herein, or unless otherwise amended by emergency rule, remain in effect:

Area	Open/Closed	Time	Date(s)
12C	Closed		9/7, 9/14

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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 23-19-003
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 23-192—Filed September 6, 2023, 3:14 p.m., effective September 7, 2023]

Effective Date of Rule: September 7, 2023.

Purpose: The purpose of this emergency rule is to increase the commercial troll fishery Chinook weekly landing limit.

Citation of Rules Affected by this Order: Repealing WAC 220-354-30000Z; and 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: The purpose of this regulation is to adjust the weekly Chinook landing and possession limit for the troll fishery to provide access to the troll fleet quota while ensuring that the quota will not be exceeded. These rules are adopted at the recommendation of the Pacific Fishery Management Council, in accordance with preseason fishing plans, and have been adopted for federal waters by the National Oceanic and Atmospheric Administration. 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 Nongovernmental 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: September 6, 2023.

Kelly Susewind
Director

NEW SECTION

WAC 220-354-30000A Coastal salmon troll seasons—Commercial.

Notwithstanding the provisions of WAC 220-354-300, WAC 220-353-050 and WAC 220-354-010, effective September 7, 2023, 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 and under conditions 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: September 7 through September 30, 2023.

(2) Grays Harbor Control Zone, defined by a line drawn from the Westport Lighthouse (46°53'18"N. lat., 124°07'01"W. long.); thence to Buoy #2 (46°52'42"N. lat., 124°12'42"W. long.); thence to Buoy #3 (46°55'00"N. lat., 124°14'48"W. long.); thence to the Grays Harbor north jetty (46°55'36"N. lat., 124°10'51"W. long.), open: September 7 through September 30, 2023.

(3) Landing and possession limit of 15 Chinook per vessel per landing week, defined as Thursday through Wednesday.

(4) Landing and possession limit of 100 coho per vessel per landing week, defined as Thursday through Wednesday.

(5) The Cape Flattery and Columbia River Control Zones are closed. The Salmon Troll Yelloweye Rockfish Conservation Area is closed.

(6) No chum retention north of Cape Alava, WA in September.

(7) Minimum size for Chinook salmon is 27 inches in length (20 1/2 inches frozen dressed). Minimum size for coho salmon is 16 inches in length (12 inches frozen dressed). No minimum size for pink, sock-eye or chum salmon.

(8) 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.

(9) 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.

(10) During any single trip, only one side of the Leadbetter Point line (46°38'10"N. lat.) may be fished.

(a) Vessels fishing or in possession of salmon while fishing south of Leadbetter Point must land and deliver all species of fish within the area south of Leadbetter Point.

(b) For delivery to Washington ports south of Leadbetter Point, vessels must notify WDFW at 360-249-1215 or by email at Danielle.Williams@dfw.wa.gov prior to crossing the Leadbetter Point line with area fished, total Chinook, coho, and halibut catch aboard, and destination with approximate time of delivery.

(c) Vessels may not land fish east of Tongue Point, Oregon.

(11) Vessels fishing or in possession of salmon north of Leadbetter Point must land and deliver all species of fish in a Washington port and must possess a Washington troll and/or salmon delivery license.

(a) Vessels in possession of salmon south of the Queets River may not cross the Queets River line (47°31'42"N. lat.) without first notifying WDFW at 360-249-1215 or by email at Danielle.Williams@dfw.wa.gov with area fished, total Chinook, coho, and halibut catch aboard and destination.

(b) Vessels in possession of salmon north of the Queets River may not cross the Queets River line without first notifying WDFW at

360-249-1215 or by email at Danielle.Williams@dfw.wa.gov with area fished, total Chinook, coho, and halibut catch aboard and destination.
(c) Vessels may not land fish east of the Sekiu River.

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REPEALER

The following section of the Washington Administrative Code is repealed, effective September 7, 2023:

WAC 220-354-30000Z Coastal salmon troll seasons—
Commercial. (23-178)

WSR 23-19-008

EMERGENCY RULES

DEPARTMENT OF ECOLOGY

[Order 23-02—Filed September 7, 2023, 9:41 a.m., effective September 7, 2023, 9:41 a.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: Ecology is making two clarifications to the rules governing the cap-and-invest program under chapter 70A.65 RCW (chapter 173-446 WAC). These rule clarifications concern the operation of the allowance price containment reserve (APCR). Ecology will make two rule changes to clarify:

(1) That the existing holding limits specified in WAC 173-446-150 (2)(a) that apply to allowances with a "vintage" also apply to the "vintage less" allowances that are acquired through APCR auctions. "Vintage year" means the annual allowance allocation budget year to which an individual Washington greenhouse gas (GHG) allowance is assigned. This means that one entity can hold only a certain number of allowances in its account at a time.

(2) Adding language to WAC 173-446-370 to clarify that any allowances purchased in an APCR auction must be deposited directly into the entity's compliance account. This change would prevent those allowances from being sold or traded on the secondary market, thereby ensuring that the allowances will be used to meet compliance obligations and not for speculative purposes.

We are also proposing the permanent adoption of these rule amendments. Please visit our website for information and to participate in the permanent rule-making process <https://ecology.wa.gov/regulations-permits/laws-rules-rulemaking/rulemaking/wac-173-446-apcr>.

Citation of Rules Affected by this Order: Amending WAC 173-446-150 and 173-446-370.

Statutory Authority for Adoption: Chapter 70A.65 RCW, Greenhouse gas emissions—Cap-and-invest program.

Other Authority: RCW 70A.65.220.

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 cap-and-invest program under chapter 70A.65 RCW establishes an emissions trading market intended to help meet the state's emission limits specified in RCW 70A.45.020. The program relies on a well-functioning market to discover the appropriate price for allowances, thereby efficiently allocating GHG emission reductions while minimizing overall costs to the economy and consumers. In order to ensure the program works as designed, ecology is required to adopt measures to maintain the integrity of the market and prevent market manipulation. This rule making clarifies that APCR allowances are subject to holding limits and can only be used for compliance. These changes limit the number of APCR allowances an entity may hold at any given time and ensure that APCR allowances cannot be further traded. Without this rule making, the cap-and-invest rules lack clarity on the nature of APCR allowances. Some entities might think that one entity would be able to hold an unlimited number of APCR allowances and would be able to trade those allowances, giving that entity sufficient market power to unfairly manipulate the market while undermining the purpose of the APCR, which is to assist in con-

taining compliance costs for covered and opt-in entities. This rule making is therefore necessary to ensure market integrity and achieve GHG emissions reductions in an economically efficient manner. Without this rule making, the market could be distorted, allowing an inefficient distribution of allowances, which could be sold at distorted prices. This market distortion could affect not only program participants, but consumers more generally. Ecology filed emergency rules because the changes needed to be in place before the first APCR auction, which was triggered by the regular quarterly auction in May. Ecology must hold an APCR auction when the settlement price in a quarterly auction reaches the APCR Tier I price (the lower of the two prices set by ecology for allowances auctioned from the allowance price containment reserve). Ecology finds that immediate amendment of this rule to maintain these emergency changes is necessary for the general welfare, and that observing the time requirements of notice and opportunity to comment required for adoption of a permanent rule 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 Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 2, 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: September 7, 2023.

Laura Watson
Director

OTS-4563.1

AMENDATORY SECTION (Amending WSR 22-20-056, filed 9/29/22, effective 10/30/22)

WAC 173-446-150 Accounts for registered entities. (1) Creation of accounts.

(a) After ecology receives the required disclosures of corporate association and complete documents for the certification and designation of the primary and alternate account representatives, ecology will set up two accounts for each covered entity and two accounts for each opt-in entity:

(i) A compliance account through which compliance instruments are transferred to ecology for retirement. Compliance instruments in compliance accounts may not be sold, transferred, traded, or otherwise provided to another account or party.

(ii) A holding account for compliance instruments that may be bought, sold, transferred to another registered entity, or traded.

(b) For each electric utility and each natural gas utility registering in the program, ecology will also set up a limited use holding account. Electric utilities and natural gas utilities must transfer their no cost allowances to the limited use holding account in order to consign them to auction for the benefit of ratepayers as described in WAC 173-446-300 (2) (b).

(c) After ecology receives the required disclosures of corporate association and complete documents for the certification and designation of the primary and alternate account representatives, ecology will set up a holding account for each general market participant.

(2) Holding limits.

(a) Except as provided in (c) and (d) of this subsection, the maximum total number of allowances of the current (~~(0x)~~) vintage, prior vintage, or that have no vintage, that a registered entity may hold in its holding account, its compliance account, or combination of both, is determined by the following:

$$HL_i = 0.1 \times 25,000,000 + 0.025 \times (C_i - 25,000,000)$$

Where:

HL_i = holding limit for year i
C_i = annual allowance budget for year i
i = current year

(b) Except as provided in (c) and (d) of this subsection, the maximum number of allowances of each vintage subsequent to the current year that a registered entity may hold in its holding account, its compliance account, or a combination of both, is determined by the following:

$$HL_j = 0.1 \times 25,000,000 + 0.025 \times (C_j - 25,000,000)$$

Where:

HL_j = holding limit for year j
C_j = annual allowance budget for year j
j = year subsequent to the current year

(c) The holding limits set in (a) and (b) of this subsection do not apply to the allowances held in the compliance account of a covered entity or opt-in entity that are needed to cover estimated GHG emissions for the current year or emissions for preceding years.

(d) The holding limits set in (a) and (b) of this subsection do not apply to allowances held in a limited use holding account that are to be consigned to auction.

(e) In addition to the holding limits described above, a general market participant may not in aggregate hold more than 10 percent of the total number of allowances of any vintage year.

(f) A registered entity that reaches or exceeds one-half of its holding limit must, within 10 business days of a request from ecology, explain its strategy and the reason for holding the allowances.

(g) When its holding limit is exceeded, a registered entity must, within five business days after the limit is exceeded, divest itself of the excess emission allowances, transfer into its compliance account the number of allowances needed to cover its emissions for the current year or preceding years, or, in the case of consolidated entities, amend the distribution of the overall holding limit to become compliant. If a registered entity fails to comply with this requirement, ecology will withdraw the excess allowances and make them available for auction.

(3) Ecology will post anonymized information about the contents of each holding account including, but not limited to, the number of allowances in the account, on ecology's cap and invest public website. Ecology will also maintain on its website a public roster of all covered entities, opt-in entities, and general market participants.

(4) When the ownership of a registered entity changes, the following information must be submitted to ecology within 30 calendar days of finalization of the ownership change:

(a) A description of the merger or acquisition and the effective date of the change of ownership, including whether the merger or acquisition is the purchase of a registered entity or entities from another party or the purchase of a party that owns a registered entity or entities;

(b) Both the legal and operating names and the tracking system IDs of the parties owning the registered entity or entities prior to the change in ownership;

(c) The legal name, operating name, and the tracking system ID of the purchasing party, if any;

(d) Written direction regarding whether the purchased registered entity or entities will be added to a consolidated entity account or whether the purchased registered entity or entities will be associated with a party that will opt out of account consolidation;

(e) Documentation with signatures (original or electronic) by a director or officer from the seller of the registered entity or entities, the registered entity or entities, and from the purchasing party, notifying ecology of the change of ownership;

(f) Any changes to disclosures or new disclosures required under WAC 173-446-110, 173-446-120, and 173-446-130;

(g) Direction regarding the disposition of compliance instruments that must be transferred by ecology to the purchasing party. Compliance instruments can be transferred. Any administrative transfers required may be requested as a one-time occurrence scheduled to occur within five business days after the facility or facilities are transferred in the tracking system to the purchasing party;

(h) It is the responsibility of the parties participating in the change of ownership to transfer any compliance instruments from tracking system holding accounts that they control prior to closure. Prior to closure, ecology may transfer compliance instruments from a registered entity's compliance account to its holding account upon request by the registered entity. If a party no longer owns or operates any active registered entity in its tracking system account due to a change in ownership, then that party may exit the program and close its tracking system accounts within five business days after the registered entity or entities are transferred in the tracking system to the purchasing party.

[Statutory Authority: RCW 70A.65.220. WSR 22-20-056 (Order 21-06), § 173-446-150, filed 9/29/22, effective 10/30/22.]

AMENDATORY SECTION (Amending WSR 22-20-056, filed 9/29/22, effective 10/30/22)

WAC 173-446-370 Allowance price containment reserve account.

(1) Ecology shall maintain an allowance price containment reserve account.

(a) Allowances in the allowance price containment reserve have no vintage and are therefore eligible to be submitted for compliance at any time.

(b) Allowances purchased from the allowance price containment reserve are placed directly into the purchaser's compliance account.

(c) On January 1, 2023, ecology shall place into the allowance price containment reserve account:

(i) Five percent of the allowances in the annual allowance budgets for each year of the first compliance period; and

(ii) Five percent of the allowances in the annual allowance budgets for each year of the second compliance period, as determined without taking into account the increase in the allowance budgets caused by the addition of waste-to-energy facilities as covered entities in the second compliance period.

(2) Ecology shall hold separate auctions for allowances from the allowance price containment reserve:

(a) When the settlement price in the preceding auction of current and prior vintage allowances reaches the Tier 1 price for allowances in the allowance price containment reserve;

(b) When new covered and opt-in entities enter the program and allowances from the emissions containment reserve account are exhausted; and

(c) Once each year before the compliance deadline.

(3) Only covered entities and opt-in entities may participate in allowance price containment reserve auctions. General market participants may not participate in allowance price containment reserve auctions.

(4) Allowance price containment reserve auctions shall follow the procedures described in WAC 173-446-310 through 173-446-362, except:

(a) The purchase limits in WAC 173-446-330 do not apply to allowance price containment reserve auctions.

(b) In place of an auction floor price, there are two tiers of allowance prices at which bidders may bid:

(i) Tier 1 price for 2023 shall be \$46.05 increased by five percent plus the rate of inflation as measured by the most recently available 12 months of the consumer price index for all urban consumers as of the first business day in December of 2022.

(ii) Tier 2 price for 2023 shall be \$59.17 increased by five percent plus the rate of inflation as measured by the most recently available 12 months of the consumer price index for all urban consumers as of the first business day in December of 2022.

(iii) The allowance price containment reserve tier prices for a year after 2023 shall be the allowance price containment tier prices for the prior calendar year increased annually by five percent plus the rate of inflation as measured by the most recently available 12 months of the consumer price index for all urban consumers as of the first business day in December of the prior year.

(iv) Beginning in 2022, on the first business day in December of each year, ecology shall announce the allowance price containment reserve tier prices for the next year.

(c) Bidders in an allowance price containment reserve auction may submit multiple bids. Each bid must be at either the Tier 1 price or the Tier 2 price.

(d) Tier 1 allowances shall be sold first, then Tier 2 allowances. The auction of Tier 1 allowances shall continue until all Tier 1 allowances are sold or all bids are filled, whichever occurs first. If any Tier 1 allowances remain, ecology will award them to bidders for

Tier 2 allowances at the Tier 1 price using a random number selection process that assigns random numbers to each lot bid and awards Tier 1 allowances starting with the lowest random number until all Tier 1 allowances are sold. The subsequent auction of Tier 2 allowances shall continue until all Tier 2 allowances are sold or all bids are filled, whichever occurs first.

(e) Ecology shall reject bids or portions of bids, starting with the smallest of the registered entity's Tier 2 bids, until the total of the registered entity's bids remaining would, if accepted, not result in contravention of a holding limit.

(f) The registered entity's actual maximum bid value is determined as follows:

(i) Multiply the Tier 1 bid price by the total number of allowances the registered entity proposed to purchase at that bid price.

(ii) Multiply the Tier 2 bid price by the total number of allowances the registered entity proposed to purchase at that bid price.

(iii) The registered entity's actual maximum bid value is the sum of the results obtained in (i) of this subsection added to the results obtained in (ii) of this subsection.

(g) If the actual maximum bid value of a registered entity's bids exceeds the value of the registered entity's bid guarantee, ecology shall, starting with the registered entity's Tier 2 bids, remove enough lots, such that the remaining bids would not result in the actual maximum bid value exceeding the value of the bid guarantee.

(h) If the sum of the bids accepted for a tier is greater than the number of allowances in the tier, ecology will follow the process in WAC 173-446-357(5) to distribute the allowances from each tier.

