

WSR 24-05-002
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 24-14—Filed February 7, 2024, 3:17 p.m., effective February 10, 2024]

Effective Date of Rule: February 10, 2024.

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

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

Statutory Authority for Adoption: RCW 77.04.012, 77.04.020, 77.12.045, 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 treaty commercial sales for the 2024 Columbia River mainstem Zone 6 winter sturgeon setline fisheries above Bonneville Dam. This rule is consistent with actions of the Columbia River Compact on February 7, 2024. 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 0; Federal Rules or Standards: New 1, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 1, Amended 0, Repealed 0.

Number of Sections Adopted at the Request of a 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: February 7, 2024.

Kelly Susewind
Director

NEW SECTION

WAC 220-359-02000Z 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, 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 (Bonneville Pool)

(a) Season: 6 AM Saturday, February 10 through 6 PM Monday, February 12, 2024.

(b) Gear: Setline gear only.

(c) Allowable sales: Sturgeon from 38 to 54 inches fork length caught in the Bonneville Pool, may be sold or kept for subsistence purposes.

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

(2) Open Areas: SMCRA 1G, 1H (The Dalles and John Day pools)

(a) Season: 6 AM Tuesday, February 13 through 6 PM Tuesday, February 20, 2024.

(b) Gear: Setline gear only.

(c) Allowable sales: Sturgeon from 43 to 54 inches fork length caught in The Dalles and John Day pools, may be sold or kept for subsistence purposes.

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

(3) 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).

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

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 24-05-004
EMERGENCY RULES
DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Developmental Disabilities Administration)

[Filed February 8, 2024, 8:27 a.m., effective February 8, 2024, 8:27 a.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: The developmental disabilities administration is enacting these changes on an emergency basis to ensure that when a client requires a medication for which there is a prescription but no pharmacist-prepared label, the medication is labeled in a way that promotes safety.

Citation of Rules Affected by this Order: Amending WAC 388-101D-0295 and 388-101D-0330.

Statutory Authority for Adoption: RCW 34.05.350, 71A.12.030.

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: These amendments would allow a provider to support a client who requires a medication for which there is no pharmacist-prepared label available. These changes are necessary to reduce the possibility of medication error and provider citation, which can impact client services, and to promote client choice.

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 0, Repealed 0.

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

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 2, Repealed 0.

Date Adopted: February 7, 2024.

Katherine I. Vasquez
Rules Coordinator

SHS-5020.2

AMENDATORY SECTION (Amending WSR 16-14-058, filed 6/30/16, effective 8/1/16)

WAC 388-101D-0295 Medication services—General. (1) If the service provider (~~(is involved in assisting any)~~) supports a client with medications, as identified in the client's (~~(individual support)~~)

person-centered service plan, the service provider must do all of the following:

(a) Have systems in place to ensure that medications are given as ordered and in a manner that safeguards the client's health and safety(~~(+)~~).

(b) Ensure that each client receives their medication as prescribed, except as provided for in the medication refusal section or in the medication assistance section regarding altering medication(~~(+ and)~~).

(c) (~~Have a legible prescription label completed by a licensed pharmacy~~) Before providing medication assistance or medication administration to a client (~~for prescribed medications~~), have a legible:

(i) Pharmacist-prepared label; or

(ii) Manufacturer label with the name of the client for whom the medication is prescribed added to the container.

(2) Group homes licensed as an assisted living facility or adult family home must meet the medication management requirements of chapter 388-78A or 388-76 WAC. For any difference in requirements the assisted living facility or adult family home medication rules take precedence over the medication rules of this chapter.

AMENDATORY SECTION (Amending WSR 16-14-058, filed 6/30/16, effective 8/1/16)

WAC 388-101D-0330 Storage of medications. (1) The service provider must keep a client's medications so they are not readily available to other clients.

(2) The service provider must store medications:

(a) Under proper conditions for sanitation, temperature, moisture, and ventilation, and separate from food or toxic chemicals; and

(b) In the original medication (~~containers~~) container with a pharmacist-prepared label, a (~~(or)~~) manufacturer's label in accordance with WAC 388-101D-0295, or in a medication (~~organizers which are~~) organizer clearly labeled with the:

(i) Name of the client for whom the medication is prescribed;

(ii) Name of (~~the medications~~) each medication; (~~and~~)

(iii) (~~Dosage and~~) Medication dose and frequency(~~(-)~~) to be given; and

(iv) Route each medication is to be administered.

(3) Group homes must:

(a) Keep all medications in locked storage; and

(b) Use medication organizers only when filled by a pharmacist.

WSR 24-05-028
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 24-15—Filed February 12, 2024, 2:37 p.m., effective February 15, 2024]

Effective Date of Rule: February 15, 2024.

Purpose: The purpose of this emergency rule is to open recreational eulachon smelt seasons.

Citation of Rules Affected by this Order: Repealing WAC 220-315-03000E; and amending WAC 220-315-030.

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 sets a limited Cowlitz River recreational fishery for eulachon smelt. Recent commercial fisheries indicate the eulachon run size is large enough to support a recreational opening, per management guidance found in the 2023 Washington and Oregon Eulachon Management Plan. The expected return of eulachon to the Columbia River in 2024 is expected to be similar in magnitude to the run in 2023. There is insufficient time to adopt permanent regulations.

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

Number of Sections Adopted at the Request of a 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: February 12, 2024.

Kelly Susewind
Director

NEW SECTION

WAC 220-315-03000E Smelt—Areas and seasons Notwithstanding the provisions of WAC 220-315-030, the Columbia River and Washington tributaries are closed to fishing for eulachon smelt except as provided below:

Open Dates: Thursday February 15, 2024, from 8:00 a.m. to 1:00 p.m. (5-hour period).

Open Area: Cowlitz River (bank only) from the HWY 432 Bridge upstream to the Al Helenberg Memorial Boat Ramp located approximately 1,300 feet upstream of the HWY 411/A Street Bridge in Castle Rock.

Daily Limit: 10 pounds. Possession limit equal to one daily limit. In the field, it is unlawful for each person harvesting smelt to fail to use a separate container to hold their catch and the container must be in the harvester's presence or identified with the harvester's name (WAC 220-315-040). Violation of this subsection is an infraction, punishable under RCW 77.15.160.

Gear: Smelt may be taken with dip net only.

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 Washington Administrative Code is repealed effective 1:01 p.m. February 15, 2024:

WAC 220-315-03000E Smelt—Areas and seasons

WSR 24-05-033
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 24-16—Filed February 13, 2024, 5:03 p.m., effective February 13, 2024, 5:03 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: The purpose of this emergency rule is to close sea cucumber harvest in District 2-2.

Citation of Rules Affected by this Order: Repealing WAC 220-340-73000N; 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 2-2 as quota has been achieved. 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: February 13, 2024.

Kelly Susewind
Director

NEW SECTION

WAC 220-340-73000P Sea cucumbers Effective immediately, through February 29, 2024, 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.

(b) It is unlawful for any harvester to fish for, take, or possess for commercial purposes more than 1,500 pounds of sea cucumber per license for each weekly fishery opening period from District 1.

REPEALER

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

WAC 220-340-73000N Sea cucumbers (24-12)

WSR 24-05-034
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 24-17—Filed February 13, 2024, 5:10 p.m., effective February 15, 2024]

Effective Date of Rule: February 15, 2024.

Purpose: This emergency rule increases the commercial pot limit in Crab Management Regions 1 and 3-1.

