

## WSR 24-19-001

## EMERGENCY RULES

## THE EVERGREEN STATE COLLEGE

[Filed September 4, 2024, 2:32 p.m., effective September 4, 2024, 2:32 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: To bring The Evergreen State College's student conduct code (code) into compliance with a new final rule governing sex discrimination grievance procedures recently adopted by the United States Department of Education and to update the code to ensure its prohibited conduct and procedures adequately protect the interests of the college community and the constitutional and procedural rights of individual students.

Citation of Rules Affected by this Order: Amending WAC 174-123-170, 174-123-200, 174-123-270, 174-123-280, 174-123-290, 174-123-310, 174-123-355, 174-123-360, 174-123-370, 174-123-380, 174-123-390, 174-123-400, 174-123-410, 174-123-420, 174-123-430, and 174-123-440.

Statutory Authority for Adoption: RCW 28B.40.120(12); chapter 34.05 RCW.

Other Authority: United States Department of Education, Title IX Amendments of 1972.

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: On April 19, 2024, the United States Department of Education released its final rule under Title IX. This rule requires institutions of higher education to adopt student disciplinary procedures addressing sex discrimination, including sex-based harassment. The deadline for implementing this new rule is August 1, 2024.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 16, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at the Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: September 4, 2024.

Daniel B. Ralph  
Rules Coordinator

OTS-5838.1

AMENDATORY SECTION (Amending WSR 21-10-022, filed 4/26/21, effective 5/27/21)

**WAC 174-123-170 Prohibited conduct.** The code of student rights and responsibilities recognizes two types of prohibited conduct: Conduct related to community, and conduct related to persons. The subsections below outline the basic structures of community that the code seeks to uphold, and the basic rights and expectations of students that the code seeks to support. Conduct prohibited under Title IX of the Education Amendments Act of 1972, 20 U.S.C. Sec. 1681, and associated procedures are set out in WAC 174-123-355 to 174-123-440 (supplemental Title IX student conduct procedures).

(1) Conduct related to community.

The Evergreen State College community is a vibrant and engaged collective of individuals who have committed to the mission of the college. The college's mission statement reads as follows: "As an innovative public liberal arts college, Evergreen emphasizes collaborative, interdisciplinary learning across significant differences. Our academic community engages students in defining and thinking critically about their learning. Evergreen supports and benefits from local and global commitments to social justice, diversity, environmental stewardship and service in the public interest." Students are encouraged to continue to grow individualistically while contributing to and shaping the Evergreen community as each person brings new ideas, new perspectives, and renewed focus that is invaluable at a liberal arts college.

Students in the college community are expected to practice academic integrity: To author their own ideas and critique and evaluate others' ideas in their own voices. The greater learning community of the college can thrive only if each person works with a genuine commitment to make their own authentic intellectual discoveries. To that end it is a community expectation that students and recognized organizations will not engage in the following prohibited conduct, which constitute violations of this code:

(a) **Academic dishonesty** which includes, but is not limited to, the following:

(i) Cheating includes any attempt to give or obtain unauthorized assistance relating to the completion of an academic assignment;

(ii) Plagiarism includes taking and using as one's own without proper attribution the ideas, writings, or work of another person in completing an academic assignment. Plagiarism may also include the unauthorized submission of academic work for credit that has been submitted for credit in another course;

(iii) Fabrication includes falsifying data, information, or citations in completing an academic assignment and also includes providing false or deceptive information to an instructor concerning the completion of an assignment;

(iv) Using assistance or materials that are expressly forbidden to complete an academic product or assignment;

(v) The unauthorized collaboration with any other person during the completion of independent academic work;

(vi) Knowingly falsifying or assisting in falsifying in whole, or in part, the contents of one's academic work;

(vii) Permitting any other person to substitute oneself to complete academic work; or

(viii) Engaging in any academic behavior specifically prohibited by a faculty member in the course covenant, syllabus, or individual or class discussion.

(b) **Damaging, defacing, destroying, or tampering** with college property or other personal or public property. This includes, but is not limited to, graffiti and vandalism.

(c) **Disorderly conduct** which includes any individual or group behavior which is abusive, obscene, violent, excessively noisy, or which unreasonably disturbs institutional functions, operations, classrooms, other groups or individuals. These behaviors include, but are not limited to, those which obstruct or interfere with institutional activities, programs, events, or facilities, such as:

(i) Any unauthorized occupancy of facilities owned or controlled by the college, or blockage of access to or from such facilities, or the occupation of college property after being given notice to depart;

(ii) Interference with the ability of any authorized person to gain access to any activity, program, event, or facility sponsored or controlled by the college;

(iii) Any obstruction or delay of a public safety officer, police officer, firefighter, EMT, or any official of the college;

(iv) The use of force or violence (actual or threatened) to deny, impede, obstruct, impair, or interfere with the freedom of movement of any person, or the performance of duties of any college employee;

(v) Participation in a disruptive or coercive demonstration. A demonstration is considered disruptive or coercive if it substantially impedes college operations, interferes with the rights of others, or takes place on premises or at times where students are not authorized to be;

(vi) Obstruction of the free flow of pedestrian or vehicular traffic on college property or at college sponsored/supervised functions; or

(vii) Public urination or defecation.

(d) **Disruptive behavior in the classroom** may be defined as, but not limited to, behavior that unreasonably obstructs or disrupts the learning environment (e.g., outbursts which disrupt the flow of instruction or prevent concentration on the subject taught, failure to cooperate in maintaining the learning community as defined in the course syllabus or covenant, and the continued use, after being given notice to stop, of any electronic or other noise or light emitting device which disturbs others, unless use of such technologies are an authorized accommodation for a documented disability for that program).

The faculty member has responsibility for maintaining a productive classroom and can order the temporary removal or exclusion from the classroom of any student engaged in disruptive behavior or behavior that violates the general rules and regulations of the college for each class session during which the behavior occurs. Extended or permanent exclusion from the classroom, beyond the session in which the conduct occurred, or further conduct action can be effected only through appropriate procedures of the college. The faculty member may also report incidents of classroom misconduct to the student conduct office.

(e) **Forgery, alteration, or the misuse** of college documents, records or identification cards.

(f) **Failure to comply** with the direction of or failure to identify yourself to a college official or other public official acting in the performance of their duties.

(g) **Unauthorized entry** into or onto, or the unauthorized remaining in, or upon, any college premises; or the unauthorized possession, duplication, or use of a college key or other access device.

(h) **Sounding of a false alarm** which includes, but is not limited to, initiating or causing to be initiated any false report, warning or threat, such as that of fire, explosion or emergency that intentionally causes a false emergency response; and the improper use or disabling of safety equipment and signs.

(2) Conduct related to persons.

Students of The Evergreen State College are to practice good citizenship in the campus community and beyond. Our collective efforts include implementation of the education, experiential learning, and skills gained through engagement with the faculty, staff, and students of the college. Engagement can be through civil discussions, a free exchange of ideas, participation in events and programs, or through other interactions where the desire to create spaces for learning are present. Students are encouraged to pursue new opportunities to engage and expand their intellectual curiosities and develop an understanding of the global society in which we live.

Students in the college community participate with fellow community members (faculty, staff, students, and members of the community beyond The Evergreen State College) in dialogue, educational activities, social events, and more with a focus on civil engagement and being one's best self. To that end it is a community expectation that students or recognized organizations will not engage in the following prohibited conduct, which constitute violations of this code:

(a) **Alcohol, drug, and tobacco violations.**

(i) Alcohol. The use, possession, delivery, sale, manufacture, or being observably under the influence of any alcoholic beverage, except as permitted by law and applicable college policies.

(ii) Cannabis. The use, possession, delivery, or sale of cannabis or the psychoactive compounds found in cannabis, regardless of form, or being observably under the influence of cannabis or the psychoactive compounds found in cannabis. Cannabis use and possession is illegal under federal law and the college is required to prohibit the possession, use and distribution of illicit drugs, including cannabis, as a condition of receiving federal funding.

(iii) Drugs. The use, possession, delivery, sale, manufacture, or being observably under the influence of any mood altering drug, or any other controlled substance under chapter 69.50 RCW, except as prescribed for a student's use by a licensed practitioner.

(iv) Tobacco, electronic cigarettes, and related products. The use of tobacco, electronic cigarettes, and related products is prohibited except as allowed by college policy in designated smoking areas. Related products include, but are not limited to, cigarettes, pipes, bidi, clove cigarettes, water pipes, hookahs, chewing tobacco, vaporizers, and snuff.

(b) **Assault.** Unwanted touching, physical harm or abuse, or threats of physical harm or abuse which threaten the health or safety of another person.

(c) **Cyber misconduct.** The term "cyber misconduct" includes, but is not limited to, behavior involving the use of a computer, computer network, the internet, or use of electronic communications including, but not limited to, electronic mail, instant messaging, list serves, electronic bulletin boards/discussion boards, ad forums and social media sites or platforms, to disrupt college function, adversely affect the pursuit of the college's objectives, or to stalk, harm or harass,

or engage in other conduct which threatens or is reasonably perceived as threatening the physical or mental safety of another person, or which is sufficiently severe, persistent, or pervasive that it interferes with or diminishes the ability of an individual to participate in or benefit from the services, activities, or privileges provided by the college, or an employee to engage in work duties.

(d) **Failure to be truthful to the college or a college official.** This includes, but is not limited to, knowingly making false charges against another member of the college community; and providing false or misleading information in an application for admission or to gain employment.

(e) **Failure to follow fire safety regulations.** Failure to evacuate during a fire alarm; the improper use or damaging of fire prevention or safety equipment, such as fire extinguishers, smoke detectors, alarm pull stations, or emergency exits; or the unauthorized setting of fires.

(f) **Harm.** Behavior directed at an individual that based on a reasonable person's standard is sufficiently severe, pervasive, or persistent such that it diminishes or interferes with the ability of an individual to participate in or benefit from the services, activities, or privileges provided by the college or an employee to engage in their work duties. This includes, but is not limited to, intimidation, verbal abuse, threat(s), bullying, or other conduct which threatens or is reasonably perceived as threatening the physical or mental safety of another person. Bullying is repeated or aggressive unwanted behavior, not otherwise protected by law that intentionally humiliates, harms, or intimidates another person.

(g) **Harassment.** Conduct against a person on the basis of protected status that is sufficiently severe, pervasive, or persistent as to interfere with or diminishes the ability of a person to participate in or benefit from the services, activities, or privileges provided by the college, or an employee to engage in work duties.

(h) **Hazing.** Conduct that includes any activity or method of initiation into a recognized organization or student social, living, learning, or athletic group that causes, or is likely to cause, bodily danger or physical or mental harm to any member of the college community.

(i) **Knowingly assisting another person to violate the code** or failing to report to a college official conduct that constitutes significant damage to property or a serious danger to the health or physical safety of an individual.

(j) **Lewd conduct.** Behavior which is sexualized or obscene that is not otherwise protected under the law including, but not limited to, exposing genitalia, and engaging in sexual intercourse or sexual activity in public.

(k) **Obstructive behavior in conduct conferences or hearings.** Any conduct at any stage of a process or investigation that is threatening or disorderly, including:

(i) Failure to abide by the directives of a student conduct official or college official(s) in the performance of their duties;

(ii) Knowing falsification, distortion, or misrepresentation of information before a student conduct official or hearing panel;

(iii) Deliberate disruption or interference with the orderly conduct of a conduct conference or hearing proceeding;

(iv) Making false statements to any student conduct officials or hearing panel;

(v) Attempting to influence the impartiality of a member of a hearing panel or a student conduct official prior to, or during the course of, a proceeding; or

(vi) Harassment or intimidation of any participant in the college conduct process.

(l) **Recording.** The recording of any private conversation, by any device, without the voluntary permission of all persons engaged in the conversation except as permitted by state law, chapter 9.73 RCW. For purposes of this section, the term "permission" will be considered obtained only when one party has announced to all other parties engaged in the communication or conversation that such communication or conversation will be recorded or transmitted; and the announcement itself is recorded as part of the conversation or communication.

(m) **Retaliation.** Harming, threatening, intimidating, coercing, or taking adverse action of any kind against a person because such person reported an alleged violation of the code or college policy, provided information about an alleged violation, or participated as a witness or in any other capacity in a college investigation or conduct proceeding.

(n) **Theft** (attempted or actual) of property, services, or identity. This includes, but is not limited to, using, taking, attempting to take, possessing, or aiding another to take college property or services, or property belonging to any person, without express permission. Identity theft is the use of another person's name and personal information including, but not limited to, private identifying information, without their permission in order to gain a financial advantage or obtain credit or other benefits in the other person's name.

(o) **Viewing,** distributing, photographing, or filming another person without that person's knowledge and voluntary permission, while the person being photographed, viewed, or filmed is in a place where they would have a reasonable expectation of privacy. The term "permission" will be considered obtained if there are signed waivers, written permission, or verbal agreement recorded with specificity to the content.

(p) **Violation of any college policy** including, but not limited to, residential and dining services policies, appropriate use of information technology resources policies, and WAC 174-136-043 regarding weapons.

(q) **Violation of federal, state, or local law** including being charged by law enforcement, or convicted of a felony or misdemeanor, under circumstances where it is reasonable to conclude that the presence of the person on college premises would constitute a danger to the physical or mental safety of a member(s) of the college community.

(r) **Stalking** is a course of conduct directed at a specific person or group that would cause a reasonable person to feel fear for their physical or mental safety, or the physical or mental safety of another. A course of conduct includes two or more acts including, but not limited to, those in which a person directly, or through third parties, by any action, method, device, or means follows, monitors, observes, surveils, threatens, or communicates to or about the complainant, or interferes with the complainant's property.

(s) **Sexual misconduct.** The term "sexual misconduct" includes sexual harassment, sexual exploitation, sexual violence, relationship violence, domestic violence, and stalking. (~~(Sexual harassment)~~) Sex discrimination as prohibited by Title IX is defined in the supplemental Title IX student conduct procedures. See WAC 174-123-355.

(3) Sexual misconduct and consent.

In order to understand the definitions of prohibited conduct in this section, and to adjudicate complaints of sexual misconduct, it is necessary to provide a further definition of consent. This section provides information about consent related to sexual misconduct.

Consent means knowing, voluntary, and clear permission by word or action, to engage in mutually agreed upon sexual activity. Each party has the responsibility to make certain that the other has consented before engaging in the activity. For consent to be valid, there must be at the time of the act of sexual intercourse or sexual contact actual words or conduct indicating freely given agreement to have sexual intercourse or sexual contact.

