

WSR 16-12-001
EMERGENCY RULES
LIQUOR AND CANNABIS
BOARD

[Filed May 18, 2016, 12:35 p.m., effective July 1, 2016]

Effective Date of Rule: July 1, 2016.

Purpose: New rules are needed to create a process for electronic payment of the marijuana excise tax, alternatives to electronic payment requirement, and to provide a waiver option to the electronic payment requirement for good cause. This emergency rule is needed to implement a proviso relating to electronic payment of the marijuana excise tax included in the legislature's 2016 supplemental budget.

Statutory Authority for Adoption: RCW 69.50.342, 69.50.345, 69.50.535, and chapter 36, Laws of 2016 (2ESHB 2376).

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: Emergency rules are needed to create guidelines and requirements for electronic payment of the marijuana excise tax and a process to apply for a waiver of that requirement to implement a 2016 supplemental budget proviso. The electronic payment requirement is in addition to other payment options, such as payment by check, cashier's check, or money order, and is necessary to reduce public safety risks associated with cash payments of the marijuana excise tax. Currently, some licensees are traveling to Washington state liquor and cannabis board (WSLCB) in Olympia with cash to pay the monthly marijuana excise tax due. This creates a large risk to licensees that transport large sums of cash to pay monthly marijuana excise taxes. In addition to alternatives to cash payment being safer than transporting cash to WSLCB on a monthly basis, these requirements will also promote efficiency.

As more marijuana businesses become licensed prior to the absorption of medical marijuana into the regulated retail market on July 1, 2016, the public safety risks of cash transport and payment and risks to licensees paying in cash will only increase with the increase in licensees paying marijuana excise taxes. For these reasons, emergency rules are necessary to reduce risks to public safety and the safety of marijuana licensees by requiring electronic payment of the marijuana excise tax unless a suitable alternative payment form is submitted or the licensee is granted a waiver from the requirements for good cause. WSLCB used the similar requirements in Washington state department of revenue's statutes, policy and procedures in developing the rule and waiver requirements.

This emergency rule has a delayed effective date of July 1, 2016, to allow licensees time to make arrangements for the new requirements or prepare to apply for a waiver. Permanent rule making is already underway to establish the requirements in this emergency rule in permanent rule, and a preproposal statement of inquiry (CR-101) was filed as WSR 16-09-120 on April 20, 2016.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 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 18, 2016.

Jane Rushford
Chair

NEW SECTION

WAC 314-55-090 Marijuana excise tax payments—Waiver. The following provisions apply to marijuana excise tax payments in addition to the requirements in WAC 314-55-089.

(1) Marijuana excise tax payments are payable only by check, cashier's check, money order, or electronic payment or electronic funds transfer. Licensees must submit marijuana excise tax payments to the board by one of the following means:

(a) By mail to WSLCB, Attention: Accounts Receivable, PO Box 43085, Olympia, WA 98504;

(b) By paying through online access through the WSLCB Traceability System; or

(c) By paying using a money transmitter licensed pursuant to Title 19.230 RCW.

(2) Payments transmitted to the Board electronically under this section will be deemed received when received by the agency's receiving account. All other payments transmitted to the board under this section by United States mail will be deemed received on the date shown by the post office cancellation mark stamped on the envelope containing the payment.

(3) The board may waive the means of payment requirements as provided in subsection (1) of this section for any licensee for good cause shown. For the purposes of this section, "good cause" means the inability of a licensee to comply with the payment requirements of this section because:

(a) The licensee demonstrates it does not have and cannot obtain a bank or credit union account or another means by which to comply with the requirements of subsection (1) of this section and cannot obtain a cashier's check or money order; or

(b) Some other circumstance or condition exists that, in the board's judgment, prevents the licensee from complying with the requirements of subsection (1) of this section.

(4) If a licensee tenders payment of the marijuana excise tax in cash without applying for and receiving a waiver or

after denial of a waiver, they may be assessed a ten percent penalty.

(5) If a licensee is denied a waiver and requests an adjudicative proceeding to contest the denial, a brief adjudicative proceeding will be conducted as provided under RCW 34.05.482 through 34.05.494.