(i) After a sale, ecology will transfer purchased allowances directly to each purchaser's compliance account.

(j) Allowances remaining unsold at the end of an allowance price containment reserve auction remain in the allowance price containment reserve to be available for sale at the next allowance price containment reserve auction.

[Statutory Authority: RCW 70A.65.220. WSR 22-20-056 (Order 21-06), § 173-446-370, filed 9/29/22, effective 10/30/22.]

WSR 23-19-011
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 23-195—Filed September 7, 2023, 3:57 p.m., effective September 7, 2023, 3:57 p.m.]

Effective Date of Rule: Immediately upon filing.

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

Citation of Rules Affected by this Order: Repealing WAC 220-359-02000W; and amending WAC 220-359-020.

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

Other authority: *United States v. Oregon*, Civil No. 68-513-KI (D. Or.), Order Adopting 2018-2027 *United States v. Oregon* Management Agreement (February 26, 2018) (Doc. No. 2607-1). *Northwest Gillnetters Ass'n v. Sandison*, 95 Wn.2d 638, 628 P.2d 800 (1981); Washington fish and wildlife commission policies concerning Columbia River fisheries; 40 Stat. 515 (Columbia River Compact).

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

Reasons for this Finding: This rule extends treaty commercial sales for the Columbia River mainstem Zone 6 fall-season gillnet fisheries. This rule is consistent with actions of the Columbia River Compact on July 18, August 16, August 30, and September 7, 2023. Conforms state rules with tribal rules. The general public welfare is protected with the immediate opening of nontreaty buyers purchasing fish from treaty fisheries. This harvest opportunity allows for the tribal use and public access to the resource as well as the maintenance of sustainable fish populations. There is insufficient time to promulgate permanent regulations.

The Yakama, Warm Springs, Umatilla, and Nez Perce Indian tribes have treaty fishing rights in the Columbia River and inherent sovereign authority to regulate their fisheries. Washington and Oregon also have some authority to regulate fishing by treaty Indians in the Columbia River, authority that the states exercise jointly under the congressionally ratified Columbia River Compact. *Sohappy v. Smith*, 302 F. Supp. 899 (D. Or. 1969). The tribes and the states adopt parallel regulations for treaty Indian fisheries under the supervision of the federal courts. A court order sets the current parameters. *United States v. Oregon*, Civil No. 68-513-KI (D. Or.), Order Adopting 2018-2027 *United States v. Oregon* Management Agreement (February 26, 2018) (Doc. No. 2607-1). Some salmon and steelhead stocks in the Columbia River are listed as threatened or endangered under ESA. On February 23, 2018, the National Marine Fisheries Service issued a biological opinion under 16 U.S.C. § 1536 that allows for some incidental take of these species in the fisheries as described in the 2018-2027 *U.S. v. Oregon* Management Agreement.

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

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

Number of Sections Adopted at the Request of a Nongovernmental 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: September 7, 2023.

Kelly Susewind
Director

NEW SECTION

WAC 220-359-02000X Columbia River salmon seasons above Bonneville Dam. Notwithstanding the provisions of WAC 220-359-010, WAC 220-359-020, WAC 220-359-030, and WAC 220-359-090, effective immediately, until further notice, it is unlawful for a person to take or possess salmon, steelhead, sturgeon, shad, carp, catfish, walleye, bass, or yellow perch taken for commercial purposes in Columbia River Salmon Management and Catch Reporting Areas 1F, 1G, and 1H. However, those individuals possessing treaty fishing rights under the Yakima, Warm Springs, Umatilla, and Nez Perce treaties may fish for salmon, steelhead, sturgeon, shad, carp, catfish, walleye, bass, or yellow perch under the following provisions:

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

(a) Season: Immediately, through 6:00 PM September 8, 2023, and 6:00 AM September 11 through 6:00 PM September 15, 2023, and 6:00 AM September 18 through 6:00 PM September 22, 2023:

(b) Gear: Set and Drift Gill nets with an 8-inch minimum mesh size.

(c) Allowable sale: Salmon (any species), steelhead, shad, yellow perch, bass, walleye, catfish and carp may be sold or retained for subsistence. Sturgeon may not be sold, but sturgeon from 38 to 54 inches fork length in the Bonneville Pool and sturgeon from 43 to 54 inches fork length in The Dalles and John Day Pools may be kept for subsistence purposes.

(d) Standard sanctuaries applicable to gillnet gear. The standard Spring Creek Hatchery Sanctuary is in place through September 8. The

standard Spring Creek Hatchery Sanctuary is reduced to a 150-foot radius around the hatchery ladder effective September 11.

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

(a) Season: Immediately, until further notice.

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

(c) Allowable sale: Salmon (any species), steelhead, shad, yellow perch, bass, walleye, catfish, and carp may be sold or retained for subsistence. Fish landed during the open periods are allowed to be sold after the period concludes. Sturgeon from 38 to 54 inches fork length in the Bonneville Pool and sturgeon from 43 to 54 inches fork length in The Dalles and John Day pools may be kept for subsistence purposes.

(d) Standard river mouth and dam sanctuary closures remain in place for this gear.

(3) Open Areas: SMCRA 1E (area defined in tribal/state MOUs/MOAs)

(a) Season: Immediately, until further notice. Only during days and times opened under tribal rule.

(b) Gear: Hook and line and/or platform gear identified in tribal rules.

(c) Allowable sale: Salmon (any species), steelhead, shad, yellow perch, bass, walleye, catfish, and carp may be sold or retained for subsistence. Sturgeon may not be retained in fisheries downstream of Bonneville Dam. Sales of fish are not authorized on COE property downstream of Bonneville Dam; fish must be transported elsewhere for sale. Fish landed during the open periods are allowed to be sold after the period concludes.

(4) Open Areas: Wind River, Drano Lake, and Klickitat River.

(a) Season: Immediately, until further notice, and only during those days and hours when the areas are open under lawfully enacted Yakama Nation tribal subsistence fishery regulations for enrolled Yakama Nation members.

(b) Gear: Hoop Nets/Bag Nets, Dip Nets, and Rod and reel with hook and Line. Gillnets may only be used in Drano Lake.

(c) Allowable sales: Salmon (any species), steelhead, shad, yellow perch, bass, walleye, catfish, and carp may be sold or retained for subsistence. Fish landed during the open periods are allowed to be sold after the period concludes. Sturgeon from 38 to 54 inches fork length may be kept for subsistence.

(5) 24-hour quick reporting is required for Washington wholesale dealers for all areas as provided in WAC 220-352-315, except that all landings from treaty fisheries described above must be reported within 24-hours of completing the fish ticket (not 24-hours after the period concludes).

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

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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.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 220-359-02000W Columbia River salmon seasons above
Bonneville Dam. (23-185)

WSR 23-19-013
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 23-194—Filed September 7, 2023, 4:37 p.m., effective September 8, 2023]

Effective Date of Rule: September 8, 2023.

Purpose: The purpose of this emergency rule is to open Chinook retention in lower Columbia River recreational salmon fisheries, from the mouth to the west end of Puget Island.

Citation of Rules Affected by this Order: Amending WAC 220-312-060.

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

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

Reasons for this Finding: Current in-season catch and stock composition projections indicate that sufficient Chinook Endangered Species Act (ESA) impacts remain available. Minimal ESA listed Chinook are expected to be handled downstream of the west end of Puget Island and allows for additional Chinook retention in this area. Staff will continue to monitor progress of ongoing fisheries, with an expectation to manage within the allowable ESA impact rate and per Washington fish and wildlife Policy C-3630. This rule conforms Washington state rules with Oregon state rules and is consistent with compact action on September 7, 2023.

Washington and Oregon jointly regulate Columbia River fisheries under the congressionally ratified Columbia River Compact. Four Indian tribes have treaty fishing rights in the Columbia River. The treaties preempt state regulations that fail to allow the tribes an opportunity to take a fair share of the available fish, and the states must manage other fisheries accordingly. *Sohappy v. Smith*, 302 F. Supp. 899 (D. Or. 1969). A court order sets the current parameters. *United States v. Oregon*, Civil No. 68-513-KI (D. Or.), Order Adopting 2018-2027 *United States v. Oregon* Management Agreement (February 26, 2018) (Doc. No. 2607-1). Some salmon and steelhead stocks in the Columbia River are listed as threatened or endangered under ESA. On February 23, 2018, the National Marine Fisheries Service issued a biological opinion under 16 U.S.C. § 1536 that allows for some incidental take of these species in the fisheries as described in the 2018-2027 *U.S. v. Oregon* Management Agreement. The Washington and Oregon fish and wildlife commissions have developed policies to guide the implementation of such biological opinions in the states' regulation of nontreaty fisheries.

Columbia River nontreaty fisheries are monitored very closely to ensure compliance with federal court orders, ESA, and commission guidelines. Because conditions change rapidly, the fisheries are managed almost exclusively by emergency rule. Representatives from the Washington (WDFW) and Oregon (ODFW) departments of fish and wildlife convene public hearings and take public testimony when considering proposals for new emergency rules. WDFW and ODFW then adopt regulations reflecting agreements reached.

There is insufficient time to promulgate 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 Nongovernmental 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: September 7, 2023.

Kelly Susewind
Director

NEW SECTION

WAC 220-312-06000U Freshwater exceptions to statewide rules—Columbia River. Effective September 8 through December 31, 2023, the provisions of WAC 220-312-060 regarding recreational salmon and steelhead seasons from a true north-south line through Buoy 10 upstream to the west end of Puget Island, shall be modified during the dates listed and as described below. All year-round Closed Waters areas remain in effect. Other provisions of WAC 220-312-060 not addressed herein remain in effect unless otherwise amended by emergency rule:

From a true north-south line through Buoy 10 upstream to a line at the west end of Puget Island projected from green navigation marker 39 on the Washington bank to green navigation marker 41, then to red navigation marker 42, and terminating at red navigation marker 44A on the Oregon bank:

(a) Effective September 8 through September 30, 2023: Salmon and steelhead: Daily limit 3 adult salmon including no more than 1 Chinook. Release all salmon and steelhead other than Chinook and hatchery coho.

(b) Effective October 1 through October 31, 2023: Salmon and steelhead: Daily limit 6. Up to 3 adults including no more than 1 Chinook may be retained. Release all salmon and steelhead other than Chinook and hatchery coho.

(c) Effective November 1 through December 31, 2023: Salmon and steelhead: Daily limit 6. Up to 3 adults including no more than 1 Chinook and no more than 2 hatchery steelhead may be retained. Release all salmon and steelhead other than Chinook, hatchery coho and hatchery steelhead.

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WSR 23-19-017
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 23-193—Filed September 8, 2023, 3:05 p.m., effective September 8, 2023, 3:05 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: The purpose of this emergency rule is to increase the pink salmon portion of the salmon daily limit in Catch Record Card Area 11.

Citation of Rules Affected by this Order: Repealing WAC 220-313-06000F; and amending WAC 220-313-060.

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

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

Reasons for this Finding: This emergency rule is necessary to increase the pink salmon portion of the salmon daily limit.

The current run size estimate for Puget Sound pink salmon shows the return coming in above forecast, allowing for additional pink salmon retention in these Puget Sound Recreational Fisheries.

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 Nongovernmental 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: September 8, 2023.

Kelly Susewind
Director

NEW SECTION

WAC 220-313-06000K Puget Sound salmon—Saltwater seasons and daily limits. Effective immediately, through September 30, 2023, the following provisions of WAC 220-313-060 regarding salmon seasons for Catch Record Card Area 11, shall be modified as described below. All other provisions of WAC 220-313-060 not addressed herein, or unless otherwise amended by emergency rule, remain in effect:

(1) Catch Record Card Area 11, except Des Moines Pier, Les Davis Pier, Point Defiance Boathouse Dock:

Effective immediately, through September 30: Salmon daily limit is 2, plus 2 additional pink salmon. Release Chinook and chum.

(2) Des Moines Pier, Les Davis Pier, Point Defiance Boathouse

Dock:

Effective immediately, through September 30: Salmon daily limit is 2 including no more than 1 Chinook, plus 2 additional pink salmon. Release chum.

[]

REPEALER

The following section of Washington Administrative Code is repealed, effective immediately:

WAC 220-313-06000F Puget Sound salmon—Saltwater seasons and daily limits. (23-155)

WSR 23-19-020
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 23-198—Filed September 8, 2023, 3:19 p.m., effective September 9, 2023]

Effective Date of Rule: September 9, 2023.

Purpose: The purpose of this emergency rule is to open commercial gillnet and purse seine seasons in Puget Sound Salmon Management and Catch Reporting Areas 7 and 7A and commercial reef net seasons in Area 7.

Citation of Rules Affected by this Order: Amending WAC 220-354-120, 220-354-160, and 220-354-180.

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 schedule openings for commercial purse seine and gillnet fisheries in Puget Sound Management and Catch Reporting Areas 7 and 7A and commercial reefnet fisheries in Area 7. Prosecuting these fisheries has been authorized by the Fraser River Panel as part of the Pacific Salmon Treaty. In-season information indicates that there are harvestable pink salmon available for United States fisheries. 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 Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 3, 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: September 8, 2023.

Kelly Susewind
Director

NEW SECTION

WAC 220-354-12000A Puget Sound salmon—Purse seine—Open periods. Effective September 9 through September 12, 2023, the following provisions of WAC 220-354-120 regarding commercial purse seine open periods in Puget Sound Salmon Management and Catch Reporting areas 7 and 7A shall be as follows. All other provisions of WAC 220-354-120 not con-

tained herein remain in effect unless otherwise altered by emergency rule:

Area(s)	Date(s)	Open/Closed	Daily open period
7 and 7A	9/9, 9/10, 9/11, 9/12	Open	5:30 a.m. - 9 p.m.

Release all salmon other than pink salmon.

[]

NEW SECTION

WAC 220-354-16000K Puget Sound salmon—Gillnet—Open periods.

Effective September 9 through September 12, 2023, the following provisions of WAC 220-354-160 regarding commercial gillnet open periods for Puget Sound Salmon Management and Catch Reporting areas 7 and 7A shall be as described below. All other provisions of WAC 220 354 160 not addressed herein, or unless otherwise amended by emergency rule, remain in effect:

Area(s)	Date(s)	Open/Closed	Daily open period	Minimum mesh size
7 and 7A	9/9, 9/10, 9/11, 9/12	Open	8 a.m. - 9 p.m.	6 1/4"

Sockeye must be released.

[]

NEW SECTION

WAC 220-354-18000C Reef net open periods. Notwithstanding the provisions of WAC 220-354-180, effective September 9 through September 12, 2023, it is unlawful to take, fish for, or possess salmon taken with reef net gear for commercial purposes in Puget Sound Salmon Management and Catch Reporting Areas except as provided in this section, provided that unless otherwise amended, all permanent rules remain in effect:

Open to reef net gear according to the times, dates and conditions contained herein:

Area(s)	Date(s)	Open/Closed	Daily open period
7	9/9, 9/10, 9/11, 9/12	Open	5:30 a.m. - 9 p.m.

(a) It is unlawful to retain unmarked Chinook, sockeye, and chum.

(b) It is unlawful to retain marked Chinook or unmarked coho unless the reef net operator is in immediate possession of a Puget Sound Reef Net Logbook. All retained marked Chinook must be recorded in the logbook in accordance with requirements of WAC 220-354-180.

(c) Marked Chinook and coho are those with a missing adipose fin with a healed scar, unmarked Chinook and coho have an intact adipose fin.

(d) It is unlawful to fish for salmon with reef net gear in Area 7 unless the vessel operator has attended a "Fish Friendly" best fishing practices workshop and is in immediate possession of a department issued certification card.

(e) "Quick Reporting Fisheries": All fisheries opened under this section, and any fishery opening under authority of the Fraser Panel for sockeye in Puget Sound Salmon Management and Catch Reporting Areas (WAC 220-301-030), are designated as "Quick Reporting Required" per WAC 220-352-325 Puget Sound salmon and sturgeon—Additional reporting requirements and WAC 220-354-090 Puget Sound salmon—Quick reporting.

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WSR 23-19-021
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 23-197—Filed September 8, 2023, 4:38 p.m., effective September 11, 2023]

Effective Date of Rule: September 11, 2023.

Purpose: Closes harvest of sea cucumber in District 2-1 on September 11, 2023.