A person cannot consent if they are unable to understand what is happening or are disoriented, helpless, asleep, or unconscious for any reason, including due to alcohol or other drugs. An individual who engages in sexual activity when the individual knows, or should know, that the other person is physically or mentally incapacitated has engaged in nonconsensual conduct.

Intoxication is not a defense against allegations that an individual has engaged in nonconsensual sexual conduct.

Consent cannot be obtained by force or coercion. Force is the use of physical violence and/or imposing on someone physically to gain sexual access. Force also includes threats or intimidation (words or actions that cause an individual to submit to or comply with sexual contact or intercourse due to fear for their safety and/or implied threats) that overcomes free will or resistance. Coercion is unreasonable pressure for sexual contact or sexual intercourse. When someone makes clear to another person by word or action that they do not want to engage in sexual contact or intercourse, that they want to stop, or that they do not want to go past a certain point of sexual contact or intercourse, continued pressure beyond that point is coercive.

(a) **Sexual harassment.** The term "sexual harassment" means unwelcome sexual or gender-based conduct, including unwelcome sexual advances, requests for sexual favors, quid pro quo harassment, and other verbal, nonverbal, or physical conduct of a sexual or a gendered nature that is sufficiently severe, pervasive, or persistent as to:

(i) Deny or limit the ability of a person to participate in or benefit from the services, activities, or privileges provided by the college; or

(ii) Alter the terms or conditions of employment for a college employee or employees; and/or

(iii) Create an intimidating, hostile, or offensive environment for other community members.

(b) **Sexual exploitation.** The term "sexual exploitation" means conduct that takes nonconsensual or abusive sexual advantage of another for their own or another's benefit. Sexual exploitation includes, but is not limited to, nonconsensual recording of sexual activity or the nonconsensual distribution of a consensual or nonconsensual recording or image; going beyond the boundaries of consent; forcing another person to engage in sexual activity for payment; or knowingly exposing someone to or transmitting a sexually transmitted infection.

(c) **Sexual violence.** "Sexual violence" is a type of sexual discrimination and harassment. The term "sexual violence" means an act or acts of a sexual nature against a person without their consent. Nonconsensual sexual intercourse, nonconsensual sexual contact, domestic violence, relationship violence, and stalking are all types of sexual violence.

(i) **Nonconsensual sexual intercourse** is any sexual intercourse (anal, oral, or vaginal), however slight, with any object or body part, by a person upon another person, that is without consent and/or by force. Sexual intercourse includes anal or vaginal penetration by a penis, tongue, finger or another body part or object, or oral copulation by mouth to genital contact. Nonconsensual sexual intercourse also includes forcing a person to engage in vaginal or anal penetration by a penis, object, tongue or finger, or oral copulation by mouth to genital contact.

(ii) **Nonconsensual sexual contact** is any intentional sexual touching, however slight, with any object or body part, by a person upon another person that is without consent and/or by force. Sexual contact includes intentional contact with the lips, breasts, buttock, groin, or genitals, or clothing covering any of those areas, or touching another with any of these body parts, or making another touch you or themselves with or on any of these body parts, or any other intentional bodily contact in a sexual manner.

(d) **Domestic violence.** The term "domestic violence" means the infliction of physical harm, bodily injury, assault, or the fear of imminent physical harm, bodily injury, or assault committed against a current or former spouse or intimate partner, current or former cohabitant, a person with whom the person shares a child in common, or a person with whom one resides.

(e) **Relationship violence.** The term "relationship violence," also known as dating violence, means the infliction of physical harm, bodily injury, assault, or the fear of imminent physical harm, bodily injury or assault committed against a person who is or has been in a social relationship of a romantic or intimate nature with the complainant. The existence of such a relationship will be presumed based on the reporting party's statement and with consideration of the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship.

(f) **Stalking.** The term "stalking" means a course of conduct directed at a specific person or group that would cause a reasonable person to feel fear for their physical or mental safety, or the physical or mental safety of another. A course of conduct includes two or more acts including, but not limited to, those in which a person directly, or through third parties, by any action, method, device, or means follows, monitors, observes, surveils, threatens, or communicates to or about the complainant, or interferes with the complainant's property.

AMENDATORY SECTION (Amending WSR 21-10-022, filed 4/26/21, effective 5/27/21)

**WAC 174-123-200 Interim measures.** (1) **Interim restrictions.** The student conduct official or designee may institute interim restrictions prior to, or at any stage during, a student conduct proceeding when the physical or mental safety of any member of the college community is deemed at risk. The interim restriction may include a no contact order and/or loss of privileges.

(a) A student issued an interim restriction that includes loss of privileges will receive written notice of the interim restriction, the reason for instituting an interim restriction, and advised of the date, time, and place for a hearing regarding the interim restriction



before the student conduct official, or their designee. The hearing will take place no later than five business days from the effective date of the interim restriction.

(b) The interim restriction has immediate effect and will remain in place during any procedural review process, until an agreement of accountability exists, a student conduct official issues a determination of responsibility, an appeal panel issues a final determination, or the student conduct official notifies the respondent in writing that the interim restriction has been modified or is no longer in effect.

(2) **Interim suspension.** This is a temporary exclusion from enrollment, including exclusion from college premises or denial of access to all activities or privileges for which a respondent might otherwise be eligible, while an investigation or student conduct proceeding is pending. The senior college official or their designee may impose an interim suspension, which has immediate effect, if there is probable cause to believe that the respondent has violated any provision of the code and presents a substantial or ongoing danger to the physical or mental safety of any member of the college community; or poses an ongoing threat of substantial disruption of, or interference with, teaching, learning, or the operations of the college.

(a) Any student assigned an interim suspension will be provided oral or written notice of the interim suspension. If oral notice is given, a written notification will be served on the respondent within two business days of the oral notice.

(b) The written notice will be entitled "Notice of Interim Suspension" and will include:

(i) The reasons for imposing the interim suspension, including a description of the conduct giving rise to the interim suspension and reference to the provisions of the code allegedly violated;

(ii) The date, time, and location when the respondent must appear before the senior college official or their designee for a hearing on the interim suspension; and

(iii) The conditions, if any, under which the respondent may physically access the campus or communicate with members of the campus community. If the respondent has been barred from the campus, a notice will be included that warns the student that their privilege to enter into or remain on college premises has been withdrawn, and that the respondent will be considered trespassing if the respondent enters the college campus other than as approved by the senior college official or their designee.

(c) The senior college official or their designee will conduct a hearing on the interim suspension within five business days after imposition of the interim suspension.

(d) During the interim suspension hearing, the issue before the senior college official or their designee is whether there are reasonable grounds to believe that the interim suspension should be continued pending the conclusion of student conduct proceedings and/or whether the interim suspension should be less restrictive in scope.

(e) The student will be afforded an opportunity to explain why interim suspension should not be continued while conduct proceedings are pending or why the interim suspension should be less restrictive in scope.

(f) If the student fails to appear at the designated hearing time, the senior college official or their designee may order that the interim suspension remain in place pending the conclusion of the investigation and conduct or Title IX proceedings.

(g) As soon as practicable following the hearing, the senior college official or their designee will issue a written decision which will include a brief explanation for any decision continuing and/or modifying the interim suspension.

(h) To the extent permissible under applicable law, the senior college official or their designee will provide a copy of the decision to all persons or offices who may be bound or protected by it.

(i) In cases involving allegations of assault, non-Title IX sexual misconduct, or Title IX (~~(sexual harassment)~~) sex discrimination, the complainant will be notified that an interim suspension has been imposed on the same day that the interim suspension notice is served on the student. The college will also provide the complainant with same day notice of any subsequent changes to the interim suspension order.

AMENDATORY SECTION (Amending WSR 21-10-022, filed 4/26/21, effective 5/27/21)

**WAC 174-123-270 Brief adjudicative appeal proceedings—Initial hearing.** Brief adjudicative proceedings will be conducted by a conduct review officer. Conduct review officers shall be designated by the senior college official. The conduct review officer will not participate in any case in which they are or have been involved; or in which there is direct or personal interest, prejudice, or bias.

(1) The parties to a brief adjudicative proceeding are the respondent, the student conduct official, and the complainant in cases involving assault or (~~non-Title IX~~) sexual misconduct. Before taking action, the conduct review officer will conduct an informal hearing and provide each party:

(a) An opportunity to be informed of the college's view of the matter; and

(b) An opportunity to explain the student's view of the matter.

(2) The conduct review officer will schedule an informal hearing and serve written notice of the hearing to the parties at least seven calendar days in advance of the hearing. The notice of informal hearing will include the following:

(a) The date, time, location, and nature of the hearing;

(b) A date by which the parties must identify advisors as well as requests for reasonable accommodations, if any;

(c) A date on which the parties may review documents held by the student conduct official; and

(d) A date by which the parties must provide a list of witnesses and copies of any documents to other parties and to the conduct review officer.

(3) The conduct review officer will serve an initial decision upon the parties within (~~ten~~) 10 calendar days of the completion of the informal hearing. The initial decision will contain a brief written statement of the reasons for the decision and information about how to seek administrative review of the initial decision. If no request for review is filed within (~~ten~~) 10 business days of service of the initial decision, the initial decision will be deemed the final decision.

(4) If the conduct review officer determines that the respondent's conduct may warrant imposition of a college or college housing

suspension of more than (~~ten~~) 10 days or college expulsion or college housing eviction, the matter will be referred to the student conduct appeal panel for a new hearing.

AMENDATORY SECTION (Amending WSR 21-10-022, filed 4/26/21, effective 5/27/21)

**WAC 174-123-280 Brief adjudicative appeal proceedings—Administrative review of initial decision.** (1) An initial decision may be appealed to the senior college official or designee, provided a party files a written request including the grounds for appeal for review with the conduct review officer within (~~ten~~) 10 calendar days of service of the initial decision. The grounds for appeal are limited to new information not available at the time of the initial process, procedural error that impacted the outcome of the process, and/or bias of the student conduct official, or the conduct review officer.

(2) The senior college official or designee will not participate in any case in which they are or have been involved as a complainant or witness, or in which there is direct or personal interest, prejudice, or bias.

(3) During the appeal, the senior college official or designee will give each party an opportunity to file written responses explaining their view of the matter and will make any inquiries necessary to ascertain whether the sanctions should be modified or whether the proceedings should be referred to the student conduct appeal panel for a hearing.

(4) The decision on appeal must be in writing and must include a brief statement of the reason for the decision and must be served on the parties within (~~twenty~~) 20 calendar days of the request for appeal. The decision will contain a notice whether appeal to Thurston County superior court is available.

(5) If the senior college official or designee determines that the respondent's conduct may warrant imposition of a college suspension of more than (~~ten~~) 10 days or college expulsion, the matter will be referred to the student conduct appeal panel for a hearing.

(6) In cases involving allegations of assault or (~~non-Title IX~~) sexual misconduct, the senior college official or designee, on the same date as the final decision is served on the respondent, will serve a written notice upon the complainant informing the complainant whether the allegations of assault or (~~non-Title IX~~) sexual misconduct were found to have merit and describing any resolution and sanctions and/or conditions imposed upon the respondent, including suspension or expulsion of the respondent. The decision will contain a notice whether appeal to Thurston County superior court is available.

AMENDATORY SECTION (Amending WSR 21-10-022, filed 4/26/21, effective 5/27/21)

**WAC 174-123-290 Appeal panel proceedings—Hearing procedures.**

(1) If not addressed in the code, the proceedings of the student conduct appeal panel will be governed by the Administrative Procedure Act, chapter 34.05 RCW.

(2) The senior college official, or designee, will schedule a hearing before the student conduct appeal panel and serve written notice of the hearing to the parties at least (~~ten~~) 10 calendar days in advance of the hearing. The notice period may be shortened by the senior college official, or designee, with the parties' permission; and the senior college official may reschedule a hearing to a later time for good cause.

(3) The notice of hearing will include the following:

(a) The date, time, location, and nature of the hearing;

(b) A date by which the parties must identify advisors as well as requests for reasonable accommodations, if any;

(c) A date by which the parties must provide a list of witnesses and copies of any documents to be provided to the appeal panel. The date for providing documents must be at least five business days prior to the hearing date. Documents and witness names submitted after the deadline stated in the hearing notice will be admitted at the discretion of the appeal panel. Documents and witness names submitted after the deadline may be excluded from the hearing absent a showing of good cause;

(d) A date on which the parties to the appeal may review documents and witness lists submitted to the panel, which must be no less than three business days prior to the hearing.

(4) The panel chair is authorized to make determinations regarding requests for postponement, release of information, or other procedural requests, provided that good cause for the request is shown. Requests for reasonable accommodations based on disability will be determined by the college's disability compliance officer.

(5) The panel chair may provide to the panel members in advance of the hearing copies of:

(a) The student conduct official's determination of responsibility and required resolution and sanction(s);

(b) The decision of the conduct review officer, if any;

(c) The review on appeal of the senior college official, if any; and

(d) The notice of appeal by the respondent or complainant.

If doing so, the chair should remind the members that these documents are not evidence of any facts they may allege.

(6) The parties may agree before the hearing to designate specific exhibits as admissible without objection and, if they do so, whether the panel chair may provide copies of these admissible exhibits to the panel members before the hearing.

(7) Only those materials and information presented at the hearing will be considered. The chair may exclude or limit ineffectual, irrelevant, or unduly repetitious information.

(8) The student conduct official or designee, upon request, will provide reasonable assistance to the parties in obtaining relevant and admissible evidence that is within the college's control.

(9) Communications between panel members and other hearing participants regarding any issue in the proceeding, other than procedural communications that are necessary to maintain an orderly process, are generally prohibited without notice and opportunity for all parties to participate. Any improper communication, as further provided in RCW 34.05.455, is prohibited.

(10) Each party may be accompanied at the hearing by an advisor of the party's choice. A respondent, or complainant in a case involving allegations of (~~non-Title IX~~) sexual misconduct or assault may elect to be represented by an attorney at the their own cost, and will

be deemed to have waived that right unless, at least five business days before the hearing, written notice of the attorney's identity and participation is filed with the panel chair with a copy to the student conduct official. The panel will ordinarily be advised by an assistant attorney general. The student conduct official may be represented by an assistant attorney general.

(11) The complainant and the respondent are neither encouraged nor required to be assisted by an advisor of their choosing at their own expense. Both the respondent and the complainant will be provided the option to have a trained procedural advisor provided by the college to assist them prior to and during the hearing in order to understand their rights in the appeal process. A college procedural advisor may not represent an individual in the appeal proceeding. Proceedings will not be automatically delayed due to the scheduling conflicts of any advisor.

