

WSR 15-10-004
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 15-84—Filed April 22, 2015, 2:19 p.m., effective May 2, 2015, 4:45 a.m.]

Effective Date of Rule: May 2, 2015, 4:45 a.m.

Purpose: Amend rules in the recreational spot shrimp fishery.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-56-32500Q and 220-56-32500R; and amending WAC 220-56-325.

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

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

Reasons for this Finding: This regulation is needed to ensure an orderly fishery, manage the fishery within court-ordered sharing requirements, and ensure conservation. Additional harvestable amounts of spot shrimp are available in Marine Area 7 West. 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Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 1, Amended 0, Repealed 2.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: April 22, 2015.

J. W. Unsworth
 Director

NEW SECTION

WAC 220-56-32500R Shrimp—Areas and seasons. Notwithstanding the provisions of WAC 220-56-325, effective 4:45 a.m. May 2 through May 31, 2015, it is unlawful to fish for or possess shrimp taken for personal use in all waters of Marine Areas 4 (east of the east of the Bonilla-Tatoosh line), 5, 6, 7, 8-1, 8-2, 9, 10, 11, 12 and the Discovery Bay Shrimp District, except as provided for in this section:

(1) Marine Areas 4 (east of the Bonilla-Tatoosh line), 5, 6 (excluding the Discovery Bay Shrimp District) and 13: Open May 2 through May 31.

(2) Marine Area 7:

(a) The portion of Marine Area 7 north of a line from Davis Point on Lopez Island to Cattle Point on San Juan Island, then north of a line due west from Lime Kiln Point light to the international boundary, then west of a line from the bell buoy at the international boundary to Point Doughty on Orcas Island, then west of a line projected true north and south from the western tip of Crane Island, then west of a line projected from the southern tip of Shaw Island to the number 2 buoy at the entrance to Fisherman Bay: Open May 2 through May 31;

(b) The portion of Marine Area 7 south of a line from Davis Point on Lopez Island to Cattle Point on San Juan Island, then south of a line due west from Lime Kiln Point light to the international boundary, then east of a line from the bell buoy at the international boundary to Point Doughty on Orcas Island, then east of a line projected true north and south from the western tip of Crane Island, then east of a line projected from the southern tip of Shaw Island to the number 2 buoy at the entrance to Fisherman Bay: Open May 2; May 13 through May 16; May 20 through May 23; and May 27 through May 30.

(3) Marine Areas 8-1, 8-2 and 9:

(a) Open May 2 and May 13 from 7:00 a.m. through 3:00 p.m.

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

(4) Marine Area 10 and 11

(a) Open May 2 from 7:00 a.m. through 3:00 p.m.

(b) On May 13, in that portion of Marine Area 10 west of a line from West Point to Alki Point, open from 7:00 a.m. to 3:00 p.m.

(5) Marine Area 12: Open May 2, 9, 11 and 13 from 9:00 a.m. through 1:00 p.m.

(6) Discovery Bay Shrimp District: Open May 2, 9, 11 and 13 from 7:00 a.m. through 3:00 p.m.

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

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 220-56-32500Q Shrimp—Areas and seasons. (15-68)

The following section of the Washington Administrative Code is repealed effective June 1, 2015:

WAC 220-56-32500R Shrimp—Areas and seasons.

WSR 15-10-006
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 15-81—Filed April 22, 2015, 2:21 p.m., effective April 24, 2015]

Effective Date of Rule: April 24, 2015.

Purpose: Amend recreational fishing rules for the Wind River and Drano Lake.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-310-18500U; and amending WAC 220-310-185.

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

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

Reasons for this Finding: This emergency rule is needed to implement a public proposal recently approved during the 2015 North of Falcon process. Analysis based on recent years' sampling showed few wild salmon and steelhead are typically handled from mid-March through June. Surplus hatchery origin spring chinook salmon are available for harvest. 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 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: April 22, 2015.

J. W. Unsworth
 Director

NEW SECTION

WAC 220-310-18500U Freshwater exceptions to statewide rules—Southwest. Notwithstanding the provisions of WAC 220-310-185, it is unlawful to violate the following provisions, provided that unless otherwise amended, all permanent rules remain in effect:

(1) Effective April 24 through June 30, 2015, it is permissible to fish with barbed hooks in the waters of Wind River from the mouth upstream to 400 feet below Shipherd Falls when fishing for salmon and steelhead.

(2) Effective May 1 through June 30, 2015, it is permissible to fish with barbed hooks in the waters of Wind River

from 100 feet above Shipherd Falls to 800 yards downstream of Carson National Fish Hatchery (except closed waters from 400 feet below to 100 feet above Coffey Dam) when fishing for salmon and steelhead.

(3) Effective April 24 through June 30, 2015, it is permissible to fish with barbed hooks in the waters of Drano Lake from the mouth upstream to markers on point of land downstream and across from Little White Salmon National Fish Hatchery when fishing for salmon and steelhead.

REPEALER

The following section of the Washington Administrative Code is repealed effective July 1, 2015:

WAC 220-310-18500U Freshwater exceptions to statewide rules.

WSR 15-10-008
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 15-80—Filed April 23, 2015, 10:12 a.m., effective May 1, 2015]

Effective Date of Rule: May 1, 2015.

Purpose: Amend commercial salmon troll fishing rules.

Citation of Existing Rules Affected by this Order: Amending WAC 220-24-040.

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: A harvestable quota of salmon is available for the troll fleet. These rules are adopted at the recommendation of the Pacific Fisheries Management Council, in accordance with preseason fishing plans. There is insufficient time to adopt permanent rules.

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

Number of Sections Adopted at 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: April 23, 2015.

J. W. Unsworth
Director

NEW SECTION

WAC 220-24-04000Q All-citizen commercial salmon troll. Notwithstanding the provisions of WAC 220-24-040, effective immediately until further notice, it is unlawful to fish for salmon with troll gear or to land salmon taken with troll gear into a Washington port except during the seasons provided below:

(1) Salmon Management and Catch Reporting Areas 1, 2, 3, and that portion of Area 4 west of 125°05'00" W longitude and south of 48°23'00" N latitude: Open May 1 through June 30, 2015.

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

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

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

(5) Fishers must land and deliver their catch within 24 hours of any closure of a fishery provided for in this section. Vessels in possession of salmon north of the Queets River may not cross the Queets River line without first notifying WDFW by phone at (360) 902-2739 or by email at Douglas.Milward@dfw.wa.gov with Area fished, total Chinook and halibut catch aboard, and destination. Vessels in possession of salmon south of the Queets River may not cross the Queets River line without first notifying WDFW by phone at (360) 902-2739 or by email at Douglas.Milward@dfw.wa.gov with Area fished, total Chinook and halibut catch aboard, and destination. Vessels fishing or in possession of salmon while fishing north of Leadbetter Point must land and deliver their fish within the area and North of Leadbetter Point. Vessels fishing or in possession of salmon while fishing south of Leadbetter Point must land and deliver their fish within the area and south of Leadbetter Point.

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

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

124°04'05" W. long.), and then along the south jetty to the point of intersection with the Buoy #10 line.

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

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

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

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

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

WSR 15-10-009 EMERGENCY RULES DEPARTMENT OF FISH AND WILDLIFE

[Order 15-85—Filed April 23, 2015, 10:15 a.m., effective May 2, 2015]

Effective Date of Rule: May 2, 2015.

Purpose: Amend recreational fishing rules for the Yakima River.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-310-19500R; and amending WAC 220-310-195.

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

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

Reasons for this Finding: Yakama Nation and Washington department of fish and wildlife fishery managers are forecasting a harvestable return of three thousand nine hundred adult hatchery spring chinook salmon to the Yakima River in 2015. Opening the two sections of the Yakima River for spring chinook salmon will provide additional fishing opportunity. There is insufficient time to adopt permanent rules.

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

Number of Sections Adopted at 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: April 23, 2015.

J. W. Unsworth
Director

NEW SECTION

WAC 220-310-19500R Exceptions to statewide rules—Yakima River. Notwithstanding the provisions of WAC 220-310-195:

(1) Effective May 2 through June 15, 2015, it is permissible to fish for salmon in waters of the Yakima River from the Hwy. 240 bridge in Richland (river mile 2.1) to the Grant Avenue bridge in Prosser (river mile 47.0) approximately 1,000 feet downstream of Prosser Dam.