WAC 220-340-45500G removes language that has since been implemented by permanent rule.

WAC 220-340-47000C increases the pot limit in Crab Management Region 1 and Crab Management Subregion 3-1 to 60 pots per license effective February 15, 2024.

Citation of Rules Affected by this Order: Repealing WAC 220-340-45500F and 220-340-47000B; and amending WAC 220-340-455 and 220-340-470.

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 pot limit in Region 1 and Subregion 3-1 has been increased to 60 pots per license following coordination with industry. There is sufficient allocation remaining to accommodate harvest in the Puget Sound commercial crab fishery in Regions 1, 3-1, 3-2, 3-3, and 3-4 until further notice. Crab Management Regions 2-West and 2-East will remain closed due to the attainment of the state share. These provisions are in conformity with the last agreed [to] management plans with applicable tribes. Comanagement plans are entered into as required by court order. The Puget Sound commercial season is structured to meet harvest allocation objectives negotiated with applicable treaty tribes and outlined in the management plans. There is insufficient time to adopt permanent rules. Further adjustment of season structure may be made pending updated harvest data.

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 2.

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

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

Date Adopted: February 13, 2024.

Kelly Susewind
Director

NEW SECTION

WAC 220-340-45500G Commercial crab fishery—Seasons and areas—Puget Sound. Notwithstanding the provisions of WAC 220-340-455, effective February 15, 2024, until further notice:

Harvest of Dungeness crab in Puget Sound is permitted during the "Open period" indicated in the following table. On the opening date harvest will be permitted starting at 8:00 a.m. Harvest for these areas after the opening date is permitted starting one hour before official sunrise until further notice. Any closures will take effect one hour after official sunset unless otherwise indicated.

Geographical Management Unit (WAC 220-320-110)	Effective Period
Region 1, MFSF Catch Areas 21A, 21B, and 22B	Immediately, through March 31, 2024.
Region 1, Marine Fish-Shellfish Catch Areas 22A, 20A, and 20B	Immediately, through April 15, 2024.
Region 2E, excluding Everett Flats CSMA (WAC 220-320-120(3))	Closed.
Region 2E, Everett Flats CSMA (WAC 220-320-120(3))	Closed.
Region 2W, not including Port Townsend Bay CSMA (WAC 220-320-120(5))	Closed.
Region 2W, Port Townsend Bay CSMA (WAC 220-320-120(5))	Closed.
Subregion 3-1	Immediately, through March 31, 2024.
Subregion 3-2, not including Discovery Bay CSMA (WAC 220-230-120 (1)(a)), Sequim Bay CSMA (WAC 220-320-120(6)), or the Port Angeles Harbor CSMA (WAC 220-320-120(4)).	Immediately through March 31, 2024.
Subregion 3-2, Discovery Bay CSMA (WAC 220-320-120 (1)(a))	Immediately through March 31, 2024.
Subregion 3-2, Sequim Bay CSMA (WAC 220-320-120(6))	Immediately through March 31, 2024.
Subregion 3-2, the Port Angeles Harbor CSMA (WAC 220-320-120(4)).	Closed, due to on-going public health concerns.
Subregion 3-3	Immediately through April 15, 2024.
Subregion 3-4	Immediately through April 15, 2024.

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.

NEW SECTION

WAC 220-340-47000C Commercial crab fishery—Gear limits—Puget Sound and Marine Fish-Shellfish Management and Catch Reporting Areas Notwithstanding the provisions of 220-340-470, effective February 15, 2024, until further notice:

Effective during the "Open period" listed in amended section of WAC 220-340-455 above it will be unlawful for any person to harvest crabs with more than the "Pot limit" per license per buoy tag number indicated within each "geographical management unit".

Geographical Management Unit (WAC 220-320-110)	Pot limit
Region 1, MFSF Catch Areas 21A, 21B, and 22B	60
Region 1, Marine Fish-Shellfish Catch Areas 22A, 20A, and 20B	60
Region 2E, excluding Everett Flats CSMA (WAC 220-320-120(3))	0
Region 2E, Everett Flats CSMA (WAC 220-320-120(3))	0
Region 2W, not including Port Townsend Bay CSMA (WAC 220-320-120(5))	0
Region 2W, Port Townsend Bay CSMA (WAC 220-320-120(5))	0
Subregion 3-1	60

Geographical Management Unit (WAC 220-320-110)	Pot limit
Subregion 3-2, not including Discovery Bay CSMA (WAC 220-230-120 (1)(a)), Sequim Bay CSMA (WAC 220-320-120(6)), or the Port Angeles Harbor CSMA (WAC 220-320-120(4)).	50
Subregion 3-2, Discovery Bay CSMA (WAC 220-320-120 (1)(a))	20
Subregion 3-2, Sequim Bay CSMA (WAC 220-320-120(6))	20
Subregion 3-2, the Port Angeles Harbor CSMA (WAC 220-320-120(4)).	0
Subregion 3-3	50
Subregion 3-4	50

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 sections of Washington Administrative Code are repealed, effective February 15, 2024:

- WAC 220-340-45500F Commercial crab fishery—Seasons and areas—Puget Sound. (24-07)
- WAC 220-340-47000B Commercial crab fishery—Gear limits—Puget Sound and Marine Fish-Shellfish Management and Catch Reporting Areas. (24-11)

WSR 24-05-039
EMERGENCY RULES
PROFESSIONAL EDUCATOR
STANDARDS BOARD

[Filed February 14, 2024, 12:49 p.m., effective February 14, 2024, 12:49 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: This WAC change will update school nurse limited certification policy to match updated department of health (department) licensure changes as a result of Washington recently entering into the nurse licensure compact.

Citation of Rules Affected by this Order: Amending WAC 181-79A-231.

Statutory Authority for Adoption: Chapter 28A.410 RCW.

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: Clarify school nurse limited certification policy to match updated department licensure changes.

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

Number of Sections Adopted at the Request of a 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: February 14, 2024.

Michael Nguyen
Rules Coordinator

OTS-5223.1

AMENDATORY SECTION (Amending WSR 22-20-090, filed 10/4/22, effective 11/4/22)

WAC 181-79A-231 Limited certificates. All applicants for limited certificates must meet the age, good moral character, and personal fitness requirements of WAC 181-79A-150 (1) and (2).

Nothing within chapter 181-79A WAC authorizes practice by an educational staff associate which is otherwise prohibited or restricted by any other law, including licensure statutes and rules and regulations adopted by the appropriate licensure board or agency.

(1) **Conditional certificate.**

(a) **Intent.** The intent of the conditional certificate is to assist school districts, approved private schools, and educational service districts in meeting the state's educational goals by giving them flexibility in hiring decisions based on shortages or the opportunity to secure the services of unusually talented individuals.

(b) **Roles.**

(i) Teacher roles. The conditional certificate may be issued to teachers in all endorsement areas. Specific minimum requirements defined in this section apply to the following:

- (A) Special education teachers;
- (B) Nonimmigrant exchange teachers;
- (C) Traffic safety education teachers.

(ii) Educational staff associate roles. The conditional certificate may be issued in the following education staff associate roles:

- (A) School counselor;
- (B) School nurse;
- (C) School psychologist;
- (D) School social worker;
- (E) School speech language pathologist or audiologist;
- (F) School behavior analyst;
- (G) School orientation and mobility specialist.