Citation of Rules Affected by this Order: Repealing WAC 220-340-73000K; and amending WAC 220-340-730.

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 closes harvest of sea cucumber in District 2-1 on September 11, 2023, due to projected quota attainment. Harvestable surpluses of sea cucumbers exist in the districts specified. 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 Nongovernmental 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: September 8, 2023.

Kelly Susewind
Director

NEW SECTION

WAC 220-340-73000L Sea cucumbers Effective September 11, 2023, until further notice, or until this rule expires on January 6, 2024 pursuant to RCW 34.05.350, the following provisions of WAC 220-340-730 regarding Puget Sound commercial sea cucumber harvest and sales shall be as described below. All other provisions of WAC 220-340-730 not addressed herein, and unless otherwise amended, remain in effect:

(a) Sea cucumber harvest using shellfish diver gear is allowed in Sea Cucumber District 1, Monday through Sunday of each week.

(b) The maximum cumulative landing of sea cucumbers for each weekly fishery opening period is 1,500 pounds per license.

(c) The maximum cumulative landing of sea cucumbers for the period of August 1 through November 5, 2023, is 9,000 pounds per license from all Puget Sound commercial sea cucumber districts combined.

[]

REPEALER

The following section of Washington Administrative Code is repealed, effective September 11, 2023:

WAC 220-340-73000K Sea cucumbers (23-164)

WSR 23-19-022
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 23-199—Filed September 8, 2023, 4:42 p.m., effective September 8, 2023, 4:42 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: The purpose of this emergency rule is to increase the pink salmon portion of the salmon daily limit in Catch Record Card Area 10.

Citation of Rules Affected by this Order: Repealing WAC 220-313-06000H; and amending WAC 220-313-060.

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

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

Reasons for this Finding: This emergency rule is necessary to increase the pink salmon portion of the salmon daily limit.

The current run size estimate for Puget Sound pink salmon shows the return coming in above forecast, allowing for additional pink salmon retention in these Puget Sound recreational fisheries.

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 Nongovernmental 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: September 8, 2023.

Kelly Susewind
Director

NEW SECTION

WAC 220-313-06000L Puget Sound salmon—Saltwater seasons and daily limits. Effective August 18 through October 31, 2023, salmon rules for Catch Record Card Area 10 shall be modified as described herein. All other provisions of WAC 220-313-060 not addressed herein, or unless otherwise amended by emergency rule, remain in effect:

(1) Catch Record Card Area 10, except; Sinclair Inlet and Port Orchard, and Year-round piers (Seacrest Pier, Waterman Pier, Bremerton Boardwalk, and Illahee State Park Pier):

(a) Effective Immediately, through September 30, 2023: Salmon daily limit 2 including no more than 1 coho, plus 2 additional pink salmon. Release Chinook, chum.

(b) Effective October 1 through October 31, 2023: Salmon daily limit 2 including no more than 1 coho. Release Chinook.

(2) Sinclair Inlet (Waters of Sinclair Inlet and Port Orchard south of the Manette Bridge in Bremerton, south of a line drawn true west from Battle Point, and west of a line drawn true south from Point White):

(a) Effective immediately, through September 30, 2023: Salmon daily limit 3 including no more than 1 coho, plus 2 additional pink salmon. Release wild Chinook and chum.

(b) Effective October 1 through October 31, 2023: Salmon daily limit 2 including no more than 1 coho. Release Chinook.

(3) Seacrest Pier, Waterman Pier, Bremerton Boardwalk, and Illahee State Park Pier:

Effective immediately, through September 30, 2023: Salmon daily limit is 2 including no more than 1 Chinook, plus two additional pink salmon.

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REPEALER

The following section of Washington Administrative Code is repealed, effective immediately:

WAC 220-313-06000H Puget Sound salmon—Saltwater seasons and daily limits. (23-167)

WSR 23-19-023
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 23-196—Filed September 8, 2023, 4:53 p.m., effective September 18, 2023]

Effective Date of Rule: September 18, 2023.

Purpose: This emergency rule will allow nontreaty commercial fishing opportunities in the Columbia River while protecting fish listed as threatened or endangered under the Endangered Species Act (ESA). This rule implements federal court orders governing Washington's relationship with treaty Indian tribes, federal law governing Washington's relationship with Oregon, and Washington fish and wildlife commission policy guidance for Columbia River fisheries.

Citation of Rules Affected by this Order: Repealing WAC 220-358-0300[0]V; and amending WAC 220-358-030.

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

Other Authority: *United States v. Oregon*, Civil No. 68-513-KI (D. Or.), Order Adopting 2018-2027 *United States v. Oregon* Management Agreement (February 26, 2018) (Doc. No. 2607-1). *Northwest Gillnetters Ass'n v. Sandison*, 95 Wn.2d 638, 628 P.2d 800 (1981); Washington fish and wildlife commission policies concerning Columbia River fisheries; 40 Stat. 515 (Columbia River Compact).

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

Reasons for this Finding: This rule sets nontreaty commercial mark selective coho-directed tangle net fisheries for fall 2023 in the mainstem downstream of the Lewis River confluence. This fishery is consistent with the 2023 nontreaty fall fisheries plan that was developed in conjunction with the annual North of Falcon management process. The fishery is also consistent with the *U.S. v. Oregon* Management Agreement and the associated biological opinion. Conforms Washington state rules with Oregon state rules. Regulation is consistent with compact action of July 18 and September 7, 2023. This harvest opportunity allows for public access to the resource as well as the maintenance of sustainable fish populations. There is insufficient time to promulgate permanent rules.

Washington and Oregon jointly regulate Columbia River fisheries under the congressionally ratified Columbia River Compact. Four Indian tribes have treaty fishing rights in the Columbia River. The treaties preempt state regulations that fail to allow the tribes an opportunity to take a fair share of the available fish, and the states must manage other fisheries accordingly. *Sohappy v. Smith*, 302 F. Supp. 899 (D. Or. 1969). A court order sets the current parameters. *United States v. Oregon*, Civil No. 68-513-KI (D. Or.), Order Adopting 2018-2027 *United States v. Oregon* Management Agreement (February 26, 2018) (Doc. No. 2607-1). Some salmon and steelhead stocks in the Columbia River are listed as threatened or endangered under ESA. On February 23, 2018, the National Marine Fisheries Service issued a biological opinion under 16 U.S.C. § 1536 that allows for some incidental take of these species in the fisheries as described in the 2018-2027 *U.S. v. Oregon* Management Agreement.

Some Columbia River Basin salmon and steelhead stocks are listed as threatened or endangered under ESA. The Washington and Oregon fish and wildlife commissions have developed policies to guide the implementation of such biological opinions in the states' regulation of nontreaty fisheries.

Columbia River nontreaty fisheries are monitored very closely to ensure compliance with federal court orders, ESA, and commission guidelines. Because conditions change rapidly, the fisheries are managed almost exclusively by emergency rule. Representatives from the Washington (WDFW) and Oregon (ODFW) departments of fish and wildlife convene public hearings and take public testimony when considering proposals for new emergency rules. WDFW and ODFW then adopt regulations reflecting agreements reached.

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

Number of Sections Adopted at the Request of a Nongovernmental 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: September 8, 2023.

Kelly Susewind
Director

NEW SECTION

WAC 220-358-03000W Columbia River seasons below Bonneville.

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

(1) Mainstem:

Open Dates	Open Days	Open Time	Open Duration
September 18 - September 20	Monday, Wednesday	4:00 am - 10:00 pm	18 hrs
September 22 - October 27	Fridays	4:00 am - 6:00 pm	14 hrs
September 25 - October 26	Mondays, Tuesdays, Wednesdays, Thursdays	4:00 am - 10:00 pm	18 hrs

(i) **Area:** SMCRA 1A, 1B, and 1C. Upper deadline defined as a straight line projected from the Warrior Rock Lighthouse on the Oregon shore easterly through the green navigation Buoy #1 and continuing to the Washington shore. Sanctuaries include Elokomina-A, Cowlitz River, Kalama-A and Lewis-A.

(ii) **Gear:** Drift nets only. Maximum mesh size is 3.75 inches. Unslackened, single-wall, multi-filament floater nets only. Monofilament nets are not allowed. Net length not to exceed 150 fathoms. A red cork

must be placed on the corkline every 25 fathoms as measured from the first mesh of the net. Red corks at 25-fathom intervals must be in color contrast to the corks used in the remainder of the net. There are no restrictions on the hang ratio. The hang ratio is used to horizontally add slack to the net. The hang ratio is determined by the length of the web per length of the corkline. The use of slackers or stringers to slacken the net vertically is prohibited. Rip lines are allowed providing they do not vertically slacken the net.

(iii) **Allowable Sales:** Salmon (except chum), and shad; all coho must be adipose fin-clipped.

(iv) **Regulations:** Regulations typically in place for mark-selective commercial fisheries are in effect, including but not limited to: net length, use of recovery boxes, limited soak times, red corks, tangle-net certification, etc.

(v) **Soak times,** defined as the time elapsed from when the first of the net web is deployed into the water until the web is fully retrieved from the water, must not exceed 30 minutes.

(vi) **Recovery Box:** Each boat will be required to have on board two operable recovery boxes or one box with two chambers that meet the flow and size requirements standard for the winter/spring season. Each box and chamber and associated pump shall be operating during any time that the net is being retrieved or picked. All non-legal fish must be released immediately unharmed to the river or placed into an operating recovery box. All non-legal salmon and all steelhead that are bleeding, lethargic or appear lifeless must be placed in the recovery box prior to being released. All fish placed in recovery boxes must be released to the river prior to landing or docking.

(vii) **Measuring mesh size:** Mesh size is determined by placing three consecutive meshes under hand tension and the measurement is taken from the inside of one knot to the inside of the opposite knot of the center mesh. Hand tension means sufficient linear tension to draw opposing knots of meshes into contact.

(viii) **Live Capture workshop:** Only licensed Columbia River commercial fishers that have completed the required state-sponsored workshop concerning live capture commercial fishing techniques may participate in this fishery. At least one fisher on each boat must have live capture certification.

(ix) **Multiple net rule:** Nets not specifically authorized for use in this fishery may be onboard the vessel if properly stored. A properly stored net is defined as a net on a drum that is fully covered by a tarp (canvas or plastic) and bound with a minimum of ten revolutions of rope with a diameter of 3/8 (0.375) inches or greater.

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

(xi) **24-hour** quick reporting required is for Washington wholesale dealers, per WAC 220-352-315. Oregon buyers are required to electronically submit fish receiving tickets pursuant to OAR 635-006-0210. Electronic fish tickets must be submitted within 24 hours of closure of the fishing period, or within 24 hours of landing for fishing periods lasting longer than 24 hours.

(2) Tongue Point/South Channel Select Area:

Open Dates	Open Days	Open Time	Open Duration
Immediately - October 31	Monday, Tuesday, Wednesday, Thursday (night)	4:00 pm - 10:00 am	18 hrs

(a) **Area:**

(i) The Tongue Point Select Area is defined as waters of the Columbia River bounded by a line from a regulatory marker on the eastern shore of Tongue Point (midway between the red USCG light "2" at the tip of Tongue Point and the northern-most pier (#8) at the Tongue Point Job Corps facility) to the flashing green USCG light "3" on the rock jetty at the northwest tip of Mott Island, a line from a regulatory marker at the southeast end of Mott Island northeasterly to a regulatory marker on the northwest shore of Lois Island, and a line from a regulatory marker located on the Oregon shore approximately 300 yards northwest of the railroad bridge crossing the John Day River projecting easterly to a regulatory marker on the southwest shore of Lois Island:

(A) If the marker on the eastern shore of Tongue Point is not in place, the downstream boundary is defined by a line projecting from a point (46°12'31.1"N latitude 123°45'34.0"W longitude) on the eastern shore of Tongue Point to the flashing green USCG light "3" on the rock jetty at the northwest tip of Mott Island.

(B) If the marker on the Oregon shore is not in place, the upstream boundary is defined by a line projecting from a point (46°10'57.7"N latitude 123°44'35.3"W longitude) on the Oregon shore approximately 300 yards northwest of the railroad bridge crossing the John Day River projecting easterly to a regulatory marker on Lois Island.

(ii) The South Channel Area is defined as waters of the Columbia River bounded by a line from a regulatory marker on the Oregon shore at John Day Point projecting northeasterly to a regulatory marker on the southwest shore of Lois Island, and a line from a regulatory marker on Settler Point projecting northwesterly to the flashing red USCG light "10" then projecting westerly to the eastern tip of Burnside Island.

(b) **Gear:** Gillnets with a 6-inch maximum mesh size restriction. Maximum net length of 250 fathoms. In the Tongue Point Select Area, the lead line weight may not exceed two pounds per any one fathom; however, unstored gillnets legal for use in South Channel may be onboard.

In the South Channel Select Area, there is no lead line weight limit and attachment of additional weight and anchors directly to the lead line is permitted. Nets not specifically authorized for use may be onboard a vessel if properly stored. A properly stored net is defined as a net on a drum that is fully covered by a tarp (canvas or plastic) and bound with a minimum of ten revolutions of rope with a diameter of 3/8 (0.375) inches or greater. Nets fished any time between official sunset and official sunrise must have lighted buoys on both ends of the net. If the net is attached to the boat, then one lighted buoy on the end of the net opposite the boat is required.

(c) **Allowable Sales:** Salmon (except Chum) and shad.

(3) Blind Slough/Knappa Slough Select Area:

Open Dates	Open Days	Open Time	Open Duration
Immediately - October 31	Monday, Tuesday, Wednesday, Thursday (night)	6:00 pm - 10:00 am	16 hrs

(a) **Area:** The Blind Slough Select Area is defined as waters of Blind Slough and Gnat Creek from a north-south line represented by regulatory markers at the mouth of Blind Slough upstream to a regulatory marker in Gnat Creek located approximately 0.5 miles southeasterly (upstream) of the Barendse Road Bridge. The Knappa Slough Select Area is defined as waters of Knappa Slough, Calendar Slough, and Big Creek Slough bounded to the north (upstream) by a line projecting from a regulatory marker on the eastern shore of Karlson Island to the northernmost regulatory marker at the mouth of Blind Slough and bounded to the west (downstream) by a line projecting southerly from a regulatory marker on the southwestern tip of Karlson Island through regulatory markers on the western tips of Minaker Island to a marker on the Oregon shore. The waters of Knappa Slough within a 100-foot radius of the railroad bridge crossing Big Creek are closed.

(b) **Gear:** Gillnets with a 6-inch maximum mesh size restriction. Maximum net length is 100 fathoms. There is no lead line weight limit and attachment of additional weight and anchors directly to the lead line is permitted.

Nets not specifically authorized for use may be onboard a vessel if properly stored. A properly stored net is defined as a net on a drum that is fully covered by a tarp (canvas or plastic) and bound with a minimum of ten revolutions of rope with a diameter of 3/8 (0.375) inches or greater. Nets fished any time between official sunset and official sunrise must have lighted buoys on both ends of the net. If the net is attached to the boat, then one lighted buoy on the end of the net opposite the boat is required.

(c) **Allowable Sales:** Salmon (except Chum) and shad.

(4) Deep River Select Area:

Open Dates	Open Days	Open Time	Open Duration
Immediately - October 13	Monday, Tuesday, Wednesday, Thursday (night)	6:00 pm - 9:00 am	15 hrs
October 16 - October 26	Monday, Wednesday (night)	6:00 pm - 9:00 am	15 hrs

(a) **Area:** The Deep River fishing area includes all waters from West Deep River Road Bridge at the town of Deep River downstream to the mouth defined by a line from USCG navigation marker #16 southwest to a marker on the Washington shore.

(b) **Gear:** Gillnets with a maximum mesh size restriction of 6-inches. Maximum net length is 100 fathoms. No weight restriction on leadline. Use of additional weights or anchors attached directly to the leadline is allowed. No nets can be tied off to stationary structures. Nets may not fully cross the navigation channel. It is unlawful to operate in any river, stream or channel any gillnet gear longer than three-fourths the width of the river, stream, or channel. "River, stream, or channel width" is defined as bank-to-bank, where the water meets the banks, regardless of the time of tide or the water level. This emergency provision shall supersede the permanent regulation and all other regulations that conflict with it. Nets not specifically authorized for use may be onboard the vessel if properly stored. A properly stored net is defined as a net on a drum that is fully covered by a tarp (canvas or plastic) and bound with a minimum of ten revolutions of rope with a diameter of 3/8 (0.375) inches or greater. Nets fished any time between official sunset and official sunrise must have lighted_buoys on both ends of the net. If the net is attached to the boat, then one lighted buoy on the end of the net opposite the boat is required.