(a) Daily limit of two hatchery Chinook, minimum size 12 inches in length.

(b) Terminal gear is restricted to two single (point) barbless hooks with a hook gap from point to shank of 3/4 inch or less when fishing for salmon. It is permissible to use bait.

(c) The Yakima River adjacent to the USBR Chandler Powerhouse/Pumping Station is closed to all fishing from the WDFW white markers 200 feet downstream of the spillway chute to the power line crossing immediately upstream of the powerhouse.

(2) Effective May 9 through June 30, 2015, it is permissible to fish for salmon in waters of the Yakima River from the Interstate 82 bridge at Union Gap (river mile 107.1) to the BNSF railroad bridge approximately 600 feet downstream of Roza Dam (river mile 127.8).

(a) Daily limit of two hatchery Chinook, minimum size 12 inches in length.

(b) When fishing for salmon, terminal gear is restricted to two single (point) barbless hooks with a hook gap from point to shank of 3/4 inch or less.

(c) During the salmon fishery, the Selective Gear Rules requirement prohibiting use of bait and knotted nets is temporarily suspended for all species, but only in the river section open to salmon fishing. Night closure is in effect.

(d) The upper "closed water" boundary line is moved upstream to the railroad bridge downstream of Roza Dam.

(3) In both areas open to salmon fishing, the use of two (2) fishing poles is permitted during the salmon fishery provided the participating angler possesses a valid "Two-Pole Endorsement."

REPEALER

The following section of the Washington Administrative Code is repealed effective July 1, 2015:

WAC 220-310-19500R Exceptions to statewide rules—
Yakima River.

WSR 15-10-010

EMERGENCY RULES

DEPARTMENT OF

FISH AND WILDLIFE

[Order 15-86—Filed April 23, 2015, 10:17 a.m., effective April 23, 2015, 10:17 a.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: Amend commercial fishing rules for Puget Sound commercial shrimp.

Citation of Existing Rules Affected by this Order: Amending WAC 220-52-051, 220-52-075, and 220-69-240.

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

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

Reasons for this Finding: The 2015 state/tribal shrimp harvest management plans for the Strait of Juan de Fuca and Puget Sound require adoption of harvest seasons contained in this emergency rule. This emergency rule (1) opens the Region 1 and 3 beam trawl fishery season; (2) opens the pot fishery season for nonspot shrimp; and (3) reflects changes to the shrimp catch reporting and purchase reporting requirements. 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 Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 3, Amended 0, Repealed 0.

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

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

Date Adopted: April 23, 2015.

J. W. Unsworth
Director

NEW SECTION

WAC 220-52-05100A Puget Sound shrimp pot and beam trawl fishery—Season. Notwithstanding the provisions of WAC 220-52-051, effective 6:00 a.m. May 1, 2015, until further notice, it is unlawful to fish for shrimp for commercial purposes in Puget Sound except as provided for in this section:

(1) Shrimp pot gear:

(a) All waters of Shrimp Management Areas 1A, 1B, 1C, 2E, 2W, 3, 4, and 6 are open to the harvest of all non-spot shrimp species, effective immediately, until further notice, except as provided for in this section:

(i) In Marine Fish/Shellfish Management and Catch Reporting Area (Catch Area) 22A, all waters inside and bounded by a line projected from Blakely Marina on the northwest corner of Blakely Island to Upright Head on Lopez Island, following the shoreline southerly on Lopez Island to intersect a line projected due west from Bald Bluff on Blakely Island, are closed until 7:00 a.m. June 16, 2015.

(ii) All waters of Catch Areas 23A-E, 23A-W, 23A-C and the Discovery Bay Shrimp District are closed.

(iii) All waters of Shrimp Management Area 1A north of a line projected at 48°.31.5' N latitude are closed.

(a) Effective immediately, until further notice, it is unlawful for the combined total harvest of non-spot shrimp by a fisher and/or the fisher's alternate operator to exceed 1,000 pounds per week from Shrimp Management Areas 1A, 1B, 1C, 2E and 2W.

(b) The shrimp catch accounting week is Wednesday through Tuesday.

(c) It is unlawful to pull shellfish pots in more than one catch area per day.

(2) Shrimp beam trawl gear:

(a) Shrimp Management Area (SMA) 3 (outside of the Discovery Bay Shrimp District, Sequim Bay and Catch Area 23D) is open, effective immediately, until further notice. Sequim Bay includes those waters of Catch Area 25A south of a line projected west from Travis Spit on the Miller Peninsula.

(b) That portion of Catch Area 22A within SMA 1B east of a line projected 122.47°W longitude and west of a line projected 122.43°W longitude in Rosario Strait is open.

(c) That portion of Catch Area 22A within SMA 1B is open effective 6:00 a.m. May 16, 2015, until further notice.

(3) All shrimp taken under this section must be sold to licensed Washington wholesale fish dealers.

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

NEW SECTION

WAC 220-52-07500Q Shellfish harvest logs. Notwithstanding the provisions of WAC 220-52-075, effective immediately, until further notice, it is unlawful for vessel operators engaged in commercial harvest of shrimp from Puget Sound with shellfish pot gear to fail to report their daily catch by text message, e-mail or FAX to WDFW by 10:00 a.m. the day after the shrimp are harvested. Text message and e-mail daily catch reports must be submitted to shrimpreport@dfw.wa.gov, and FAX reports must be transmitted to FAX number 360-302-3031. Daily catch reports must include the following information as it is recorded on the fish receiving ticket: fisher name, buyer name, pounds landed per shrimp species, catch area, date of harvest, date of sale, and complete fish ticket serial number, including the first alphanumeric letter. If the fish receiving ticket is faxed as the daily harvest report, the date of harvest must be recorded on the bottom half of the ticket.

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.

NEW SECTION

WAC 220-69-24000M Duties of commercial purchasers and receivers. Notwithstanding the provisions of WAC 220-69-240, effective immediately until further notice, it is unlawful for the original receiver of shrimp other than ghost shrimp taken from Puget Sound to fail to report in the following manner:

(1) For Puget Sound shrimp - Pot gear: All buyers of shrimp taken by pot gear (including fishers who buy their own catch) are no longer required to report the previous week's purchases by phone or FAX.

(2) Puget Sound shrimp - Trawl gear: All buyers of shrimp taken by trawl gear (including fishers who buy their own catch) must report the previous day's purchases by 10:00 a.m. the following morning. Reports must be made by text message, e-mail or FAX. Text message and e-mail reports must be submitted to shrimpreport@dfw.wa.gov, and FAX reports must be transmitted to FAX number 360-302-3031. Reports must include dealer name, fisher name, pounds sold per shrimp species, catch area, date sold, and the complete fish ticket serial number, including the first alphanumeric letter. Violation of this subsection is a gross misdemeanor, punishable under RCW 77.15.560.

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

**WSR 15-10-019
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE**

[Order 15-88—Filed April 24, 2015, 1:03 p.m., effective May 1, 2015]

Effective Date of Rule: May 1, 2015.

Purpose: Amend recreational fishing rules for the halibut fishery.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-56-25500X; and amending WAC 220-56-255.

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

Under RCW 34.05.350 the agency for good cause finds that immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or

general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.

Reasons for this Finding: This rule conforms to federal action taken by the Pacific Fisheries Management Council, International Pacific Halibut Commission and National Marine Fisheries Service. The recreational halibut quota is sufficient to provide for these seasons. Bottomfish retention allowances during the halibut season in Marine Areas 7-10 are prohibited to provide additional protection of rockfish listed under the Endangered Species Act. 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 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: April 24, 2015.

Joe Stohr
for J. W. Unsworth
Director

NEW SECTION

WAC 220-56-25500Y Halibut—Seasons—Daily and possession limits. Notwithstanding the provisions of WAC 220-56-255, 220-56-250, and 220-56-230, effective May 1, 2015, until further notice, it is unlawful to fish for or possess halibut taken for personal use, except as provided in this section:

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

(a) Open May 1, 2015, until further notice, Thursdays through Sundays.

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

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

(a) Open May 4, 2015, until further notice, Mondays through Wednesdays.

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

(3) **Catch Record Card Area 2:** Open May 3, through May 19, 2015, Sundays and Tuesdays only.