(6) For the purposes of this section, "electronic payment" or "electronic funds transfer" means any transfer of funds, other than a transaction originated or accomplished by conventional check, drafts, or similar paper instrument, which is initiated through an electronic terminal, telephonic instrument, or computer or magnetic tape so as to order, instruct, or authorize a financial institution to debit or credit a checking or other deposit account. "Electronic funds transfer" includes payments made by electronic check (e-check).

WSR 16-12-002
EMERGENCY RULES
LIQUOR AND CANNABIS
BOARD

[Filed May 18, 2016, 12:35 p.m., effective May 18, 2016, 12:35 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: New rules are needed to create action levels for pesticide residue for marijuana and marijuana products.

Statutory Authority for Adoption: RCW 69.50.342 and 69.50.345.

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: Marijuana and marijuana products sold in Washington state liquor and cannabis board (WSLCB) licensed retail stores are a consumable product and it is important that they are safe for human consumption. Action levels for disallowed pesticides are needed to establish a point at which a marijuana sample fails quality assurance testing and may be subject to destruction or a recall. Pesticide action levels are standard in the food industry and other products meant for human consumption.

Currently, there is a default zero tolerance action level for pesticides not allowed for use in marijuana production. This level is not workable or supported by science as many of the chemicals in pesticides are found in the natural environment and laboratories cannot test down to zero levels. Without action levels, there are risks to marijuana licensees solubility should pesticides be identified even at extremely low levels, which would make those products potentially subject to destruction or recall.

Action levels for disallowed pesticides does not negate prohibitions against the use of such pesticides. Action levels do, however, account for the instance in which a producer has not used the disallowed pesticide, such as "drift" from a neighboring orchard in an outdoor grow or residual pesticides from former farms on the land. Conversely, even if the producer does not use a disallowed pesticide on marijuana that

later tests to have higher levels than the action levels established in this emergency rule, consumer safety will be protected in ensuring that product will not enter the marketplace. Additionally, with medical marijuana being folded into the regulated retail market, action levels are necessary since pesticide testing will be required for medical marijuana. WSLCB is considering mandatory testing of pesticides on recreational marijuana as well, however action levels are still necessary for random testing of marijuana and investigations into whether disallowed pesticides were used in marijuana production or marijuana should be recalled to avoid risks to consumers.

In the event that product is tested at levels higher than the action levels for disallowed pesticides, the lot from which the sample was derived from will fail quality assurance testing or be subject to a recall. WSLCB has previously adopted procedures for a recall of marijuana where the product will be identified and removed from the marketplace.

This emergency rule is needed to ensure the public health, and safety of the citizens of Washington and the protection of licensees. WSLCB researched other jurisdictions' regulations and consulted with the Washington state department of agriculture, department of ecology, and department of health as well as laboratories and marijuana licensees in developing this emergency rule. The action levels established in this emergency rule are based on the action levels adopted by Oregon and supported by a technical paper from the Oregon Health Authority. Permanent rule making is underway and WSLCB will continue to work on this issue to consider whether changes will be needed in permanent rule making.

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: May 18, 2016.

Jane Rushford
Chairman

NEW SECTION

WAC 314-55-108 Pesticide action levels. (1) Only pesticides allowed under WAC 314-55-084 may be used in the production of marijuana, and they must be registered by the Washington State department of agriculture (WSDA) under chapter 15.58 RCW.

(2) Pursuant to WAC 314-55-102, if a certified independent testing laboratory or state agency or other designee of the WSLCB identifies a pesticide that is not allowed under

subsection (1) of this section and is above the action levels provided in subsections (3) or (4) of this section, that lot or batch from which the sample was deducted has failed quality assurance testing and may be subject to a recall as provided in WAC 314-55-225.

(3) Pesticide action levels:

Analyte	Chemical Abstract Services (CAS) Registry number	Action level ppm
Abamectin	71751-41-2	0.5
Acephate	30560-19-1	0.4
Acequinocyl	57960-19-7	2
Acetamiprid	135410-20-7	0.2
Aldicarb	116-06-3	0.4
Azoxystrobin	131860-33-8	0.2
Bifenazate	149877-41-8	0.2
Bifenthrin	82657-04-3	0.2
Boscalid	188425-85-6	0.4
Carbaryl	63-25-2	0.2
Carbofuran	1563-66-2	0.2
Chlorantraniliprole	500008-45-7	0.2
Chlorfenapyr	122453-73-0	1
Chlorpyrifos	2921-88-2	0.2
Clofentezine	74115-24-5	0.2
Cyfluthrin	68359-37-5	1
Cypermethrin	52315-07-8	1
Daminozide	1596-84-5	1
DDVP (Dichlorvos)	62-73-7	0.1
Diazinon	333-41-5	0.2
Dimethoate	60-51-5	0.2
Ethoprophos	13194-48-4	0.2
Etofenprox	80844-07-1	0.4
Etoazole	153233-91-1	0.2
Fenoxycarb	72490-01-8	0.2
Fenpyroximate	134098-61-6	0.4
Fipronil	120068-37-3	0.4
Flonicamid	158062-67-0	1
Fludioxonil	131341-86-1	0.4
Hexythiazox	78587-05-0	1
Imazalil	35554-44-0	0.2
Imidacloprid	138261-41-3	0.4
Kresoxim-methyl	143390-89-0	0.4
Malathion	121-75-5	0.2
Metalaxyl	57837-19-1	0.2
Methiocarb	2032-65-7	0.2

Analyte	Chemical Abstract Services (CAS) Registry number	Action level ppm
Methomyl	16752-77-5	0.4
Methyl parathion	298-00-0	0.2
MGK-264	113-48-4	0.2
Myclobutanil	88671-89-0	0.2
Naled	300-76-5	0.5
Oxamyl	23135-22-0	1
Paclobutrazol	76738-62-0	0.4
Permethrins*	52645-53-1	0.2
Phosmet	732-11-6	0.2
Piperonyl_butoxide	51-03-6	2
Prallethrin	23031-36-9	0.2
Propiconazole	60207-90-1	0.4
Propoxur	114-26-1	0.2
Pyrethrins†	8003-34-7	1
Pyridaben	96489-71-3	0.2
Spinosad	168316-95-8	0.2
Spiromesifen	283594-90-1	0.2
Spirotetramat	203313-25-1	0.2
Spiroxamine	118134-30-8	0.4
Tebuconazole	80443-41-0	0.4
Thiacloprid	111988-49-9	0.2
Thiamethoxam	153719-23-4	0.2
Trifloxystrobin	141517-21-7	0.2

(4) The action level for all other pesticides that are not allowed under subsection (1) of this section is 0.1 ppm.

(5) A licensed marijuana producer or processor which provided a sample that fails quality assurance testing must dispose of the entire lot or batch from which the sample was taken as provided by marijuana waste disposal requirements in WAC 314-55-097 and document the disposal of the sample pursuant to traceability requirements in WAC 314-55-083(4) and record keeping requirements in WAC 314-55-087.

(6) Pursuant to WAC 314-55-102, at the request of the producer or processor, the WSLCB may authorize a retest to validate a failed test result on a case-by-case basis. All costs of the retest will be borne by the producer or the processor.

(7) Pursuant to WAC 314-55-105, upon request a marijuana licensee must disclose and make available all quality assurance tests and retest results for the lot or batch of usable marijuana, marijuana concentrates, or marijuana-infused products to the marijuana licensee or retail customer who is considering purchasing the usable marijuana, marijuana concentrates, or marijuana-infused products.

WSR 16-12-003
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 16-113—Filed May 18, 2016, 2:49 p.m., effective May 21, 2016]

Effective Date of Rule: May 21, 2016.

Purpose: Amend recreational fishing rules for the halibut fishery.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-56-25500G; 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: An emergency rule is needed to reopen the recreational halibut fishery in Marine Areas 3 and 4 as there is sufficient quota remaining for one more day. A closure is needed in the northern nearshore area in Marine Area 2 because the Pacific halibut quota reserved for this area has been reached. This rule conforms to federal action taken by the National Marine Fisheries Service and the International Pacific Halibut Commission. 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 18, 2016.

Joe Stohr
for J. W. Unsworth
Director

NEW SECTION

WAC 220-56-25500H Halibut—Seasons—Daily and possession limits. Notwithstanding the provisions of WAC 220-56-255, 220-56-250, and 220-56-230, effective May 21, 2016, 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 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 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 - Closed.**

(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: Closed effective May 21, 2016.

47°31.70N. lat, 124°37.03W. long
 47°25.67N. lat, 124°34.79W. long
 47°12.82N. lat, 124°29.12W. long
 46°58.00N. lat, 124°24.24W. long

(b) Lingcod may be taken, retained and possessed 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 28, 2016.