(iii) Administrator role. The conditional certificate may be issued in the following administrator role: Principal.

(c) **Request requirements.**

(i) When requesting the conditional certificate, the district, the educational service district, or the approved private school will verify that one or more of the following criteria have been met:

(A) The individual has extensive experience, unusual distinction, or exceptional talent in the subject matter to be taught or in the certificate role; or

(B) No person with regular certification in the area is available; or

(C) The individual holds a bachelor's degree or higher from an accredited college or university; or

(D) The individual is enrolled in an educator preparation program specific to the certificate role for which they are applying; or

(E) The individual will serve as a nonimmigrant exchange teacher and meets the specific minimum requirements defined in this section; or

(F) The individual will serve as a traffic safety education teacher and meets the specific minimum requirements defined in this section; or

(G) Circumstances warrant.

(ii) When requesting the conditional certificate, the district, the educational service district, or the approved private school will verify that all of the following criteria have been met:

(A) The district, educational service district, or approved private school has determined that the individual is competent for the assignment; and

(B) After specific inclusion on the agenda and a formal vote, the school board or educational service district board has authorized the conditional certificate; and

(C) The individual is being certificated for a specific assignment and responsibility in a specified activity/field; and

(D) The individual will be delegated primary responsibility for planning, conducting, and evaluating instructional activities; and

(E) The individual will not be serving in a paraeducator role;
and

(F) The individual will be oriented and prepared for the assignment. In addition, prior to service, the individual will be apprised of any legal liability, the responsibilities of a professional educator, the lines of authority, and the duration of the assignment; and

(G) The individual will be assigned a mentor within 20 working days from the commencement of the assignment; and

(H) A written plan of support will be developed within 20 working days from the commencement of the assignment.

(d) **Minimum requirements.**

(i) Individuals must complete 50 continuing education credit hours after the issuance of the certificate, and prior to the reissuance of the certificate. Holders of conditional certificates in the role of nonimmigrant exchange teacher are not required to complete 50 continuing education credit hours.

(ii) Special education teacher. The applicant for a conditional teaching certificate in special education shall hold a bachelor's degree or higher from an accredited college or university.

The issuance of a conditional certificate to a special education teacher is contingent upon the individual being enrolled in a state-approved teacher preparation program resulting in a teacher certificate endorsed in special education.

An individual with full certification and endorsed in special education shall be assigned as a mentor to the special education teacher serving on a conditional certificate for the duration of the conditional certificate.

(iii) Traffic safety education teacher. The applicant qualifies to instruct in the traffic safety program under WAC 392-153-021. Written plans of support and mentors are not required for holders of conditional certificates in the role of traffic safety education teacher.

(iv) Nonimmigrant exchange. A conditional certificate in the role of teacher may be issued to an individual admitted to the United States for the purpose of serving as an exchange teacher.

The individual must be eligible to serve as a teacher in the elementary or secondary schools in their country of nationality or last residence.

(v) School counselor. The applicant must hold a bachelor's degree or higher from an accredited college or university, and be enrolled in a state-approved preparation program for the role, in accordance with Washington requirements for certification.

(vi) School nurse. The applicant possesses a (~~state of Washington~~) valid license (~~for~~) as a registered nurse (RN) under chapter 18.79 or 18.80 RCW. Applicants who meet the requirements for the initial school nurse certificate will not be issued a conditional school nurse certificate.

(vii) School psychologist. The applicant must hold a bachelor's degree or higher from an accredited college or university, and be enrolled in a state-approved preparation program for school psychologists, in accordance with Washington requirements for certification.

In addition, the candidate shall have completed all course work for the required master's degree, and shall be participating in the required internship.

(viii) School social worker. The applicant must hold a bachelor's degree or higher from an accredited college or university. The applicant must be enrolled in a master's degree program in social work or social welfare.

(ix) School speech language pathologist or audiologist. The applicant has completed a bachelor's degree or higher from an accredited college or university.

(x) School behavior analyst. Applicants must meet one or more of the following:

(A) Hold a valid Washington state department of health license as an assistant behavior analyst. The district, educational service district, or approved private school must provide a supervisor who meets the department of health requirements for a supervisor of assistant behavior analysts; or

(B) Hold a valid board certified assistant behavior analyst (BCABA) certificate from the behavior analyst certification board (BACB). The district, educational service district, or approved private school must provide a supervisor who meets the behavior analyst certification board (BACB) requirements for a supervisor of board certified assistant behavior analyst (BCABA); or

(C) Hold a bachelor's degree, and, must be enrolled in or have completed the course work requirements for the board certified behavior analyst (BCBA) certificate from the behavior analyst certification board (BACB), as verified by the institution providing the behavior analysis course work.

(xi) School orientation and mobility specialist.

(A) Applicants must have completed all requirements for an approved national certificate with the exception of the internship and the assessment, as verified by the institution providing the course-work for the national certificate. The approved national certificates are the certified orientation and mobility specialist (COMS) certificate from the academy for certification of vision rehabilitation and education professionals (ACVREP), and the national orientation and mobility certification (NOMC) from the national blindness professional certification board (NBPCB).

(B) The school employer must ensure the candidate has access to a mentor who meets the requirements for an intern supervisor set by the academy for certification of vision rehabilitation and education professionals (ACVREP) or the national blindness professional certification board (NBPCB).

(xii) Principal. The applicant holds a bachelor's degree from an accredited college or university.

The candidate for conditional certification as a principal shall be enrolled in a program resulting in the issuance of a residency principal certificate, in accordance with Washington requirements for certification.

(e) **Validity.** The conditional certificate is valid for two years or less, and is only valid for the activity or role specified on the certificate.

The reissuance of the special education conditional certificate will have a validity period of three years or less.

(f) **Reissuance.**

(i) The conditional certificate may be reissued upon request by the employing local school district, approved private school, or educational service district, provided all conditions for the first issuance of the certificate are met.

(ii) The requesting school district, approved private school, or educational service district will verify that the 50 continuing education credit hours earned as a requirement for reissuance of the certificate are designed to support the individual's professional growth,

and enhance the individual's knowledge or skills to better assist students in meeting state learning goals.

(iii) Nonimmigrant exchange. The conditional certificate in the role of teacher may be reissued while the individual is being sponsored by a school district in an exchange and visiting teacher program.

(iv) Special education teacher. Conditional certificates in special education may only be reissued once. The reissuance of the special education conditional certificate will have a validity period of three years or less. The special education conditional certificate may only be reissued upon verification by the preparation program provider that the individual is completing satisfactory progress in a state-approved teacher certificate program leading to a special education endorsement.

(v) School speech language pathologist or audiologist. Conditional certificates as a school speech language pathologist or audiologist may be reissued twice.

The conditional certification as a school speech language pathologist or audiologist may be reissued if the candidate is enrolled in a master's degree program resulting in issuance of an initial ESA certificate in accordance with Washington requirements for certification.

The school speech language pathologist or audiologist conditional certificate may be reissued a second time upon verification by the degree provider that the individual is completing satisfactory progress in a master's degree program resulting in issuance of an initial school speech language pathologist or audiologist certificate in accordance with Washington requirements for certification.

(vi) Conditional certificates as a school behavior analyst may be reissued twice.

(vii) Conditional certificates as a school orientation and mobility specialist may be reissued once.

(2) **Transitional certificate.**

(a) **Intent.** The transitional certificate provides flexibility for school districts in employing an individual according to this chapter.