(12) Each party is expected to present all information during the proceedings.

(13) In cases where the complaint alleges (~~non-Title IX~~) sexual misconduct or assault, the complainant may present information during the proceedings.

(14) Upon the failure of any party to attend or participate in a hearing, the student conduct appeal panel may either:

(a) Proceed with the hearing and issue a determination; or

(b) Serve a decision of default in accordance with RCW 34.05.440.

(15) The hearing is a closed proceeding which includes only members of the panel; the advisor to the panel, if any; the student conduct official and their advisor, if any; the complainant and the respondent and their advisor(s), if any; and persons requested to provide information at the hearing. Admission of any other person to the hearing is at the discretion of the panel chair.

(16) All procedural questions and other decisions are subject to the final decision of the panel chair unless otherwise provided for in these rules. The chair will ensure that the proceeding is held in an orderly manner such that the rights of all parties to a full, fair, and impartial proceeding that adheres to the code is achieved.

(17) There will be a single verbatim sound recording of the hearing, and the record will be on file with the senior college official and is the property of the college in accordance with RCW 34.05.449.

(18) All testimony will be given under oath or affirmation. Evidence will be admitted or excluded at the discretion of the panel chair.

(19) In cases involving allegations of (~~non-Title IX~~) sexual misconduct or assault, neither party will directly question or cross examine one another. Attorneys for the parties are also prohibited from questioning the other party. All cross examination questions will be directed to the panel chair, who has the discretion to pose the questions on the party's behalf.

(20) In cases involving Title IX (~~sexual harassment~~) sex discrimination, non-Title IX sexual misconduct, or assault, the senior college official may designate an external hearing panel chair to preside over the hearing. The external hearing panel chair will perform all of the functions of a presiding officer under the code of student rights and responsibilities and WAC 174-108-910, unless otherwise specified in the appointment letter.

AMENDATORY SECTION (Amending WSR 21-10-022, filed 4/26/21, effective 5/27/21)

**WAC 174-123-310 Appeal panel proceedings—Determination.** (1) At the conclusion of the hearing, the student conduct appeal panel will permit the parties to make closing statements in whatever form it wishes to receive them. The panel also may permit each party to propose findings, conclusions, and/or a proposed decision for its consideration.

(2) Only members of the student conduct appeal panel and the advisor to the panel, if any, will be present for deliberations. Deliberations are not recorded.

(3) Within (~~fifteen~~) 15 calendar days following the conclusion of the hearing, or the panel's receipt of closing arguments, whichever is later, the panel will issue a decision in accordance with RCW 34.05.461 and WAC 10-08-210 or written notice specifying the date by which it will issue a decision. The decision will include findings on all material issues of fact and conclusions on all material issues of law, including which, if any, provisions of the code were violated. Any findings based substantially on the credibility of evidence or the demeanor of witnesses will be so identified.

(4) The panel's decision will also include a determination on appropriate resolution and sanction(s), if any. The panel may affirm, reverse, or modify the required resolution and sanction(s) issued by the student conduct official and/or issue additional sanction(s) or condition(s) as authorized herein.

(5) The panel's decision will also include a statement of the available procedures and time frames for seeking reconsideration. The decision will also include a notice whether appeal to Thurston County superior court is available.

(6) The panel chair will serve copies of the decision on the parties through the senior college official's office. It is the responsibility of the student to forward any notice or communication to their advisor. If a student signs a release of information, the chair of the panel will provide the decision to legal counsel representing a student.

(7) In cases involving allegations of assault, non-Title IX sexual misconduct, or Title IX (~~sexual harassment~~) sex discrimination, the chair of the student conduct appeal panel, on the same date as the decision is served to the respondent, will serve a written notice to the complainant informing the complainant of the panel's decision and describing any sanction(s) and/or condition(s) issued to the respondent, including suspension or expulsion of the respondent. The complainant may request reconsideration of the panel's decision subject to the same procedures and deadlines applicable to other parties. The notice will also inform the complainant of the available procedures and time frames for seeking reconsideration. The decision will also include a notice whether appeal to Thurston County superior court is available.

AMENDATORY SECTION (Amending WSR 21-10-022, filed 4/26/21, effective 5/27/21)

**WAC 174-123-355 Order of precedence.** This supplemental procedure applies to allegations of (~~(sexual harassment)~~) sex discrimination arising on or after August 1, 2024, subject to Title IX jurisdiction pursuant to regulations promulgated by the United States Department of Education. See 34 C.F.R. Part 106. To the extent these supplemental hearing procedures conflict with Evergreen's standard (~~(disciplinary)~~) code of student rights and responsibilities and procedures, WAC 174-123-110 through 174-123-340, these supplemental procedures shall take precedence.

AMENDATORY SECTION (Amending WSR 21-10-022, filed 4/26/21, effective 5/27/21)

**WAC 174-123-360 Title IX definitions.** For purposes of the supplemental Title IX student conduct procedure, the following terms used have the definitions contained in the Title IX policy and procedure and the terms below are defined as follows:

(1) **Consent** means knowing, voluntary, and clear permission by word or action, to engage in mutually agreed upon sexual activity. Each party has the responsibility to make certain that the other has consented before engaging in the activity. For consent to be valid, there must be at the time of the act of sexual intercourse or sexual contact actual words or conduct indicating freely given agreement to have sexual intercourse or sexual contact.

A person cannot consent if they are unable to understand what is happening or are disoriented, helpless, asleep, or unconscious for any reason, including due to alcohol or other drugs. An individual who engages in sexual activity when the individual knows, or should know, that the other person is physically or mentally incapacitated has engaged in nonconsensual conduct.

Intoxication is not a defense against allegations that an individual has engaged in nonconsensual sexual conduct.

Consent cannot be obtained by force or coercion. Force is the use of physical violence and/or imposing on someone physically to gain sexual access. Force also includes threats or intimidation (words or actions that cause an individual to submit to or comply with sexual contact or intercourse due to fear for their safety and/or implied threats) that overcomes free will or resistance. Coercion is unreasonable pressure for sexual contact or sexual intercourse. When someone makes clear to another person by word or action that they do not want to engage in sexual contact or intercourse, that they want to stop, or that they do not want to go past a certain point of sexual contact or intercourse, continued pressure beyond that point is coercive.

(2) **Complaint** means a written or oral request that can be objectively understood as a request for Evergreen to investigate and make a determination about alleged sex discrimination.

(3) **Complainant** means (~~(an)~~) the following individuals who (~~is~~ alleged to be the victim of conduct) have been subjected to alleged conduct that could constitute (~~(sexual harassment-~~

~~(3-))~~ sex discrimination:

(a) A student or employee; or

(b) A person other than a student or employee who was participating in or attempting to participate in Evergreen's educational program or activity at the time of the alleged discrimination.

~~(4) **Respondent** means an individual who has been ((reported to be the perpetrator of conduct that could constitute sexual harassment.~~

~~(4) **Formal complaint** means a writing submitted by the complainant or signed by the Title IX coordinator alleging sexual harassment against a respondent and requesting that the college conduct an investigation)) alleged to have violated Evergreen's Title IX policy and procedure's prohibited conduct.~~

(5) **Education program or activity** includes locations, events, or circumstances over which Evergreen exercised substantial control over both the respondent and the context in which the alleged ((sexual harassment)) sex discrimination occurred. It also includes any building owned or controlled by a student organization officially recognized by the college.

~~(6) ((**Determination of responsibility** means a decision of the hearing panel regarding whether the respondent is responsible for the alleged violation(s) of this Title IX policy. If the respondent is found responsible for the alleged violations, the determination of responsibility will include discipline and sanctions, as appropriate.~~

~~(7)) **Interim suspension** means a temporary exclusion from enrollment, including exclusion from college premises or denial of access to all activities or privileges for which a respondent might otherwise be eligible, pending investigation and resolution of disciplinary proceedings pursuant to the procedure and standards set forth in WAC 174-123-200 (2).~~

(7) **Confidential employee** means an Evergreen employee whose communications are privileged and confidential under federal or state law. An employee's status as a confidential employee only applies when they are functioning within the scope of duties to which the privilege or confidentiality applies.

(8) **Investigation procedure** is the process Evergreen uses to initiate, informally resolve, and/or investigate allegations that an individual has violated Evergreen policies prohibiting sex discrimination or sex-based harassment.

(9) **Peer retaliation** means retaliation by a student against another student or an employee against another employee.

(10) **Pregnancy or related conditions** means:

(a) Pregnancy, childbirth, termination of pregnancy, or lactation;

(b) Medical conditions related to pregnancy, childbirth, termination of pregnancy, or lactation;

(c) Recovery from pregnancy, childbirth, termination of pregnancy, lactation, or related medical conditions.

(11) **Relevant** means related to the allegations of sex discrimination under investigation. Questions are relevant when they seek evidence that may aid in showing whether the alleged sex discrimination occurred, and evidence is relevant when it may aid a decision maker in determining whether the alleged sex discrimination occurred.

(12) **Remedies** mean measures provided to a complainant or other person whose equal access to Evergreen's education program or activity has been limited or denied by sex discrimination. These measures are intended to restore or preserve that person's access to educational programs and activities after a determination if sex discrimination has occurred.



(13) **Student employee** means an individual who is both a student and an employee of the college. When a complainant or respondent is a student employee, Evergreen will make a fact-specific inquiry to determine whether the individual's primary relationship with the college is to receive an education and whether any alleged code of student rights and responsibilities violations including, but not limited to, sex-based harassment, occurred while the individual was performing employment-related work.

(14) **Student group** is a student organization, athletic team, or living group including, but not limited to, student clubs and organizations, members of a class or student cohort, student performance groups, and student living groups.

(15) **Supportive measures** means reasonably available, individualized and appropriate, nonpunitive and nondisciplinary measures offered by Evergreen's Title IX coordinator to the complainant and respondent without unreasonably burdening either party, and without fee or charge, for purposes of:

(a) Restoring or preserving the party's access to Evergreen's educational programs and activities, including measures that are designed to protect the safety of the parties or Evergreen's educational environment; or

(b) Providing support during Evergreen's investigation and disciplinary procedures, or during any informal resolution process.

(16) **Title IX personnel** are the Title IX coordinator and designees; investigators; decision makers and hearing panel members at both the hearing and appeal level responsible for administering Evergreen's Title IX policy and procedure; facilitators of the informal resolution process, and any other employees who are responsible for implementing Evergreen's Title IX policy and procedures for students and employees or have the authority to modify or terminate supportive measures.

(17) **Title IX coordinator** is responsible for processing Title IX complaints and conducting and/or overseeing investigations and informal resolution processes under this procedure, providing supportive measures and remedies if applicable.

AMENDATORY SECTION (Amending WSR 21-10-022, filed 4/26/21, effective 5/27/21)

**WAC 174-123-370 Prohibited conduct under Title IX.** Pursuant to ((~~RCW 28B.50.140(13) and~~) Title IX of the Education Amendments Act of 1972, 20 U.S.C. Sec. 1681, Evergreen may impose disciplinary sanctions up to and including dismissal from Evergreen against a student (~~who~~ commits, attempts to commit, or aids, abets, incites, encourages, or assists) or student groups who have been found responsible for committing, attempting to commit, aiding, abetting, inciting, encouraging, or assisting another person to commit(~~(, an)~~) or engage in act(s) of ("sexual harassment.") sex discrimination, including sex-based harassment.

(1) **Sex discrimination**, which includes sex-based harassment, occurs when a respondent causes more than de minimis (insignificant) harm to an individual by treating them differently from an otherwise similarly situated individual based on:

(a) Sex stereotypes;

(b) Sex characteristics;

(c) Pregnancy or related conditions;

(d) Sexual orientation; or

(e) Gender identity.

Conduct that prevents a person from participating in an education program or activity consistent with a person's gender identity subjects a person to more than de minimis harm on the basis of sex and is prohibited.

(2) **Sex-based harassment.** For purposes of this supplemental procedure, (~~"sexual harassment" encompasses the following conduct:~~

~~(1))~~ sex-based harassment is a type of sex discrimination that occurs when a respondent engages in the following discriminatory conduct on the basis of sex:

(a) Quid pro quo harassment. An (~~Evergreen~~) employee (~~conditioning the provision of~~), agent, or other person authorized by Evergreen to provide an aid, benefit, or service (~~of Evergreen on an individual's~~) under Evergreen's educational program or activity explicitly or impliedly conditioning the provision of such an aid, benefit, or service on a person's participation in unwelcome sexual conduct.

~~((2))~~ (b) Hostile environment. Unwelcome sex-based conduct that (~~a reasonable person would find to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to~~), based on the totality of the circumstances, is subjectively and objectively offensive and is so severe or pervasive that it limits or denies a person's ability to participate in or benefit from Evergreen's educational programs or activities(~~, or Evergreen employment~~) (i.e., creates a hostile environment). Whether a hostile environment has been created is a fact-specific inquiry that includes consideration of the following:

(i) The degree to which the conduct affected the complainant's ability to access Evergreen's educational program or activity;

(ii) The type, frequency, and duration of the conduct;

(iii) The parties' ages, roles within Evergreen's educational program or activity, previous interactions, and other factors about each party that may be relevant to evaluating the effects of the conduct;

(iv) The location of the conduct and the context in which the conduct occurred; and

(v) Other sex-based harassment in Evergreen's educational program or activity.

~~((3))~~ (c) Sexual (~~assault~~) violence. Sexual (~~assault~~) violence includes the following conduct:

~~((a))~~ (i) Nonconsensual sexual intercourse. Any actual or attempted sexual intercourse (anal, oral, or vaginal), however slight, with any object or body part, by a person upon another person, that is without consent and/or by force. Sexual intercourse includes anal or vaginal penetration by a penis, tongue, finger, or object, or oral copulation by mouth to genital contact or genital to mouth contact.

~~((b))~~ (ii) Nonconsensual sexual contact/fondling. Any actual or attempted sexual touching, however slight, with any body part or object, by a person upon another person that is without consent and/or by force. Sexual touching includes any bodily contact with the breasts, groin, mouth, or other bodily orifice of another individual, or any other bodily contact in a sexual manner.

~~((e))~~ (iii) Incest. Sexual intercourse or sexual contact with a person known to be related to them, either legitimately or illegitimately, as an ancestor, descendant, brother, or sister of either wholly or half related. Descendant includes stepchildren and adopted children under the age of (~~eighteen~~) 18.

~~((d))~~ (iv) Statutory rape. ((Consensual)) Nonforcible sexual intercourse ((between someone who is eighteen years of age or older and someone who is under the age of sixteen)) with a person who is under the statutory age of consent.