(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) 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 through 10**

(a) Open May 26 through May 29, 2016.

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

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

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

(8) All other permanent rules remain in effect.

(9) 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 21, 2016:

WAC 220-56-25500G Halibut—Seasons—Daily and possession limits. (16-111)

WSR 16-12-006

**EMERGENCY RULES
DEPARTMENT OF**

SOCIAL AND HEALTH SERVICES

(Developmental Disabilities Administration)

[Filed May 19, 2016, 8:49 a.m., effective May 19, 2016, 8:49 a.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: The primary purpose for this filing is to allow DSHS to continue the individual and family services (IFS) waiver and the community first choice (CFC) program. Both were implemented by emergency rules and need to remain active by emergency while the department completes the process to make them permanent. In addition, these rules clarify where the developmental disabilities administration (DDA) assessment and reassessment are administered and define overnight planned respite services.

Citation of Existing Rules Affected by this Order: See Reviser's note below.

Statutory Authority for Adoption: SSB 6387 of the 63rd legislature, 2014 regular session for the IFS waiver, ESHB 2746 of the 63rd legislative 2014 regular session for the CFC waiver, and ESSB 6052 S.L. of the 64th legislative 2015 3rd sp. sess. for the definition of overnight planned respite services.

Other Authority: RCW 71A.12.030, 71A.12.120.

Under RCW 34.05.350 the agency for good cause finds that state or federal law or federal rule or a federal deadline for state receipt of federal funds requires immediate adoption of a rule.

Reasons for this Finding: See Reviser's note below.

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 16, Amended 90, 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 16, Amended 90, Repealed 0.

Date Adopted: May 16, 2016.

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 16-13 issue of the Register.

WSR 16-12-007

**EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE**

[Order 16-112—Filed May 19, 2016, 8:54 a.m., effective May 21, 2016]

Effective Date of Rule: May 21, 2016.

Purpose: Amend recreational fishing rules.

Citation of Existing Rules Affected by this Order: Amending WAC 220-310-180.

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: An emergency rule is needed to open South Pond at the Bogachiel Hatchery because recent restrictions to the public access to [at] Wentworth Lake, hatchery trout normally planted into Wentworth Lake are being planted in the South Pond which will provide additional angling opportunity. There is insufficient time to adopt permanent rules.

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

Number of Sections Adopted at 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 19, 2016.

Joe Stohr
for J. W. Unsworth
Director

NEW SECTION

WAC 220-310-18000W Freshwater exceptions to statewide rules—Coastal. Notwithstanding the provisions of WAC 220-310-180, effective May 21, through September 15, 2016, it is permissible to fish in waters of South Pond at the Bogachiel Hatchery. Statewide rules apply.

WSR 16-12-008
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 16-114—Filed May 19, 2016, 2:18 p.m., effective May 20, 2016]

Effective Date of Rule: May 20, 2016.

Purpose: The purpose of this rule making is to allow nontreaty recreational fishing opportunity in the Columbia River while protecting fish 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, 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 220-310-20000L; and amending WAC 220-310-200.

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: The regulation extends the 2016 spring recreational salmon season in the Columbia River from Tongue Point/Rocky Point Line upstream to Bonneville Dam. ESA impacts for wild fish are available to recreational fisheries in order to access hatchery fish. 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 May 18, 2016. 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 1, Amended 0, Repealed 1.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 1, Amended 0, Repealed 1.

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

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

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

Date Adopted: May 19, 2016.

J. W. Unsworth
Director

NEW SECTION

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

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

(1) Effective May 20 through May 22, 2016

(a) Open for fishing for salmonids. From the Tongue Point/Rocky Point Line upstream to 600 feet downstream of the fish ladder at the new Bonneville Dam powerhouse #2.

(b) HOWEVER, closed to salmonid fishing from boats upstream of Beacon Rock (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).

(c) 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.

(d) Release all wild Chinook, wild steelhead and sock-eye.

(e) Salmon minimum size is 12 inches.

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 May 23, 2016:

WAC 220-310-20000L Exceptions to statewide rules—
Columbia River.

WSR 16-12-009
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 16-115—Filed May 19, 2016, 2:20 p.m., effective May 24, 2016,
7:00 p.m.]