(a) **Catch Record Card Area 2 (Northern Nearshore fishery):** Those waters from 47°31.70'N. latitude south to

46°58.00'N latitude and east of a line approximating the 30 fathom depth contour as defined by the following coordinates, open May 3, 2015, seven days per week until further notice:

47°31.70 N. lat, 124°37.03 W. long

47°25.67 N. lat, 124°34.79 W. long

47°12.82 N. lat, 124°29.12 W. long

47°58.00 N. lat, 124°24.24 W. long

(b) It is permissible to take, retain and possess lingcod seaward of the 30 fathom line on any day open to the primary halibut fishery as provided in subsection (2) above.

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

(a) Open May 14, May 16, May 21, and May 23, 2015, Thursdays and Saturdays only.

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

Beginning at 48°18'N., 125°18'W.; thence to

48°18'N., 124°59'W.; thence to

48°11'N., 124°59'W.; thence to

48°11'N., 125°11'W.; thence to

48°04'N., 125°11'W.; thence to

48°04'N., 124°59'W.; thence to

48°N., 124°59'W.; thence to

48°N., 125°18'W.; thence to point of origin.

(c) From May 9, 2015, until further notice, it is unlawful to fish for or possess bottomfish seaward of a line approximating the 20-fathom depth contour except, on days open to the Pacific halibut fishery in these areas, it is permissible to retain lingcod, sablefish and Pacific cod seaward of the 20 fathom depth contour as defined by the following coordinates:

48°23.9'N. lat., 124°44.2'W. long.

48°23.6'N. lat., 124°44.9'W. long.

48°18.6'N. lat., 124°43.6'W. long.

48°18.6'N. lat., 124°48.2'W. long.

48°10.0'N. lat., 124°48.8'W. long.

48°02.4'N. lat., 124°49.3'W. long.

47°37.6'N. lat., 124°34.3'W. long.

47°31.7'N. lat., 124°32.4'W. long.

(d) In Marine Area 4 east of the Bonilla-Tatoosh Line it is unlawful to fish for or possess bottomfish seaward of a line approximating 120-feet (20 fathoms) except, on days open to the Pacific halibut fishery in this area, it is permissible to retain lingcod, and Pacific cod seaward of the 120 feet (20 fathoms) as defined by WAC 220-56-230.

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

(a) Open May 15 through May 16, 2015, Friday and Saturday.

(b) Open May 21 through May 24, 2015, Thursday through Sunday.

(c) Open May 29 through May 30, 2015, Friday and Saturday.

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

(6) Catch Record Card Areas 6 through 10:

(a) Open May 8 through May 9, 2015, Friday and Saturday.

(b) Open May 15 through May 16, 2015, Friday and Saturday.

(c) Open May 21 through May 24, 2015, Thursday through Sunday

(d) Open May 28 through May 30, 2015, Thursday through Saturday.

(e) It is permissible for halibut anglers to retain lingcod and Pacific cod caught while fishing for halibut in waters deeper than 120 feet on days that halibut fishing is open in Marine Area 6.

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

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

(9) Unless otherwise amended, all other permanent rules remain in effect.

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

REPEALER

The following section of the Washington Administrative Code is repealed effective May 1, 2015:

WAC 220-56-25500X Halibut—Seasons—Daily and possession limits. (15-58)

**WSR 15-10-023
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE**

[Order 15-90—Filed April 27, 2015, 10:34 a.m., effective April 28, 2015]

Effective Date of Rule: April 28, 2015.

Purpose: Amend commercial fishing rules.

Citation of Existing Rules Affected by this Order: Amending WAC 220-44-095.

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 closure of the current year sardine fishery is consistent with federal rule closing federal waters to directed sardine fishing effective April 28, 2015. Based on projections the fishery will attain its quota. 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 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: April 27, 2015.

Joe Stohr
for J. W. Unsworth
Director

NEW SECTION

WAC 220-44-09500C Coastal sardine purse seine fishery. Notwithstanding provisions of WAC 220-44-095, effective April 28, 2015, until further notice, it is unlawful to possess, transport through the waters of the state, or deliver into any Washington port, Pacific sardine (*Sardinops sagax*) or other coastal pelagic species, except as authorized by coastal baitfish regulations.

**WSR 15-10-029
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE**

[Order 15-87—Filed April 27, 2015, 1:41 p.m., effective May 2, 2015]

Effective Date of Rule: May 2, 2015.

Purpose: Amend recreational fishing rules for razor clams.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-56-36000D; and amending WAC 220-56-360.

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

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

Reasons for this Finding: Survey results show that adequate razor clams are available for recreational harvest in Razor Clam Areas 1, 3 and 5. Washington department of health has certified clams from these beaches are safe for human consumption. There is insufficient time to adopt permanent rules.

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

Number of Sections Adopted at 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: April 27, 2015.

J. W. Unsworth
Director

NEW SECTION

WAC 220-56-3600D Razor clams—Areas and seasons. Notwithstanding the provisions of WAC 220-56-360, it is unlawful to dig for or possess razor clams taken for personal use from any beach in Razor Clam Areas 1, 3, 4, or 5, except as provided for in this section:

(1) Effective 12:01 a.m. May 2, 2015 through 11:59 a.m. May 3, 2015, razor clam digging is permissible in Razor Clam Area 1. Digging is permissible from 12:01 a.m. to 11:59 a.m. each day only.

(2) Effective 12:01 a.m. May 2, 2015 through 11:59 a.m. May 3, 2015, razor clam digging is permissible in Razor Clam Area 3. Digging is permissible from 12:01 a.m. to 11:59 a.m. each day only.

(3) Effective 12:01 a.m. May 2, 2015 through 11:59 a.m. May 3, 2015, razor clam digging is permissible in Razor Clam Area 5. Digging is permissible from 12:01 a.m. to 11:59 a.m. each day only.

(4) It is unlawful to dig for razor clams at any time in Long Beach, Twin Harbors Beach or Copalis Beach Clam sanctuaries defined in WAC 220-56-372.

REPEALER

The following section of the Washington Administrative Code is repealed effective 12:01 p.m. May 3, 2015:

WAC 220-56-3600D Razor clams—Areas and seasons.

**WSR 15-10-030
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE**

[Order 15-93—Filed April 28, 2015, 8:58 a.m., effective April 28, 2015, 8:58 a.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: Amend Puget Sound commercial crab fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-52-04500E; and amending WAC 220-52-045.

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

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

Reasons for this Finding: Mandatory meat pick-out rate allowance for coastal crab will be achieved by the opening dates contained herein. The special management areas are listed in accordance with state/tribal management agreements. The stepped opening periods/areas will also provide for fair start provisions. 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 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: April 28, 2015.

J. W. Unsworth
Director

NEW SECTION

WAC 220-52-04500F Coastal crab seasons. Notwithstanding the provisions of WAC 220-52-046, effective immediately until further notice, it is unlawful to fish for Dungeness crab in Washington coastal waters, the Pacific Ocean, Grays Harbor, Willapa Bay, or the Columbia River, except as provided for in this section.

(1) The area from the WA/OR border (46°15.00) and the U.S./Canada Border, including Willapa Bay and Grays Harbor: Open.

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

(3) The Quinault Secondary Special Management Area (SSMA) is closed to fishing for Dungeness crab from the area shoreward of a line approximating the 27-fathom depth curve between Split Rock (47°24.50) and the mouth of the Copalis River (47°08.00). The legal SSMA is defined by the following coordinates:

(a) Northeast Corner (Split Rock): 47°24.50 N. Lat. 124°20.00 W. Lon.

(b) Northwest Corner: 47°24.50 N. Lat. 124°32.40 W. Lon.

(c) Southwest Corner: 47°08.00 N. Lat. 124°25.50 W. Lon.

(d) Southeast Corner (Copalis River): 47°08.00 N. Lat. 124°11.20 W. Lon.

(4) It is unlawful for a vessel to use more than 200 pots in the area between Raft River (47°28.00) and Split Rock (47°24.50) shoreward of a line approximating the 27-fathom depth curve until 8:00 a.m. May 3, 2015. The area in which the pot limit applies is legally defined by the following coordinates:

(a) Northeast Corner (Raft River): 47°28.00 N. Lat. 124°20.70 W. Lon.

(b) Northwest Corner: 47°28.00 N. Lat. 124°34.00 W. Lon.

(c) Southwest Corner: 47°24.50 N. Lat. 124°32.40 W. Lon.