~~((4))~~ (3) Domestic violence. Physical violence, bodily injury, assault, the infliction of fear of imminent physical harm, sexual assault, ~~((or))~~ coercive control, damage or destruction of personal property, stalking, or any other conduct prohibited under RCW 10.99.020, committed ((by a person with whom the victim shares a child in common,)) by a person who is cohabitating with or has cohabitated with the victim as a spouse, by a person similarly situated to a spouse of the victim under the domestic or family violence laws of the state of Washington, or by any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of the state of Washington, RCW 26.50.010.

~~((5))~~ (4) Dating violence. Physical violence, bodily injury, assault, the infliction of fear of imminent physical harm, sexual assault, or stalking committed by a person:

(a) Who is or has been in a social relationship of a romantic or intimate nature with the victim; and

(b) Where the existence of such a relationship shall be determined based on a consideration of the following factors:

(i) The length of the relationship;

(ii) The type of relationship; and

(iii) The frequency of interaction between the persons involved in the relationship.

~~((6))~~ (5) Stalking. Engaging in a course of conduct directed at a specific person that would cause a reasonable person to fear for their safety or the safety of others, or suffer substantial emotional distress.

(6) Retaliation. Means intimidation, threats, coercion, or discrimination against a person by Evergreen, a student, or an employee or other person authorized by Evergreen to provide aid, benefit, or service under Evergreen's educational program or activity, for the purpose of interfering with any right or privilege secured by Evergreen policies and procedures prohibited sex discrimination, or because the person has reported information, made a complaint, testified, assisted, or participated or refused to participate in any manner in an investigation, proceeding, or hearing under this part, including in an informal resolution process or this procedure. Nothing in this definition prevents Evergreen from requiring an employee to provide aid, benefit, or service under Evergreen's educational program or activities to participate as a witness in, or otherwise assist with, an investigation, proceeding, or hearing.

AMENDATORY SECTION (Amending WSR 21-10-022, filed 4/26/21, effective 5/27/21)

**WAC 174-123-380 Title IX jurisdiction.** (1) This supplemental procedure applies only if the alleged misconduct:

(a) ~~((Occurred in the United States,))~~ Meets the definition of sex discrimination, sex-based harassment or retaliation as defined in this procedure, including causing more than de minimis harm to the complainant;

(b) ~~Occurred ((during an Evergreen))~~ in the United States or interfered with the complainant's ability to access or participate in Evergreen's educational programs or ((activity)) activities in the United States; and

(c) ~~((Meets the definition of sexual harassment as that term is defined in this supplemental procedure.~~

~~(2) For purposes of this procedure, an "educational program or activity" is defined as locations, events, or circumstances over which Evergreen exercised substantial control over both the respondent and the context in which the alleged sexual harassment occurred. This definition includes any building owned or controlled by a student organization that is officially recognized by Evergreen.~~

~~(3))~~ Occurred during an Evergreen educational program or activity or interferes with the complainant's ability to access or participate in Evergreen's educational program or activity.

(2) Proceedings under this procedure must be dismissed if the Title IX coordinator determines that one or all of the requirements of subsection (1)(a) through (c) of this section have not been met. Dismissal under this procedure does not prohibit the college from pursuing other disciplinary action based on allegations that the respondent violated other provisions of Evergreen's code of student rights and responsibilities, WAC 174-123-170.

~~((4))~~ (3) If the Title IX coordinator ((and/or the student conduct official)) determines the facts in the investigation report are not sufficient to support Title IX jurisdiction and/or pursuit of a Title IX violation, the ((student conduct official will)) Title IX coordinator must issue a notice of dismissal in whole or part to ((the)) both parties explaining why some or all of the Title IX claims have been dismissed.

(4) Both parties can appeal the dismissal of the complaint, with the procedures described in this policy.

AMENDATORY SECTION (Amending WSR 21-10-022, filed 4/26/21, effective 5/27/21)

**WAC 174-123-390 Initiation of discipline.** (1) Upon ~~((receiving the Title IX))~~ receipt of the investigation report ~~((from the Title IX coordinator)),~~ the ~~((student conduct official will))~~ decision maker shall independently review the report to determine whether ~~((there are sufficient grounds to pursue a disciplinary action against the respondent for engaging in prohibited conduct under Title IX.~~

~~(2) If the student conduct official determines that there are sufficient grounds to proceed under these procedures, the student conduct official will initiate a Title IX disciplinary proceeding by filing a written disciplinary notice with the chair of the hearing panel. The hearing panel chair will serve the notice on the respondent and the complainant, and their respective advisors. The notice must:~~

~~(a) Set forth the basis for Title IX jurisdiction;~~

~~(b) Identify the alleged Title IX violation(s);~~

~~(c) Set forth the facts underlying the allegation(s);~~

~~(d) Identify the range of possible sanctions that may be imposed if the respondent is found responsible for the alleged violation(s); and~~

~~(e) Explain that the parties are entitled to be accompanied by their chosen advisors during the hearing and that:~~

~~(i) The advisors will be responsible for questioning all witnesses and the other party(ies) on the party's behalf;~~  
~~(ii) An advisor may be an attorney; and~~  
~~(iii) Evergreen will appoint the party an advisor of the college's choosing at no cost to the party, if the party fails to do so; and~~

~~(iv) A party may select to have an individual as emotional support with them during Title IX processes. This individual is separate from an advisor, and will serve the purpose of providing care and emotional support for the party, but will not participate during the processes.~~

~~(3) Explain that if a party fails to appear at the hearing, a decision of responsibility may be made in their absence), by the preponderance of the evidence, there was a violation of Evergreen's Title IX policy and procedure and prohibited conduct under these rules, and if so what disciplinary sanction(s) and/or remedies will be determined. The decision maker has the ability to speak with parties at their discretion should additional information be needed. The decision maker will, within 14 calendar days of receiving the investigation report, serve the respondent, complainant and Title IX coordinator with a proposed order, which includes a description of the facts and conclusions supporting the decision, as well as sanction(s). The time for serving this proposed order may be extended by the decision maker for good cause.~~

~~(2) The decision maker will be responsible for drafting the proposed order that:~~

~~(a) Identifies the allegations of sex discrimination;~~

~~(b) Describes the procedures of this policy and process, starting with Evergreen's receipt of the complaint through the proposed order, including notices to parties, interviews with witnesses and parties, site visits, methods used to gather evidence, and interviews held;~~

~~(c) Makes findings of fact supporting the proposed order;~~

~~(d) Reaches conclusions as to whether the facts establish whether the respondent is responsible for engaging in sex discrimination in violation of Title IX;~~

~~(e) Contains a statement of, and a rationale for the determination of responsibility for each allegation;~~

~~(f) Describes the disciplinary sanction or conditions imposed against the respondent, if any;~~

~~(g) Describes to what extent, if any, the complainant is entitled to remedies designed to restore or preserve the complainant's equal access to Evergreen's educational programs and activities; and~~

~~(h) Describes the process for requesting an appeal hearing to the Title IX coordinator.~~

~~(3) The proposed order shall be served on the parties and the Title IX coordinator. If the case involves allegations of sex-based harassment, the proposed order shall be served on the parties and Title IX coordinator simultaneously.~~

~~(4) The complainant or respondent shall have 21 calendar days from service of the proposed order to either accept the proposed order or request an appeal hearing before the Title IX hearing panel. The request may be verbal or written but must be clearly communicated through the Title IX coordinator. Requests for appeal must identify the specific findings of fact and/or conclusions in the proposed order being challenged and must contain argument(s) as to why the appeal should be granted.~~

(5) Upon receiving a request for an appeal, the Title IX coordinator shall promptly notify the decision maker, the other party, party's advisors, and the appeal hearing chair of the request and forward a copy of the proposed order to the appeal hearing chair. The written appeal notice must:

- (a) Set forth the basis of Title IX jurisdiction;
  - (b) Identify the alleged Title IX violation(s);
  - (c) Set forth the facts underlying the allegation(s);
  - (d) Explain to the parties that they will have an opportunity to present relevant and not otherwise impermissible evidence to a trained, impartial appellate officer(s);
  - (e) Provide the proposed order which makes clear the rationale for the decision and sanctions;
  - (f) Explain that the parties are entitled to be accompanied by an advisor of their choosing during the hearing and that:
    - (i) Advisors will be responsible for questioning all witnesses and the other party on the party's behalf;
    - (ii) Advisors may be an attorney;
    - (iii) Evergreen will appoint the party an advisor of Evergreen's choosing at no cost to the party if the party does not choose an advisor;
  - (g) Explain that if a party fails to appear at the hearing, a decision on the appeal may be made in the party's absence;
  - (h) A statement that the parties are entitled to an equal opportunity to access relevant and permissible evidence, or a description of the evidence upon request and prior to the appeal hearing.
- (6) If no requests for an appeal hearing is provided to the Title IX coordinator within 21 calendar days, the decision maker's proposed order will be final and the disciplinary sanctions, if any, shall be implemented immediately.
- (7) Service of the final order or any other document required to be served under this procedure shall be done:
- (a) In person; or
  - (b) By first class or certified mail to the party's last known address and by electronic mail to the party's Evergreen email address.

AMENDATORY SECTION (Amending WSR 21-10-022, filed 4/26/21, effective 5/27/21)

**WAC 174-123-400 Appeal prehearing procedure.** (1) In cases where the proposed order and sanctions are not expulsion or suspension over 10 calendar days, parties will have their appeal hearing through a brief adjudicative proceeding, conducted by an appellate officer and in accordance with WAC 174-123-270 through 174-123-280. In cases where the proposed order and sanctions are expulsion or suspension over 10 days, parties will have their appeal hearing heard through a hearing panel in accordance to WAC 174-123-290 through 174-123-310. In all cases, the provisions and requirements of this supplemental Title IX student conduct procedures shall apply in addition to the rules for a brief adjudicative appeal and hearing panel identified above.

(2) Upon receiving the ((disciplinary notice)) proposed order and the request for an appeal, the ((hearing panel chair)) Title IX coordinator will send a hearing notice to all parties, in compliance with WAC ((174-123-290(3))) 174-123-390(5). In no event will the hearing date be set less than ((ten)) 10 days after the Title IX coordinator

provided the ~~((final investigation report))~~ proposed order to the parties. Evergreen may, at its discretion, contract with an administrative law judge or other qualified person to act as the hearing panel.

~~((2) A party may choose an advisor to be at the hearing with them. The advisor will be conducting the cross-examination of parties and witnesses. The full names and contact information for all advisors selected by the parties to appear at the hearing must be submitted to the hearing panel chair at least five days before the hearing.~~

~~(3) A party may choose to have an attorney serve as their advisor at the party's own expense. This right will be waived unless, at least five days before the hearing, the attorney files a notice of appearance with the hearing panel chair, with copies to all parties and the student conduct official.~~

~~(4) Parties may also select an individual to serve as emotional support during the hearing. This individual will not have a formal role in the hearing, and will serve the purpose of providing care and emotional support for the party.))~~

(3) Any party may make a written request for an extension of time and must do so no later than 48 hours before any date specified in the appeal notice. A party requesting an extension of time should provide a statement to the appellate officer, in writing, and provide rationale for the extension. Once received, the written request will be served by email to all parties. Any party may respond and object to the request for an extension of time no later than 24 hours after service of this written request. The appellate officer will make a determination to grant the extension of time if it shows good cause and will serve a written decision onto the parties and will include the reasons for granting or denying any request. The appellate officer's decision on an extension request will be final.

(4) Complainants and respondents may be accompanied by an advisor of their choice during the process at the party's own expense. The advisor may be an attorney. If a party does not select their own advisor, Evergreen will provide the party with an advisor at no cost to the party. If the advisor is an attorney, the advisor must file a notice of appearance with the Title IX coordinator, who will provide copies to all parties and the appellate officer(s) at least five calendar days before the hearing. If a notice of appearance is not filed within this time frame, the party will be deemed to have waived their right to have an attorney as an advisor.

(5) In preparation for the appeal hearing, ~~((the parties will have equal access to all))~~ Evergreen will provide parties with an accurate description of all relevant and not otherwise privileged evidence gathered by the investigator during the investigation, regardless of whether Evergreen intends to offer the evidence at the appeal hearing. All parties shall have an equal opportunity to access the evidence upon request.

(6) The appeal hearing may, or upon the request of any party, must conduct the hearing with the parties physically present in separate locations, with technology enabling the appellate officer(s) and parties to simultaneously see and hear the party or the witness while the person is speaking.

(7) The appellate officer may, upon written request of any party and showing good cause, extend the time for disclosure of witness and exhibit list, accessing and reviewing evidence, or the hearing date.

AMENDATORY SECTION (Amending WSR 21-10-022, filed 4/26/21, effective 5/27/21)

**WAC 174-123-410 Rights of parties.** (1) The Evergreen State College's code of student rights and responsibilities, this chapter, and this supplemental procedure shall apply equally to all parties.

(2) The college has the burden of offering and presenting sufficient ~~((testimony and))~~ evidence to establish that the respondent is responsible for ~~((a Title IX violation))~~ engaging in sex discrimination, sex-based harassment or retaliation related to or arising from such allegations by a preponderance of the evidence standard.

(3) The respondent will be presumed not responsible until such time as the disciplinary process has been ~~((finally))~~ resolved.

(4) ~~((During the hearing, each party shall be represented by advisors. The parties are entitled to advisors of their own choosing and the advisor may be an attorney. If a party does not choose a process advisor, then the Title IX coordinator will appoint a process advisor of the college's choosing on the party's behalf at no expense to the party.))~~ The complainant and respondent are both entitled to have an advisor present, who may be an attorney retained at the party's expense.