(i) Individuals whose continuing certificate has lapsed or expired.

(ii) Individuals whose certificate has lapsed or expired by June 30, 2022, under WAC 181-79A-240.

(b) **Roles.** The transitional certificate may be issued in roles of teacher, education staff associate, and administrator for continuing certificates or other certificates subject to renewal under WAC 181-79A-240.

(c) **Request requirements.**

(i) The transitional certificate is issued upon request by a school district, approved private school, or educational service district for an individual whose continuing certificate has lapsed or expired according to this chapter.

(ii) The transitional certificate is issued upon request by a school district, approved private school, or educational service district for an individual whose certificate has expired according to this chapter.

(A) Districts may request a transitional certificate for all certificates other than continuing certificates under this section through December 31, 2023.

(B) Educators under this section must apply for the transitional certificate through the office of the superintendent of public instruction no later than June 30, 2024.

(iii) School districts, approved private schools, and educational service districts are strongly encouraged to develop with the holder of a transitional certificate a plan of support for the holder to complete the necessary certificate renewal requirements under this chapter.

(d) **Minimum requirements.**

(i) The holder of the transitional certificate must complete the requirements for certificate renewal within two years of the date the holder was issued the transitional certificate.

(ii) No individual whose certificate has been suspended, revoked, or surrendered shall be eligible to be employed under this section.

(e) **Validity.** The transitional certificate is valid until two years from the date the holder was issued the certificate. The transitional certificate expiration date shall not be calculated under professional educator standards board policy WAC 181-79A-117.

(f) **Reissuance.** The transitional certificate is not renewable and may not be reissued.

(3) **Emergency substitute certificate.**

(a) **Intent.** The intent of the emergency substitute certificate is to assist school districts, approved private schools, and educational service districts with flexibility in meeting educator workforce needs.

(b) **Roles.**

(i) The emergency substitute certificate may be issued in the role of teacher.

(ii) To ensure that related services personnel deliver special education services in their respective discipline or profession, the emergency substitute certificate may not be issued for individuals to serve in an educational staff associate role in accordance with 34 C.F.R. Part 300.156 (b) (2) (ii).

(iii) Holders of the emergency substitute certificate may serve in the local school district, approved private school, or educational service district which requested the certificate.

(iv) Holders of the emergency substitute certificate may serve as substitutes if the local school district, approved private school, or educational service district has exhausted or reasonably anticipates it will exhaust its list of qualified substitutes under WAC 181-79A-232.

(c) **Request requirements.**

(i) The emergency substitute certificate is issued upon request by a school district, approved private school, or educational service district.

(ii) If the local school district, approved private school, or educational service district has exhausted or reasonably anticipates it will exhaust its list of qualified substitutes who are willing to serve as substitutes, emergency substitute certificates may be issued to persons not fully qualified as substitutes under WAC 181-79A-232.

(d) **Validity.** Emergency substitute certificates shall be valid for two years or less.

(e) **Reissuance.** The emergency substitute certificate may be reissued upon request by the employing local school district, approved private school, or educational service district.

(4) **Intern substitute certificate.**

(a) **Intent.** The intent of the intern substitute certificate is to provide the intern the opportunity to serve as a substitute when the cooperating teacher is absent. This provides the intern with experience while allowing for consistency in instruction for the students.

(b) **Roles.** The intern substitute certificate may be issued to student teachers or intern teachers.

(c) **Request requirements.**

(i) School districts, educational service districts, and approved private schools may request intern substitute teacher certificates for individuals enrolled in student teaching and internships to serve as substitute teachers in the absence of the cooperating teacher.

(ii) The supervising preparation program provider must approve the candidate for the intern substitute teacher certificate.

(d) **Minimum requirements.** The holder of the intern substitute certificate may be called at the discretion of the school district, education service district, or approved private school to serve as a substitute teacher only in the classroom(s) to which the individual is assigned as a student teacher or intern.

(e) **Validity.** The intern substitute teacher certificate is valid for one year or less.

(f) **Reissuance.** The intern substitute certificate may be reissued upon request by the local school district, approved private school, or educational service district, and approved by the educator preparation program provider.

WSR 24-05-042
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 24-18—Filed February 14, 2024, 4:14 p.m., effective February 15, 2024]

Effective Date of Rule: February 15, 2024.

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 (commission) policy guidance for Columbia River fisheries.

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

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

Other Authority: *United States v. Oregon*, Civil No. 68-513-KI (D. Or.), Order Adopting 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: Sets 2024 winter, spring, and summer select area commercial seasons. Impacts to nonlocal stocks are expected to be minimal and local Chinook stocks reared for the select area sites are available for harvest. Preseason modeling results in a select area commercial fisheries allocation of ≤387 upriver spring Chinook. The fishery is consistent with the *U.S. v. Oregon* Management Agreement and the associated biological opinion. Conforms Washington state rules with Oregon state rules. Regulation is consistent with compact action of February 13, 2024. The general public welfare is protected with the immediate opening of nontreaty select area fisheries. 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 the 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 0; Federal Rules or Standards: New 1, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 1, Amended 0, Repealed 0.

Number of Sections Adopted at the Request of a 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: February 14, 2024.

Kelly Susewind
Director

NEW SECTION

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

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

(1) Tongue Point and South Channel areas:

Open Dates	Open Days	Open Time	Open Duration
Feb 15 - Mar 8	Sun, Tue, Thu (nights)	7:00 pm - 7:00 am	10 nights
Apr 22 - Apr 26	Mon, Thu (nights)	7:00 pm - 7:00 am	2 nights
Apr 29 - May 3	Mon, Wed, Thu (nights)	7:00 pm - 7:00 am	3 nights
May 6 - Jun 14	Mon, Tue, Wed, Thu (nights)	7:00 pm - 7:00 am	24 nights

Tongue Point Area only:

Open Dates	Open Days	Open Time	Open Duration
Mar 10	Sun (night)	8:00 pm - 12:00 am	4 hrs
Mar 12 - Mar 13	Tue (night)	9:00 pm - 1:00 am	4 hrs

Open Dates	Open Days	Open Time	Open Duration
Mar 14 - Mar 15	Thu (night)	10:30 pm - 2:30 am	4 hrs
Mar 18	Mon (morning)	1:30 am - 5:30 am	4 hrs
Mar 20	Wed (morning)	4:00 am - 8:00 am	4 hrs

South Channel Area only:

Open Dates	Open Days	Open Time	Open Duration
Mar 10 - Mar 22	Sun, Tue, Thu (nights)	7:00 pm - 7:00 am	6 nights
Mar 25	Mon (night)	8:00 pm - 12:00 am	4 hrs
Mar 28 - Mar 29	Thu (night)	9:00 pm - 1:00 am	4 hrs
Apr 1	Mon (night)	8:00 pm - 12:00 am	4 hrs
Apr 4 - Apr 5	Thu (night)	11:00 pm - 3:00 am	4 hrs
Apr 8	Mon (night)	7:30 pm - 11:30 pm	4 hrs
Apr 11 - Apr 12	Thu (night)	9:30 pm - 1:30 am	4 hrs
Apr 16 - Apr 17	Tue (night)	9:00 pm - 1:00 am	4 hrs
Apr 18 - Apr 19	Thu (night)	11:00 pm - 3:00 am	4 hrs

(a) Area definitions: Effective February 15 through June 14, 2024:

(i) Tongue Point: Waters of the Columbia River bounded by a line from the end of the southern-most pier (#1) at the Tongue Point Job Corps facility projecting in a straight line through flashing red USCG light "6" to the shore of Mott Island, a line from a regulatory marker at the southeast end of Mott Island northeasterly to a regulatory marker on the northwest shore of Lois Island, and a line from a regulatory marker located 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. If the marker on the Oregon shore is not in place, the upper boundary is defined by a line projecting easterly 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 to a regulatory marker on the southwest shore of Lois Island.