(c) **Allowable Sales:** Salmon (except Chum) and shad.

(5) **24-hour quick reporting** is in effect for Washington buyers WAC 220-352-315. Permanent transportation rules in effect. Oregon buyers are required to submit fish receiving tickets electronically pursuant to OAR 635-006-0210.

(6) **Multi-Net Rule:** Nets not specifically authorized for use in these areas may be onboard a vessel if properly stored. A properly stored net is defined as a net on a drum that is fully covered by a tarp (canvas or plastic) and bound with a minimum of ten revolutions of rope with a diameter of 3/8 (0.375) inches or greater (WAC 220-358-030(2)).

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

Reviser's note: The unnecessary underlining 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 effective September 18, 2023:

WAC 220-358-03000V Columbia River seasons below
Bonneville. (23-132)

WSR 23-19-033
EMERGENCY RULES
SUPERINTENDENT OF
PUBLIC INSTRUCTION

[Filed September 13, 2023, 9:23 a.m., effective September 13, 2023, 9:23 a.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: The purpose of this emergency rule making is to expand access to running start in alignment with HB 1316 (2023). The rules provide for funding, reporting, and administration of participating student's enrollment in running start courses.

Citation of Rules Affected by this Order: Repealing WAC 392-169-057; and amending WAC 392-121-123, 392-121-136, 392-169-015, 392-169-020, 392-169-022, 392-169-025, 392-169-045, 392-169-055, and 392-169-115.

Statutory Authority for Adoption: 2SHB 1316 (chapter 350, Laws of 2023); RCW 28A.600.390 and 28A.150.290.

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 emergency rules are necessary to ensure eligible students can participate in running start at enrollment levels provided for in HB 1316. Emergency rules are needed to ensure requirements for student enrollment calculations, reporting, and program administration are effective by the beginning of the 2023-2024 school year.

The office of superintendent of public instruction will also conduct permanent rule making concerning running start.

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 9, Repealed 1.

Number of Sections Adopted at the Request of a Nongovernmental 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 0, Repealed 0.

Date Adopted: September 13, 2023.

Chris P. S. Reykdal
State Superintendent of Public Instruction

OTS-4904.1

AMENDATORY SECTION (Amending WSR 23-13-089, filed 6/16/23, effective 7/1/23)

WAC 392-121-123 Nonstandard school year programs. Except for running start, a student participating in a program of education occurring during the nonstandard school year on a tuition-free basis may be claimed for state funding to the extent that the student was not claimed as a 1.0 AAFTE during the regular school year (September through June), subject to the following:

(1) Eligible student FTE in a nonstandard school year program shall be claimed based upon the following:

(a) Enrolled hours based upon the standards in WAC 392-121-122 or 392-121-182.

(b) Credit based for student enrolled in a college program under WAC 392-121-188.

(c) A student enrolled in transition school is not eligible for nonstandard school year funding.

(2) A district or charter school shall make month by month evaluation of the student to determine if the following conditions were met during the regular school year:

(a) The student was not home schooled or enrolled in a private school.

(b) The student was not claimed as a 1.0 FTE in a regular or institution education program.

(3) For each month in which the conditions of subsection (2) of this section are met, the district or charter school shall determine the amount of student FTE claimed for the student. To the extent the enrollment claimed is less than 1.0 FTE for each month, the school district or charter school may claim nonstandard school year FTE based upon the student enrollment in the nonstandard school year school program.

(4) For the running start program only, a student may be claimed up to 1.40 AAFTE for their running start enrollment.

[Statutory Authority: RCW 28A.600.390 and 2022 c 297 § 504(18). WSR 23-13-089, § 392-121-123, filed 6/16/23, effective 7/1/23. Statutory Authority: RCW 28A.150.290 and 28A.710.220. WSR 15-18-078, § 392-121-123, filed 8/28/15, effective 9/28/15. Statutory Authority: RCW 28A.150.305. WSR 13-02-004, § 392-121-123, filed 12/19/12, effective 1/19/13. Statutory Authority: RCW 28A.150.290. WSR 09-01-173, § 392-121-123, filed 12/23/08, effective 1/23/09; WSR 95-01-013, § 392-121-123, filed 12/8/94, effective 1/8/95. Statutory Authority: RCW 28A.41.055 and 28A.41.170. WSR 88-03-013 (Order 88-8), § 392-121-123, filed 1/11/88.]

OTS-4903.1

AMENDATORY SECTION (Amending WSR 22-15-119, filed 7/20/22, effective 8/20/22)

WAC 392-121-136 Limitation on enrollment counts. Enrollment counts under WAC 392-121-106 through 392-121-133 are subject to the following limitations:

(1) Except as provided in (a), (b) and (c) of this subsection, no student, including a student enrolled in more than one school district, shall be counted as more than one full-time equivalent student on any count date or more than one annual average full-time equivalent student in any school year.

(a) School districts or charter schools operating approved vocational skills center programs during the summer vacation months may claim additional full-time equivalent students based upon actual enrollment in such vocational skills centers on the aggregate of enrolled hours based upon the fourth day of each summer session.

(i) Prior to the 2018-19 school year, each district or charter school operating an approved vocational skills center program shall be entitled to claim one annual average full-time equivalent student for each 900 hours of planned student enrollment for the summer term(s) subject to the limitation in (c) of this subsection.

(ii) Beginning with the 2018-19 school year, each district or charter school operating an approved vocational skills center program shall be entitled to claim one annual average full-time equivalent student for each 1,000 hours of planned student enrollment for the summer term(s) subject to the limitation in (c) of this subsection.

(b) Enrollment count limitations apply separately to a student's running start, skills center and high school enrollments and is limited to an overall maximum (~~(1.8)~~) 2.0 FTE.

(c) Subject to (b) of this subsection:

(i) A student enrolled in a skill center program during the regular school year may be claimed for up to a combined 1.6 full-time equivalent student.

(ii) A student enrolled in running start during the regular school year may be claimed for up to a combined (~~(1.2)~~) 1.4 full-time equivalent student.

(iii) A student enrolled in high school and skills center for more than 1.0 FTE, can be claimed for a (~~(0.2)~~) 0.4 running start FTE.

(iv) A student enrolled in an institutional education program under WAC 392-122-205 and a youth engagement program under chapter 392-700 WAC can be claimed up to a combined 2.0 FTE.

(v) Each student may be claimed for a maximum of a 1.0 full-time equivalent for the skills center enrollment, a maximum of a (~~(1.0)~~) 1.40 full-time equivalent for running start, a maximum of a 1.0 full-time equivalent for the student's high school enrollment, and a maximum of a 1.0 full-time equivalent for institutional education funding under WAC 392-122-225 subject to the overall combined FTE limitation in (b) of this subsection.

(2) Running start enrollment counts are limited as provided in chapter 392-169 WAC and specifically as provided in WAC 392-169-060.

(3) The full-time equivalent reported for a five year old pre-school student with a disability is limited as provided in WAC 392-121-137.

(4) No kindergarten student, including a student enrolled in more than one school district, shall be counted as more than one-half of an annual average full-time equivalent student in any school year.

(5) A student reported as part-time by a state institution educational program on Form SPI E-672 shall not be reported by a school district or charter school for more than part-time basic education funding on that enrollment count date and the total enrollment reported by one or more school districts or charter schools for basic education and on Form SPI E-672 must not exceed one full-time equivalent,

except if the student is enrolled in a youth reengagement program under chapter 392-700 WAC.

(6) Districts and charter schools providing an approved state-funded full-day kindergarten program as provided in chapter 28A.150 RCW (from E2SSB 5841) may claim for an additional 0.50 FTE based upon student enrolled hours in excess of the 0.50 FTE provided under subsection (4) of this section.

[Statutory Authority: RCW 28A.150.290 and 28A.175.115. WSR 22-15-119, § 392-121-136, filed 7/20/22, effective 8/20/22. Statutory Authority: RCW 28A.150.290. WSR 17-16-162, § 392-121-136, filed 8/2/17, effective 9/2/17. Statutory Authority: RCW 28A.150.290 and 28A.710.220. WSR 15-18-078, § 392-121-136, filed 8/28/15, effective 9/28/15. Statutory Authority: RCW 28A.150.305. WSR 13-02-004, § 392-121-136, filed 12/19/12, effective 1/19/13. Statutory Authority: RCW 28A.150.290(1). WSR 10-13-020, § 392-121-136, filed 6/4/10, effective 7/5/10. Statutory Authority: RCW 28A.150.290. WSR 09-01-172, § 392-121-136, filed 12/23/08, effective 1/23/09; WSR 08-04-010, § 392-121-136, filed 1/24/08, effective 2/24/08; WSR 97-22-013 (Order 97-06), § 392-121-136, filed 10/27/97, effective 11/27/97; WSR 95-01-013, § 392-121-136, filed 12/8/94, effective 1/8/95. Statutory Authority: RCW 28A.150.290, 28A.150.250 and 28A.150.260. WSR 91-02-096 (Order 50), § 392-121-136, filed 1/2/91, effective 2/2/91. Statutory Authority: RCW 28A.41.055 and 28A.41.170. WSR 88-03-013 (Order 88-8), § 392-121-136, filed 1/11/88.]

OTS-4902.1

AMENDATORY SECTION (Amending WSR 16-10-115, filed 5/4/16, effective 6/4/16)

WAC 392-169-015 Running start program—Definition. As used in this chapter, the terms "running start" and "running start program" mean the part-time to full-time equivalent enrollment under this chapter of eligible (~~eleventh and twelfth~~) 11th and 12th grade high school students, as defined under this chapter, in an institution of higher education for the purpose of earning at least high school credit to be awarded by a school district, and such additional college level or university level credit as may be awarded by the institution of higher education. A running start program's course must be open for registration to matriculated students at the participating institution of higher education and may not be a course consisting solely of high school students in a high school classroom.

[Statutory Authority: RCW 28A.600.390. WSR 16-10-115, § 392-169-015, filed 5/4/16, effective 6/4/16. Statutory Authority: RCW 28A.300.390, 28A.150.260 and 28A.150.290. WSR 95-09-042 (Order 95-02), § 392-169-015, filed 4/14/95, effective 5/15/95. Statutory Authority: RCW 28A.600.390, 28A.150.260 and [28A.150.]290. WSR 94-04-095 (Order 94-01), § 392-169-015, filed 2/1/94, effective 3/4/94.]

AMENDATORY SECTION (Amending WSR 16-10-115, filed 5/4/16, effective 6/4/16)

WAC 392-169-020 Eligible student—Definition. As used in this chapter, the term "eligible student" means any person, including a person who is otherwise attending a private school or receiving home-based instruction, who meets each of the following conditions:

(1) The person is under the age of (~~twenty-one~~) 21 years of age as of September 1st of the school year.

(2) The person is eligible by reason of his or her residence or other criterion established by law to enroll in the school district through which the person seeks to obtain the award of running start program high school credit. See RCW 28A.225.160 (residents of a school district), RCW 28A.225.170 (residents of the United States and Indian Reservations), RCW 28A.225.210 (residents of "nonhigh" school districts), and RCW 28A.225.220 ("choice" students). Note: A running start student who changes his or her school district of residence, including after a rescindment of a choice transfer agreement following enrollment in running start, solely for the purpose of attending an institution of higher education under this chapter shall be deemed to have retained his or her residence in the school district of initial running start enrollment for high school graduation, funding and other purposes under this chapter.

(3) The person is eligible to be in the 11th or 12th grade under the grade placement policies of the school district through which the person seeks to obtain running start program high school credit (~~to be in the eleventh or the twelfth grade~~). For the summer term, eligibility is established when the person has completed the 10th grade at the end of the standard school year or will be eligible to enroll in the 11th or 12th grade in the upcoming school year based upon district grade placement policies.

(4) The person has not as of the beginning of the school year earned the credits required for the award of a high school diploma by the school district through which the person seeks to obtain the award of running start program high school credit.

(5) The person has not as of the beginning of the school year received a high school diploma or its equivalent. Note: A general education development certificate is not considered to be the equivalent of a high school diploma for purposes of this subsection.

(6) The person's running start program enrollment to date is below the applicable (~~eleventh or twelfth~~) 11th or 12th grade running start enrollment limitations established under WAC 392-169-055.

[Statutory Authority: RCW 28A.600.390. WSR 16-10-115, § 392-169-020, filed 5/4/16, effective 6/4/16. Statutory Authority: RCW 28A.300.390, 28A.150.260 and 28A.150.290. WSR 95-09-042 (Order 95-02), § 392-169-020, filed 4/14/95, effective 5/15/95. Statutory Authority: RCW 28A.600.390, 28A.150.260 and [28A.150.]290. WSR 94-04-095 (Order 94-01), § 392-169-020, filed 2/1/94, effective 3/4/94.]

AMENDATORY SECTION (Amending WSR 95-09-042, filed 4/14/95, effective 5/15/95)

WAC 392-169-022 Running start student—Definition. For the purposes of this chapter and chapter 392-121 WAC, the term "running start student" means an eligible student:

- (1) Who is enrolled in the running start program in accordance with this chapter;
- (2) Whose enrollment has not been suspended or terminated by withdrawal, transfer, suspension or expulsion; and
- (3) Who has participated in one or more instructional activities conducted by college or university staff (e.g., classroom or laboratory instruction, course work testing, post enrollment/registration academic counseling, and similar other instructional activities) on at least one college or university day during the current (~~quarter or semester~~) term since the last enrollment count date.

[Statutory Authority: RCW 28A.300.390, 28A.150.260 and 28A.150.290. WSR 95-09-042 (Order 95-02), § 392-169-022, filed 4/14/95, effective 5/15/95. Statutory Authority: RCW 28A.600.390, 28A.150.260 and [28A.150.]290. WSR 94-04-095 (Order 94-01), § 392-169-022, filed 2/1/94, effective 3/4/94.]

AMENDATORY SECTION (Amending WSR 16-10-115, filed 5/4/16, effective 6/4/16)

WAC 392-169-025 Full-time equivalent (FTE) running start enrollment—Definition. For the purposes of this chapter and chapter 392-121 WAC, "full-time equivalent (FTE) running start enrollment" (i.e., college or university enrollment) means the FTE of running start students on an enrollment count date when each student's FTE is determined subject to the limitations of WAC 392-169-022, 392-169-055 and 392-169-115 as follows:

~~((1))~~ FTE for running start enrollment is the result of dividing a student's enrolled college credits by ~~((fifteen))~~ 15. For Washington State University classes offered at the college campus only, the FTE for running start enrollment is the result of dividing a student's enrolled college semester credits by ~~((fifteen))~~ 15.

~~((2) The sum of the results of running start enrollment under subsection (1) of this section at all colleges shall not exceed 1.00 FTE per student on any count day except for the month of January or 1.00 annual average FTE in any school year.))~~

[Statutory Authority: RCW 28A.600.390. WSR 16-10-115, § 392-169-025, filed 5/4/16, effective 6/4/16; WSR 14-22-079, § 392-169-025, filed 11/3/14, effective 12/4/14. Statutory Authority: RCW 28A.300.390, 28A.150.260 and 28A.150.290. WSR 95-09-042 (Order 95-02), § 392-169-025, filed 4/14/95, effective 5/15/95. Statutory Authority: RCW 28A.600.390, 28A.150.260 and [28A.150.]290. WSR 94-04-095 (Order 94-01), § 392-169-025, filed 2/1/94, effective 3/4/94.]

AMENDATORY SECTION (Amending WSR 95-09-042, filed 4/14/95, effective 5/15/95)

WAC 392-169-045 Enrollment—General requirements and conditions.

The enrollment of an eligible student in the running start program shall be governed as follows:

(1) An eligible student is responsible for applying for and pursuing admission to an institution of higher education on or before the deadline for enrollment established by the college or university.

(2) It shall not be necessary for an eligible student to obtain a release of attendance from (~~his or her~~) their resident school district or school in order for the student to enroll in an institution of higher education.