Effective Date of Rule: May 24, 2016, 7:00 p.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 220-33-01000I; 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. This season allows the commercial mainstem fishery to access some of its allocation of spring Chinook. Spring season select area commercial seasons also remain in place. 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 27 and May 18, 2016. 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 19, 2016.

J. W. Unsworth
Director

NEW SECTION

WAC 220-33-01000J 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:** 7:00 p.m. Tuesday May 24 to 7:00 a.m. Wednesday May 25, 2016.

(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. 8-inch minimum mesh size. 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.

(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; pumps must continue to run until the net is fully retrieved and completely on board the vessel. Pumps shall continue to run whenever a fish is in the recovery box. 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 non-legal 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 hours are 7 PM to 7 AM Monday and Thursday nights immediately through June 14, 2016.

(b) **Area:** From USCG navigation marker #16 southwest to a marker on the Washington shore, 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 and/or anchors attached directly to the leadline is allowed. Nets cannot be tied off to stationary structures. Nets may not fully cross 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 shall be unlawful in any area to use, operate, or carry aboard a commercial fishing vessel a licensed net or combination of such nets, whether fished singly or separately, in excess of the maximum lawful size or length prescribed for a single net in that area, except as otherwise provided for in the rules and regulations of the department (WAC 220-20-010)(17).

(d) **Allowable Possession:** Chinook salmon and shad

(e) **Miscellaneous:** Transportation or possession of fish outside the fishing area (except to the sampling station) is unlawful until WDFW staff has biologically sampled individual catch. 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, about 0.5 miles upstream of the lower Deep River area boundary (USCG navigation marker #16).

(3) Tongue Point/South Channel

(a) **Dates:** Open hours are 7 PM to 7 AM Monday and Thursday nights immediately through June 14, 2016.

(b) **Area:** 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.

The South Channel area includes all waters bounded by a line from a marker on John Day Point 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 restricted to a maximum net length of 250 fathoms, and weight not to exceed two pounds on any one fathom. In the South Channel fishing area, gear restricted to a maximum net length of 250 fathoms, no weight restriction on leadline, and use of additional weights or anchors attached directly to the leadline is allowed.

(d) **Allowable Possession:** Chinook salmon and shad

(e) **Miscellaneous:** Permanent transportation rules in effect.

(4) Blind Slough/Knappa Slough Select Area

(a) **Dates:** Open hours are 7 PM to 7 AM Monday and Thursday nights immediately through June 14, 2016.

(b) **Area:** Blind Slough and Knappa Slough areas are both open. Immediately until further notice, 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 and/or anchors attached directly to the leadline is allowed.

(d) **Allowable Possession:** Chinook salmon and shad

(e) **Miscellaneous:** Permanent transportation rules in effect.

(5) 24-hour quick reporting is in effect for Washington buyers (WAC 220-69-240 (14)(d)). Permanent transportation rules in effect.

(6) Multi-Net Rule: Nets not specifically authorized for use in these areas may be onboard a vessel if properly stored (WAC 220-33-001(2)).

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

Reviser's note: The 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 7:00 p.m. May 24, 2016:

WAC 220-33-01000I Columbia River seasons below Bonneville. (16-103)

**WSR 16-12-021
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE**

[Order 16-117—Filed May 20, 2016, 9:26 a.m., effective May 20, 2016, 9:26 a.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: Amend recreational fishing rules for coastal salmon.

Citation of Existing Rules Affected by this Order: Amending WAC 232-28-620.

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 department is in the process of adopting permanent rules that are necessary to implement the personal use fishing plans agreed-to with resource comanagers at the North of Falcon proceedings. These emergency rules are necessary to comply with agreed-to management plans, and are interim until permanent rules take effect.

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 20, 2016.