(ii) South Channel: 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:

(i) February 15 through April 12, 2024: 7-inch minimum mesh size.

(ii) April 16, 2024, until further notice: 9 3/4-inch maximum mesh size.

(iii) The maximum net length is 1,500 feet (250 fathoms).

(iv) In the Tongue Point Area, the lead line weight may not exceed two pounds per any one fathom.

(v) In the South Channel Area, there is no lead line weight limit and attachment of additional weight and anchors directly to the lead line is permitted.

(2) Blind Slough and Knappa Slough areas:

Open Dates	Open Days	Open Time	Open Duration
Feb 15 - Mar 22	Sun, Tue, Thu (nights)	7:00 pm - 7:00 am	16 nights

Open Dates	Open Days	Open Time	Open Duration
Mar 25 - April 12	Mon, Thu (nights)	7:00 pm - 7:00 am	6 nights
Apr 16 - Apr 19	Tue, Thu (nights)	7:00 pm - 7:00 am	2 nights
Apr 22 - Apr 26	Mon, Thu (nights)	7:00 pm - 7:00 am	2 nights
April 29 - May 3	Mon, Wed, Thu (nights)	7:00 pm - 7:00 am	3 nights
May 6 - Jun 14	Mon, Tue, Wed, Thu (nights)	7:00 pm - 7:00 am	24 nights

(a) Area definitions:

(i) 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.

(ii) 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.

Through May 3 the downstream (western) boundary in Knappa Slough is a north-south line projecting through the easternmost tip of Minaker Island and regulatory markers on Karlson Island and the Oregon shore.

(b) Gear: Gillnets:

(i) February 15 through April 12, 2024: 7-inch minimum mesh size.

(ii) April 16, 2024, until further notice: 9 3/4-inch maximum mesh size.

(iii) The maximum net length is 600 feet (100 fathoms).

(iv) There is no lead line weight limit and attachment of additional weight or anchors directly to the lead line is permitted.

(c) Miscellaneous: Permanent transportation rules in effect.

(3) Deep River Select Area:

Open Dates	Open Days	Open Time	Open Duration
Feb 15 - Mar 22	Sun, Tue, Thu (nights)	7:00 pm - 9:00 am	16 nights
Mar 25 - Apr 12	Mon, Thu (nights)	7:00 pm - 9:00 am	6 nights
Apr 16 - Apr 19	Tue, Thu (nights)	7:00 pm - 9:00 am	2 nights
Apr 22 - Apr 26	Mon, Thu (nights)	7:00 pm - 9:00 am	2 nights
Apr 29 - May 3	Mon, Wed, Thu (nights)	7:00 pm - 9:00 am	3 nights
May 6 - Jun 14	Mon, Tue, Wed, Thu (nights)	7:00 pm - 9:00 am	24 nights

(a) Area definition: From the mouth of Deep River defined as a line from USCG navigation marker #16 southwest to a marker on the Washington shore, upstream to the Highway 4 Bridge.

(b) Gear: Gillnets:

(i) February 15 through April 12, 2024: 7-inch minimum mesh size.

(ii) April 16 through June 14, 2024: 9 3/4-inch maximum mesh size.

(iii) The maximum net length is 600 feet (100 fathoms).

(iv) There is no lead line weight limit and attachment of additional weight or anchors directly to the lead line is permitted.

(v) Nets may not fully cross navigation channel. It is unlawful to operate in any river, stream or channel any gill net longer than three-fourths the width of the stream (WAC 220-354-010). It shall be unlawful in any area to use, operate, or carry aboard a commercial fishing vessel a licensed net or combination of such nets, whether fished singly or separately, in excess of the maximum lawful size or length prescribed for a single net in that area, except as otherwise provided for in the rules and regulations of the department rule (WAC 220-353-060).

(c) Miscellaneous:

(i) Transportation or possession of fish outside the fishing area (except to the sampling station) is unlawful until WDFW staff has biologically sampled individual catches. After sampling, fishers will be issued a transportation permit by WDFW staff.

(ii) February 15 through June 14, 2024: fishers are required to call 360-798-8098 to confirm the place and time of sampling.

(4) 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.

WSR 24-05-045
EMERGENCY RULES
DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Developmental Disabilities Administration)

[Filed February 15, 2024, 11:52 a.m., effective February 16, 2024]

Effective Date of Rule: February 16, 2024.

Purpose: The developmental disabilities administration (DDA) is enacting these amendments on an emergency basis to align with SB 5252 (2023) and FBI background check requirements.

Citation of Rules Affected by this Order: Amending WAC 388-825-335, 388-825-615, and 388-825-620.

Statutory Authority for Adoption: RCW 71A.12.030.

Other Authority: RCW 43.43.837 and 74.39A.056.

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: Enacting amendments to WAC 388-825-335 and 388-825-620 on an emergency basis is necessary to comply with FBI background check requirements and to conduct background checks necessary to receive federal funding. Enacting amendments to WAC 388-825-615 is necessary to align with amendments to SB 5252. This is the third emergency filing on these sections and is necessary to keep the rules in effect while DDA completes the permanent rule-making process. DDA is proceeding with permanent adoption; please see CR-102 proposal filed under WSR 23-22-008.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 2, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 1, 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 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 3, Repealed 0.

Date Adopted: February 15, 2024.

Katherine I. Vasquez
Rules Coordinator

SHS-4986.2

AMENDATORY SECTION (Amending WSR 14-14-029, filed 6/24/14, effective 7/25/14)

WAC 388-825-335 Is a background check required of a long-term care worker employed by a home care agency licensed by the department of health? (1) In order to be a long-term care worker employed by a home care agency, a person must:

(a) Complete the required DSHS form authorizing a background check.

(b) Disclose any disqualifying criminal convictions and pending charges as listed in chapter 388-113 WAC, and also disclose civil adjudication proceedings and negative actions as those terms are defined in WAC (~~(388-71-0512)~~) 388-113-0030.

(c) Effective January 8, 2012, be screened through Washington state's name and date of birth background check, (Preliminary results may require a thumb print for identification purposes); and

(d) Effective January 8, 2012, be screened through the Washington state and national fingerprint-based background check, as required by RCW 74.39A.056.

(2) Results of background checks are provided to the department and the employer or potential employer for the purpose of determining whether the person:

(a) Is disqualified based on a disqualifying criminal conviction or a pending charge for a disqualifying crime (~~(as listed in)~~) under WAC 388-113-0020, civil adjudication proceeding, or negative action (~~(as defined in)~~) under WAC (~~(388-71-0512 and listed in WAC 388-71-0540)~~) 388-113-0030; or

(b) Should or should not be employed based on his or her character, competence, and/or suitability.

(3) For those providers listed in RCW 43.43.837(1), a second national fingerprint-based background check is required if they have lived out of the state of Washington since the first national fingerprint-based background check was completed.