(d) Southeast Corner (Split Rock): 47°24.50 N. Lat. 124°20.00 W. Lon.

Fishers must pre-register with the Department of Fish and Wildlife 24 hours prior to deploying gear in this area by one of the three following methods:

- Fax transmission to Carol Henry at 360-249-1229;
- E-mail to: Carol Henry at Carol.Henry@dfw.wa.gov;

or

- Telephone call to Carol Henry at 360-249-1296.

(5) The Quinalt Secondary Special Management Area (SSMA) is modified and closed to fishing for Dungeness crab from the area shoreward of a line approximating the 27-fathom depth curve between Split Rock (47°24.50) and the mouth of the Joe Creek (47°12.11). This area is closed until further notice. The legal modified SSMA is defined by the following coordinates:

(a) Northeast Corner (Split Rock): 47°24.50 N. Lat. 124°20.00 W. Lon.

(b) Northwest Corner: 47°24.50 N. Lat. 124°32.40 W. Lon.

(c) Southwest Corner: 47°12.11 N. Lat. 124°27.33 W. Lon.

(d) Southeast Corner (Joe Creek): 47°12.11 N. Lat. 124°12.28 W. Lon.

(6) It is unlawful for a vessel to use more than 200 pots in the area between the mouth of Joe Creek (47°12.11) and the mouth of the Copalis River (47°08.00) shoreward of a line approximating the 27-fathom depth curve and from the area until 8:00 a.m. May 10, 2015. The area in which the pot limit applies is legally defined by the following coordinates:

(a) Northeast Corner (Joe Creek): 47°12.11 N. Lat. 124°12.28 W. Lon.

(b) Northwest Corner: 47°12.11 N. Lat. 124°27.33 W. Lon.

(c) Southwest Corner: 47°08.00 N. Lat. 124°25.50 W. Lon.

(d) Southeast Corner (Copalis River): 47°08.00 N. Lat. 124°11.20 W. Lon.

Fishers must pre-register with the Department of Fish and Wildlife 24 hours prior to deploying gear in this area by one of the three following methods:

- Fax transmission to Carol Henry at 360-249-1229;
- E-mail to: Carol Henry at Carol.Henry@dfw.wa.gov;

or

- Telephone call to Carol Henry at 360-249-1296.

(7) The Quileute Special Management Area (SMA) will open to fishing for Dungeness crab at 8:00 a.m. on May 1, 2015. The SMA includes the area shoreward of a line approximating the 30-fathom depth curve between Destruction Island and Cape Johnson according to the following points:

- Northeast Corner (Cape Johnson) 47°58.00' N. Lat. 124°40.40' W. Lon.

- Northwest Corner: 47°58.00' N. Lat. 124°49.00' W. Lon.

- Southwest Corner: 47°40.50' N. Lat. 124°40.00' W. Lon.

- Southeast Corner (Destruction Island): 47°40.50' N. Lat. 124°24.43' W. Lon.

(8) It is unlawful for a vessel to use more than 100 pots in the Quileute SMA from 8:00 a.m. May 1, 2015, until 8:00 a.m. May 31, 2015. Fishers must pre-register with the Department of Fish and Wildlife 24 hours prior to deploying gear in this area by one of the three following methods:

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

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

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

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 220-52-04500E Coastal crab seasons. (15-62)

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.

WSR 15-10-042

EMERGENCY RULES

HEALTH CARE AUTHORITY

(Washington Apple Health)

[Filed April 29, 2015, 1:27 p.m., effective April 30, 2015]

Effective Date of Rule: April 30, 2015.

Purpose: To add an age restriction to clients who require thickeners.

Citation of Existing Rules Affected by this Order: Amending WAC 182-554-500.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160.

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 Food and Drug Administration has issued a warning not to give infants thickeners, particularly those born prematurely, because there is substantive evidence it puts them at risk of necrotizing enterocolitis. The recommendation is supported by American Academy of Pediatrics.

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

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

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

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

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

Date Adopted: April 29, 2015.

Jason R. P. Crabbe
Rules Coordinator

AMENDATORY SECTION (Amending WSR 11-14-075, filed 6/30/11, effective 7/1/11)

WAC 182-554-500 Covered enteral nutrition products, equipment and related supplies—Orally administered—Clients twenty years of age and younger only. (1) The department covers orally administered enteral nutrition products for clients twenty years of age and younger only, as follows:

(a) The client's nutritional needs cannot be met using traditional foods, baby foods, and other regular grocery products that can be pulverized or blenderized and used to meet the client's caloric and nutritional needs;

(b) The client is able to manage their feedings in one of the following ways:

(i) Independently; or

(ii) With a caregiver who can manage the feedings; and

(c) The client meets one of the following clinical criteria:

(i) Acquired immune deficiency syndrome (AIDS). Providers must obtain prior authorization to receive payment. The client must:

(A) Be in a wasting state;

(B) Have a weight-for-length less than or equal to the fifth percentile if the client is three years of age or younger; or

(C) Have a body mass index (BMI) of:

(I) Less than or equal to the fifth percentile if the client is four through seventeen years of age; or

(II) Less than or equal to 18.5 if the client is eighteen through twenty years of age; or

(D) Have a BMI of:

(I) Less than or equal to twenty-five; and

(II) An unintentional or unexplained weight loss of five percent in one month, seven and a half percent in three months, or ten percent in six months.

(ii) Amino acid, fatty acid, and carbohydrate metabolic disorders.

(A) The client must require a specialized nutrition product; and

(B) Providers must follow the department's expedited prior authorization process to receive payment.

(iii) Cancer(s).

(A) The client must be receiving chemotherapy and/or radiation therapy or post-therapy treatment;

(B) The department pays for orally administered nutritional products for up to three months following the completion of chemotherapy or radiation therapy; and

(C) Providers must follow the department's expedited prior authorization process to receive payment.

(iv) Chronic renal failure.

(A) The client must be receiving dialysis and have a fluid restrictive diet in order to use nutrition bars; and

(B) Providers must follow the department's expedited prior authorization process to receive payment.

(v) Decubitus pressure ulcers.

(A) The client must have stage three or greater decubitus pressure ulcers and an albumin level of 3.2 or below; and

(B) Providers must follow the department's expedited prior authorization process to receive a maximum of three month's payment.

(vi) Failure to thrive or malnutrition/malabsorption as a result of a stated primary diagnosed disease.

(A) The provider must obtain prior authorization to receive payment; and

(B) The client must have:

(I) A disease or medical condition that is only organic in nature and not due to cognitive, emotional, or psychological impairment; and

(II) A weight-for-length less than or equal to the fifth percentile if the client is two years of age or younger; or

(III) A BMI of:

(aa) Less than or equal to the fifth percentile if the client is three through seventeen years of age; or

(bb) Less than or equal to 18.5, an albumin level of 3.5 or below, and a cholesterol level of one hundred sixty or below if the client is age eighteen through twenty years of age; or

(IV) Have a BMI of:

(aa) Less than or equal to twenty-five; and

(bb) An unintentional or unexplained weight loss of five percent in one month, seven and a half percent in three months, or ten percent in six months.

(vii) Medical conditions (e.g., dysphagia) requiring a thickener.

(A) The client must be older than one year of age and:

(I) Require a thickener to aid in swallowing or currently be transitioning from tube feedings to oral feedings; and

(II) Be evaluated by a speech therapist or an occupational therapist who specializes in dysphagia. The report recommending a thickener must be in the client's chart in the prescriber's office.

(B) Providers must follow the ~~((department's))~~ agency's expedited prior authorization process to receive payment.

(C) If prescribing for a child younger than one year of age, providers must request prior authorization and:

(I) Include clinical documentation that supports the medical necessity of the request; and

(II) Include the report recommending a thickener from a speech therapist or occupational therapist who specializes in dysphagia.

(d) If four years of age or younger.

(i) The client must:

(A) Have a certified registered dietitian (RD) evaluation with recommendations which support the prescriber's order for oral enteral nutrition products or formulas; and

(B) Have a signed and dated written notification from WIC indicating one of the following:

(I) Client is not eligible for the women, infants, and children (WIC) program; or

(II) Client is eligible for WIC program, but the need for the oral enteral nutrition product or formula exceeds WIC's allowed amount; or

(III) The requested oral enteral nutrition product or formula is not available through the WIC program. Specific, detailed documentation of the tried and failed efforts of similar WIC products, or the medical need for alternative products must be in the prescriber's chart for the client; and

(C) Meet one of the following clinical criteria:

(I) Low birth weight (less than 2500 grams);

(II) A decrease across two or more percentile lines on the CDC growth chart, once a stable growth pattern has been established;

(III) Failure to gain weight on two successive measurements, despite dietary interventions; or

(IV) Documented specific, clinical factors that place the child at risk for a compromised nutrition and/or health status.