AMENDATORY SECTION (Amending WSR 21-10-022, filed 4/26/21, effective 5/27/21)

**WAC 174-123-420 Evidence.** The introduction and consideration of evidence during the ~~((hearing is subject to the following procedures and restrictions:~~

~~(1) Relevance: The hearing chair shall review all questions for relevance and shall explain on the record their reasons for excluding any question based on lack of relevance.~~

~~(2) Relevance means that information elicited by the question makes facts in dispute more or less likely to be true.~~

~~(3) Questions or evidence about a complainant's sexual predisposition or prior sexual behavior are not relevant and must be excluded, unless such question or evidence:~~

~~(a) Is asked or offered to prove someone other than the respondent committed the alleged misconduct; or~~

~~(b) Concerns specific incidents of prior sexual behavior between the complainant and the respondent, which are asked or offered on the issue of consent.~~

~~(4) Cross-examination required: If a party or witness does not submit to cross-examination during the live hearing, the hearing panel must not rely on any statement by that party or witness in reaching a determination of responsibility.~~

~~(5) No negative inference: The hearing panel may not make an inference regarding responsibility solely on a witness's or party's absence from the hearing or refusal to answer questions.~~

~~(6) Privileged evidence: The hearing panel shall not consider legally privileged information unless the holder has effectively waived the privilege. Privileged information includes, but is not limited to, information protected by the following:~~

~~(a) Spousal/domestic partner privilege;~~

~~(b) Attorney-client and attorney work product privileges;~~

~~(c) Privileges applicable to members of the clergy and priests;~~



~~(d) Privileges applicable to medical providers, mental health therapists, and counselors;~~

~~(e) Privileges applicable to sexual assault and domestic violence advocates; and~~

~~(f) Other legal privileges identified in RCW 5.60.060.~~

~~(7) Recording of live hearing: The live hearing will be audio-recorded, and copies may be provided to the parties, upon written request.) Investigation and appeal hearings are subject to the following definitions, procedures, and restrictions:~~

(1) Relevant or relevance means a question or evidence is related to the allegations of sex discrimination at issue in the proceeding. Questions are relevant when they seek evidence that may aid in showing whether the alleged sex discrimination occurred, and evidence is relevant when it may aid the appellate officer(s) in determining whether the alleged sex discrimination occurred.

(2) Impermissible evidence:

(a) Privileged information. The appellate officer(s) shall not consider legally privileged information unless the individual holding the privilege has effectively waived the privilege. Privileged information includes, but is not limited to, information protected by the following:

(i) Spousal/domestic partner privilege;

(ii) Attorney-client and attorney work product privilege;

(iii) Privileges applicable to members of the clergy and priests;

(iv) Privileges applicable to medical providers, mental health therapists, and counselors;

(v) Privileges applicable to sexual assault and domestic violence advocates, and other legal privileges identified in RCW 5.60.060.

(b) Prior sexual behavior. Question or evidence about a complainant's sexual predisposition or prior sexual behavior are not relevant and must be excluded, unless such question or evidence:

(i) Is asked or offered to prove someone other than the respondent committed the alleged misconduct; or

(ii) Concerns specific incidents of prior sexual behavior between the complainant and the respondent, which are asked or offered on the issue of consent.

(3) The appellate officer(s) may not make an inference regarding responsibility solely on a witness or party's absence from the proceeding or refusal to answer questions.

(4) During the hearing, the appellate chair will work with the complainant and respondent to question the other parties.

AMENDATORY SECTION (Amending WSR 21-10-022, filed 4/26/21, effective 5/27/21)

**WAC 174-123-430 ((Initial order.)) Appeal hearing.** ~~((1) In addition to complying with WAC 174-123-310, the hearing panel will be responsible for conferring and drafting an initial order that:~~

~~(a) Identifies the allegations of sexual harassment;~~

~~(b) Describes the grievance and disciplinary procedures, starting with filing of the formal complaint through the determination of responsibility, including notices to parties, interviews with witnesses and parties, site visits, methods used to gather evidence, and hearings held;~~

~~(c) Makes findings of fact supporting the determination of responsibility for each charge;~~

~~(d) Reaches conclusions as to whether the facts establish whether the respondent is responsible for engaging in sexual harassment in violation of Title IX;~~

~~(e) Contains a statement of, and rationale for, the hearing panel's determination of responsibility for each allegation;~~

~~(f) Describes any disciplinary sanction or conditions imposed against the respondent, if any;~~

~~(g) Describes to what extent, if any, the complainant is entitled to remedies designed to restore or preserve the complainant's equal access to Evergreen's educational programs or activities; and~~

~~(h) Describes the process for appealing the initial order.~~

~~(2) The hearing panel chair will serve the initial order on the parties simultaneously.)~~ (1) In cases involving sex-based harassment, the complainant and the respondent may not directly question one another during the appeal hearing. The appellate officer(s) will determine whether questions will be submitted through the appellate chair or asked by the party's advisor.

(2) The appellate officer(s) may revise this process if, in the appellate officer's determination, the questioning by any party, advisor, or attorney becomes contentious or harassing.

(3) Prior to any question being posed to a party or witness, the appellate officer(s) must determine whether the question is relevant and not otherwise impermissible; and must explain any decision to exclude a question that is deemed not relevant or is otherwise impermissible. Any written copies will be retained for the record.

(4) The appellate officer(s) must not permit questions that are unclear or harassing; but shall give the party an opportunity to clarify or revise such a question.

(5) The appellate officer(s) shall exclude and not consider legally privileged information, outlined in the evidence section of this policy, unless the individual holding the privilege has waived that privilege.

(6) The appellate officer(s) shall exclude and shall not consider questions or evidence that relate to the complainant's sexual interests or prior sexual conduct, unless such question or evidence is offered to prove someone other than the respondent committed the alleged conduct or is evidence of specific instances of prior sexual conduct with the respondent that are offered to prove consent.

(7) The appellate officer(s) may choose to place less or no weight upon statements by a party or witness who refuses to respond to questions. The appellate officer(s) must not draw an inference about whether sex-based harassment occurred based solely on a party or witness's refusal to respond.

(8) At the conclusion of the appeal hearing, the appellate officer(s) will have 14 calendar days to make a written final decision. The final decision will include:

(a) Determining the grounds for appeal;

(b) Whether the decision of responsibility and/or sanctions in the proposed order is affirmed, vacated, or amended;

(c) If amended, set for the new disciplinary sanctions and conditions;

(d) Information on the ability to administratively appeal for a final appeal.

(9) The final decision shall be served on all parties and the Title IX coordinator. If a case involves sex-based harassment, the final

decision shall be served on the parties and the Title IX coordinator simultaneously.

AMENDATORY SECTION (Amending WSR 21-10-022, filed 4/26/21, effective 5/27/21)

**WAC 174-123-440 Final appeal((s)).** (1) The parties shall have the right to appeal (~~((from the initial order's determination of responsibility and/or dismissal of an allegation(s) of sexual harassment in a formal complaint))~~) the final decision from the appellate officer(s). The parties may do so by filing a written notice of final appeal with the (~~(hearing panel chair)~~) Title IX coordinator within (~~(ten)~~) 10 calendar days of service of the (~~(student conduct official's, or hearing panel's decision)~~) final decision. Failure to timely file a notice of final appeal constitutes a waiver of the right to appeal and the decision shall be deemed final.

Either party may request a final appeal based on the following criteria: Procedural irregularity that affected the outcome of the determination; new evidence discovered that was not reasonably available at the time of the determination; a conflict of interest from a Title IX (~~(administrator)~~) personnel; or severity of sanctioning is not consistent with the violation.

(2) The president or their designee will determine whether the grounds for final appeal have merit, provide the rationale for this conclusion, and state whether the disciplinary sanction and condition(s) imposed in the (~~(initial order)~~) final decision are affirmed, vacated, or amended, and, if amended, set forth any new disciplinary sanction and/or condition(s).

(3) The president's office shall serve the final decision on the parties simultaneously.

(4) The final decision will include information on the ability to judicially appeal to the Washington superior courts, pursuant to applicable provisions of chapter 34.05 RCW including, but not limited to, the timelines set forth in RCW 34.05.542.

**WSR 24-19-003**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**

[Order 24-175—Filed September 4, 2024, 4:28 p.m., effective September 4, 2024, 4:28 p.m.]

Effective Date of Rule: Immediately upon filing.

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

Citation of Rules Affected by this Order: Repealing WAC 220-359-02000F; and 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 the 2024 Columbia River treaty fall season commercial fisheries for nontreaty buyers. This rule is consistent with actions of the Columbia River Compact on July 18, August 14, and September 4, 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 1; Federal Rules or Standards: New 1, Amended 0, Repealed 1; or Recently Enacted State Statutes: New 1, Amended 0, Repealed 1.

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

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

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

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

Date Adopted: September 4, 2024.

Kelly Susewind  
Director

#### NEW SECTION

**WAC 220-359-02000G 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, 1G, 1H (Zone 6)

(a) Season: Immediately through 6:00 PM September 6  
6:00 AM September 9 through 6:00 PM September 13

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

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

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

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

(a) Season: Immediately, until further notice.

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

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

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

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

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

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

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

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

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

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

(c) Allowable sale: Salmon (any species), steelhead, shad, carp, catfish, walleye, bass, and yellow perch. Sturgeon from 38 to 54 inches fork length in the Bonneville Pool may be kept for subsistence.

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

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

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

## REPEALER

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

WAC 220-359-02000F Columbia River salmon seasons above Bonneville Dam. (24-156)

**WSR 24-19-004**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**

[Order 24-174—Filed September 4, 2024, 4:33 p.m., effective September 4, 2024, 4:33 p.m.]

Effective Date of Rule: Immediately upon filing.

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

Citation of Rules Affected by this Order: Repealing WAC 220-358-03000F; and amending WAC 220-358-030.

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

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

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

Reasons for this Finding: This rule adds five fishing periods to the front end of the previously adopted Deep River select area fishery season. Impacts to nonlocal stocks are expected to be minimal in off channel select areas. This fishery is consistent with the 2024 nontreaty fall fisheries plan that was developed in conjunction with the annual North of Falcon management process and with the *U.S. v. Oregon* Management Agreement and the associated biological opinion. Conforms Washington state rules with Oregon state rules. Regulation is consistent with compact action of July 18, August 14, and September 4, 2024. This harvest opportunity allows for public access to the resource as well as the maintenance of sustainable fish populations. There is insufficient time to promulgate permanent rules.

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

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

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

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

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

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

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

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

Date Adopted: September 4, 2024.

Kelly Susewind  
Director

NEW SECTION

**WAC 220-358-03000G 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) Emerging Commercial Fishery - Mainstem Seine:**

Open Dates	Open Days	Open Time	Open Duration
Immediately - September 6	Tuesday - Friday	6:00 am - 4:00 pm	10 hrs
September 9 - October 31	Monday - Friday	7:00 am - 5:00 pm	10 hrs

(a) **Area:** Catch Reporting Areas 1A, 1B, and 1C (Zones 1-3). The deadline at the upper end of Area 1C (Zone 3) is defined as a straight line projected from the Warrior Rock Lighthouse on the Oregon shore easterly through the green navigation Buoy #1 and continuing to the Washington shore. Sanctuaries: Elokomina-B, Cowlitz, Kalama-B, Lewis-B and Select Area commercial fishing sites.

(b) **Gear:** Beach seines or purse seines only. Only one seine net per primary vessel. Mesh size restricted to a 3.5-inch maximum (inside of knot to outside of knot using hand tension stretched measure). Net material to consist of 3-strand nylon; twine size ≥#12. Seines may in-



clude a bunt of 1.0-2.0 inch knotless mesh. Net length not to exceed 200 fathoms (NOT including associated lead nets). Net depth not to exceed 200 meshes (approximately 50 feet). Seine and lead lines may not be connected. Lead nets must be retrieved daily. No restrictions on corkline, leadline or use of stringers and slackers. A chafing strip panel consisting of non-monofilament webbing (such as nylon seine web or polyethylene trawl web) is allowed on bottom of net; maximum panel depth is 5-feet. Chafing mesh not to exceed 3.5-inch stretched measure for beach and 5-inch stretched measure for purse. There are no restrictions associated with hangings used to connect the net to the chafing panel or the net or chafing panel to the leadline or corkline. Red corks are required at 25-fathom intervals and red corks must be in contrast to the corks used in the remainder of the net. Lead net (optional for both gear types). Only one lead net is allowed per fishing operation. Lead nets may not exceed 100 fathoms in length. Lead nets may be constructed of 3-strand nylon webbing, twine size  $\geq 12$ ,  $\leq 3.5$ -inch mesh size (inside of knot to outside of knot using hand tension stretched measure) OR nylon or cotton webbing with mesh size  $\geq 14$ -inches. Lead nets may not be vertically slackened. Seine net and lead net may not be connected. Lead nets must be retrieved daily.

(c) **Allowable Possession and Sales:** Subject to IFQs as defined on individual permits. Except as noted below, allowable sales limited to adipose fin-clipped Chinook, adipose fin-clipped Coho, sockeye, and pink salmon and shad. All legal adult Chinook and legal adult Coho caught must be kept and sold. Adult salmon defined in WAC 220 300-010. Retained Chinook and Coho must have a healed scar at the location of the adipose-clipped fin.

(d) **Handling of Catch:** Hand sorting or use of a knotless dip net is required when sorting fish. All fish must be sorted and/or released prior to removing entire seine from water. Dry sorting not permitted.

(e) **Sort time not to exceed 75 minutes.**

(i) Beach seine - defined as the elapsed time from when the outer towed end of the net first contacts the shore or block until the net is emptied of fish.

(ii) Purse Seine - defined as the elapsed time from when all rings are pursed and out of the water until the net is emptied of fish.

(f) **Observer Program:** Agency observers must be present during all fishing operations.

**(2) Mainstem Tangle Net:**

Open Dates	Open Days	Open Time	Open Duration
September 16 - September 18	Monday, Wednesday	4:00 am - 10:00 pm	18 hrs
September 20 - October 25	Fridays	4:00 am - 6:00 pm	14 hrs
September 23 - October 31	Mondays, Tuesdays, Wednesdays, Thursdays	4:00 am - 10:00 pm	18 hrs

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

(b) **Gear:** Drift nets only. Maximum mesh size is 3.75 inches. Unslackened, single-wall, multi-filament floater nets only. Monofilament nets are not allowed. Net length not to exceed 150 fathoms. A red cork must be placed on the corkline every 25 fathoms as measured from the first mesh of the net. Red corks at 25-fathom intervals must be in

color contrast to the corks used in the remainder of the net. There are no restrictions on the hang ratio. The hang ratio is used to horizontally add slack to the net. The hang ratio is determined by the length of the web per length of the corkline. The use of slackers or stringers to slacken the net vertically is prohibited. Rip lines are allowed providing they do not vertically slacken the net.

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

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

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

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

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

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

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

(j) **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.