(4) The department may require a long-term care worker to have a Washington state name and date of birth background check (~~(or)~~) at any time and a Washington state and national fingerprint-based background check (~~(, or both, at any time.)~~) if information is disclosed or found regarding new:

(a) Pending charges;

(b) Convictions; or

(c) Negative actions.

AMENDATORY SECTION (Amending WSR 23-07-130, filed 3/22/23, effective 4/22/23)

WAC 388-825-615 What type of background check is required? (1) Beginning January 7, 2012, long-term care workers, including parents and individual providers, undergoing a background check for initial hire or initial contract, must be screened through a Washington state name and date of birth check and a national fingerprint-based background check.

(2) Beginning January 1, 2016, a newly hired long-term care worker employed by a community residential service business must be screened through a Washington state name and date of birth check and a national fingerprint-based background check.

(a) For a renewal, a person who has continuously resided in Washington state for the past three consecutive years must be screened through a Washington state name and date of birth check.

(b) For a renewal, a person who has resided outside of Washington state in the past three years must be screened through a Washington state name and date of birth check and a national fingerprint-based background check.

(3) For adult family homes, refer to chapter 388-76 WAC. For assisted living facilities, refer to chapter 388-78A WAC.

(4) Beginning July ((1)) 23, 2023, a residential habilitation center applicant undergoing a background check for initial hire must be screened through a Washington state name and date of birth check and a national fingerprint-based background check.

(5) All background checks must be completed through the background check system.

AMENDATORY SECTION (Amending WSR 23-07-130, filed 3/22/23, effective 4/22/23)

WAC 388-825-620 How often must a background check be renewed?

(1) DDA requires a background check at least every three years, or more frequently if required by program rule.

(2) A background check renewal will be conducted as follows:

(a) Individuals who have continuously resided in Washington state for the past three consecutive years will be screened through a state name and date of birth background check.

(b) Individuals who have lived outside of Washington state within the past three years will be screened through a state name and date of birth check and a national fingerprint-based background check.

(c) Individuals who live outside of Washington state and provide services in Washington state will be screened through a Washington state name and date of birth check and a national fingerprint-based background check.

(3) The department may require a long-term care worker to have a renewed Washington state name and date of birth background check at any time and a Washington state and national fingerprint-based background check if information is disclosed or found regarding new:

(a) Pending charges;

(b) Convictions; or

(c) Negative actions.

WSR 24-05-046
EMERGENCY RULES
DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Aging and Long-Term Support Administration)

[Filed February 15, 2024, 11:58 a.m., effective February 15, 2024, 11:58 a.m.]

Effective Date of Rule: Immediately upon filing.

Other Findings Required by Other Provisions of Law as Precondition to Adoption or Effectiveness of Rule: ESB [E2SSB] 5440 (section 13, chapter 453, Laws of 2023) took effect December 1, 2023, so courts may start referring people, and the department of social and health services (department) is expected to have a pilot program in place which requires rules. There have only been six months after the legislature passed the law, thus this did not allow enough time for both program development and regular rule-making procedures. The CR-101 was filed as WSR 23-24-046 on November 30, 2023.

Purpose: The department will be adopting new rules to implement the provisions of ESB [E2SSB] 5440 (chapter 453, Laws of 2023). The department is adding new sections in chapter 388-106 WAC to support the new civil transitions program created as a result of ESB [E2SSB] 5440. These sections include WAC 388-106-2000 through 388-106-2050. The proposed rules describe eligibility for the civil transitions program and the package of services provided for individuals who are referred by the behavioral health administration who have been found not functionally and financially eligible for long-term support services due to a brain injury, intellectual, or developmental disability. The rules will describe services and the duration.

Citation of Rules Affected by this Order: New WAC 388-106-2000, 388-106-2005, 388-106-2010, 388-106-2015, 388-106-2020, 388-106-2025, 388-106-2030, 388-106-2035, 388-106-2040, 388-106-2045, and 388-106-2050.

Statutory Authority for Adoption: RCW 74.08.090 and 74.09.520.

Other Authority: ESB [E2SSB] 5440 (chapter 453, Laws of 2023).

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: Legislation passed ESB [E2SSB] 5440 (chapter 453, Laws of 2023) that addressed timely competency evaluations and restoration services for individuals experiencing behavioral health disorders consistent with the Trueblood settlement. Section 13 of the bill requires the aging and long-term support administration (ALTSA) and the developmental disabilities administration to provide services for individuals that have been found by the court to be not competent and not restorative to stand trial due to a diagnosis of dementia, traumatic brain injury, or intellectual or developmental disability. ALTSA is to provide services whether the individual meets financial eligibility requirements or is determined functionally eligible for services.

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 11, 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 11, 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 11, Amended 0, Repealed 0.

Date Adopted: February 14, 2024.

Katherine I. Vasquez
Rules Coordinator

SHS-5009.5

NEW SECTION

WAC 388-106-2000 What definitions apply to the civil transitions program? "Aging and long-term services administration (AL TSA)" is an administration within the department of social and health services, that promotes choice, independence, and safety through innovative services and partnerships with tribes, advocates, providers, and caregivers to support seniors and people with disabilities so they can live with good health, independence, dignity, and control over decisions that affect their lives.

"Behavioral health administration (BHA)" is an administration within the department of social and health services, that supports sustainable recovery, independence, and wellness. This is done by funding and supporting effective prevention and intervention services for youth and family, and treatment and recovery support for youth and adults with addiction and mental health conditions (also known as behavioral health). BHA operates three state psychiatric hospitals and the office of forensic mental health services that deliver high quality services to adults and children with complex needs.

"Civil transitions program" is a program implemented according to Engrossed Second Substitute Senate Bill 5440 to provide support services to individuals recently subject to criminal charges and found incompetent to stand trial due to an intellectual or developmental disability, traumatic brain injury, or dementia.

"Competency evaluation" is an assessment of the ability of a defendant to understand and rationally participate in a court process under the United States criminal justice system.

"Conditional services" is a term that describes the services available under the civil transitions program for an individual who does not meet functional eligibility criteria under medicaid personal care level of care under WAC 388-106-0210 or nursing facility level of care under WAC 388-106-0355 or is not financially eligible for Washington apple health, or is not functionally or financially eligible.

"Dementia" is a general term for loss of memory, language, problem-solving, and other thinking abilities that are severe enough to interfere with daily life. The term "dementia" is no longer used to refer to the etiological subgroups for which it is standard, but it is instead included under the newly titled term significant neurocognitive disease. For consistency, the term "dementia" is still used in the DSM-5 and can be applied in situations where patients and doctors are familiar with it. The phrase neurocognitive disorder is commonly

used, while dementia is the standard word for illnesses such as the degenerative dementias that typically impact older persons (DSM-5-TR).

Neurocognitive disorder is characterized by the progressive and persistent deterioration of cognitive function. Cognitive deficits are sufficient to interfere with independence, do not occur exclusively in the context of a delirium, and are not attributable to another mental disorder (e.g. major depressive disorder, schizophrenia).

Specific major neurocognitive diagnosis, primary diagnosis:

- (a) Major neurocognitive disorder due to Alzheimer's disease;
- (b) Major frontotemporal neurocognitive disorder (Pick's);
- (c) Major neurocognitive disorder with Lewy bodies;
- (d) Major vascular neurocognitive disorder (Vascular);
- (e) Major neurocognitive disorder due to traumatic brain injury;
- (f) Substance or medication-induced major neurocognitive disorder (alcohol-related);
- (g) Major neurocognitive disorder due to HIV infection;
- (h) Major neurocognitive disorder due to Prion disease;
- (i) Major neurocognitive disorder due to Parkinson's disease;
- (j) Major neurocognitive disorder due to Huntington's disease.