(3) An eligible student is entitled to enroll in an institution of higher education for running start program purposes subject to each of the following conditions and limitations:

(a) Enrollment is limited to college and university level courses.

(b) Prior confirmation pursuant to WAC 392-169-050 by the school district through which the student seeks to obtain the award of running start program high school credit of the amount of high school credit to be awarded on or before the deadline for enrollment established by the institution of higher education.

(c) Acceptance of the student by the institution of higher education subject to generally applicable admission and enrollment requirements and limitations established by the institution, including a determination that the student is competent to profit from the college or university level course(s) the student seeks to enroll in: Provided, That a technical college shall not deny admission or continued attendance to a person under (~~twenty-two~~) 22 years of age with a disability based upon impaired competency or the creation of a disruptive atmosphere associated with the person's disability.

(d) The limitations upon the duration and extent of institution of higher education course enrollment set forth in WAC 392-169-055 and 392-169-057.

[Statutory Authority: RCW 28A.300.390, 28A.150.260 and 28A.150.290. WSR 95-09-042 (Order 95-02), § 392-169-045, filed 4/14/95, effective 5/15/95. Statutory Authority: RCW 28A.600.390, 28A.150.260 and [28A.150.]290. WSR 94-04-095 (Order 94-01), § 392-169-045, filed 2/1/94, effective 3/4/94.]

AMENDATORY SECTION (Amending WSR 23-13-089, filed 6/16/23, effective 7/1/23)

WAC 392-169-055 Enrollment—Extent and duration of running start enrollment. Running start program enrollment under this chapter is limited as follows (~~((and as may be further limited for academic reasons under WAC 392-169-057))~~):

(1) An eligible student who enrolls upon completion of grade 10 after the end of the regular school year may enroll in an institution of higher education for no more than the course work equivalent to 10 postsecondary credits in the summer term prior to enrolling in grade 11.

(2) An eligible student who enrolls in grade 11 may enroll in an institution of higher education while in the 11th grade for ((no more than the course work equivalent to one academic year of enrollment as an annual average full-time equivalent running start student.

(2-)) a maximum 1.40 AAFTE or 63 postsecondary credits, depending on the student's concurrent enrollment in high school and/or skill center courses, subject to the AAFTE limitation under WAC 392-121-136.

(3) An eligible student who enrolls in grade 12 may enroll in an institution of higher education while in the 12th grade for ((no more than the course work equivalent to one academic year of enrollment as an annual average full-time equivalent running start student.

(3) As a general rule)) a maximum 1.40 AAFTE or 63 postsecondary credits, depending on the student's concurrent enrollment in high school and/or skill center courses, subject to the AAFTE limitation under WAC 392-121-136.

(4) An eligible student who enrolls in summer term must have the capacity under the AAFTE limits established in subsections (2) and (3) of this section and may enroll for no more than the course work equivalent of 10 postsecondary credits.

(5) Even when a student does not enroll at the postsecondary level to the full extent permitted by subsections (1) through (4) of this section, a student's eligibility for running start program enrollment terminates at the end of the ((student's 12th grade regular academic year, notwithstanding the student's failure to have enrolled in an institution of higher education to the full extent permitted by subsections (1) and (2) of this section: Provided, That a student who has failed to meet high school graduation requirements as of the end of the student's 12th grade regular academic year (September through June) due to the student's absence, the student's failure of one or more courses, or another similar reason may continue running start program enrollment for the sole and exclusive purpose of completing the particular course or courses required to meet high school graduation requirements, subject to the enrollment limitation established by subsection (2-)) academic year in which a student meets the district's graduation requirements. Students who have not yet met high school graduation requirements as of the end of the 12th grade standard school year would be eligible to enroll in the summer college term, provided they have capacity under the 1.40 AAFTE limitation. Students who have not met running start enrollment limits may continue running start program enrollment into a second 12th grade year due to the student's absence, inability to complete all required courses, or another similar reason for the sole and exclusive purpose of completing the particular course(s) required to meet the district's high school graduation requirements, subject to the enrollment limitation established by subsection (3) of this section.

[Statutory Authority: RCW 28A.600.390 and 2022 c 297 § 504(18). WSR 23-13-089, § 392-169-055, filed 6/16/23, effective 7/1/23. Statutory Authority: RCW 28A.600.390. WSR 16-10-115, § 392-169-055, filed 5/4/16, effective 6/4/16; WSR 14-22-079, § 392-169-055, filed 11/3/14, effective 12/4/14. Statutory Authority: RCW 28A.300.390, 28A.150.260 and 28A.150.290. WSR 95-09-042 (Order 95-02), § 392-169-055, filed 4/14/95, effective 5/15/95. Statutory Authority: RCW 28A.600.390, 28A.150.260 and [28A.150.]290. WSR 94-04-095 (Order 94-01), § 392-169-055, filed 2/1/94, effective 3/4/94.]

AMENDATORY SECTION (Amending WSR 13-02-006, filed 12/19/12, effective 1/19/13)

WAC 392-169-115 Finance—Limitations on enrollment counts. (~~No~~ running start student enrolled in one or more institutions of higher education reported under WAC 392-169-105 and 392-169-110 shall exceed one full-time equivalent running start student on any enrollment count date except for the month of January or more than one annual average full-time equivalent student in any school year. An exception is allowed for January when the change in high school semesters may result in students exceeding the FTE limitation until the high school begins a new term.) A student enrolled in both high school and running start may be claimed for a maximum of 1.40 combined monthly FTE and a maximum of 1.40 AAFTE. The high school may only claim a maximum of 1.00 FTE and AAFTE. A student whose enrollment is reported under WAC 392-169-105 and 392-169-110 may be claimed up to a 1.40 monthly FTE on any enrollment count date, except for July and August. No student may be claimed for more than 1.40 AAFTE in any school year. An exception is allowed for December and January when the high school term overlaps with the institution of higher education term but may result in a reduction of the available FTE for the spring term. District business offices or high schools will complete the spring quarter eligibility adjustment form for any student who was claimed for more than a 1.40 FTE in December or January to determine if the student's available FTE for the spring term will be reduced.

[Statutory Authority: RCW 28A.150.305. WSR 13-02-006, § 392-169-115, filed 12/19/12, effective 1/19/13. Statutory Authority: RCW 28A.300.390, 28A.150.260 and 28A.150.290. WSR 95-09-042 (Order 95-02), § 392-169-115, filed 4/14/95, effective 5/15/95. Statutory Authority: RCW 28A.600.390, 28A.150.260 and [28A.150.]290. WSR 94-04-095 (Order 94-01), § 392-169-115, filed 2/1/94, effective 3/4/94.]

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 392-169-057 Enrollment—Extent of combined high school and running start enrollment.

WSR 23-19-034
EMERGENCY RULES
SUPERINTENDENT OF
PUBLIC INSTRUCTION

[Filed September 13, 2023, 9:25 a.m., effective September 13, 2023, 9:25 a.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: The purpose of this emergency rule making is to amend college in the high school rules in alignment with 2SSB 5048 (2023) that eliminated fees for students.

Citation of Rules Affected by this Order: Repealing WAC 392-725-325; and amending WAC 392-725-005, 392-725-015, 392-725-050, 392-725-225, 392-725-235, 392-725-250, and 392-725-300.

Statutory Authority for Adoption: RCW 28A.600.287; and 2SSB 5048 (chapter 314, Laws of 2023).

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 emergency rules are necessary to ensure students participating in college in the high school programs are not required to pay fees as provided in 2SSB 5048 during the 2023-24 school year.

The office of superintendent of public instruction will also conduct permanent rule making concerning college in the high school (chapter 392-725 WAC).

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 7, Repealed 1.

Number of Sections Adopted at the Request of a Nongovernmental 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 0, Repealed 0.

Date Adopted: September 13, 2023.

Chris P. S. Reykdal
State Superintendent of Public Instruction

OTS-4916.2

AMENDATORY SECTION (Amending WSR 16-14-030, filed 6/27/16, effective 7/28/16)

WAC 392-725-005 Authority. The authority for this chapter is RCW ((~~28A.600.290~~)) 28A.600.287, which authorizes the superintendent of public instruction to adopt rules governing RCW ((~~28A.600.290~~))

28A.600.287, with the state board of community and technical colleges, the student achievement council, and the public baccalaureate institutions to jointly develop rules, and with the association of Washington school principals to be consulted. The rules set forth in this chapter have been jointly developed and agreed upon by the four organizations with the council of presidents representing the public baccalaureate institutions. The rules may be modified only by agreement of the superintendent of public instruction, state board of community and technical colleges, the student achievement council, and an organization representing the interest of the public baccalaureate institutions.

[Statutory Authority: RCW 28A.600.290. WSR 16-14-030, § 392-725-005, filed 6/27/16, effective 7/28/16.]

AMENDATORY SECTION (Amending WSR 19-12-049, filed 5/31/19, effective 7/1/19)

WAC 392-725-015 Definitions. The following definitions in this section apply throughout this chapter.

(1) **"College in the high school course"** means a dual credit course provided on a high school campus or in a high school environment in which an eligible student is given the opportunity to earn high school credit to be awarded by a district, charter school, or tribal compact school and college credit awarded by the participating institution of higher education by completing a college course with a passing grade. College in the high school courses may be either academic or career and technical (vocational) education.

(2) **"College in the high school program"** means the subset of dual credit courses meeting NACEP quality standards and provided on a high school campus or in a high school environment in which an eligible student is given the opportunity to earn high school credit to be awarded by a district, charter school, or tribal compact school and college credit awarded by the participating institution of higher education by completing a college course with a passing grade.

(3) **"Eligible student"** means any student who meets the following conditions:

(a) The student meets the definition of an enrolled student pursuant to WAC 392-121-106.

(b) The student under the grade placement policies of the district, charter school, or tribal compact school through which the high school credits will be awarded has been deemed to be a (~~tenth, eleventh, or twelfth~~) 9th, 10th, 11th, or 12th grade student.

(4) **"Participating institution of higher education"** means an institution of higher education that:

(a) A district, charter school, or tribal compact school has contracted with to provide the college in the high school program;

(b) Meets the definition in RCW 28B.10.016, is authorized or exempt under the requirements of chapter 28B.85 RCW, or is a public tribal college located in Washington as (~~noted in RCW 28A.600.290 (7)(a)~~) described in RCW 28A.600.287 (12)(c);

(c) Meets the college in the high school program standards outlined in WAC 392-725-130 through 392-725-170; and

(d) Is accredited by National Alliance of Concurrent Enrollment Partnerships or commits to the reporting of evidence requirement outlined in WAC 392-725-120.

(5) **"National Alliance of Concurrent Enrollment Partnerships"** is the professional organization that works to ensure that college in the high school courses are as rigorous as courses offered on the sponsoring college campuses. National Alliance of Concurrent Enrollment Partnerships (NACEP) has defined a set of quality standards that is the basis of their accreditation process.

(6) **"Council of presidents"** is defined throughout this chapter as the organization representing the interest of public baccalaureate institutions (~~(, specific to RCW 28A.600.290(6)).~~

~~(7) **"Fees."**~~

~~(a) **"College in the high school fees"** means the per credit or per course fee charged by the participating institution of higher education for the registration for the college course.~~

~~(i) The maximum college in the high school fee shall not exceed the college in the high school state-funded subsidies described in RCW 28A.600.290.~~

~~(ii) The college in the high school fee may be less than the college in the high school state-funded subsidies.~~

~~(iii) The institution of higher education must receive the corresponding fee for any student seeking to earn college credit from the college in the high school course in accordance with the general requirements identified in WAC 392-725-225 (2)(a) unless the student qualifies for the state-funded subsidies in accordance with WAC 392-725-325(4).~~

~~(b) **"Other associated college in the high school fees"** means additional fees required to fully participate in the college in the high school program charged by the participating institution of higher education such as registration fees and fees for consumables.~~

~~(8) **"College in the high school state-funded subsidies"** means the amount provided in the Omnibus Appropriations Act that pays the college in the high school fee for specific eligible eleventh or twelfth grade students pursuant to RCW 28A.600.290 (1)(b)(i) only and for the limited amount provided in WAC 392-725-325(2)).~~

[Statutory Authority: RCW 28A.600.290. WSR 19-12-049, § 392-725-015, filed 5/31/19, effective 7/1/19; WSR 17-21-001, § 392-725-015, filed 10/5/17, effective 11/5/17; WSR 16-14-030, § 392-725-015, filed 6/27/16, effective 7/28/16.]

AMENDATORY SECTION (Amending WSR 19-12-049, filed 5/31/19, effective 7/1/19)

WAC 392-725-050 Local agreement requirement. Prior to the start of the college in the high school program(s), a local agreement between the district, charter school, or tribal compact school and the participating institution of higher education must be developed and in place. The agreement shall be for no more than one school year, meet the district, charter school, or tribal compact school's board policies and the policies of the institution of higher education regarding contracting agreements, and address the following requirements:

(1) List of college in the high school courses.

(2) College in the high school student standards pursuant to WAC 392-725-130 will be met.

(3) College in the high school curriculum and assessment standards pursuant to WAC 392-725-140 will be met.

(4) College in the high school faculty standards pursuant to WAC 392-725-150 will be met.

(5) College in the high school evaluation standards pursuant to WAC 392-725-160 will be met.

(6) College in the high school partnership standards pursuant to WAC 392-725-170 will be met.

(7) Award of high school credits pursuant to WAC 392-725-200 will be met.

(8) District, charter school, or tribal compact school's responsibilities for offering college in the high school program.

~~(9) ((Institution of higher education's fee amount per college credit or per college course and a description and amount of other associated college in the high school fees.~~

~~(10))~~ Course materials including, but not limited to, textbooks for each college in the high school course, and which party will be responsible to provide.

~~((11))~~ (10) Provide an explanation of how any compensation paid to the instructor for work performed beyond their contract with the district, charter school, or tribal compact school will be calculated and provide details of what duties the compensation represents.

~~((12) Method and collection of college in the high school fee and other associated college in the high school fees.~~

~~(13))~~ (11) Districts, charter schools, tribal compact schools, and institutions of higher education shall as necessary assure compliance with their respective duties under federal and state law.

[Statutory Authority: RCW 28A.600.290. WSR 19-12-049, § 392-725-050, filed 5/31/19, effective 7/1/19; WSR 16-14-030, § 392-725-050, filed 6/27/16, effective 7/28/16.]

AMENDATORY SECTION (Amending WSR 19-12-049, filed 5/31/19, effective 7/1/19)

WAC 392-725-225 College in the high school general requirements.

(1) Participating districts, charter schools, or tribal compact schools must provide general information about the college in the high school program to all students in grades ~~((nine))~~ eight through ~~((twelve))~~ 12 and to the parents and guardians of those students.

(2) The enrollment of a student who meets the definition of WAC 392-725-015(2) in the college in the high school program shall be governed as follows:

(a) An eligible student seeking to earn college credit is responsible for enrolling into an institution of higher education on or before the deadline established by the institution of higher education.

(b) An eligible student is entitled to enroll in an institution of higher education for college in the high school program purposes subject to each of the following conditions and limitations:

(i) Enrollment is limited to college courses.

(ii) Prior confirmation pursuant to WAC 392-725-200 by the district, charter school, or tribal compact school of the amount of high school credit to be awarded for a college in the high school course on or before the deadline for enrollment established by the institution of higher education.

(iii) Acceptance of the student by the institution of higher education subject to enrollment requirements and limitations established by the institution.

[Statutory Authority: RCW 28A.600.290. WSR 19-12-049, § 392-725-225, filed 5/31/19, effective 7/1/19; WSR 17-21-001, § 392-725-225, filed 10/5/17, effective 11/5/17; WSR 16-14-030, § 392-725-225, filed 6/27/16, effective 7/28/16.]

AMENDATORY SECTION (Amending WSR 17-21-001, filed 10/5/17, effective 11/5/17)

WAC 392-725-235 Co-delivery of college in the high school courses. (1) In cases where a college in the high school course is co-delivered with another dual credit course, such as career and technical education dual credit, advanced placement, international baccalaureate, or Cambridge international, the participating institution of higher education, in coordination with the institution's academic department, shall assess curriculum alignment and approve the option to provide a co-delivered course.