(ii) Providers must follow the department's expedited prior authorization process to receive payment.

(e) If five years of age through twenty years of age.

(i) The client must:

(A) Have a certified RD evaluation, for eligible clients, with recommendations which support the prescriber's order for oral enteral nutrition products; and

(B) Meet one of the following clinical criteria:

(I) A decrease across two or more percentile lines on the CDC growth chart, once a stable growth pattern has been established;

(II) Failure to gain weight on two successive measurements, despite dietary interventions; or

(III) Documented specific, clinical factors that place the child at risk for a compromised nutrition and/or health status.

(ii) Providers must follow the department's expedited prior authorization process to receive payment.

(2) Requests to the department for prior authorization for orally administered enteral nutrition products must include a completed Oral Enteral Nutrition Worksheet Prior Authorization Request (DSHS 13-743), available for download at: <http://www1.dshs.wa.gov/msa/forms/eforms.html>. The DSHS 13-743 form must be:

(a) Completed by the prescribing physician, advanced registered nurse practitioner (ARNP), or physician assistant-certified (PA-C), verifying all of the following:

(i) The client meets the requirements listed in this section;

(ii) The client's physical limitations and expected outcome;

(iii) The client's current clinical nutritional status, including the relationship between the client's diagnosis and nutritional need;

(iv) For a client eighteen through twenty years of age, the client's recent weight loss history and a comparison of the client's actual weight to ideal body weight and current body mass index (BMI);

(v) For a client younger than eighteen years of age, the client's growth history and a comparison to expected weight gain, and:

(A) An evaluation of the weight-for-length percentile if the client is three years of age or younger; or

(B) An evaluation of the BMI if the client is four through seventeen years of age.

(vi) The client's medical condition and the exact daily caloric amount of needed enteral nutrition product;

(vii) The reason why the client is unable to consume enough traditional food to meet nutritional requirements;

(viii) The medical reason the specific enteral nutrition product, equipment, and/or supply is prescribed;

(ix) Documentation explaining why less costly, equally effective products or traditional foods are not appropriate;

(x) The number of days or months the enteral nutrition products, equipment, and/or necessary supplies are required; and

(xi) The client's likely expected outcome if enteral nutritional support is not provided.

(b) Written, signed (including the prescriber's credentials), and dated by the prescriber on the same day and before delivery of the enteral nutrition product, equipment, or related supply. This form must not be back-dated; and

(c) Be submitted within three months from the date the prescriber signs the prescription.

(3) Clients twenty years of age and younger must be evaluated by a certified RD within thirty days of initiation of enteral nutrition products and periodically (at the discretion of the certified RD) while receiving enteral nutrition products. The certified RD must be a current provider with the department.

WSR 15-10-049

EMERGENCY RULES

DEPARTMENT OF FISH AND WILDLIFE

[Order 15-89—Filed April 30, 2015, 9:25 a.m., effective June 1, 2015]

Effective Date of Rule: June 1, 2015.

Purpose: Amend recreational fishing rules for the Skykomish River.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-310-19000T; and amending WAC 220-310-190.

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 forecast run size for Wallace River Hatchery chinook is below broodstock needs. Hatchery returns will be closely monitored and if early returns indicate that the run size will meet broodstock needs the Skykomish mark selective fishery will open. 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 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: April 30, 2015.

J. W. Unsworth
Director

NEW SECTION

WAC 220-310-19000T Freshwater exceptions to statewide rules—Skykomish River. Notwithstanding the provisions of WAC 220-310-190, effective June 1 through July 31, 2015, it is unlawful to fish for Chinook salmon in the waters of the Skykomish River from the mouth upstream to the mouth of Wallace River.

REPEALER

The following section of the Washington Administrative Code is repealed effective August 1, 2015:

WAC 220-310-19000T Freshwater exceptions to statewide rules—Skykomish River.

WSR 15-10-054
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 15-102—Filed April 30, 2015, 11:56 a.m., effective May 4, 2015]

Effective Date of Rule: May 4, 2015.

Purpose: Amend commercial fishing rules to close the sea cucumber fishery.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-52-07100I.

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

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

Reasons for this Finding: There is insufficient quota of sea cucumbers to extend harvest into an additional commercial fishing week without a significant risk of overharvest. 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 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 1.

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

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

Date Adopted: April 30, 2015.

Nate Pamplin
for J. W. Unsworth
Director

REPEALER

The following section of the Washington Administrative Code is repealed effective May 4, 2015:

WAC 220-52-07100I Sea cucumbers (15-44)

WSR 15-10-056
EMERGENCY RULES
DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Aging and Long-Term Support Administration)

[Filed April 30, 2015, 1:54 p.m., effective May 1, 2015]

Effective Date of Rule: May 1, 2015.

Purpose: The department is amending chapter 388-107 WAC in order to address concerns of the Center for Medicare/Medicaid Services (CMS) Home and Community Based Services (HCBS) and stakeholders with operationalization of the requirements stated therein.

Citation of Existing Rules Affected by this Order: Amending WAC 388-107-0001, 388-107-0080, 388-107-0100, 388-107-0110, 388-107-0120, 388-107-0130, 388-107-0140, 388-107-0150, 388-107-0160, 388-107-0180, 388-107-0190, 388-107-0200, 388-107-0210, 388-107-0240,

388-107-0280, 388-107-0370, 388-107-0390, 388-107-0400, 388-107-0410, 388-107-0420, 388-107-0430, 388-107-0560, 388-107-0770, 388-107-0810, 388-107-0830, 388-107-0890, 388-107-0940, 388-107-0960, and 388-107-1190.

Statutory Authority for Adoption: RCW 70.97.230.

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: After receiving input from stakeholders, DSHS' residential care services has revised chapter 388-107 WAC to operationalize the enhanced services facilities (ESF) program.

Immediate Adoption is Necessary for Public Safety and General Welfare: The Washington state operating budget directs the department to implement chapter 70.97 RCW, which requires the establishment of ESF. ESFs are intended to relieve pressure on institutional mental health settings such as Eastern and Western state hospitals. If certain patients are relocated to ESFs, more beds will be available to those who need an institutional level of mental health care.

Due to shortage of beds at evaluation and treatment centers and Western and Eastern state hospitals, some patients have been kept in non-psychiatric acute care hospital settings such as emergency rooms and medical surgical units. In the case known as *In re: the Detention of D.W., et al. v. Department of Social and Health Service[s]*, the Washington state supreme court found these placements, known as "psychiatric boarding," to be unconstitutional. In order to comply with *D.W.*, DSHS needs to immediately develop alternatives to institutional mental health settings in order to reduce the need for psychiatric boarding. Therefore, adoption of these rules, which will allow ESFs to become licensed and begin operation, is an urgent and time-sensitive matter of public safety and general welfare.

Immediate Adoption is Necessary to Receive Federal Funds: In order to qualify for federal matching funds, the ESF program must conform to federal CMS/HCBS requirements. These federal requirements became effective after the initial ESF rules were adopted. In order to ensure that payments for ESF services will qualify for federal funding under the HCBS requirements, the proposed rule amendments need to be adopted immediately.

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 29, Repealed 0.

Number of Sections Adopted at 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 29, Repealed 0.

Date Adopted: April 29, 2015.

Katherine I. Vasquez
Rules Coordinator

Reviser's note: The material contained in this filing exceeded the page-count limitations of WAC 1-21-040 for appearance in this issue of the Register. It will appear in the 15-11 issue of the Register.

**WSR 15-10-067
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE**

[Order 15-104—Filed May 1, 2015, 12:59 p.m., effective May 1, 2015, 12:59 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: Amend recreational fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-310-20000E; and amending WAC 220-310-200.