"Not Competent" means a legal determination has been made by a court that a defendant is unable to stand trial based on being diagnosed with a mental disease or defect which prevents them from understanding court proceedings or being able to rationally assist in their own defense per chapter 10.77 RCW.

"Not Restorable" means a court has found that a person lacks the capacity to have competency restored via inpatient or outpatient treatment.

"Office of forensic mental health services (OFMHS)" is a division of the department of social and health services' behavioral health administration that oversees the state's adult forensic mental health system.

"Washington apple health" means the public health insurance programs for eligible Washington residents defined in WAC 182-500-0120. Washington apple health or apple health is the name used in Washington state for medicaid, the children's health insurance program (CHIP), and state-only funded health care programs.

NEW SECTION

WAC 388-106-2005 Who is eligible to apply to receive services under the civil transitions program? You are eligible to apply for services under the civil transitions program if you:

- (1) Are referred to ALTSA from the BHA starting December 1, 2023;
- (2) Have been determined by a court as not competent to stand trial due to a diagnosis of dementia, a traumatic brain injury, or an intellectual or developmental disability, and your competency is not restorable;

(3) Complete an assessment of your functional eligibility using the comprehensive assessment reporting evaluation (CARE) tool under WAC 388-106-0050 to determine if you are functionally eligible for:

- (a) Nursing facility level of care under WAC 388-106-0355; or
- (b) Medicaid personal care level of care under WAC 388-106-0210;

and

(4) File an application for Washington apple health so the department can determine if you are financially eligible for medicaid-

funded long-term services and supports. The application process is described in WAC 182-503-0005.

NEW SECTION

WAC 388-106-2010 What services may I receive under the civil transitions program if I am not functionally and financially eligible for long-term services and supports? (1) If you meet the criteria in WAC 388-106-2005 but are not functionally eligible for medicaid personal care level of care under WAC 388-106-0210 or nursing facility level of care under WAC 388-106-0355, or you are not financially eligible for Washington apple health, you may receive conditional services, subject to available funds, under the civil transitions program.

(2) If you meet the criteria in WAC 388-106-2005 but have yet to complete a CARE assessment and are, or at risk of becoming a "homeless person" as defined in RCW 43.185C.010, you may receive supportive housing services under the civil transitions program, as funding allows.

(3) Conditional services are described in WAC 388-106-2020.

NEW SECTION

WAC 388-106-2015 What services may I receive under the civil transitions program if I am functionally and financially eligible for long-term services and supports? If you are referred to AL TSA for services under the civil transitions program and you are both functionally eligible for long-term services and supports under chapter 388-106 WAC and financially eligible for medicaid-funded long-term services and supports, you are eligible for any service offered by AL TSA based on your assessment and identified in your plan of care. Financial eligibility criteria for long-term services and supports is determined under chapters 182-513 and 182-515 WAC.

NEW SECTION

WAC 388-106-2020 What conditional services may I receive under the civil transitions program? The legislature has appropriated specific funding for the civil transitions program for the provision of conditional services. If you meet the criteria in WAC 388-106-2005 you are eligible for conditional services as described below, subject to available funding.

(1) If you do not meet medicaid personal care level of care under WAC 388-106-0210 or nursing facility level of care under WAC 388-106-0355, and you are not financially eligible for Washington apple health, you can receive the following conditional services:

(a) Community transition or sustainability services; and

(b) Supportive housing as defined in WAC 388-106-1705.

(2) If you are determined functionally eligible for medicaid personal care level of care under WAC 388-106-0210, but you are not financially eligible for Washington apple health, you may receive the

following conditional services if they are included in your plan of care:

- (a) Personal care services as defined in WAC 388-106-0010;
 - (b) Community transition or sustainability services; and
 - (c) Supportive housing as defined in WAC 388-106-1705.
- (3) If you are determined functionally eligible for nursing facility level of care under WAC 388-106-0355 but you are not financially eligible for Washington apple health, you may receive the following conditional services if they are included in your plan of care:
- (a) Personal care services as defined in WAC 388-106-0010;
 - (b) Nurse delegation as defined in WAC 388-106-0270;
 - (c) Personal emergency response system (PERS) as defined in WAC 388-106-0270;
 - (d) Assistive technology as defined in WAC 388-106-0270;
 - (e) Supportive housing as defined in WAC 388-106-1705;
 - (f) Community transition services as defined in WAC 388-106-0270;
- and
- (g) Community transition or sustainability services.

NEW SECTION

WAC 388-106-2025 Who can provide long-term services and supports when I am eligible for the civil transitions program conditional services? The following types of providers can provide conditional services under the civil transitions program:

- (1) Individual providers (IPs) who provide services to clients in their own home as defined in WAC 388-106-0040 and 388-106-0010.
- (2) Home care agencies that provide services to clients in their own home. Home care agencies must be licensed under chapter 70.127 RCW and chapter 246-335 WAC and be contracted with the department of social and health services.
- (3) Providers who are contracted with the department to provide goods and services.
- (4) Durable medical equipment vendors that have a core provider agreement with the health care authority.
- (5) Supportive housing providers as defined in WAC 388-106-1715 or 182-559-200.

NEW SECTION

WAC 388-106-2030 Where can I receive civil transitions program conditional services? You can receive conditional services under the civil transitions program:

- (1) In your own home as defined in WAC 388-106-0030, or an interim setting while you secure permanent housing; and
- (2) While you are out of your home accessing the community or working while:
 - (a) within the state of Washington; or
 - (b) in a recognized out of state bordering city as defined in WAC 182-501-0175.

NEW SECTION

WAC 388-106-2035 When will the department authorize my civil transitions program conditional services? Within available funds, the department will authorize conditional services under the civil transitions program when you have:

(1) Completed an assessment of your functional eligibility using the comprehensive assessment reporting evaluation (CARE) tool under WAC 388-106-0050;

(2) Applied for Washington apple health;

(3) Been found eligible for conditional services under WAC 388-106-2010 and 388-106-2020;

(4) Given consent for services and approved your care plan; and

(5) Chosen a DSHS qualified provider per WAC 388-71-0510.

NEW SECTION

WAC 388-106-2040 When will my civil transitions program conditional services end? (1) If, at the time of your initial assessment you were found ineligible for medicaid-funded long-term services and supports, your civil transitions program conditional services, except supportive housing, will end the earlier of:

(a) The date you are found both functionally and financially eligible for medicaid-funded long-term services and supports;

(b) Six months from the start date of your services; or

(c) When the department has exhausted available funds.

(2) For conditional supportive housing services, your eligibility will be reviewed in six-month increments based upon available funding, up to a maximum of 24 months.

NEW SECTION

WAC 388-106-2045 Do I have a right to an administrative hearing on civil transitions program conditional services? You have a right to an administrative hearing if you disagree with a decision made by the department about your eligibility for services under the civil transitions program. The department will notify you in writing of the right to contest a decision and provide you with information on how to request a hearing.

NEW SECTION

WAC 388-106-2050 Can an exception to rule (ETR) be granted for civil transitions program conditional services? If you receive conditional services under the civil transitions program, an exception to rule under WAC 388-440-0001 will not be granted.