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

**(3) Tongue Point/South Channel Select Area:**

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

(a) **Area:**

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

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

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

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

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

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

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

**(4) Blind Slough/Knappa Slough Select Area:**

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

(a) **Area:** The Blind Slough Select Area is defined as waters of Blind Slough and Gnat Creek from a north-south line represented by regulatory markers at the mouth of Blind Slough upstream to a regulatory marker in Gnat Creek located approximately 0.5 miles southeaster-

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

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

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

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

**(5) Deep River Select Area:**

Open Dates	Open Days	Open Time	Open Duration
September 5 - September 13	Monday, Tuesday, Wednesday, Thursday (night)	6:00 pm - 9:00 am	15 hrs
September 16 - October 11	Monday, Tuesday, Wednesday, Thursday (night)	6:00 pm - 9:00 am	15 hrs
October 14 - October 31	Monday, Wednesday (night)	6:00 pm - 9:00 am	15 hrs
November 4 - November 28	Monday, Wednesday (night)	5:00 pm - 8:00 am	15 hrs

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

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

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

(6) **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.

(7) **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)).

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

**Reviser's note:** The unnecessary 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 immediately:

WAC 220-358-03000F Columbia River seasons below  
Bonneville. (24-155)

**WSR 24-19-005**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**

[Order 24-173—Filed September 4, 2024, 4:36 p.m., effective September 4, 2024, 4:36 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: This emergency rule closes commercial sea cucumber harvest in District 5 after attaining the state share.

Citation of Rules Affected by this Order: Repealing WAC 220-340-73000R; 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 sea cucumber harvest in District 5 to prevent overharvest because the quotas have been reached. Harvestable surpluses of sea cucumbers exist in the districts specified. There is insufficient time to adopt permanent rules.

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

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

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

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

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

Date Adopted: September 4, 2024.

Kelly Susewind  
Director

NEW SECTION

**WAC 220-340-73000S Sea cucumbers** Effective immediately, until further notice, the following provisions of WAC 220-340-730 regarding Puget Sound commercial sea cucumber harvest seasons and landing limits shall be as described herein. All other provisions of WAC 220-340-730 not addressed herein, and unless otherwise amended, remain in effect:

(1) Sea cucumber harvest using shellfish diver gear is allowed in Sea Cucumber Districts 1 and 2-1 Monday through Sunday of each week.

(2) 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.

(3) The maximum cumulative landing of sea cucumbers from August 5 through November 17, 2024, is 9,300 pounds per valid designated sea cucumber harvest license.

REPEALER

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

WAC 220-340-73000R Sea cucumbers (24-164)

**WSR 24-19-008**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**

[Order 24-176—Filed September 5, 2024, 8:43 a.m., effective September 6, 2024]

Effective Date of Rule: September 6, 2024.

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

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: This emergency rule is necessary to increase the Chinook salmon portion of the salmon daily limit.

Catch estimates for the Marine Area 11 summer Chinook fishery indicate that through September 2, 66 percent of the harvest quota (2,214 of 3,379), and 53 percent of sublegal encounters (3,102 of 5,907) have been reached. Based on these estimates, the Chinook portion of the daily limit will be increased to two hatchery Chinook.

There is insufficient time to adopt permanent rules.

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

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

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

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

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

Date Adopted: September 5, 2024.

Kelly Susewind  
Director

NEW SECTION

**WAC 220-313-06000F Puget Sound salmon—Saltwater seasons and daily limits.** Effective September 6 through September 30, 2024, the following provisions of WAC 220-313-060 regarding salmon seasons for Catch Record Card Area 11, shall be modified as described below. All other provisions of WAC 220-313-060 not addressed herein, or unless otherwise amended by emergency rule, remain in effect:



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

Salmon daily limit is 2. Release chum and wild Chinook.

**WSR 24-19-011**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**

[Order 24-177—Filed September 5, 2024, 1:00 p.m., effective September 5, 2024, 1:00 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: The purpose of this emergency rule is to close fishing in the lower Deschutes River.

Citation of Rules Affected by this Order: Amending WAC 220-312-040.

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

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

Reasons for this Finding: This emergency rule is necessary to close fishing in the lowest section of the Deschutes River.

This section of the Deschutes River runs through Brewery Park at Tumwater Falls. The park does not allow fishing from the shore. Due to recent trespassing and fishing activity, this action is necessary both for the protection of the public due to the dangerous conditions presented in this area, and for the protection of fall Chinook staging for the Tumwater Falls Hatchery facility.

There is insufficient time to adopt permanent rules.

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

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

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

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

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

Date Adopted: September 5, 2024.

Kelly Susewind  
Director

NEW SECTION

**WAC 220-312-04000S Freshwater exceptions to statewide rules—Puget Sound.** Effective immediately, through October 31, 2024, the following provisions of WAC 220-312-040 regarding recreational gamefish seasons for Deschutes River, shall be modified as described below. All other provisions of WAC 220-312-040 not addressed herein, or unless otherwise amended by emergency rule, remain in effect:

Deschutes River (Thurston Co.), from the mouth (a line projected across the river 400 feet below the lower Tumwater Falls fish ladder) to the Old Highway 99 Bridge:

Gamefish: Closed.

**WSR 24-19-017**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**

[Order 24-178—Filed September 6, 2024, 2:20 p.m., effective September 9, 2024]

Effective Date of Rule: September 9, 2024.

Purpose: The purpose of this emergency rule is to open a commercial beach seine season in Puget Sound Salmon Management Area 12C on September 9, 2024.

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

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

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

Reasons for this Finding: This rule is necessary to open a commercial beach seine season in Puget Sound Salmon Management and Catch Reporting Area 12C on September 9. Hoodspout Hatchery Chinook returns are currently on track to meet broodstock escapement goals. This temporary opening of commercial beach seine harvest is needed to attain harvest objectives. There is insufficient time to adopt permanent rules.

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

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

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

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

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

Date Adopted: September 6, 2024.

Kelly Susewind  
Director

NEW SECTION

**WAC 220-354-21000P Puget Sound salmon—Beach seine—Open periods.** Effective September 9, 2024, the following provisions of WAC 220-354-210 regarding commercial Beach Seine open periods for Puget Sound Salmon Management and Catch Reporting Area 12C shall be as described below. All other provisions of WAC 220-354-210 not addressed herein, or unless otherwise amended by emergency rule, remain in effect:

Area	Open/Closed	Time	Date(s)
12C	Open	7 AM - 7 PM	9/9

**WSR 24-19-031**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**

[Order 24-179—Filed September 9, 2024, 4:49 p.m., effective September 10, 2024]

Effective Date of Rule: September 10, 2024.

Purpose: The purpose of this emergency rule is to reduce the salmon daily limit in the Quillayute River system.

Citation of Rules Affected by this Order: Amending WAC 220-312-020.

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

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

Reasons for this Finding: This rule is needed to reduce the salmon daily limit for Bogachiel, Calawah, Dickey, Quillayute, and Sol Duc rivers.

A reduced daily limit is necessary to protect salmon returning to the Quillayute watershed. Low flows have resulted in coho and Chinook holding in the lower river and not moving upstream to spawning grounds. Returning salmon abundance will be monitored and regulations may be modified as additional information becomes available.

There is insufficient time to adopt permanent rules.

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

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

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

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

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

Date Adopted: September 9, 2024.

Kelly Susewind  
Director

NEW SECTION

**WAC 220-312-02000K Freshwater exceptions to statewide rules—Coast.** Effective September 10 through December 15, 2024, the following provisions of WAC 220-312-020, regarding all salmon daily limits for Bogachiel, Calawah, Dickey, Hoh, Quillayute, and Sol Duc rivers shall be modified as described below. All other provisions of WAC 220-312-020 not addressed herein, or unless otherwise amended by emergency rule, remain in effect:

(1) **Bogachiel River (Clallam Co.)**, from mouth to Hwy 101 Bridge:  
September 10 through December 15: Salmon: Daily limit 1. Release sockeye and wild coho.

(2) **Calawah River (Clallam Co.)**, from the mouth to Hwy 101 Bridge:

September 10 through December 15: Salmon: Daily limit 1. Release sockeye and wild coho.

(3) **Dickey River (Clallam Co.)**, from Olympic National Park boundary upstream to the confluence of the East and West Forks:

September 10 through December 15: Salmon: Daily limit 1. Release sockeye and wild coho.

(4) **Quillayute River (Clallam Co.)**, from Olympic National Park boundary upstream to confluence of Sol Duc and Bogachiel rivers:

September 10 through December 15: Salmon: Daily limit 1. Release sockeye and wild coho.

(5) **Sol Duc River (Clallam Co.)**, from mouth to the concrete pump station at Sol Duc Hatchery:

September 10 through December 15: Salmon: Daily limit 1. Release sockeye and wild coho.

**WSR 24-19-038**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**

[Order 24-180—Filed September 11, 2024, 10:03 a.m., effective September 16, 2024]

Effective Date of Rule: September 16, 2024.

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

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

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

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

Reasons for this Finding: This rule is needed to set a maximum size limit on salmon in Yale Reservoir. As part of upper Lewis River anadromous reintroduction effort, adult coho will be released into Yale Reservoir for habitat preparation and nutrient enhancement. Upstream transport for reintroduction into areas above Swift Dam is ongoing with hatchery coho in excess of weekly Lewis basin hatchery broodstock collection targets.

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

There is insufficient time to adopt permanent rules.

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

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

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

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

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

Date Adopted: September 11, 2024.

Kelly Susewind  
Director

NEW SECTION

**WAC 220-312-03000F Freshwater exceptions to statewide rules—Southwest.** Effective September 16 through December 31, 2023, the provisions of WAC 220-312-030 regarding salmon in Yale Reservoir shall be modified as described below. All other provisions of WAC 220-312-030



not addressed herein remain in effect unless otherwise amended by emergency rule:

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

**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 24-19-039**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**

[Order 24-181—Filed September 11, 2024, 10:07 a.m., effective September 12, 2024]

Effective Date of Rule: September 12, 2024.

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

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

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

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

Reasons for this Finding: The United States Fraser River Panel relinquished regulatory control of nontreaty commercial sockeye salmon fisheries in United States waters, including Puget Sound Marine Area 7, effective September 12, 2024, returning those fisheries to regulation by state rule. The additional release requirements are needed to minimize encounters and mortalities to sockeye, Chinook, and chum salmon in Marine Area 7. There is insufficient time to adopt permanent rules.

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

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

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

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

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

Date Adopted: September 11, 2024.

Kelly Susewind  
Director

NEW SECTION

**WAC 220-354-18000F Reef net open periods.** Notwithstanding the provisions of WAC 220-354-180, effective September 12 through November 14, 2024, it is unlawful to take, fish for, or possess salmon taken with reef net gear for commercial purposes in Puget Sound Salmon Management and Catch Reporting Areas except as provided in this section, provided that unless otherwise amended, all permanent rules remain in effect:

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

Area(s)	Date(s)	Open/Closed	Daily open period
7	9/12-11/9	Open	5:00 a.m. - 9 p.m.

(a) It is unlawful at all times to retain sockeye and unmarked Chinook taken with reef net gear.

(b) It is unlawful to retain chum taken with reef gear before October 1.

(c) It is unlawful to retain any Chinook, marked or unmarked, after September 30.

(d) It is unlawful to retain marked Chinook or unmarked coho unless the reef net operator is in immediate possession of a Puget Sound Reef Net Logbook. All retained marked Chinook and unmarked coho must be recorded in the logbook.

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

(f) Completed logs must be submitted and received within six working days to: Puget Sound Commercial Salmon Manager, Department of Fish & Wildlife, P.O. Box 43200, Olympia, WA 98504.

(g) All other saltwater and freshwater areas - Closed.

## WSR 24-19-042

## EMERGENCY RULES

## PUBLIC DISCLOSURE COMMISSION

[Filed September 11, 2024, 12:11 p.m., effective September 11, 2024, 12:11 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: The rule sets forth how HB 2032 (2024), which requires sponsor identification on previously exempted political yard signs, will be implemented upon the effective date and throughout the 2024 election cycle.

Citation of Rules Affected by this Order: Amending WAC 390-18-030.

Statutory Authority for Adoption: RCW 42.17A.110; chapter 148, Laws of 2024.

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

Reasons for this Finding: Formal rule making could not be completed before the effective date for the new law, June 6, 2024, or before the June 30th deadline for implementing any new rule for the upcoming election cycle, see RCW 42.17A.110. This rule is necessary to implement the new law (HB 2032) by addressing the campaigns that will have ordered and placed yard signs prior to the effective date. Without clarification, the status of such signs would remain uncertain.

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: September 11, 2024.

Sean Flynn  
General Counsel

**OTS-5468.1**

AMENDATORY SECTION (Amending WSR 20-02-062, filed 12/24/19, effective 1/24/20)

**WAC 390-18-030 Advertising—Exemptions from sponsor identification and alternatives for online advertising.** (1) RCW 42.17A.320 re-

quires that political advertising must identify certain information. The commission is authorized to exempt advertising where the sponsor identification disclosures required by RCW 42.17A.320 (1) and (2) are impractical. In addition, other political advertising is exempt from providing certain disclosures.

(2) The following forms of advertising need not include the sponsor's name and address, the "no candidate authorized this ad" sponsor identification, the "top five contributors," "top three donors to PAC contributors," or the identification of the individual, corporation, union, association, or other entity that established, maintains, or controls the sponsoring political committee as otherwise required by RCW 42.17A.320 (1) and (2) and 42.17A.350:

(a) Campaign paraphernalia, including novelty or sundry items intended for individual distribution and use, with a printing surface area smaller than 4" x 15" square inches, including expandable surface area such as a balloon when expanded, or where such identification is otherwise impractical to provide a readable text;

(b) Newspaper ads of one column inch or less (excluding online ads);

(c) Reader boards where a message is affixed in movable letters, or skywriting; and

(d) State or local voter's pamphlets published pursuant to law (~~and~~

~~(e) Yard signs — size 4' x 8' or smaller~~)).

(3) Online political advertising must provide the same disclosures that apply to non-online advertising to the extent practical. As an alternative, small online advertising may provide the required disclosures by using an automatic display with the advertising that takes the reader directly to the required disclosures.

(a) These automatic displays must be clear and conspicuous, unavoidable, immediately visible, remain visible for at least four seconds, and display a color contrast as to be legible. Online advertising that includes only audio must include the disclosures in a manner that is clearly spoken.

(b) Examples include nonblockable pop-ups, roll-overs, a separate text box or link that automatically appears with or in the advertising that automatically takes the reader directly to the required disclosures upon being clicked once, or other similar mechanisms that disclose the information required in RCW 42.17A.320 in a manner that is compatible with the device and technology used to display the advertising.