(2) In cases where a college in the high school course is co-delivered with another dual credit course, the high school transcript shall reflect the co-delivered courses as follows:

(a) The course title as listed on the high school transcript shall begin with the institute of higher education's curriculum and course number, as described in the office of superintendent of public instruction CEDARS manual.

(b) Any additional course title description for a co-delivered college in the high school course title shall be included pursuant to WAC 392-415-070.

Official course abbreviations for career and technical education dual credit, advanced placement, international baccalaureate and Cambridge international shall be included on the high school transcript as listed in appendix Q of the office of superintendent of public instruction CEDARS manual.

(c) For approved co-delivered courses, as provided in subsection (1) of this section, the high school transcript course title and course designators may reflect two dual credit programs in cases where students have met any required prerequisites or other entrance requirements for both programs.

(3) Students choosing to enroll in a co-delivered college in the high school course for the purpose of earning college credit must meet the college in the high school enrollment requirements outlined in WAC 392-725-225(2).

[Statutory Authority: RCW 28A.600.290. WSR 17-21-001, § 392-725-235, filed 10/5/17, effective 11/5/17.]

AMENDATORY SECTION (Amending WSR 16-14-030, filed 6/27/16, effective 7/28/16)

WAC 392-725-250 Transferability of college credit. (1) College in the high school programs may include both academic and career and

technical education. The college credit shall be applied at institutions of higher education (~~toward:~~

~~(a) General education requirements; or~~

~~(b))~~ as appropriate and applicable to the student's degree requirements.

(2) A college in the high school course has the same transferability as its equivalent course on the college campus. Some courses including career and technical education courses may not meet specific general education and/or degree requirements.

[Statutory Authority: RCW 28A.600.290. WSR 16-14-030, § 392-725-250, filed 6/27/16, effective 7/28/16.]

AMENDATORY SECTION (Amending WSR 19-12-049, filed 5/31/19, effective 7/1/19)

WAC 392-725-300 Finance. (~~((1))~~) Districts, charter schools, and tribal compact schools claim the college in the high school courses for basic education funding based on the course's average enrolled weekly minutes pursuant to WAC 392-121-122. Courses that qualify for vocational enhanced funding can be claimed pursuant to WAC 392-121-138.

~~((2) The participating institution of higher education receives college in the high school fees as defined in WAC 392-725-015 (7)(a) and other associated college in the high school fees for eligible students as defined in WAC 392-725-015 (7)(b). The amount and method of collection of these fees shall be outlined in local agreement.~~

~~(3) For college in the high school courses that qualify for state funded subsidies as defined in WAC 392-725-015(8) and based on the per student limitations provided in WAC 392-725-325(2), these subsidies are provided in lieu of college in the high school fees as defined in WAC 392-725-015 (7)(a).)~~

[Statutory Authority: RCW 28A.600.290. WSR 19-12-049, § 392-725-300, filed 5/31/19, effective 7/1/19; WSR 16-14-030, § 392-725-300, filed 6/27/16, effective 7/28/16.]

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 392-725-325 College in the high school state funded subsidies.

WSR 23-19-035
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 23-200—Filed September 12, 2023, 10:19 a.m., effective September 14, 2023]

Effective Date of Rule: September 14, 2023.

Purpose: The purpose of this emergency rule is to open commercial reef net fisheries in Puget Sound Salmon Management and Catch Reporting Area 7.

Citation of Rules Affected by this Order: Amending WAC 220-354-180.

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 United States Fraser River Panel relinquished regulatory control of nontreaty commercial sockeye and pink salmon fisheries in United States waters including Puget Sound Marine Area 7 effective September 14, 2023, returning those fisheries to regulation by state rule. The additional release requirements are needed to minimize encounters and mortalities to sockeye, Chinook, and chum salmon in Marine Area 7. 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 Nongovernmental 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: September 13, 2023.

Kelly Susewind
Director

NEW SECTION

WAC 220-354-18000D Reef net open periods. Notwithstanding the provisions of WAC 220-354-180, effective September 14 through September 16, 2023, it is unlawful to take, fish for, or possess salmon taken with reef net gear for commercial purposes in Puget Sound Salmon Management and Catch Reporting Areas except as provided in this section, provided that unless otherwise amended, all permanent rules remain in effect:

Open to reef net gear according to the times, dates and conditions contained herein:

Area(s)	Date(s)	Open/Closed	Daily open period
7	9/14, 9/15, 9/16	Open	5:00 a.m. - 9 p.m.

(a) It is unlawful to retain unmarked Chinook, sockeye, and chum.

(b) It is unlawful to retain marked Chinook or unmarked coho unless the reef net operator is in immediate possession of a Puget Sound Reef Net Logbook. All retained marked Chinook must be recorded in the logbook in accordance with requirements of WAC 220-354-180.

(c) Marked Chinook and coho are those with a missing adipose fin with a healed scar, unmarked Chinook and coho have an intact adipose fin.

(d) It is unlawful to fish for salmon with reef net gear in Area 7 unless the vessel operator has attended a "Fish Friendly" best fishing practices workshop and is in immediate possession of a department issued certification card.

(e) "Quick Reporting Fisheries": All fisheries opened under this section, and any fishery opening under authority of the Fraser Panel for sockeye in Puget Sound Salmon Management and Catch Reporting Areas (WAC 220-301-030), are designated as "Quick Reporting Required" per WAC 220-352-325 Puget Sound salmon and sturgeon—Additional reporting requirements and WAC 220-354-090 Puget Sound salmon—Quick reporting.

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WSR 23-19-046
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 23-201—Filed September 14, 2023, 11:46 a.m., effective September 15, 2023]

Effective Date of Rule: September 15, 2023.

Purpose: The purpose of this emergency rule is to open Chinook harvest opportunities in Samish River and Whatcom Creek.

Citation of Rules Affected by this Order: 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 action is necessary to open recreational hatchery Chinook retention seasons in Samish River and Whatcom Creek.

Chinook released at the Whatcom Fish Hatchery to aid southern resident killer whales and support harvest programs have returned to Whatcom Creek in harvestable numbers. Closure dates ensure that gear conflicts between comanager fisheries and recreational fisheries are avoided.

For Samish River, hatchery broodstock needs are expected to be met and a harvestable surplus of Chinook exists, allowing for this harvest opportunity. Gear restrictions for Samish River reflect salmon gear restrictions agreed to during the 2023 North of Falcon season setting process.

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 Nongovernmental 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: September 14, 2023.

Kelly Susewind
Director

NEW SECTION

WAC 220-312-04000S Freshwater exceptions to statewide rules—Puget Sound. Effective September 15 through September 24, 2023, provi-

sions of WAC 220-312-040 regarding salmon seasons for Samish River and Whatcom Creek shall be as described below. All other provisions of WAC 220-312-040 not addressed herein, or unless otherwise amended by emergency rule remain in effect:

(1) Whatcom Creek (Whatcom Co): From the mouth (a line from the flashing light at the southwest end of the Port of Bellingham North Terminal to the southernmost point of the dike surrounding the Georgia Pacific treatment pond) to the markers downstream of the footbridge that is downstream of Dupont Street:

Salmon: Effective September 15 through September 24:

(a) Open Fridays, Saturdays, and Sundays only.

(b) Daily limit 1. Release all salmon other than hatchery Chinook.

(c) Night Closure in effect.

(d) Anti-snagging rule in effect.

(2) Samish River (Skagit Co.), from the mouth (Bayview-Edison Rd.) to Thomas Rd. Bridge:

Salmon: Effective September 15 through September 17:

(a) Daily limit 2. Release all salmon other than Chinook.

(b) Stationary gear rule in effect.

(c) Night closure in effect.

(d) It is unlawful for anglers to use anything other than 1 single-point hook, with a hook gap of 3/4 inch or less measured from point to shank.

(e) Only fish hooked inside the mouth may be retained.

[]

WSR 23-19-047
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 23-201 [23-202]—Filed September 14, 2023, 11:52 a.m., effective September 15, 2023]

Effective Date of Rule: September 15, 2023.

Purpose: The purpose of this emergency rule is to set a maximum size restriction for salmon in Yale Reservoir.

Citation of Rules Affected by this Order: Amending WAC 220-312-030.

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 needed to set a maximum size limit on salmon in Yale Reservoir. As part of upper Lewis River anadromous reintroduction effort, adult coho will be released into Yale Reservoir for habitat preparation and nutrient enhancement. Upstream transport for reintroduction into areas above Swift Dam is ongoing with hatchery coho in excess of weekly Lewis Basin Hatchery broodstock collection targets. Transport of additional coho adults to Yale Reservoir will occur for habitat preparation and nutrient enhancement purposes.

This fishing rule change will enable continued landlocked salmon fishing while restricting retention of adult coho transported for habitat preparation needs.

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 Nongovernmental 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: September 14, 2023.

Kelly Susewind
Director

NEW SECTION

WAC 220-312-03000F Freshwater exceptions to statewide rules—Southwest. Effective September 15 through December 31, 2023, the provisions of WAC 220-312-030 regarding salmon in Yale Reservoir shall be

modified as described below. All other provisions of WAC 220-312-030 not addressed herein remain in effect unless otherwise amended by emergency rule:

Yale Reservoir (Cowlitz Co.): Landlocked salmon rules apply, except salmon maximum length is 15 inches.

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WSR 23-19-048
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 23-203—Filed September 14, 2023, 11:59 a.m., effective September 15, 2023]

Effective Date of Rule: September 15, 2023.

Purpose: The purpose of this emergency rule is to open Chinook retention between Puget Island and Bonneville Dam.

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

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

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

Reasons for this Finding: The technical advisory committee recently updated the upriver Chinook return to the Columbia River mouth. Current in-season catch and stock composition projections indicate that sufficient Chinook Endangered Species Act (ESA)-impacts remain available which allows for additional Chinook retention in this area. Staff will continue to monitor progress of ongoing fisheries, with an expectation to manage within the allowable ESA impact rate and per Washington Fish and Wildlife Policy C-3630. This rule conforms Washington state rules with Oregon state rules and is consistent with compact action on September 7 and September 13, 2023.

Washington and Oregon jointly regulate Columbia River fisheries under the congressionally ratified Columbia River Compact. Four Indian tribes have treaty fishing rights in the Columbia River. The treaties preempt state regulations that fail to allow the tribes an opportunity to take a fair share of the available fish, and the states must manage other fisheries accordingly. *Sohappy v. Smith*, 302 F. Supp. 899 (D. Or. 1969). A court order sets the current parameters. *United States v. Oregon*, Civil No. 68-513-KI (D. Or.), Order Adopting 2018-2027 *United States v. Oregon* Management Agreement (February 26, 2018) (Doc. No. 2607-1). Some salmon and steelhead stocks in the Columbia River are listed as threatened or endangered under ESA. On February 23, 2018, the National Marine Fisheries Service issued a biological opinion under 16 U.S.C. § 1536 that allows for some incidental take of these species in the fisheries as described in the 2018-2027 *U.S. v. Oregon* Management Agreement. The Washington and Oregon fish and wildlife commissions have developed policies to guide the implementation of such biological opinions in the states' regulation of nontreaty fisheries.

Columbia River nontreaty fisheries are monitored very closely to ensure compliance with federal court orders, ESA, and commission guidelines. Because conditions change rapidly, the fisheries are managed almost exclusively by emergency rule. Representatives from the Washington (WDFW) and Oregon (ODFW) departments of fish and wildlife convene public hearings and take public testimony when considering proposals for new emergency rules. WDFW and ODFW then adopt regulations reflecting agreements reached.

There is insufficient time to promulgate 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 Nongovernmental 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: September 14, 2023.

Kelly Susewind
Director

NEW SECTION

WAC 220-312-06000V Freshwater exceptions to statewide rules—Columbia River. Effective September 15 through December 31, 2023, the provisions of WAC 220-312-060 regarding recreational salmon and steelhead seasons from a true north-south line through Buoy 10 upstream to Bonneville Dam, shall be modified during the dates listed and as described below. All year-round Closed Waters areas remain in effect. Other provisions of WAC 220-312-060 not addressed herein remain in effect unless otherwise amended by emergency rule:

From a true north-south line through Buoy 10 upstream to a line at the west end of Puget Island projected from green navigation marker 39 on the Washington bank to green navigation marker 41, then to red navigation marker 42, and terminating at red navigation marker 44A on the Oregon bank:

(a) Effective immediately through September 30, 2023: Salmon and steelhead: Daily limit 3 adult salmon including no more than 1 Chinook. Release all salmon and steelhead other than Chinook and hatchery coho.

(b) Effective October 1 through October 31, 2023: Salmon and steelhead: Daily limit 6. Up to 3 adults including no more than 1 Chinook may be retained. Release all salmon and steelhead other than Chinook and hatchery coho.

(c) Effective November 1 through December 31, 2023: Salmon and steelhead: Daily limit 6. Up to 3 adults including no more than 1 Chinook and no more than 2 hatchery steelhead may be retained. Release all salmon and steelhead other than Chinook, hatchery coho and hatchery steelhead.

From a line at the west end of Puget Island projected from green navigation marker 39 on the Washington bank to green navigation marker 41, then to red navigation marker 42, and terminating at red navigation marker 44A on the Oregon bank to a line projected from the Warrior Rock lighthouse through Red Buoy 4 to the marker atop the piling dolphin located at the downstream end of Bachelor Island on the Washington Shore (Warrior Rock Line):

Effective September 15 through September 17, 2023: Salmon and steelhead: Daily limit 6. Up to 2 adults including no more than 1 Chi-

nook may be retained. Release all salmon and steelhead other than Chinook and hatchery coho.

From a line projected from the Warrior Rock lighthouse through Red Buoy 4 to the marker atop the piling dolphin located at the downstream end of Bachelor Island on the Washington Shore (Warrior Rock Line) to a point 600 feet below the new Bonneville Dam Powerhouse:

Effective September 15 through September 21, 2023: Salmon and steelhead: Daily limit 6. Up to 2 adults including no more than 1 Chinook may be retained. Release all salmon and steelhead other than Chinook and hatchery coho.

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REPEALER

The following section of Washington Administrative Code is repealed, effective September 15, 2023:

WAC 220-312-06000U Freshwater exceptions to statewide rules—Columbia River. (23-194)

WSR 23-19-050

EMERGENCY RULES

HEALTH CARE AUTHORITY

[Filed September 14, 2023, 2:26 p.m., effective September 14, 2023, 2:26 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: The health care authority (agency) is amending WAC 182-513-1110 on an emergency basis to remove presumptive eligibility for long-term services and supports in an alternate living facility.

Citation of Rules Affected by this Order: Amending WAC 182-513-1110.

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: The agency adopted WAC 182-513-1110 anticipating federal government approval from the Department of Health and Human Services, Centers for Medicare and Medicaid Services (CMS). Currently, CMS has approved presumptive eligibility for long-term services and supports (LTSS) in the person's home, but not in an alternate living facility. Because federal funding is not yet available, the agency is amending the rule to remove language related to LTSS in an alternate living facility and intends to restore that language through future rule making upon CMS approval.

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

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

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

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

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 1, Repealed 0.

Date Adopted: September 14, 2023.