WSR 24-05-048
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 24-20—Filed February 15, 2024, 4:08 p.m., effective February 15, 2024, 4:08 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: The purpose of this emergency rule is to open razor clam seasons.

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

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: Survey results show that adequate clams are available for recreational harvest in Razor Clam Areas 1, 3, 4, and 5. Washington department of health has certified clams from Razor Clam Areas 1, 3, 4, and 5 to be safe for human consumption. 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: February 15, 2024.

Amy H. Windrope
for Kelly Susewind
Director

NEW SECTION

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

(1) Effective 12:01 p.m. February 21 through 11:59 p.m. February 25, 2024, razor clam digging is permissible in Razor Clam Areas defined in WAC 220-330-160 during evening tides on dates and times listed below:

Razor Clam Area	Date	Time
Area 1	February 21 through 25	From 12:01 p.m. to 11:59 p.m.
Area 2	Closed	Closed
Area 3	February 21 through 24	From 12:01 p.m. to 11:59 p.m.
Area 4	February 21, 22, 25	From 12:01 p.m. to 11:59 p.m.
Area 5	February 23 and 24	From 12:01 p.m. to 11:59 p.m.
Area 6	Closed	Closed
Area 7	Closed	Closed

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

REPEALER

The following section of the Washington Administrative Code is repealed effective 12:01 a.m. February 26, 2024:

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

WSR 24-05-055
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 24-23—Filed February 16, 2024, 3:26 p.m., effective February 19, 2024]

Effective Date of Rule: February 19, 2024.

Purpose: The purpose of this emergency rule is to open green sea urchin harvest in District 2.

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

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

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

Reasons for this Finding: This emergency rule opens harvest of green urchins in District 2 on February 19, 2024. 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: February 16, 2024.

Kelly Susewind
Director

NEW SECTION

WAC 220-340-75000E Commercial sea urchin fisheries. Effective February 19, 2024, until further notice, the provisions of WAC 220-340-750 regarding commercial harvest of sea urchins shall be modified as described below. All other provisions of WAC 220-340-750 not addressed herein remain in effect unless otherwise amended by emergency rule:

(1) It is unlawful for any person to fish for, take, or possess for commercial purposes any green sea urchins less than 2.25 inches; or red sea urchins measuring less than 3.25 inches or greater than 5 inches. All measurements are caliper measurements of the largest shell (test) diameter, exclusive of the spines.

(2) The following areas are open for red sea urchin harvest, seven days-per-week: Sea Urchin District 1, District, 2, and District 4.

(3) The following areas are open for green urchin harvest, seven days-per-week: Sea Urchin District 1 and District 2.

(4) It is unlawful for any harvester to fish for, take, or possess for commercial purposes more than 1,500 pounds per species of red sea urchin or green sea urchin per license for each weekly fishery opening period.

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 effective February 19, 2024:

WAC 220-340-75000D Commercial sea urchin fisheries.
(24-13)

WSR 24-05-056
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 24-24—Filed February 16, 2024, 3:51 p.m., effective February 16, 2024, 3:51 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: The purpose of this rule is to close fox trapping within the exterior boundaries of the Mount Baker-Snoqualmie, Okanogan, Wenatchee, and Gifford Pinchot National Forests to prevent accidental take of state endangered Cascade red fox.

Citation of Rules Affected by this Order: Amending WAC 220-417-010.

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 protect Cascade red fox populations, which are listed as an endangered species in Washington state. 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: February 16, 2024.

Kelly Susewind
Director

NEW SECTION

WAC 220-417-01000A Trapping seasons and regulations. Effective immediately, through March 31, 2024, the provisions of WAC 220-417-010 regarding trapping seasons for Fox shall be modified as described below. All other provisions of WAC 220-417-010 not addressed herein remain in effect unless otherwise amended by emergency rule:

Fox trapping is CLOSED within the exterior boundaries of the Mount Baker-Snoqualmie, Okanogan, Wenatchee, and Gifford Pinchot National Forests. Effective immediately.

WSR 24-05-064
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 24-21—Filed February 20, 2024, 11:11 a.m., effective March 1, 2024]

Effective Date of Rule: March 1, 2024.

Purpose: Opens clam, mussel, and oyster harvest on one beach that is currently closed to harvest year-round in permanent rules. This action will reopen a beach that was closed to accommodate construction at the park in 2023. Permanent rules are currently underway but will not become effective in time to return this season to its normal March 1 through April 30 timing. Proposed 2024 seasons have been announced.

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

Statutory Authority for Adoption: RCW 77.04.012, 77.04.020, 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 ensure an orderly fishery and manage within court-ordered sharing requirements. It will open recreational clam, mussel, and oyster harvesting opportunity at Penrose Point State Park beginning March 1, 2024. Permanent rule making for this beach is currently underway.

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: February 20, 2024.

Kelly Susewind
Director

NEW SECTION

WAC 220-330-11000P Clams other than razor clams, mussels—Areas and seasons. Notwithstanding the provisions of WAC 220-330-110, effective March 1 through April 30, 2024, the following provisions of WAC 220-330-110 regarding Penrose Point clam and mussel seasons shall be as described below. All other provisions not addressed herein, or unless otherwise amended by emergency rule, remain in effect:

Penrose Point State Park: Open March 1 through April 30, 2024, only.

NEW SECTION

WAC 220-330-14000M Oysters—Areas and seasons. Notwithstanding the provisions of WAC 220-330-140, effective March 1 through April 30, 2024, the following provisions of WAC 220-330-140 regarding Penrose Point oyster seasons shall be as described below. All other provisions not addressed herein, or unless otherwise amended by emergency rule, remain in effect:

Penrose Point State Park: Open March 1 through April 30, 2024, only.

WSR 24-05-074
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 24-19—Filed February 20, 2024, 2:09 p.m., effective March 1, 2024]

Effective Date of Rule: March 1, 2024.

Purpose: The purpose of this emergency rule is to implement periodic, weekly closures of recreational salmon seasons in Catch Record Card Areas 10 and 11 in order to extend the quotas later into the winter season.

Citation of Rules Affected by this Order: 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: Based on current run projections, and with input from recreational fishing advisors, this rule is needed to avoid early season closures and is intended to extend the available winter salmon quota later into the season.

There is insufficient time to adopt permanent rules.

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

Number of Sections Adopted at the Request of a 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: February 20, 2024.

Kelly Susewind
Director

NEW SECTION

WAC 220-313-06000Q Puget Sound salmon—Saltwater seasons and daily limits. Effective March 1 through April 15, 2024, salmon rules for Catch Record Card Areas 10 and 11 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 Agate Pass (waters west of a line from Point Monroe to Indianola and east of a line from Point Bolin to Battle Point), and year-round piers (Seacrest Pier, Waterman Pier, Bremerton Boardwalk, and Illahee State Park Pier):

Salmon: Open Wednesday through Saturday only, each week; daily limit 2 including no more than 1 hatchery Chinook. Release wild Chinook and chum. Closed Sunday through Tuesday, each week.

(2) Catch Record Card Area 11, except year-round piers (Des Moines Pier, Les Davis Pier, and Point Defiance Boathouse Dock):

(a) Salmon: Open Wednesday through Saturday only, each week; daily limit 2 including no more than 1 hatchery Chinook. Release wild Chinook and chum. Closed Sunday through Tuesday, each week.

(b) Commencement Bay (east of a line from Cliff House Restaurant to Sperry Ocean Dock): Closed to fishing for or retention of salmon.