J. W. Unsworth
Director

NEW SECTION

WAC 232-28-62000X Coastal salmon—Saltwater seasons and daily limits. Notwithstanding the provisions of WAC 232-28-620, effective immediately until further notice, it is unlawful to violate the provisions below. Unless otherwise amended, all permanent rules remain in effect:

- (1) **Catch Record Card Area 1:**
- (a) Immediately through June 30: Closed.
 - (b) July 1 through August 31:
 - (i) Daily limit of 2 salmon; no more than one may be a Chinook.
 - (ii) Release wild coho.
 - (c) September 1 until further notice: Closed.
 - (d) Closed in the Columbia River Mouth Control Zone 1 during all open periods. See WAC 220-56-195.
- (2) **Catch Record Card Area 2:**
- (a) Immediately through June 30: Closed.
 - (b) July 1 through August 21:
 - (i) Daily limit of one salmon.
 - (ii) Release coho.
 - (iii) Beginning August 8, the Grays Harbor Control Zone is closed. Grays Harbor Control Zone - The area defined by a line drawn from the Westport Lighthouse (46°53.18'N latitude, 124°07.01'W longitude) to Buoy #2 (46°52.42'N latitude, 124°12.42'W longitude) to Buoy #3 (46°55.00'N latitude, 124°14.48'W longitude) to the Grays Harbor north jetty (46°55.36'N latitude, 124°10.51'W longitude).
 - (c) August 22 until further notice - Closed.
- (3) **Willapa Bay (Catch Record Card Area 2-1):**
- (a) Immediately through June 30: Closed.
 - (b) July 1 through July 31: Open concurrent with Area 2 when Area 2 is open for salmon angling. Area 2 rules apply.
 - (c) August 1 until further notice:
 - (i) Daily limit of 6 salmon; no more than 4 may be adult salmon.
 - (ii) Release wild Chinook.
 - (iii) Anglers in possession of a valid two-pole endorsement may use up to two lines while fishing.
 - (iv) Waters north of a line from Toke Point channel marker 3 easterly through Willapa Harbor channel marker 13 (green) then, northeasterly to the power transmission pole located at 46°43.19'N, 123°50.83'W are closed August 1 until further notice.
- (4) **Grays Harbor (Catch Record Card Area 2-2 east of the Buoy 13 line):**
- (a) Immediately through July 31: Closed.
 - (b) August 1 until further notice:
 - (i) Daily limit of 2 salmon.
 - (ii) Release wild coho.
 - (iii) Waters south of a line running from the south end of the eastern jetty at Ocean Shores Marina to the fishing boundary marker on Sand Island (46°57.52'N, 124°03.36'W) to the Tripod Station on Brackenridge Bluff (46°59.12'N, 124°00.72'W) are closed.
 - (c) The Westport Boat Basin and Ocean Shores Boat Basin are open only August 16 until further notice.
 - (i) Daily limit of 6 salmon; no more than 4 may be adult salmon.
 - (ii) Release Chinook.
 - (iii) Night closure and anti-snagging rule in effect.

(5) **Grays Harbor (Catch Record Card Area 2-2 west of the Buoy 13 line):**

- (a) Immediately through June 30: Closed.
 - (b) July 1 through August 7: Open concurrent with Area 2 when Area 2 is open for salmon angling. Area 2 rules apply.
 - (c) August 8 until further notice: Closed.
- (6) **Catch Record Card Area 3:**
- (a) Immediately through June 30: Closed
 - (b) July 1 through August 21:
 - (i) Daily limit of 2 salmon.
 - (ii) Release coho.
 - (iii) In years ending in odd numbers, two additional pink salmon may be retained as part of the daily limit.
 - (c) August 22 until further notice: Closed.
- (7) **Catch Record Card Area 4:**
- (a) Immediately through June 30: Closed.
 - (b) July 1 through August 21:
 - (iv) Daily limit of 2 salmon.
 - (v) Release coho.
 - (vi) In years ending in odd numbers, two additional pink salmon may be retained as part of the daily limit.
 - (vii) Waters east of a true north-south line through Sail Rock are closed through July 31.
 - (viii) Waters east of the Bonilla-Tatoosh line closed beginning August 1.
 - (ix) Release chum salmon beginning August 1.
 - (c) August 22 until further notice: Closed.

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 16-12-030**RECISSION OF EMERGENCY RULES
HEALTH CARE AUTHORITY**

[Filed May 24, 2016, 7:46 a.m.]

The health care authority requests to rescind emergency rules filed as WSR 16-10-039, distributed in the 16-11 [16-10] Washington State Register. As a result of further clarification from the Centers for Medicare and Medicaid Services, this emergency rule is no longer required.

Note: The health care authority previously filed a request to rescind this emergency rule filing under WSR 16-12-017; however that request to rescind contained a typographical error, listing the emergency rule filing as WSR 16-11-039 rather than WSR 16-10-039. This notice corrects that error.