Statutory Authority for Adoption: RCW 77.04.012, 77.04.020, 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: Reopens the 2015 spring recreational salmon season in the Columbia River in the area from Buoy 10 upstream to Bonneville Dam for two additional days. The upriver spring chinook return has been updated to two hundred twenty thousand fish, which means harvestable fish remain on the guideline. The regulation continues to adjust the hatchery adult bag limit in Deep River to be consistent with the adjacent Columbia River when both areas are open. The regulation continues to allow for the retention of shad and hatchery steelhead during days and in areas that are open for hatchery chinook. The regulation continues to allow anglers to possess up to four hatchery chinook in fresh form in the geographic area from The Dalles Dam to the Oregon/Washington border when the area is open for hatchery spring chinook. The state will pursue making this regulation a permanent rule during the spring season when the area is open for hatchery chinook retention. The regulation continues to allow only hand-casted lines in the geographic area of Bonneville Pool from the Tower Island powerlines (located approximately six miles below The Dalles Dam) downstream to Bonneville Dam on the Washington shore. The state will pursue making this regulation a permanent rule during the spring season when the area is open for hatchery chinook retention.

The fishery is consistent with the *U.S. v. Oregon* Management Agreement and the associated biological opinion. Conforms Washington state rules with Oregon state rules.

Regulation is consistent with compact action of January 28 and April 8, 2015. There is insufficient time to promulgate permanent rules. Washington and Oregon jointly regulate Columbia River fisheries under the congressionally ratified Columbia River compact. Four Indian tribes have treaty fishing rights in the Columbia River. The treaties preempt state regulations that fail to allow the tribes an opportunity to take a fair share of the available fish, and the states must manage other fisheries accordingly. *Sohappy v. Smith*, 302 F. Supp. 899 (D. Or. 1969). A federal court order sets the current parameters for sharing between treaty Indians and others. *United States v. Oregon*, Civil No. 68-513-KI (D. Or.), Order Adopting 2008-2017 *United States v. Oregon* Management Agreement (Aug. 12, 2008) (Doc. No. 2546).

Some Columbia River Basin salmon and steelhead stocks are listed as threatened or endangered under the federal Endangered Species Act (ESA). On May 5, 2008, the National Marine Fisheries Service issued a biological opinion under 16 U.S.C. § 1536 that allows for some incidental take of these species in treaty and nontreaty Columbia River fisheries governed by the 2008-2017 *U.S. v. Oregon* Management Agreement. The Washington and Oregon fish and wildlife commissions have developed policies to guide the implementation of such biological opinions in the states' regulation of nontreaty fisheries.

Columbia River nontreaty fisheries are monitored very closely to ensure compliance with federal court orders, the 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 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 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: May 1, 2015.

J. W. Unsworth
Director

NEW SECTION

WAC 220-310-20000F Exceptions to statewide rules—Columbia River. Notwithstanding the provisions of WAC 220-310-200, it is unlawful to violate the following provi-

sions, provided that unless otherwise amended, all permanent rules remain in effect:

(1) Columbia River: Open May 2 through May 3, 2015:

(a) Open for fishing for salmonids and shad from the Tongue Point/Rocky Point Line upstream to 600 feet downstream of the fish ladder at the new Bonneville Dam powerhouse (#2), except closed to fishing from boats upstream of Beacon Rock. For the purposes of this section, Beacon Rock is defined as a deadline marker on the Oregon bank, located approximately four miles downstream from Bonneville Dam Powerhouse #1, projecting a straight line through the western tip of Pierce Island to a deadline marker on the Washington bank at Beacon Rock.

(b) Daily salmonid limit is 6 fish (hatchery Chinook or hatchery steelhead), of which no more than 2 may be adults and no more than 1 may be an adult Chinook.

(c) Release all wild Chinook and wild steelhead.

(d) Salmon minimum size is 12 inches.

(2) Columbia River: Effective immediately through May 6, 2015:

(a) Open to fishing from the Tower Island power lines in Bonneville Pool (located approximately 6 miles below The Dalles Dam) upstream to the Oregon and Washington border, plus the Washington bank between Bonneville Dam and the Tower Island power lines (except for those waters closed under permanent regulations).

(b) Daily salmonid limit is 6 fish (hatchery Chinook or hatchery steelhead), of which no more than 2 may be adults and no more than 1 may be an adult Chinook.

(c) Release all wild Chinook and wild steelhead.

(d) Salmon minimum size is 12 inches.

(3) Columbia River Possession limit: Effective immediately through June 15, 2015, when the Columbia River is open to fishing for hatchery spring Chinook from the Tower Island power lines in Bonneville Pool (located approximately 6 miles below The Dalles Dam) upstream to the Oregon and Washington border, including the Washington bank between Bonneville Dam and the Tower Island power lines, from the Dalles Dam upstream: Anglers may possess 2 daily limits in fresh form (special rule) in addition to the 2 daily limits in fresh form allowed by permanent rule, except anglers aboard a boat may only possess one daily limit of salmon in fresh form.

(4) Columbia River hand cast restriction: Effective immediately through June 15, 2015:

(a) When the Columbia River from the Tower Island powerlines (located approximately 6 miles below The Dalles Dam) downstream to Bonneville Dam is open to fishing from the Washington bank for hatchery spring Chinook, only hand-casted lines may be used.

(b) It is unlawful to use a floating device to set lines for salmon and steelhead.

(5) Deep River (Wahkiakum Co.): Effective immediately through June 15, 2015: The hatchery adult Chinook daily limit is the same as the adjacent mainstem Columbia River during those days when the mainstem Columbia River is open for adult Chinook retention. When the adjacent mainstem Columbia River is closed for adult Chinook retention, the salmon daily limit is the same as provided in the permanent rules for Deep River.

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.

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

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 220-310-20000E Exceptions to statewide rules—
Columbia River. (15-73)

WSR 15-10-068
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 15-103—Filed May 1, 2015, 2:01 p.m., effective May 4, 2015, 10:00 a.m.]

Effective Date of Rule: May 4, 2015, 10:00 a.m.

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 Existing Rules Affected by this Order: Repealing WAC 220-33-01000K; and amending WAC 220-33-010.

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

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

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

Reasons for this Finding: Sets a mainstem commercial fishing period for hatchery spring chinook. Adjusts the spring select area commercial seasons to open on Tuesday, May 5, rather than the previously scheduled Monday, May 4. The upriver spring chinook return has been officially updated by TAC to two hundred twenty thousand fish. This update allows additional fish to be available for harvest in mainstem commercial fisheries. Adjusting the season in the select areas allows for a separation in the seasons between the mainstem and select areas for ease in enforcement of the regulations.

The fisheries are consistent with the *U.S. v. Oregon* Management Agreement and the associated biological opinion. Conforms Washington state rules with Oregon state rules. Regulation is consistent with compact action of January 28 and April 30, 2015. There is insufficient time to promulgate permanent rules.

Washington and Oregon jointly regulate Columbia River fisheries under the congressionally ratified Columbia River compact. Four Indian tribes have treaty fishing rights in the Columbia River. The treaties preempt state regulations that fail to allow the tribes an opportunity to take a fair share of the available fish, and the states must manage other fisheries accordingly. *Sohappy v. Smith*, 302 F. Supp. 899 (D. Or. 1969). A federal court order sets the current parameters for sharing between treaty Indians and others. *United States v. Oregon*, Civil No. 68-513-KI (D. Or.), Order Adopting 2008-2017 *United States v. Oregon* Management Agreement (Aug. 12, 2008) (Doc. No. 2546).

Some Columbia River Basin salmon and steelhead stocks are listed as threatened or endangered under the federal ESA. On May 5, 2008, the National Marine Fisheries Service issued a biological opinion under 16 U.S.C. § 1536 that allows for some incidental take of these species in treaty and nontreaty Columbia River fisheries governed by the 2008-2017 *U.S. v. Oregon* Management Agreement. The Washington and Oregon fish and wildlife commissions have developed policies to guide the implementation of such biological opinions in the states' regulation of nontreaty fisheries.

Columbia River nontreaty fisheries are monitored very closely to ensure compliance with federal court orders, the 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 0, Amended 0, Repealed 0.

Number of Sections Adopted at 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: May 1, 2015.

J. W. Unsworth
Director

NEW SECTION

WAC 220-33-01000L Columbia River seasons below Bonneville. Notwithstanding the provisions of WAC 220-33-010, WAC 220-33-020, and WAC 220-33-030, 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 Columbia River

(a) **Dates:** 10:00 a.m. to 12:00 p.m. (Midnight) Monday May 4, 2015.