(4) Political advertising created and distributed by an individual using their own modest resources is not required to provide the disclosures in RCW 42.17A.320, when all of the following criteria are satisfied:

(a) The individual spends in the aggregate less than (~~one hundred dollars~~) \$100 to produce and distribute the advertising or less than (~~fifty dollars~~) \$50 to produce and distribute online advertising;

(b) The individual acts independently and not as an agent of a candidate, authorized committee, political committee, corporation, union, business association, or other organization or entity;

(c) The advertising is not a contribution under RCW 42.17A.005 (16) (a) (ii) or (iii) or WAC 390-05-210;

(d) The individual does not receive donations, contributions, or payments from others for the advertising, and is not compensated for producing or distributing the advertising; and

(e) The advertising is either:

(i) A letter, flier, handbill, text, email or other digital communications from the individual that does not appear in a newspaper or other similar mass publication (except for letters to the editor and similar communications addressed in WAC 390-05-490(4)); or

(ii) Disseminated on the individual's social media site, personal website, or an individual's similar online forum where information is produced and disseminated only by the individual.

(5) Political advertising that is internal political communications to members is not required to separately include the disclosures in RCW 42.17A.320 where the sponsor's name is otherwise apparent on the face of the communication.

(6) Any political yard sign 4' x 8' (square feet) or smaller that was printed on or after June 6, 2024, must include sponsor identification, but remains exempt from the top five contributor and top three PAC contributor requirements.

**WSR 24-19-045**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**

[Order 24-183—Filed September 11, 2024, 1:02 p.m., effective September 12, 2024]

Effective Date of Rule: September 12, 2024.

Purpose: This emergency rule will open Chinook retention and increase the coho portion of the salmon and steelhead daily limit in the Columbia River from Buoy 10 to the west end of Puget Island. Chinook and coho retention seasons will also be extended from Warrior Rock to the Highway 395 Bridge at Pasco.

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

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

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

Reasons for this Finding: The Columbia River Technical Advisory Committee (TAC) recently updated the upriver Chinook return to the Columbia River mouth. Current inseason catch and stock composition projections indicate that sufficient Chinook Endangered Species Act (ESA) impacts remain available which allows for additional Chinook retention in these areas. Staff will continue to monitor progress of ongoing fisheries, with an expectation to manage within the allowable ESA impact rate and per Washington fish and wildlife Policy C-3630. This rule conforms Washington state rules with Oregon state rules and is consistent with compact action on September 10, 2024.

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

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

There is insufficient time to promulgate permanent rules.

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

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

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

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

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

Date Adopted: September 11, 2024.

Kelly Susewind  
Director

#### NEW SECTION

**WAC 220-312-06000T Freshwater exceptions to statewide rules—Columbia River.** Effective September 12 through October 31, 2024, the provisions of WAC 220-312-060 regarding recreational salmon and steelhead seasons from a true north-south line through Buoy 10 upstream to Highway 395 Bridge at Pasco, shall be modified during the dates listed and as described below. All year-round Closed Waters areas remain in effect. Other provisions of WAC 220-312-060 not addressed herein remain in effect unless otherwise amended by emergency rule:

**(1) From a true north-south line through Buoy 10 upstream to a line from Rocky Point on the Washington Bank through red buoy 44 to red navigation marker 2 at Tongue Point on the Oregon bank.**

(a) Effective September 12 through September 22, 2024: Salmon and steelhead: Daily limit 3 including no more than 1 Chinook. Chinook minimum size 24 inches. Coho minimum size 16 inches. Release all salmon and steelhead other than Chinook and hatchery coho.

(b) Effective September 23 through September 30, 2024: Salmon and steelhead: Daily limit 3. Coho minimum size 16 inches. Release all salmon and steelhead other than hatchery coho.

(c) Effective October 1 through October 31, 2024: Salmon and steelhead. Daily limit 6 including no more than 3 adults. Release all salmon and steelhead other than hatchery coho.

**(2) From a line from Rocky Point on the Washington Bank through red buoy 44 to red navigation marker 2 at Tongue Point on the Oregon bank upstream to a line at the west end of Puget Island projected from green navigation marker 39 on the Washington bank to green navigation marker 41, then to red navigation marker 42, and terminating at red navigation marker 44A on the Oregon bank:**

(a) Effective September 12 through September 22, 2024: Salmon and steelhead: Daily limit 6. Up to 3 adult salmon including no more than 1 Chinook may be retained. Release all salmon and steelhead other than Chinook and hatchery coho.



(b) Effective September 23 through October 31, 2024: Salmon and steelhead: Daily limit 6 including no more than 3 adults. Release all salmon and steelhead other than hatchery coho.

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

Effective September 16 through September 22, 2024: Salmon and steelhead: Daily limit 6. Up to 2 adult salmon including no more than 1 Chinook may be retained. Release all salmon and steelhead other than Chinook and hatchery coho.

**(4) From Bonneville Dam upstream to the Hood River Bridge:**

Effective September 16 through September 22, 2024: Salmon and steelhead: Daily limit 6. Up to 2 adult salmon including no more than 1 Chinook may be retained. Release all salmon and steelhead other than Chinook and hatchery coho.

**(5) From Hood River Bridge upstream to the Highway 395 Bridge at Pasco:**

Effective September 16 through September 22, 2024: Salmon and steelhead: Daily limit 6. Up to 2 adult salmon including no more than 1 Chinook may be retained. Release all salmon and steelhead other than Chinook and coho.

**WSR 24-19-046**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**

[Order 24-185—Filed September 11, 2024, 1:43 p.m., effective September 11, 2024, 1:43 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: The purpose of this emergency rule is to prohibit the feeding of wildlife including deer, elk, and moose located in Game Management Units (GMU) 124, 127, and 130.

Citation of Rules Affected by this Order: New WAC 220-440-26000A.

Statutory Authority for Adoption: RCW 77.04.012, 77.04.055, 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: Chronic wasting disease (CWD) cases in ungulates have been confirmed in Washington state. This emergency rule is part of the Washington department of fish and wildlife's (department) broad effort to reduce the infection and spread of CWD in the foregoing GMUs. It is filed in concert with several recent emergency rules filed by the department (see WSR 24-18-017 filed on August 22, 2024, and WSR 24-18-039 filed on August 26, 2024) to combat the spread of CWD.

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

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

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

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

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

Date Adopted: September 11, 2024.

Kelly Susewind  
Director

NEW SECTION

**WAC 220-440-26000A Prohibition of feeding wildlife** (1) Except as provided in subsection (3), it is an infraction under RCW 77.15.160 (6)(b) to place, deposit, distribute, or scatter feed including but not limited to grain, hay, minerals, salt, fruit, or other such substances or food types to feed, lure or attract deer, elk, or moose not lawfully held in captivity in Game Management Units (GMU) 124, 127, and 130.

(2) This rule does not apply in the completion of any of the following agricultural practices:

(a) Cultivation, production, and harvest of crops including but not limited to, fruit, vegetable, hay, and grains;

(b) Animal husbandry related to the care and feeding of domestic livestock and poultry.

(3) The Director may authorize the feeding of deer, elk, or moose under the following conditions:

(a) Prevent damage to private property;

(b) Mitigate population loss anticipated by a predicted winter mortality;

(c) Support a WDFW research or management program.

WSR 24-19-047  
EMERGENCY RULES  
DEPARTMENT OF  
FISH AND WILDLIFE

[Order 24-182—Filed September 11, 2024, 1:46 p.m., effective September 11, 2024, 1:46 p.m.]

Effective Date of Rule: Immediately upon filing.

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

Citation of Rules Affected by this Order: Repealing WAC 220-359-02000G; and 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 the 2024 Columbia River treaty fall season commercial fisheries for nontreaty buyers. This rule is consistent with actions of the Columbia River Compact on July 18, August 14, September 4, and September 10, 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 1; Federal Rules or Standards: New 1, Amended 0, Repealed 1; or Recently Enacted State Statutes: New 1, Amended 0, Repealed 1.

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

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

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

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

Date Adopted: September 11, 2024.

Kelly Susewind  
Director

#### NEW SECTION

**WAC 220-359-02000H 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, 1G, 1H (Zone 6)

(a) Season: Immediately through 6:00 PM September 13

6:00 AM September 16 through 6:00 PM September 20

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

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

(d) Standard sanctuaries applicable to gillnet gear. The standard Spring Creek Hatchery Sanctuary is in place through September 13. The small Spring Creek Hatchery sanctuary (150-feet around the hatchery ladder) is in place effective September 16 through September 20.

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

(a) Season: Immediately, until further notice.

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

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

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

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

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

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

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

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

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

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

(c) Allowable sale: Salmon (any species), steelhead, shad, carp, catfish, walleye, bass, and yellow perch. Sturgeon from 38 to 54 inches fork length in the Bonneville Pool may be kept for subsistence.

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

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

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

#### REPEALER

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

WAC 220-359-02000G Columbia River salmon seasons above Bonneville Dam. (24-175)

WSR 24-19-051  
EMERGENCY RULES  
DEPARTMENT OF  
FISH AND WILDLIFE

[Order 24-184—Filed September 11, 2024, 4:47 p.m., effective September 11, 2024, 4:47 p.m.]

Effective Date of Rule: Immediately upon filing.

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

Citation of Rules Affected by this Order: Repealing WAC 220-358-03000G; and amending WAC 220-358-030.

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

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

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

Reasons for this Finding: This rule sets the initial late fall nontreaty commercial gill net season upstream of the Lewis River confluence. This fishery is consistent with the 2024 nontreaty fall fisheries plan that was developed in conjunction with the annual North of Falcon management process, the *U.S. v. Oregon* Management Agreement and the associated biological opinion. Conforms Washington state rules with Oregon state rules. Regulation is consistent with compact action of July 18, August 14, September 4, and September 10, 2024. This harvest opportunity allows for public access to the resource as well as the maintenance of sustainable fish populations. There is insufficient time to promulgate permanent rules.

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

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

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

Number of Sections Adopted in Order to Comply with Federal Statute: New 1, Amended 0, Repealed 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: September 11, 2024.

Kelly Susewind  
Director

NEW SECTION

**WAC 220-358-03000H Columbia River seasons below Bonneville.**

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

**(1) Mainstem Gillnet:**

Open Dates	Open Days	Open Time	Open Duration
September 12 - September 13	Thursday (night)	8:00 pm - 6:00 am	10 hrs
September 17 - September 18	Tuesday (night)	8:00 pm - 6:00 am	10 hrs

(a) **Area:** Catch Reporting Areas 1E and 1D (Zones 4-5). The deadline at the lower end of Area 1E (Zone 4) is defined as a straight line projected from the Warrior Rock Lighthouse on the Oregon shore easterly through the green navigation Buoy #1 and continuing to the Washington shore. Sanctuaries: Washougal and Sandy River.

(b) **Gear:** Drift gillnets only. 8-inch minimum mesh size restriction. Nets not specifically authorized for use in this fishery may be onboard the vessel if properly stored. A properly stored net is defined as a net on a drum that is fully covered by a tarp (canvas or



plastic) and bound with a minimum of ten revolutions of rope with a diameter of 3/8 (0.375) inches or greater. Lighted buoys required.

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

**(2) Emerging Commercial Fishery - Mainstem Seine:**

Open Dates	Open Days	Open Time	Open Duration
September 11	Wednesday	7:00 am - 5:00 pm	10 hrs
September 12 - October 31	Monday - Friday	6:00 am - 5:00 pm	11 hrs

(a) **Area:** Catch Reporting Areas 1A, 1B, and 1C (Zones 1-3). The deadline at the upper end of Area 1C (Zone 3) is defined as a straight line projected from the Warrior Rock Lighthouse on the Oregon shore easterly through the green navigation Buoy #1 and continuing to the Washington shore. Sanctuaries: Elokomina-B, Cowlitz, Kalama-B, Lewis-B and Select Area commercial fishing sites.

(b) **Gear:** Beach seines or purse seines only. Only one seine net per primary vessel. Mesh size restricted to a 3.5-inch maximum (inside of knot to outside of knot using hand tension stretched measure). Net material to consist of 3-strand nylon; twine size ≥#12. Seines may include a bunt of 1.0-2.0 inch knotless mesh. Net length not to exceed 200 fathoms (NOT including associated lead nets). Net depth not to exceed 200 meshes (approximately 50 feet). Seine and lead lines may not be connected. Lead nets must be retrieved daily. No restrictions on corkline, leadline or use of stringers and slackers. A chafing strip panel consisting of non-monofilament webbing (such as nylon seine web or polyethylene trawl web) is allowed on bottom of net; maximum panel depth is 5-feet. Chafing mesh not to exceed 3.5-inch stretched measure for beach and 5-inch stretched measure for purse. There are no restrictions associated with hangings used to connect the net to the chafing panel or the net or chafing panel to the leadline or corkline. Red corks are required at 25-fathom intervals and red corks must be in contrast to the corks used in the remainder of the net. Lead net (optional for both gear types). Only one lead net is allowed per fishing operation. Lead nets may not exceed 100 fathoms in length. Lead nets may be constructed of 3-strand nylon webbing, twine size ≥#12, ≤3.5-inch mesh size (inside of knot to outside of knot using hand tension stretched measure) OR nylon or cotton webbing with mesh size ≥14-inches. Lead nets may not be vertically slackened. Seine net and lead net may not be connected. Lead nets must be retrieved daily.

(c) **Allowable Possession and Sales:** Subject to IFQs as defined on individual permits. Except as noted below, allowable sales limited to adipose fin-clipped Chinook, adipose fin-clipped Coho, sockeye, and pink salmon and shad. All legal adult Chinook and legal adult Coho caught must be kept and sold. Adult salmon defined in WAC 220 300-010. Retained Chinook and Coho must have a healed scar at the location of the adipose-clipped fin.

(d) **Handling of Catch:** Hand sorting or use of a knotless dip net is required when sorting fish. All fish must be sorted and/or released prior to removing entire seine from water. Dry sorting not permitted.

(e) **Sort time not to exceed 75 minutes.**

(i) Beach seine - defined as the elapsed time from when the outer towed end of the net first contacts the shore or block until the net is emptied of fish.

(ii) Purse Seine - defined as the elapsed time from when all rings are pursed and out of the water until the net is emptied of fish.

(f) **Observer Program:** Agency observers must be present during all fishing operations.

**(3) Mainstem Tangle Net:**

Open Dates	Open Days	Open Time	Open Duration
September 16 - September 18	Monday, Wednesday	4:00 am - 10:00 pm	18 hrs
September 20 - October 25	Fridays	4:00 am - 6:00 pm	14 hrs
September 23 - October 31	Mondays, Tuesdays, Wednesdays, Thursdays	4:00 am - 10:00 pm	18 hrs

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

(b) **Gear:** Drift nets only. Maximum mesh size is 3.75 inches. Un-slackened, single-wall, multi-filament floater nets only. Monofilament nets are not allowed. Net length not to exceed 150 fathoms. A red cork must be placed on the corkline every 25 fathoms as measured from the first mesh of the net. Red corks at 25-fathom intervals must be in color contrast to the corks used in the remainder of the net. There are no restrictions on the hang ratio. The hang ratio is used to horizontally add slack to the net. The hang ratio is determined by the length of the web per length of the corkline. The use of slackers or stringers to slacken the net vertically is prohibited. Rip lines are allowed providing they do not vertically slacken the net.