Wendy Barcus
Rules Coordinator

OTS-4950.1

AMENDATORY SECTION (Amending WSR 23-14-101, filed 6/30/23, effective 9/1/23)

WAC 182-513-1110 Presumptive eligibility (PE)—Long-term services and supports (LTSS) in a home setting ((~~or in an alternate living facility (ALF)~~)) authorized by home and community services (HCS). (1) A person may be determined presumptively eligible for long-term services and supports (LTSS) in their own home, as defined in WAC 388-106-0010 (~~(, or in an alternate living facility, as defined in WAC 182-513-1100)~~):

- (a) Upon completion of a screening interview; and
- (b) When authorized by home and community services (HCS).
- (2) The screening interview described in subsection (3) of this section may be conducted by either:
 - (a) A HCS case manager or social worker;
 - (b) An area agency on aging (AAA) or their subcontractor; or
 - (c) A state designated tribal entity.
- (3) To be presumptively eligible (PE), the person must:
 - (a) Be determined to meet nursing facility level of care under WAC 388-106-0355 during the screening interview; and
 - (b) Attest to information that meets the:
 - (i) Income limits at or below the average monthly state nursing facility rate;
 - (ii) Resource limits defined under WAC 182-513-1350;
 - (iii) Social security requirement under WAC 182-503-0515;
 - (iv) Residency requirement under WAC 182-503-0520; and
 - (v) Aged, blind, or disabled requirement under WAC 182-512-0050.
- (4) The agency or the agency's designee determines how much client responsibility must be paid to the provider for PE home and community-based services authorized by HCS when living at home (~~or in an alternate living facility~~) as outlined in WAC 182-513-1215, 182-515-1507, and 182-515-1509.
- (5) The client or the client's representative must submit an on-line application through Washington connection or an HCA 18-005 application for aged, blind, disabled/long-term care coverage to HCS within 10 calendar days of PE determination.
- (6) The PE period begins on the date the screening interview is completed and:
 - (a) Ends on the last day of the month following the month of the PE determination if an LTSS application is not completed and submitted within 10 calendar days of PE determination; or
 - (b) Ends the last day of the month that the final eligibility determination is made if a LTSS application is submitted under subsection (5) of this section within 10 calendar days of PE determination.
- (7) For application processing times, refer to WAC 182-503-0060.
- (8) If the applicant is determined not financially eligible for LTSS under WAC 182-513-1315, there is no overpayment for services received during the PE period; however, client responsibility applies as described in WAC 182-513-1215, 182-515-1507, and 182-515-1509.
- (9) People who qualify for PE under this section receive categorically needy (CN) medical coverage under WAC 182-501-0060 through the PE period. CN medical coverage begins as described in WAC 182-503-0070(1).
- (10) When PE services described in WAC 388-106-1810 and 388-106-1820 are approved or denied, the agency or the agency's designee sends written notice as described in WAC 182-518-0010.
- (11) A person may receive services under a PE period only once within a consecutive 24-month period.
- (12) The applicant does not have a right to an administrative hearing on PE decisions under chapter 182-526 WAC.
- (13) Institutional resource and income standards are found at <https://www.hca.wa.gov/free-or-low-cost-health-care/i-help-others-apply-and-access-apple-health/program-standard-income-and-resources>.
- (14) This section does not apply to medical assistance programs described in WAC 182-507-0125 or 182-508-0005.

[Statutory Authority: RCW 41.05.021 and 41.05.160. WSR 23-14-101, § 182-513-1110, filed 6/30/23, effective 9/1/23.]

WSR 23-19-057
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 23-205—Filed September 15, 2023, 12:12 p.m., effective September 17, 2023]

Effective Date of Rule: September 17, 2023.

Purpose: The purpose of this emergency rule is to open commercial purse seine and gillnet fisheries in Puget Sound Salmon Management and Catch Reporting Area 7C.

Citation of Rules Affected by this Order: Amending WAC 220-354-120 and 220-354-160.

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 schedule openings for commercial purse seine and gillnet fisheries in Puget Sound Management and Catch Reporting Area 7C. Recent data and observations indicate Chinook are returning above forecasted expectation to Samish Hatchery. The Washington department of fish and wildlife salmon managers and comanagers agree that current Chinook returns present a harvestable surplus, sufficient for this 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 Nongovernmental Entity: New 0, Amended 0, Repealed 0.

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

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

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

Date Adopted: September 15, 2023.

Kelly Susewind
Director

NEW SECTION

WAC 220-354-12000B Puget Sound salmon—Purse seine—Open periods. Effective September 18 through September 22, 2023, the following provisions of WAC 220-354-120 regarding commercial purse seine open periods in Puget Sound Salmon Management and Catch Reporting Area 7C shall be as follows. All other provisions of WAC 220-354-120 not contained herein remain in effect unless otherwise altered by emergency rule:

Area(s)	Date(s)	Open/Closed	Daily open period
7C	9/18, 9/20, 9/22	Open	7 a.m. - 7 p.m.

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NEW SECTION

WAC 220-354-16000L Puget Sound salmon—Gillnet—Open periods.

Effective September 17 through September 22, 2023, the following provisions of WAC 220-354-160 regarding commercial gillnet open periods for Puget Sound Salmon Management and Catch Reporting Area 7C shall be as described below. All other provisions of WAC 220-354-160 not addressed herein, or unless otherwise amended by emergency rule, remain in effect:

Area(s)	Date(s)	Open/Closed	Daily open period	Minimum mesh size
7C	7 a.m. 9/17 through 7 a.m. 9/22	Open	24 hrs/day	7"

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WSR 23-19-060
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 23-204—Filed September 15, 2023, 7:46 p.m., effective September 18, 2023]

Effective Date of Rule: September 18, 2023.

Purpose: This emergency rule will allow nontreaty commercial fishing opportunities in the Columbia River while protecting fish listed as threatened or endangered under the Endangered Species Act (ESA). This rule implements federal court orders governing Washington's relationship with treaty Indian tribes, federal law governing Washington's relationship with Oregon, and Washington fish and wildlife commission policy guidance for Columbia River fisheries.

Citation of Rules Affected by this Order: Repealing WAC 220-358-0300[0]W; and amending WAC 220-358-030.

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

Other Authority: *United States v. Oregon*, Civil No. 68-513-KI (D. Or.), Order Adopting 2018-2027 *United States v. Oregon* Management Agreement (February 26, 2018) (Doc. No. 2607-1). *Northwest Gillnetters Ass'n v. Sandison*, 95 Wn.2d 638, 628 P.2d 800 (1981); Washington fish and wildlife commission policies concerning Columbia River fisheries; 40 Stat. 515 (Columbia River Compact).

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

Reasons for this Finding: This rule sets the initial late fall nontreaty commercial gill net season upstream of the Lewis River confluence. This fishery is consistent with the 2023 nontreaty fall fisheries plan that was developed in conjunction with the annual North of Falcon management process. The fishery is also consistent with the *U.S. v. Oregon* Management Agreement and the associated biological opinion. Conforms Washington state rules with Oregon state rules. Regulation is consistent with compact action of July 18, September 7, and September 13, 2023. This harvest opportunity allows for public access to the resource as well as the maintenance of sustainable fish populations. There is insufficient time to promulgate permanent rules.

Washington and Oregon jointly regulate Columbia River fisheries under the congressionally ratified Columbia River Compact. Four Indian tribes have treaty fishing rights in the Columbia River. The treaties preempt state regulations that fail to allow the tribes an opportunity to take a fair share of the available fish, and the states must manage other fisheries accordingly. *Sohappy v. Smith*, 302 F. Supp. 899 (D. Or. 1969). A court order sets the current parameters. *United States v. Oregon*, Civil No. 68-513-KI (D. Or.), Order Adopting 2018-2027 *United States v. Oregon* Management Agreement (February 26, 2018) (Doc. No. 2607-1). Some salmon and steelhead stocks in the Columbia River are listed as threatened or endangered under ESA. On February 23, 2018, the National Marine Fisheries Service issued a biological opinion under 16 U.S.C. § 1536 that allows for some incidental take of these species in the fisheries as described in the 2018-2027 *U.S. v. Oregon* Management Agreement.

Some Columbia River Basin salmon and steelhead stocks are listed as threatened or endangered under ESA. The Washington and Oregon fish and wildlife commissions have developed policies to guide the implementation of such biological opinions in the states' regulation of nontreaty fisheries.

Columbia River nontreaty fisheries are monitored very closely to ensure compliance with federal court orders, ESA, and commission guidelines. Because conditions change rapidly, the fisheries are managed almost exclusively by emergency rule. Representatives from the Washington (WDFW) and Oregon (ODFW) departments of fish and wildlife convene public hearings and take public testimony when considering proposals for new emergency rules. WDFW and ODFW then adopt regulations reflecting agreements reached.

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

Number of Sections Adopted at the Request of a Nongovernmental 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: September 15, 2023.

Kelly Susewind
Director

NEW SECTION

WAC 220-358-03000X Columbia River seasons below Bonneville.

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

(1) Mainstem:

(a) **Area:** SMCRA 1A, 1B, and 1C. Upper deadline defined as a straight line projected from the Warrior Rock Lighthouse on the Oregon shore easterly through the green navigation Buoy #1 and continuing to the Washington shore. Sanctuaries include Elokomina-A, Cowlitz River, Kalama-A and Lewis-A.

(i)

Open Dates	Open Days	Open Time	Open Duration
September 18 - September 20	Monday, Wednesday	4:00 am - 10:00 pm	18 hrs
September 22 - October 27	Fridays	4:00 am - 6:00 pm	14 hrs
September 25 - October 26	Mondays, Tuesdays, Wednesdays, Thursdays	4:00 am - 10:00 pm	18 hrs

(ii) **Gear:** Drift nets only. Maximum mesh size is 3.75 inches. Unslackened, single-wall, multi-filament floater nets only. Monofilament

nets are not allowed. Net length not to exceed 150 fathoms. A red cork must be placed on the corkline every 25 fathoms as measured from the first mesh of the net. Red corks at 25-fathom intervals must be in color contrast to the corks used in the remainder of the net. There are no restrictions on the hang ratio. The hang ratio is used to horizontally add slack to the net. The hang ratio is determined by the length of the web per length of the corkline. The use of slackers or stringers to slacken the net vertically is prohibited. Rip lines are allowed providing they do not vertically slacken the net.

(iii) **Allowable Sales:** Salmon (except chum), and shad; all coho must be adipose fin-clipped.

(iv) **Soak times,** defined as the time elapsed from when the first of the net web is deployed into the water until the web is fully retrieved from the water, must not exceed 30 minutes.

(v) **Recovery Box:** Each boat will be required to have on board two operable recovery boxes or one box with two chambers that meet the flow and size requirements standard for the winter/spring season. Each box and chamber and associated pump shall be operating during any time that the net is being retrieved or picked. All non-legal fish must be released immediately unharmed to the river or placed into an operating recovery box. All non-legal salmon and all steelhead that are bleeding, lethargic or appear lifeless must be placed in the recovery box prior to being released. All fish placed in recovery boxes must be released to the river prior to landing or docking.

(vi) **Measuring mesh size:** Mesh size is determined by placing three consecutive meshes under hand tension and the measurement is taken from the inside of one knot to the inside of the opposite knot of the center mesh. Hand tension means sufficient linear tension to draw opposing knots of meshes into contact.

(vii) **Live Capture workshop:** Only licensed Columbia River commercial fishers that have completed the required state-sponsored workshop concerning live capture commercial fishing techniques may participate in this fishery. At least one fisher on each boat must have live capture certification.

(viii) **Multiple net rule:** Nets not specifically authorized for use in this fishery may be onboard the vessel if properly stored. A properly stored net is defined as a net on a drum that is fully covered by a tarp (canvas or plastic) and bound with a minimum of ten revolutions of rope with a diameter of 3/8 (0.375) inches or greater (WAC 220-358-030(2)).

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

(x) **24-hour** quick reporting required is for Washington wholesale dealers, per WAC 220-352-315. Oregon buyers are required to electronically submit fish receiving tickets pursuant to OAR 635-006-0210. Electronic fish tickets must be submitted within 24 hours of closure of the fishing period, or within 24 hours of landing for fishing periods lasting longer than 24 hours.

(b) **Area:** SMCRA 1D, 1E. The deadline at the lower end of 1D is defined as a straight line projected from the Warrior Rock Lighthouse on the Oregon shore easterly through the green navigation Buoy #1 and continuing to the Washington shore. Sanctuaries: Washougal and Sandy Rivers

(i)

Open Dates	Open Days	Open Time	Open Duration
September 17 - September 18	Sunday (night)	8:00 pm - 6:00 am	10 hrs

(ii) **Gear:** Drift gillnets only. 8-inch minimum mesh size restriction. Multiple net rule is in effect. Nets not specifically authorized for use in this fishery may be onboard the vessel if properly stored. A properly stored net is defined as a net on a drum that is fully covered by a tarp (canvas or plastic) and bound with a minimum of ten revolutions of rope with a diameter of 3/8 (0.375) inches or greater.

(iii) **Allowable Sales:** Salmon (except Chum) and shad.

(iv) **Multiple net rule:** Nets not specifically authorized for use in this fishery may be onboard the vessel if properly stored. A properly stored net is defined as a net on a drum that is fully covered by a tarp (canvas or plastic) and bound with a minimum of ten revolutions of rope with a diameter of 3/8 (0.375) inches or greater (WAC 220-358-030(2)).

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

(vi) **24-hour** quick reporting required is for Washington wholesale dealers, per WAC 220-352-315. Oregon buyers are required to electronically submit fish receiving tickets pursuant to OAR 635-006-0210. Electronic fish tickets must be submitted within 24 hours of closure of the fishing period, or within 24 hours of landing for fishing periods lasting longer than 24 hours.

(2) Tongue Point/South Channel Select Area:

(a) **Area:**

(i) The Tongue Point Select Area is defined as waters of the Columbia River bounded by a line from a regulatory marker on the eastern shore of Tongue Point (midway between the red USCG light "2" at the tip of Tongue Point and the northern-most pier (#8) at the Tongue Point Job Corps facility) to the flashing green USCG light "3" on the rock jetty at the northwest tip of Mott Island, a line from a regulatory marker at the southeast end of Mott Island northeasterly to a regulatory marker on the northwest shore of Lois Island, and a line from a regulatory marker located on the Oregon shore approximately 300 yards northwest of the railroad bridge crossing the John Day River projecting easterly to a regulatory marker on the southwest shore of Lois Island:

(A) If the marker on the eastern shore of Tongue Point is not in place, the downstream boundary is defined by a line projecting from a point (46°12'31.1"N latitude 123°45'34.0"W longitude) on the eastern shore of Tongue Point to the flashing green USCG light "3" on the rock jetty at the northwest tip of Mott Island.

(B) If the marker on the Oregon shore is not in place, the upstream boundary is defined by a line projecting from a point (46°10'57.7"N latitude 123°44'35.3"W longitude) on the Oregon shore approximately 300 yards northwest of the railroad bridge crossing the John Day River projecting easterly to a regulatory marker on Lois Island.

(ii) The South Channel Area is defined as waters of the Columbia River bounded by a line from a regulatory marker on the Oregon shore at John Day Point projecting northeasterly to a regulatory marker on the southwest shore of Lois Island, and a line from a regulatory marker on Settler Point projecting northwesterly to the flashing red USCG

light "10" then projecting westerly to the eastern tip of Burnside Island.

(b)

Open Dates	Open Days	Open Time	Open Duration
Immediately - October 31	Monday, Tuesday, Wednesday, Thursday (night)	4:00 pm - 10:00 am	18 hrs

(c) **Gear:** Gillnets with a 6-inch maximum mesh size restriction. Maximum net length of 250 fathoms. In the Tongue Point Select Area, the lead line weight may not exceed two pounds per any one fathom; however, unstored gillnets legal for use in South Channel may be on-board.

In the South Channel Select Area, there is no lead line weight limit and attachment of additional weight and anchors directly to the lead line is permitted. Nets not specifically authorized for use may be onboard a vessel if properly stored. A properly stored net is defined as a net on a drum that is fully covered by a tarp (canvas or plastic) and bound with a minimum of ten revolutions of rope with a diameter of 3/8 (0.375) inches or greater. Nets fished any time between official sunset and official sunrise must have lighted buoys on both ends of the net. If the net is attached to the boat, then one lighted buoy on the end of the net opposite the boat is required.

(d) **Allowable Sales:** Salmon (except Chum) and shad.

(e) **Multiple net rule:** Nets not specifically authorized for use in this fishery may be onboard the vessel if properly stored. A properly stored net is defined as a net on a drum that is fully covered by a tarp (canvas or plastic) and bound with a minimum of ten revolutions of rope with a diameter of 3/8 (0.375) inches or greater (WAC 220-358-030(2)).

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

(g) **24-hour** quick reporting required is for Washington wholesale dealers, per WAC 220-352-315. Oregon buyers are required to electronically submit fish receiving tickets pursuant to OAR 635-006-0210. Electronic fish tickets must be submitted within 24 hours of closure of the fishing period, or within 24 hours of landing for fishing periods lasting longer than 24 hours.