(b) **Area:** SMCRA 1A, 1B, 1C, 1D, and 1E (Zones 1-5).

(c) **Sanctuaries:** Grays River, Elochoman-B, Abernathy Creek, Cowlitz River, Kalama-B, Lewis-B, Sandy, and Washougal rivers.

(d) **Allowable Possession:** Adipose fin-clipped Chinook salmon and shad.

(e) **Gear:** Drift nets only. 4 1/4" maximum mesh size (tangle net). Single-wall multi-filament net only. Monofilament tangle nets are not allowed. 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. Net length not to exceed 150 fathoms. There are no restrictions on the use of slackers or stringers to slacken the net vertically. There are no restrictions on the hang ratio. The hang ratio is used to horizontally add slack to the net and is determined by the length of the web per length of the corkline.

Net length may be increased from 150 to 175 fathoms for nets constructed with a steelhead excluder panel, weedlines, or droppers. An optional use of a steelhead excluder panel of mesh may be hung between the corkline and the 4 1/4" maximum mesh size tangle net. The excluder panel web must be a minimum mesh size of 12" stretched measure when taut under hand tension. Monofilament mesh is allowed for the excluder panel only. The excluder panel must be a minimum of five feet in depth and must not exceed ten feet in depth as measured from the corkline to the upper margin of the tangle net mesh as the net hangs naturally from a taut corkline. Weedlines or droppers (bobber type) may be used in place of the steelhead excluder panel. A weedline-type excluder means the net is suspended below the corkline by lines of no less than five feet in length between the corkline and the upper margin of the tangle net. A dropper-type excluder means the entire net is suspended below the surface of the water by lines of no less than five feet in length extending from individual surface floats to a submersed corkline. The corkline cannot be capable of floating the net in its entirety (including the leadline) independent of the attached floats. Weedlines or droppers must extend a minimum of five feet above the 4 1/4" maximum mesh size tangle net. Tangle nets constructed with a steelhead excluder panel, weedlines, or droppers must have two red corks at each end of the net, as well as the red corks as required under subsection (1)(f)(ii) of this section.

(f) Miscellaneous Regulations:

(i) **Soak times** are defined as the time elapsed from when the first of the gillnet web is deployed into the water until the gillnet web is fully retrieved from the water, must not exceed 45 minutes.

(ii) **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.

(iii) **Recovery Box:** Each boat will be required to have on board two operable recovery boxes or one box with two chambers. Each chamber of the recovery box(es) must include an operating water pumping system capable of delivering a minimum flow of 16 gallons per minute, not to exceed 20 gallons per minute of freshwater per chamber. Each box and chamber and associated pump shall be operating during any time that the net is being retrieved or picked. Each chamber of the recovery box must meet the following dimensions as measured from within the box: the inside length measurement must be at or within 39 1/2 inches to 48 inches; the inside width measurements must be at or within 8 to 10 inches; and the inside height measurement must be at or within 14 to 16 inches.

Each chamber of the recovery box must include a water inlet hole between 3/4 inch and 1 inch in diameter, centered horizontally across the door or end wall of the chamber and 1 3/4 inches from the floor of the chamber. Each chamber of the recovery box must include a water outlet hole that is at least 1 1/2 inches in diameter located on either the same or opposite end as the inlet. The center of the outlet hole must be located a minimum of 12 inches above the floor of the box or chamber.

The fisher must demonstrate to WDFW and ODFW employees, fish and wildlife enforcement officers, or other peace officers, upon request, that the pumping system is delivering the proper volume of fresh river water into each chamber.

All sturgeon, non-adipose fin-clipped salmon, and steelhead must be released immediately to the river with care and with the least possible injury to the fish, or placed into an operating recovery box.

Any salmonid that is bleeding or lethargic 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.

(iv) **Observer program:** As a condition of fishing, owners or operators of commercial fishing vessels must cooperate with department observers or observers collecting data for the department, when notified by the observer of his or her intent to board the commercial vessel for observation and sampling during the fishery. In addition, cooperation with department personal prior to a fishing period is expected.

(v) **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.

(2) Deep River Select Area

(a) **Dates:** Open 7:00 PM Tuesday May 5 to 7:00 AM Wednesday May 6, and open 7:00 PM to 7:00 AM Monday and Thursday nights from May 7 through June 12, 2015.

(b) **Area:** From USCG navigation marker #16 upstream to the Highway 4 Bridge.

(c) **Gear:** Gillnets. 9 3/4-inch maximum mesh. Nets are restricted to 100 fathoms in length with no weight restriction on leadline. Use of additional weights or anchors attached directly to the leadline is permissible. It is unlawful to tie off nets to stationary structures. It is unlawful for a net to fully cross a navigation channel. It is unlawful to operate in any river, stream or channel any gillnet longer than three-fourths the width of the stream (WAC 220-20-015)(1)). It is unlawful in any area to use, operate, or carry aboard a commercial fishing vessel a licensed net or combination of such nets, whether fished singly or separately, in excess of the maximum lawful size or length prescribed for a single net in that area, except as otherwise provided for in department rule (WAC 220-20-010)(17)).

(d) **Miscellaneous:** Except for transport of fish to the sampling station, it is unlawful to transport or possess fish unless and until WDFW has biologically sampled individual catches. After sampling, fishers will be issued a transportation permit by WDFW staff. A sampling station will be established at WDFW's Oneida Road boat ramp, approximately 0.5 miles upstream of the lower Deep River area boundary (USCG navigation marker #16).

(e) **Allowable possession:** Salmon and shad.

(3) Tongue Point/South Channel

(a) **Dates:** 7 PM Tuesday May 5 to 7 AM Wednesday May 6 and open 7:00 PM to 7:00 AM Monday and Thursday nights from May 7 through June 12, 2015.

(b) **Area:**

(i) The Tongue Point fishing area includes all waters bounded by a line extended from the upstream (southern most) pier (#1) at the Tongue Point Job Corps facility, through navigation marker #6 to Mott Island; a line from a marker at the southeast end of Mott Island, northeasterly to a marker on the northwest tip of Lois Island; and a line from a marker on the southwest end of Lois Island, westerly to a marker on the Oregon shore.

(ii) The South Channel area includes all waters bounded by a line from a marker on John Day Point through the green USCG buoy #7 to a marker on the southwest end of Lois Island, upstream to an upper boundary line from a marker on Settler Point, northwesterly to the flashing red USCG marker #10, and northwesterly to a marker on Burnside Island defining the upstream terminus of South Channel.

(c) **Gear:** Gillnets. 9 3/4-inch maximum mesh. In the Tongue Point fishing area, gear is restricted to a maximum net length of 250 fathoms, and weight must not exceed two pounds on any one fathom. In the South Channel fishing area, gear is restricted to a maximum net length of 250 fathoms, there is no weight restriction on leadline, and the use of additional weights or anchors attached directly to the leadline is permissible.

(d) **Miscellaneous:** Permanent transportation rules are in effect.

(e) **Allowable possession:** Salmon and shad

(4) Blind Slough/Knappa Slough Select Area

(a) **Dates:** 7 PM Tuesday May 5 to 7 AM Wednesday May 6 and open 7:00 PM to 7:00 AM Monday and Thursday nights from May 7 through June 12, 2015.

(b) **Area:** Blind Slough and Knappa Slough areas are both open. The lower boundary of the Knappa Slough fishing area is extended downstream to boundary lines defined by markers on the west end of Minaker Island to markers on Karlson Island and the Oregon Shore (fall season boundary).

(c) **Gear:** Gillnets. 9 3/4-inch maximum mesh. Nets are restricted to 100 fathoms in length, with no weight restriction on leadline. Use of additional weights or anchors attached directly to the leadline is permissible.

(d) **Allowable possession:** Salmon and shad

(5) The following provisions apply to all seasons listed above:

(a) **24-hour** quick reporting is in effect for Washington buyers (WAC 220-69-240 (14)(d)). Permanent transportation rules are in effect.

(b) **Multi-Net Rule:** It is permissible to possess onboard a vessel nets not specifically authorized for use in these areas so long as they are properly stored (WAC 220-33-001(2)).

(c) **Lighted Buoys:** Nets 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 fished while attached to a boat, then one lighted buoy on the opposite end of the net from the boat is required.