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

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

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

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

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

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

(i) **Multiple net rule:** Nets not specifically authorized for use in this fishery may be onboard the vessel if properly stored. A prop-

erly stored net is defined as a net on a drum that is fully covered by a tarp (canvas or plastic) and bound with a minimum of ten revolutions of rope with a diameter of 3/8 (0.375) inches or greater.

(j) **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.

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

**(4) Tongue Point/South Channel Select Area:**

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

(a) **Area:**

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

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

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

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

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

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

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

**(5) Blind Slough/Knappa Slough Select Area:**

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

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

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

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

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

**(6) Deep River Select Area:**

Open Dates	Open Days	Open Time	Open Duration
Immediately - September 13	Monday, Tuesday, Wednesday, Thursday (night)	6:00 pm - 9:00 am	15 hrs
September 16 - October 11	Monday, Tuesday, Wednesday, Thursday (night)	6:00 pm - 9:00 am	15 hrs
October 14 - October 31	Monday, Wednesday (night)	6:00 pm - 9:00 am	15 hrs
November 4 - November 28	Monday, Wednesday (night)	5:00 pm - 8:00 am	15 hrs

(a) **Area:** The Deep River fishing area includes all waters from West Deep River Road Bridge at the town of Deep River downstream to

the mouth defined by a line from USCG navigation marker #16 southwest to a marker on the Washington shore.

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

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

(7) **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.

(8) **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)).

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

**Reviser's note:** The unnecessary 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 immediately:

WAC 220-358-03000G Columbia River seasons below  
Bonnevillle. (24-174)

**WSR 24-19-054**  
**EMERGENCY RULES**  
**DEPARTMENT OF**

**SOCIAL AND HEALTH SERVICES**

(Developmental Disabilities Administration)

[Filed September 12, 2024, 1:14 p.m., effective September 19, 2024]

Effective Date of Rule: September 19, 2024.

Purpose: The developmental disabilities administration (DDA) is enacting these changes on an emergency basis to require providers in the scope of chapter 388-829 WAC to complete the skills demonstration portion of CPR training in person.

Citation of Rules Affected by this Order: Repealing WAC 388-101D-0105; and amending WAC 388-829-0040 and 388-829-0050.

Statutory Authority for Adoption: RCW 34.05.350 and 74.39A.074(5).

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: Enacting these rules on an emergency basis is necessary in order to ensure providers delivering DDA services complete the skills portion of CPR training in person. The in-person requirement existed before the COVID-19 pandemic but was temporarily lifted during the pandemic to allow providers to complete training virtually to maintain social distancing. These rule amendments are necessary to ensure all providers return to the prepandemic requirement, and to clarify that this requirement is for all provider types of community residential services, not just exempt providers (as implied by the requirement previously existing only in a section about exempt staff).

This is the third emergency filing on these sections and is necessary to keep the rules in effect until DDA completes the permanent rule-making process. DDA held a public hearing on proposed amendments on August 27, 2024, and is reviewing public comments received.

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

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

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

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 2, Repealed 1.

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 1.

Date Adopted: September 10, 2024.

Katherine I. Vasquez  
Rules Coordinator

## SHS-5018.2

AMENDATORY SECTION (Amending WSR 17-14-090, filed 6/30/17, effective 8/1/17)

**WAC 388-829-0040 What are the training requirements for exempt individuals ~~((hired on or after January 1, 2016))~~?** ~~((Exempt individuals hired on or after January 1, 2016,))~~ An individual exempt under WAC 388-829-0035 must meet the following ~~((the))~~ training requirements:

- (1) Staff hired with a ~~((seventy-five))~~ 75-hour certificate or letter of exemption must take:
  - (a) Agency orientation; and
  - (b) Client-specific training.
- (2) The hiring or contracting entity must verify that staff hired with an HCA-C from areas outside of DDA have completed the training required in subsection (1) of this section and:
  - (a) DDA-developed specialty training; or
  - (b) Forty hours of DDA residential services curriculum.
- (3) ~~((All))~~ Exempt community residential staff must maintain current CPR and first aid training certificates as required under WAC 388-829-0050. ~~((This training must be completed in person and within sixty days of hire.))~~
- (4) ~~((All))~~ Exempt community residential staff must complete ~~((twelve))~~ 12 hours of continuing education per year.

AMENDATORY SECTION (Amending WSR 17-14-090, filed 6/30/17, effective 8/1/17)

**WAC 388-829-0050 What is basic training?** Basic training is ~~((seventy))~~ 70 hours of required training that must include:

- (1) Forty hours of DDA residential services curriculum, which includes:
  - (a) Blood-borne pathogen requirements under WAC 296-823-12005; and
  - (b) DDA specialty training requirements; and
- (2) Thirty hours of additional topics related to one or more of the following:
  - (a) Population-specific training~~((?))~~.
  - (b) ~~((Capable caregiver))~~ Specialty training under ~~((chapter 388-112))~~ WAC 388-112A-0450 related to mental health or WAC 388-112A-0440 dementia~~((?))~~.
  - (c) ~~((CPR and))~~ First aid training and certification ~~((as described in WAC 388-829-0040; or))~~ which must be completed no more than 60 days after date of hire and kept current.
  - (d) Cardiopulmonary resuscitation (CPR) training and certification which must be completed no more than 60 days after date of hire and kept current. The skills demonstration portion must be completed in-person.
  - (e) On-the-job training hours, including client-specific training, when the instructor is a trained peer coach as described in WAC 388-829-0060.

(3) For an employee hired on or after February 1, 2024, a provider must ensure that the new employee complies with the in-person CPR requirement under subsection (2) of this section.

(4) For an employee hired before February 1, 2024, who is CPR-certified but did not complete training in-person, the employee must meet the in-person CPR requirement no later than December 1, 2024, regardless of when the certification expires.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 388-101D-0105      Staff training within six months of employment.



**WSR 24-19-058**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**

[Order 24-186—Filed September 13, 2024, 12:07 p.m., effective September 16, 2024]

Effective Date of Rule: September 16, 2024.

Purpose: This emergency rule closes sea cucumber District 2-1 to prevent overharvest of sea cucumbers.

Citation of Rules Affected by this Order: Repealing WAC 220-340-73000S; 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 sea cucumber harvest in District 2-1 to prevent overharvest because the quota has been reached. Harvestable surpluses of sea cucumbers exist in the districts specified. There is insufficient time to adopt permanent rules.

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

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

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

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

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

Date Adopted: September 13, 2024.

Kelly Susewind  
Director

NEW SECTION

**WAC 220-340-73000T Sea cucumbers** Effective September 16, 2024, until further notice, the following provisions of WAC 220-340-730 regarding Puget Sound commercial sea cucumber harvest seasons and landing limits shall be as described herein. All other provisions of WAC 220-340-730 not addressed herein, and unless otherwise amended, remain in effect:

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

(2) 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.

(3) The maximum cumulative landing of sea cucumbers from August 5 through November 17, 2024, is 9,300 pounds per valid designated sea cucumber harvest license.

REPEALER

The following section of Washington Administrative Code is repealed, effective September 16, 2024:

WAC 220-340-73000S Sea cucumbers (24-173)

WSR 24-19-059
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 24-187—Filed September 13, 2024, 1:37 p.m., effective September 14, 2024]

Effective Date of Rule: September 14, 2024.

Purpose: The purpose of this emergency rule is to close retention of unmarked coho taken by reef net gear until October 1, 2024.

Citation of Rules Affected by this Order: Repealing WAC 220-354-18000F; and amending WAC 220-354-180.

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

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

Reasons for this Finding: The reef net fishery will have caught the preseason modeled number of coho salmon for September by September 13, necessitating release of unmarked coho through the end of September. There is insufficient time to adopt permanent rules.

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

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

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

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

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

Date Adopted: September 13, 2024.

Kelly Susewind
Director

NEW SECTION

WAC 220-354-18000G Reef net open periods. Notwithstanding the provisions of WAC 220-354-180, effective September 14 through November 9, 2024, it is unlawful to take, fish for, or possess salmon taken with reef net gear for commercial purposes in Puget Sound Salmon Management and Catch Reporting Areas except as provided in this section, provided that unless otherwise amended, all permanent rules remain in effect:

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

Table with 4 columns: Area(s), Date(s), Open/Closed, Daily open period. Row 1: 7, 9/14-11/9, Open, 5:00 a.m. - 9 p.m.

(a) It is unlawful at all times to retain sockeye and unmarked Chinook taken with reef net gear.

(b) It is unlawful to retain chum and unmarked coho taken with reef gear before October 1.

(c) It is unlawful to retain any Chinook and marked or unmarked, after September 30.

(d) It is unlawful to retain marked Chinook and unmarked coho unless the reef net operator is in immediate possession of a Puget Sound Reef Net Logbook. All retained marked Chinook and unmarked coho must be recorded in the logbook.

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

(f) Completed logs must be submitted and received within six working days to: Puget Sound Commercial Salmon Manager, Department of Fish & Wildlife, P.O. Box 43200, Olympia, WA 98504.

(g) All other saltwater and freshwater areas - Closed.

#### REPEALER

The following section of Washington Administrative Code is repealed, effective September 14, 2024:

WAC 220-354-18000F Reef net open periods. (24-181)

**WSR 24-19-069**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**

[Order 24-189—Filed September 16, 2024, 3:31 p.m., effective September 18, 2024]

Effective Date of Rule: September 18, 2024.

Purpose: The purpose of this emergency rule is to temporarily close recreational fishing in Skagit River from the Hwy. 9 Bridge in Sedro Woolley to the Baker River.

Citation of Rules Affected by this Order: Amending WAC 220-312-040.

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

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

Reasons for this Finding: This rule is necessary to temporarily close a portion of the Skagit River to avoid gear conflicts with treaty fisheries. There is insufficient time to adopt permanent rules.

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

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

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

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

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

Date Adopted: September 16, 2024.

Kelly Susewind  
Director

NEW SECTION

**WAC 220-312-04000U Freshwater exceptions to statewide rules—Puget Sound.** Effective September 18 through September 19, 2024, the following provisions of WAC 220-312-040 regarding fishing seasons for the Skagit River from the Hwy 9 Bridge in Sedro Woolley to the Baker River shall be modified as described below. All other provisions of WAC 220-312-040 not addressed herein, unless otherwise amended by emergency rule, remain in effect:

**Skagit River (Skagit Co.):** From the Hwy 9 Bridge in Sedro Woolley to the Baker River:

All species: Closed Waters.

**WSR 24-19-089**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**

[Order 24-188—Filed September 17, 2024, 11:02 a.m., effective September 21, 2024]

Effective Date of Rule: September 21, 2024.

Purpose: This emergency rule will return most of the Snohomish watershed streams to permanent rules. Cherry Creek, Skykomish River tributaries except Sultan and Wallace rivers; and Skykomish River, North and South Fork tributaries will remain closed.

Citation of Rules Affected by this Order: Repealing WAC 220-312-04000L; and amending WAC 220-312-040.

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

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

Reasons for this Finding: This rule is needed to return most Snohomish watershed to permanent rules. Limited allowable take of wild Chinook in the Snohomish system necessitates monitoring and strict controls to conserve impacts for fall in-river fisheries. The opening dates listed in permanent rules have taken into account that most returning Chinook will no longer be present in those areas. Cherry Creek and Skykomish tributaries will remain closed to avoid impacts to spawning Chinook that do remain present in those systems. There is insufficient time to adopt permanent rules.

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

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

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

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

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

Date Adopted: September 17, 2024.

Kelly Susewind  
Director

NEW SECTION

**WAC 220-312-04000T Freshwater exceptions to statewide rules—Puget Sound.** Effective September 21, 2024, until further notice, provisions of WAC 220-312-040 regarding recreational fishing seasons for the Snohomish River system shall be modified as described below. All

other provisions of WAC 220-312-040 not addressed herein, or unless otherwise amended by emergency rule remain in effect:

The following waters are closed to all fishing immediately, until further notice:

- (a) **Cherry Creek**, from mouth upstream
- (b) **Skykomish River tributaries**, except Sultan River and Wallace River
- (c) **Skykomish River, North Fork tributaries**
- (d) **Skykomish River, South Fork tributaries**

REPEALER

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

WAC 220-312-04000L Freshwater exceptions to statewide rules—Puget Sound. (24-105)

**WSR 24-19-095**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**

[Order 24-190—Filed September 17, 2024, 2:15 p.m., effective September 19, 2024]

Effective Date of Rule: September 19, 2024.

Purpose: The purpose of this emergency rule is to require to re-lease wild coho in Catch Record Card Area 8-2.

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

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

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

Reasons for this Finding: This emergency rule is necessary to require the release of wild coho in Catch Record Card Area 8-2. The coho catch to date has greatly exceeded the preseason projected catch for the months of August and September. Due to concerns about wild north sound coho stock status and considering the high mark rates observed to date, the fishery will remain open for hatchery coho only. The closure to wild coho retention will allow the fishery to continue without putting other fisheries or attainment of conservation objectives at risk. There is insufficient time to adopt permanent rules.

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

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

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

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

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

Date Adopted: September 17, 2024.

Kelly Susewind  
Director

NEW SECTION

**WAC 220-313-06000G Puget Sound salmon—Saltwater seasons and daily limits.** Effective September 19 through September 24, 2024, salmon rules for Catch Record Card Area 8-2, except the Tulalip Terminal Area (Waters west of Tulalip Bay and within 2,000 feet of shore from the pilings at Old Bower's Resort to a fishing boundary marker approximately 1.4 miles northwest of Hermosa Point and not including waters east of a line drawn from Mission Point to Hermosa Point) and Tulalip



Bay (waters east of a line drawn from Mission Point to Hermosa Point), 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:

**Catch Record Card Area 8-2, except the Tulalip Terminal Area and Tulalip Bay:**

Salmon: Daily limit 1. Release Chinook, chum, and wild coho.

REPEALER

The following section of Washington Administrative Code is repealed, effective September 19, 2024:

WAC 220-313-06000E Puget Sound salmon—Saltwater seasons and daily limits. (24-169)