(3) Blind Slough/Knappa Slough Select Area:

(a) **Area:** The Blind Slough Select Area is defined as waters of Blind Slough and Gnat Creek from a north-south line represented by regulatory markers at the mouth of Blind Slough upstream to a regulatory marker in Gnat Creek located approximately 0.5 miles southeasterly (upstream) of the Barendse Road Bridge. The Knappa Slough Select Area is defined as waters of Knappa Slough, Calendar Slough, and Big Creek Slough bounded to the north (upstream) by a line projecting from a regulatory marker on the eastern shore of Karlson Island to the northernmost regulatory marker at the mouth of Blind Slough and bounded to the west (downstream) by a line projecting southerly from a regulatory marker on the southwestern tip of Karlson Island through regulatory markers on the western tips of Minaker Island to a marker on the Oregon shore. The waters of Knappa Slough within a 100-foot radius of the railroad bridge crossing Big Creek are closed.

(b)

Open Dates	Open Days	Open Time	Open Duration
Immediately - October 31	Monday, Tuesday, Wednesday, Thursday (night)	6:00 pm - 10:00 am	16 hrs

(c) **Gear:** Gillnets with a 6-inch maximum mesh size restriction. Maximum net length is 100 fathoms. There is no lead line weight limit and attachment of additional weight and anchors directly to the lead line is permitted.

Nets not specifically authorized for use may be onboard a vessel if properly stored. A properly stored net is defined as a net on a drum that is fully covered by a tarp (canvas or plastic) and bound with a minimum of ten revolutions of rope with a diameter of 3/8 (0.375) inches or greater. Nets fished any time between official sunset and official sunrise must have lighted buoys on both ends of the net. If the net is attached to the boat, then one lighted buoy on the end of the net opposite the boat is required.

(c) **Allowable Sales:** Salmon (except Chum) and shad.

(d) **Multiple net rule:** Nets not specifically authorized for use in this fishery may be onboard the vessel if properly stored. A properly stored net is defined as a net on a drum that is fully covered by a tarp (canvas or plastic) and bound with a minimum of ten revolutions of rope with a diameter of 3/8 (0.375) inches or greater (WAC 220-358-030(2)).

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

(f) **24-hour** quick reporting required is for Washington wholesale dealers, per WAC 220-352-315. Oregon buyers are required to electronically submit fish receiving tickets pursuant to OAR 635-006-0210. Electronic fish tickets must be submitted within 24 hours of closure of the fishing period, or within 24 hours of landing for fishing periods lasting longer than 24 hours.

(4) Deep River Select Area:

(a) **Area:** The Deep River fishing area includes all waters from West Deep River Road Bridge at the town of Deep River downstream to the mouth defined by a line from USCG navigation marker #16 southwest to a marker on the Washington shore.

(b)

Open Dates	Open Days	Open Time	Open Duration
Immediately - October 13	Monday, Tuesday, Wednesday, Thursday (night)	6:00 pm - 9:00 am	15 hrs
October 16 - October 26	Monday, Wednesday (night)	6:00 pm - 9:00 am	15 hrs

(c) **Gear:** Gillnets with a maximum mesh size restriction of 6-inches. Maximum net length is 100 fathoms. No weight restriction on leadline. Use of additional weights or anchors attached directly to the leadline is allowed. No nets can be tied off to stationary structures. Nets may not fully cross the navigation channel. It is unlawful to operate in any river, stream or channel any gillnet gear longer than three-fourths the width of the river, stream, or channel. "River, stream, or channel width" is defined as bank-to-bank, where the water meets the banks, regardless of the time of tide or the water level. This emergency provision shall supersede the permanent regulation and all other regulations that conflict with it. Nets not specifically authorized for use may be onboard the vessel if properly stored. A prop-

erly stored net is defined as a net on a drum that is fully covered by a tarp (canvas or plastic) and bound with a minimum of ten revolutions of rope with a diameter of 3/8 (0.375) inches or greater. Nets fished any time between official sunset and official sunrise must have lighted buoys on both ends of the net. If the net is attached to the boat, then one lighted buoy on the end of the net opposite the boat is required.

(d) **Allowable Sales:** Salmon (except Chum) and shad.

(g) **Multiple net rule:** Nets not specifically authorized for use in this fishery may be onboard the vessel if properly stored. A properly stored net is defined as a net on a drum that is fully covered by a tarp (canvas or plastic) and bound with a minimum of ten revolutions of rope with a diameter of 3/8 (0.375) inches or greater (WAC 220-358-030(2)).

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

(i) **24-hour** quick reporting required is for Washington wholesale dealers, per WAC 220-352-315. Oregon buyers are required to electronically submit fish receiving tickets pursuant to OAR 635-006-0210. Electronic fish tickets must be submitted within 24 hours of closure of the fishing period, or within 24 hours of landing for fishing periods lasting longer than 24 hours.

[]

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

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

REPEALER

The following section of the Washington Administrative Code is repealed effective September 18, 2023:

WAC 220-358-03000W Columbia River seasons below
Bonnevillle. (23-196)

WSR 23-19-095

EMERGENCY RULES

HEALTH CARE AUTHORITY

[Filed September 20, 2023, 10:31 a.m., effective October 1, 2023]

Effective Date of Rule: October 1, 2023.

Purpose: The health care authority (agency) is amending these rules to align with Section 11405 of the Inflation Reduction Act (IRA) of 2022 (P.L. 117-169), which requires states to cover approved adult vaccines recommended by the Advisory Committee on Immunization Practices (ACIP).

Citation of Rules Affected by this Order: Amending WAC 182-531-0150 and 182-531-0950.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160.

Other Authority: P.L. 117-169, Sec. 11405.

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; and 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: The agency is filing these emergency rules because IRA requires apple health (medicaid) to begin covering adult travel vaccines recommended by ACIP beginning October 1, 2023. This new coverage also preserves the health, safety, and welfare of apple health clients. The agency began the permanent rule making under WSR 23-16-097, filed July 31, 2023, and will be filing the proposed rule making for a public hearing soon. This emergency filing is necessary while the permanent rule-making process is completed.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 2, 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 Nongovernmental 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 0, Repealed 0.

Date Adopted: September 20, 2023.

Wendy Barcus
Rules Coordinator

OTS-4962.1

AMENDATORY SECTION (Amending WSR 22-07-105, filed 3/23/22, effective 4/23/22)

WAC 182-531-0150 Noncovered physician-related and health care professional services—General and administrative. (1) The medicaid agency evaluates a request for noncovered services in this chapter under WAC 182-501-0160. In addition to noncovered services found in WAC 182-501-0070, except as provided in subsection (2) of this section, the agency does not cover:

- (a) Acupuncture, massage, or massage therapy;
- (b) Any service specifically excluded by statute;
- (c) Care, testing, or treatment of infertility or sexual dysfunction. This includes procedures for donor ovum, donor sperm, gestational carrier, and reversal of vasectomy or tubal ligation;
- (d) Hysterectomy performed solely for the purpose of sterilization;
- (e) Cosmetic treatment or surgery, except as provided in WAC 182-531-0100 (4) (x);
- (f) Experimental or investigational services, procedures, treatments, devices, drugs, or application of associated services, except when the individual factors of an individual client's condition justify a determination of medical necessity under WAC 182-501-0165;
- (g) Hair transplantation;
- (h) Marital counseling or sex therapy;
- (i) More costly services when the medicaid agency determines that less costly, equally effective services are available;
- (j) Vision-related services as follows:
 - (i) Services for cosmetic purposes only;
 - (ii) Group vision screening for eyeglasses; and
 - (iii) Refractive surgery of any type that changes the eye's refractive error. The intent of the refractive surgery procedure is to reduce or eliminate the need for eyeglass or contact lens correction. This refractive surgery does not include intraocular lens implantation following cataract surgery((-));
- (k) Payment for body parts, including organs, tissues, bones and blood, except as allowed in WAC 182-531-1750;
- (l) Physician-supplied medication, except those drugs which the client cannot self-administer and therefore are administered by the physician in the physician's office;
- (m) Physical examinations or routine checkups, except as provided in WAC 182-531-0100;
- (n) Foot care, unless the client meets criteria and conditions outlined in WAC 182-531-1300, as follows:
 - (i) Routine foot care including, but not limited to:
 - (A) Treatment of tinea pedis;
 - (B) Cutting or removing warts, corns and calluses; and
 - (C) Trimming, cutting, clipping, or debriding of nails.
 - (ii) Nonroutine foot care including, but not limited to, treatment of:
 - (A) Flat feet;
 - (B) High arches (cavus foot);
 - (C) Onychomycosis;
 - (D) Bunions and tailor's bunion (hallux valgus);
 - (E) Hallux malleus;
 - (F) Equinus deformity of foot, acquired;
 - (G) Cavovarus deformity, acquired;

(H) Adult acquired flatfoot (metatarsus adductus or pes planus);

(I) Hallux limitus.

(iii) Any other service performed in the absence of localized illness, injury, or symptoms involving the foot;

(o) Except as provided in WAC 182-531-1600, weight reduction and control services, procedures, treatments, devices, drugs, products, gym memberships, equipment for the purpose of weight reduction, or the application of associated services;

(p) Nonmedical equipment;

(q) Nonemergent admissions and associated services to out-of-state hospitals or noncontracted hospitals in contract areas; and

(r) ~~((Vaccines recommended or required for the sole purpose of international travel. This does not include routine vaccines administered according to current centers for disease control (CDC) advisory committee on immunization practices (ACIP) immunization schedule for adults and children in the United States; and~~

~~(s))~~ Early elective deliveries as defined in WAC 182-500-0030.

(2) The medicaid agency covers excluded services listed in (1) of this subsection if those services are mandated under and provided to a client who is eligible for one of the following:

(a) The EPSDT program;

(b) A Washington apple health program for qualified **medicare** beneficiaries (QMBs); or

(c) A waiver program.

[Statutory Authority: RCW 41.05.021 and 41.05.160. WSR 22-07-105, § 182-531-0150, filed 3/23/22, effective 4/23/22; WSR 15-24-021, § 182-531-0150, filed 11/19/15, effective 1/1/16; WSR 15-03-041, § 182-531-0150, filed 1/12/15, effective 2/12/15. Statutory Authority: RCW 41.05.021, 74.09.520, 74.09.657, 74.09.659, and 74.09.800. WSR 13-16-008, § 182-531-0150, filed 7/25/13, effective 9/1/13. WSR 11-14-075, recodified as § 182-531-0150, filed 6/30/11, effective 7/1/11. Statutory Authority: RCW 74.08.090. WSR 11-14-055, § 388-531-0150, filed 6/29/11, effective 7/30/11; WSR 10-19-057, § 388-531-0150, filed 9/14/10, effective 10/15/10. Statutory Authority: RCW 74.08.090, 74.09.520. WSR 05-12-022, § 388-531-0150, filed 5/20/05, effective 6/20/05; WSR 01-01-012, § 388-531-0150, filed 12/6/00, effective 1/6/01.]

AMENDATORY SECTION (Amending WSR 17-21-040, filed 10/12/17, effective 11/12/17)

WAC 182-531-0950 Office and other outpatient physician-related services. (1) The medicaid agency pays eligible providers for the following:

(a) Two calls per month for routine medical conditions for a client residing in a nursing facility; and

(b) One call per noninstitutionalized client, per day, for an individual physician, except for valid call-backs to the emergency room per WAC 182-531-0500.

(2) The provider must provide justification based on medical necessity at the time of billing for visits in excess of subsection (1) of this section and follow the requirements in WAC 182-501-0169.

(3) See the agency's physician-related services billing instructions for procedures that are included in the office call and that cannot be billed separately.

(4) Using selected diagnosis codes, the agency reimburses the provider at the appropriate level of physician office call for history and physical procedures in conjunction with dental surgery services performed in an outpatient setting.

(5) The agency may reimburse providers for injection procedures and/or injectable drug products only when:

(a) The injectable drug is administered during an office visit; and

(b) The injectable drug used is from office stock and which was purchased by the provider from a pharmacy, drug manufacturer, or drug wholesaler.

(6) The agency does not reimburse a prescribing provider for a drug when a pharmacist dispenses the drug.

(7) The agency does not reimburse the prescribing provider for an immunization when the immunization material is received from the department of health; the agency does reimburse an administrative fee.

(8) The agency reimburses immunizations as follows:

(a) For immunizations that are not part of the vaccines for children program through the department of health, the agency reimburses for the immunization:

(i) At the medicare Part B drug file price; or

(ii) When a medicare Part B price is not available, the agency uses the point-of-sale actual acquisition cost (POS AAC) rate effective July 1st of each year; or

(iii) Invoice cost.

(b) The agency reimburses a separate administration fee for these immunizations.

(c) Covered immunizations are listed in the professional administered drugs (~~and physician related/professional services~~) fee schedule(~~s~~).

~~((d) Refer to WAC 182-531-0150 (1)(r) for vaccines recommended or required for the sole purpose of international travel.))~~

(9) The agency reimburses therapeutic and diagnostic injections subject to certain limitations as follows:

(a) The agency does not pay separately for the administration of intra-arterial and intravenous therapeutic or diagnostic injections provided in conjunction with intravenous infusion therapy services. The agency does pay separately for the administration of these injections when they are provided on the same day as an E&M service. The agency does not pay separately an administrative fee for injectables when both E&M and infusion therapy services are provided on the same day. The agency reimburses separately for the drug(s).

(b) The agency does not pay separately for subcutaneous or intramuscular administration of antibiotic injections provided on the same day as an E&M service. If the injection is the only service provided, the agency pays an administrative fee. The agency reimburses separately for the drug.

(c) The agency reimburses injectable drugs at **acquisition cost**. The provider must document the name, strength, and dosage of the drug and retain that information in the client's file. The provider must provide an invoice when requested by the agency. This subsection does not apply to drugs used for chemotherapy; see subsection (11) in this section for chemotherapy drugs.

(d) The provider must submit a manufacturer's invoice to document the name, strength, and dosage on the claim form when billing the agency for the following drugs:

(i) Classified drugs where the billed charge to the agency is over one thousand, one hundred dollars; and

(ii) Unclassified drugs where the billed charge to the agency is over one hundred dollars. This does not apply to unclassified antineoplastic drugs.

(10) The agency reimburses allergen immunotherapy only as follows:

(a) Antigen/antigen preparation codes are reimbursed per dose.

(b) When a single client is expected to use all the doses in a multiple dose vial, the provider may bill the total number of doses in the vial at the time the first dose from the vial is used. When remaining doses of a multiple dose vial are injected at subsequent times, the agency reimburses the injection service (administration fee) only.

(c) When a multiple dose vial is used for more than one client, the provider must bill the total number of doses provided to each client out of the multiple dose vial.

(d) The agency covers the antigen, the antigen preparation, and an administration fee.

(e) The agency reimburses a provider separately for an E&M service if there is a diagnosis for conditions unrelated to allergen immunotherapy.

(f) The agency reimburses for **RAST** testing when the physician has written documentation in the client's record indicating that previous skin testing failed and was negative.

(11) The agency reimburses for chemotherapy drugs:

(a) Administered in the physician's office only when:

(i) The physician personally supervises the E&M services furnished by office medical staff; and

(ii) The medical record reflects the physician's active participation in or management of course of treatment.

(b) At established maximum allowable fees that are based on medicare Part B pricing, or POS AAC, maximum allowable cost (MAC), or invoice cost;

(c) For unclassified antineoplastic drugs, the provider must submit the following information on the claim form:

(i) The name of the drug used;

(ii) The dosage and strength used; and

(iii) The National Drug Code (NDC).

(12) Notwithstanding the provisions of this section, the agency reserves the option of determining drug pricing for any particular drug based on the best evidence available to the agency, or other good and sufficient reasons (e.g., fairness/equity, budget), regarding the actual cost, after discounts and promotions, paid by typical providers nationally or in Washington state.

(13) The agency may request an invoice as necessary.

[Statutory Authority: RCW 41.05.021 and 41.05.160. WSR 17-21-040, § 182-531-0950, filed 10/12/17, effective 11/12/17; WSR 15-20-057, § 182-531-0950, filed 10/1/15, effective 11/1/15; WSR 15-03-041, § 182-531-0950, filed 1/12/15, effective 2/12/15. WSR 11-14-075, recodified as § 182-531-0950, filed 6/30/11, effective 7/1/11. Statutory Authority: RCW 74.08.090. WSR 10-19-057, § 388-531-0950, filed 9/14/10,

effective 10/15/10. Statutory Authority: RCW 74.08.090, 74.09.520. WSR 01-01-012, § 388-531-0950, filed 12/6/00, effective 1/6/01.]