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

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

REPEALER

The following section of the Washington Administrative Code is repealed effective 10:00 a.m. May 4, 2015:

WAC 220-33-01000K Columbia River seasons below Bonnevillle. (15-83)

WSR 15-10-089

EMERGENCY RULES

DEPARTMENT OF

FISH AND WILDLIFE

[Order 15-106—Filed May 5, 2015, 5:43 p.m., effective May 5, 2015, 5:43 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 Existing Rules Affected by this Order: Amending WAC 220-32-051.

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

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

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

Reasons for this Finding: Allows the sale of fish caught in Columbia River tribal fisheries with gillnets, platform and hook and line gear in Zone 6 mainstem. In the area downstream of Bonneville Dam (consistent with tribal memorandum of understanding/memorandum of agreement's) sales are not allowed. The sale of fish caught in Yakama Nation tributary fisheries is allowed when open under Yakama Nation regulations. The upriver spring chinook has been updated to two hundred forty-one thousand fish, and harvestable fish are available to the treaty tribes. Fisheries are consistent with the 2008-2017 Management Agreement and the associated biological opinion. Rule is consistent with action of the Columbia River compact on May 5, 2015. Conforms state rules with tribal rules. There is insufficient time to promulgate permanent regulations.

The Yakama, Warm Springs, Umatilla, and Nez Perce Indian tribes have treaty fishing rights in the Columbia River and inherent sovereign authority to regulate their fisheries. Washington and Oregon also have some authority to regulate fishing by treaty Indians in the Columbia River, authority that the states exercise jointly under the congressionally ratified Columbia River compact. *Sohappy v. Smith*, 302 F. Supp. 899 (D. Or. 1969). The tribes and the states adopt parallel regulations for treaty Indian fisheries under the supervision of the federal courts. A court order sets the current parameters. *United States v. Oregon*, Civil No. 68-513-KI (D. Or.), Order Adopting 2008-2017 *United States v. Oregon* Management Agreement (Aug. 12, 2008) (Doc. No. 2546). Some salmon and steelhead stocks in the Columbia River are listed as threatened or endangered under the federal ESA. On May 5, 2008, the National Marine Fisheries Service issued a biological opinion under 16 U.S.C. § 1536 that allow[s] for some incidental take of these species in the fisheries as described in the 2008-2017 *U.S. v. Oregon* Management Agreement. Columbia River fisheries are monitored very closely to ensure consistency with court orders and ESA guidelines. Because conditions change rapidly, the fisheries are managed almost exclusively by emergency rule. As required by court order, the Washington (WDFW) and Oregon (ODFW) departments of fish and wildlife convene public hearings and invite tribal participation when considering proposals for new emergency rules affecting treaty fishing rights. *Sohappy*, 302 F. Supp. at 912. WDFW and ODFW then adopt regulations reflecting agreements reached.

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

Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at 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: May 5, 2015.

J. W. Unsworth
Director

NEW SECTION

WAC 220-32-05100W Columbia River salmon seasons above Bonneville Dam. Notwithstanding the provisions of WAC 220-32-050, WAC 220-32-051, WAC 220-32-052 and WAC 220-32-058, effective immediately until further notice, it is unlawful for a person to take or possess salmon, steelhead, sturgeon, shad, carp, catfish, walleye, bass, or yellow perch taken for commercial purposes in Columbia River Salmon Management and Catch Reporting Areas 1F, 1G, and 1H, and in the Wind River, Klickitat River, and Drano Lake and specific areas of SMCRA 1E. However, those individuals possessing treaty fishing rights under the Yakama, 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 Area: SMCRA 1F, 1G, 1H (Zone 6):

(a) Season: 6:00 a.m. May 12 to 6:00 p.m. May 15, 2015.

(b) Gear: Gillnets.

(c) Allowable sale: Salmon, steelhead, shad, carp, catfish, walleye, bass, or yellow perch. Sturgeon between 38-54 inches in fork length in the Bonneville Pool and sturgeon between 43-54 inches in fork length in The Dalles and John Day pools may be retained for subsistence purposes only. Live release of all oversize and under-size sturgeon is required.

(d) All sanctuaries for this gear type are in effect, except Spring Creek.

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

(e) Season: 7:00 p.m. May 5, 2015, until further notice.

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

(g) Allowable sale: Salmon, steelhead, shad, carp, catfish, walleye, bass, or yellow perch. Sturgeon between 38-54 inches in fork length in the Bonneville Pool and sturgeon between 43-54 inches in fork length in The Dalles and John Day pools may be retained for subsistence purposes only. Live release of all oversize and under-size sturgeon is required.

(h) All sanctuaries for these gear types are in effect.

(3) Columbia River Tributaries upstream of Bonneville Dam:

(a) Season: 7:00 p.m. May 5, 2015, until further notice, and only during those days and hours when the tributaries listed below are open under lawfully enacted Yakama Nation tribal subsistence fishery regulations for enrolled Yakama Nation members.

(b) Area: Drano Lake, Wind River and Klickitat River.

(c) Gear: Hoop nets, dip bag nets, and rod and reel with hook-and-line. Gill nets may only be used in Drano Lake.

(d) Allowable Sales: Salmon, steelhead, shad, carp, catfish, walleye, bass, or yellow perch. Sturgeon between 43-54 inches fork length harvested in tributaries within The Dalles or John Day Pools and sturgeon between 38-54 inches fork length harvested in tributaries within Bonneville pool may not be sold but may be kept for subsistence purposes only. Live release of all oversize and under-size sturgeon is required.

(4) 24-hour quick reporting is required as provided in WAC 220-69-240, for Washington wholesale dealers for all areas, 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).

(5) Sales of fish are allowed after open period concludes, as long as the fish sold were landed during the open period.

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

WSR 15-10-098
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 15-105—Filed May 6, 2015, 9:19 a.m., effective May 7, 2015]

Effective Date of Rule: May 7, 2015.

Purpose: Amend recreational fishing rules for razor clams.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-56-36000E; and amending WAC 220-56-360.

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

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

Reasons for this Finding: Survey results show that adequate razor clams are available for recreational harvest in Razor Clam Areas 1, 3 and 5. Washington department of health has certified clams from these beaches are safe for human consumption. There is insufficient time to adopt permanent rules.

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

Number of Sections Adopted at 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: May 6, 2015.

J. W. Unsworth
Director

NEW SECTION

WAC 220-56-36000E Razor clams—Areas and seasons. Notwithstanding the provisions of WAC 220-56-360, it is unlawful to dig for or possess razor clams taken for personal use from any beach in Razor Clam Areas 1, 3, or 5, except as provided for in this section:

(1) Effective 12:01 a.m. May 7, 2015 through 11:59 a.m. May 9, 2015, razor clam digging is permissible in Razor Clam Area 1. Digging is permissible from 12:01 a.m. to 11:59 a.m. each day only.

(2) Effective 12:01 a.m. May 10, 2015 through 12:59 p.m. May 10, 2015, razor clam digging is permissible in Razor Clam Area 1. Digging is permissible from 12:01 a.m. to 12:59 p.m. each day only.

(3) Effective 12:01 a.m. May 7, 2015 through 11:59 a.m. May 9, 2015, razor clam digging is permissible in Razor Clam Area 3. Digging is permissible from 12:01 a.m. to 11:59 a.m. each day only.

(4) Effective 12:01 a.m. May 10, 2015 through 12:59 p.m. May 10, 2015, razor clam digging is permissible in Razor Clam Area 3. Digging is permissible from 12:01 a.m. to 12:59 p.m. each day only.

(5) Effective 12:01 a.m. May 8, 2015 through 11:59 a.m. May 9, 2015, razor clam digging is permissible in Razor Clam Area 5. Digging is permissible from 12:01 a.m. to 11:59 a.m. each day only.

(6) Effective 12:01 a.m. May 10, 2015 through 12:59 p.m. May 10, 2015, razor clam digging is permissible in Razor Clam Area 5. Digging is permissible from 12:01 a.m. to 12:59 p.m. each day only.

(7) It is unlawful to dig for razor clams at any time in Long Beach or Twin Harbors Beach Clam sanctuaries defined in WAC 220-56-372.

REPEALER

The following section of the Washington Administrative Code is repealed effective 1:01 p.m. May 10, 2015:

WAC 220-56-36000E Razor clams—Areas and seasons.