Ann Myers
Section Manager

WSR 16-12-031**EMERGENCY RULES
TRANSPORTATION COMMISSION**

[Filed May 24, 2016, 9:58 a.m., effective May 24, 2016, 9:58 a.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: To modify the hours and days when tolling is in effect on the Interstate 405 express toll lanes between Bellevue and Lynnwood. This filing restarts the one hundred twenty day emergency order time frame, previously started in March 2016 with WSR 16-07-112. This emergency order will allow for the completion of the permanent rule-making process (WSR 16-06-020 and 16-09-082) in summer 2016.

Citation of Existing Rules Affected by this Order: Amending WAC 468-270-077, 468-270-110 and 468-270-120; and new WAC 468-270-078.

Statutory Authority for Adoption: RCW 47.56.850 and 47.56.880, 2016 supplemental transportation budget (ESHB 2524).

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: Legislative finding provided in the 2016 supplemental transportation budget, and further finding by the transportation commission, that to preserve the general welfare, the hours and days of operation when tolling is in effect for the express toll lanes on Interstate 405 must be further defined and adjusted. While the initial implementation of the express toll lanes has benefited many commuters, additional operational changes are needed to support effective use of this corridor, critical for the movement of people and goods in Washington state.

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 1, Amended 3, 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 0, Repealed 0.

Date Adopted: May 24, 2016.

Reema Griffith
Executive Director

AMENDATORY SECTION (Amending WSR 15-08-038, filed 3/25/15, effective 4/25/15)

WAC 468-270-077 What are the toll rates for the I-405 express toll lanes? When tolling is in effect on the I-405 express toll lanes (~~(are in operation)~~), the *Good To Go!*TM toll rate schedule shall be a minimum toll rate of \$0.75 and a maximum toll rate of \$10.00. *Good To Go!*TM Pass toll rates shall vary in amount by time of day and level of traffic congestion, and will automatically adjust within the established toll schedule using dynamic tolling to ensure average vehicle

speeds in the lanes above forty-five miles per hour at least ninety percent of the time.

The commission shall periodically review the *Good To Go!*TM toll rate schedule against traffic performance outlined in RCW 47.56.880 to determine if the *Good To Go!*TM toll rates are effectively maintaining travel time, speed, and reliability, and shall adjust the toll rate schedule as needed to maintain performance standards.

The toll rate for a Pay By Mail transaction is equal to the *Good To Go!*TM Pass toll rate plus \$2.00.

NEW SECTION

WAC 468-270-078 What are the hours that tolling will be in effect on the I-405 express toll lanes? Tolling will be in effect on the I-405 express toll lanes weekdays, Monday through Friday, from 5:00 a.m. to 7:00 p.m. (excluding the weekdays on which holidaysⁱ are observed).

When tolling is not in effect on the I-405 express toll lanes, including on weekends and holidaysⁱ, the lanes are open to all vehicles regardless of occupancy, and a transponder is not needed to travel toll-free.

ⁱ New Years Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, and Christmas Day.

AMENDATORY SECTION (Amending WSR 15-08-038, filed 3/25/15, effective 4/25/15)

WAC 468-270-110 What vehicles are exempt from paying tolls on the I-405 express toll lanes? When tolling is in effect on the I-405 express toll lanes, except as provided herein, all vehicles using the I-405 express toll lanes must pay the required toll. Only qualified vehicles may be exempt from paying tolls. The registered owner and operator of the qualified vehicle must comply with the requirements of the department in order to obtain the exemption. The following vehicles shall qualify for exemption:

(1) Transit buses and vanpools as specified in RCW 47.56.880;

(2) Carpools, as defined for the facility in WAC 468-270-120;

(3) Motorcycles;

(4) Washington state patrol vehicles directly providing service to the express toll lane facility;

(5) Department maintenance vehicles directly involved in roadway maintenance on the I-405 express toll lanes, including the department's incident response vehicles responding to incidents and WSDOT tow trucks;

(6) Authorized emergency vehicles on bona fide emergencies; and

(7) Tow trucks authorized by Washington state patrol responding to clear blocking vehicles from the toll facility.

AMENDATORY SECTION (Amending WSR 15-08-038, filed 3/25/15, effective 4/25/15)

WAC 468-270-120 How many occupants are required to be considered an eligible carpool for toll exemption on I-405 express toll lanes? Between 5 a.m. to 9 a.m. and 3 p.m. to 7 p.m., Monday through Friday, (excluding the ~~(days)~~ weekdays on which holidaysⁱ are observed) you

must have three or more occupants in your vehicle to qualify as a toll-free carpool. At all other times when tolling is in effect on the I-405 express toll lanes, you must have two or more occupants in your vehicle to qualify as a toll-free carpool. Occupancy requirements do not apply to vehicles that are otherwise exempt from tolls pursuant to WAC 468-270-110 or authorized as an HOV vehicle as defined in chapter 468-510 WAC.

ⁱ New Years Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, and Christmas Day.

WSR 16-12-032
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 16-119—Filed May 24, 2016, 12:14 p.m., effective May 24, 2016, 11:59 p.m.]

Effective Date of Rule: May 24, 2016, 11:59 p.m.

Purpose: Amend commercial fishing rules for Puget Sound shrimp.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-52-05100M; and amending WAC 220-52-051.

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 2016 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) closes the pot fishery season for nonspot shrimp in Shrimp Management Area 2E, as the quota will be reached; and (2) opens the beam trawl fishery in Shrimp Management Area 1B-20B on June 16. 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 24, 2016.

Joe Stohr for
J. W. Unsworth
Director

NEW SECTION

WAC 220-52-05100N Puget Sound shrimp pot and trawl fishery—Season. Notwithstanding the provisions of WAC 220-52-051, effective immediately, 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 6:00 a.m. June 16, 2016.

(ii) All waters of Shrimp Management Area 2E and 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.

(b) 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 900 pounds from Shrimp Management Areas 1A, 1B, 1C and 2W.

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

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

(2) Shrimp trawl gear:

(a) Shrimp Management Area (SMA) 3 (outside of the Discovery Bay Shrimp District, Sequim Bay and Catch Area 23D) is open. 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 is open.

(c) That portion of Catch Area 20B within SMA 1B is open effective 6:00 a.m. June 16, 2016, 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.

REPEALER

The following section of the Washington Administrative Code is repealed effective 11:59 p.m. May 24, 2016:

WAC 220-52-05100M Puget Sound shrimp pot and beam trawl fishery—Season. (16-85)

WSR 16-12-035
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 16-118—Filed May 24, 2016, 4:49 p.m., effective May 25, 2016,
6:00 a.m.]

Effective Date of Rule: May 25, 2016, 6:00 a.m.

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: Repealing WAC 220-32-05100U; and 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 Zone 6 Columbia River tribal fisheries with gillnets. Continues to allow sales of fish caught with platform and hook and line gear and the sale of fish caught in Yakama Nation tributary fisheries when open under Yakama Nation regulations. The area downstream of Bonneville Dam (SMCRA 1E1) remains closed to sales of fish. The upriver spring Chinook has been updated to 180,000 fish, and harvestable fish are available to the treaty tribes. The season is consistent with the 2008-2017 Management Agreement and the associated biological opinion. Rule is consistent with action of the Columbia River Compact on May 10 and 24, 2016. Confirms 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 allows 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 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 24, 2016.

Ron Warren
for J. W. Unsworth
Director

NEW SECTION

WAC 220-32-05100V 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. 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 Areas: SMCRA 1F, 1G, and 1H (Zone 6):

(a) Season: 6:00 AM May 25 through 6:00 PM. May 27, 2016.

(b) Gear: Gill nets with no mesh restriction.

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

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

(a) Season: Immediately through June 15, 2016.

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

(c) Allowable sale: Salmon, steelhead, shad, carp, catfish, walleye, bass, or yellow perch. Sturgeon may not be sold. Sturgeon from 43 to 54 inches fork length in The Dalles and John Day Pools and sturgeon from 38 to 54 inches fork length in the Bonneville Pool may be kept for subsistence. Live release of all oversize and under-size sturgeon is required.

(d) Closed areas applicable to platform gear are in effect.

(3) Columbia River Tributaries upstream of Bonneville Dam:

(a) Season: Immediately 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 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 for Washington wholesale dealers for all areas as provided in WAC 220-69-240, 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) Fish caught during the open period may be sold after the period concludes.

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

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 6:00 a.m. May 25, 2016:

WAC 220-32-05100U Columbia River salmon seasons above Bonneville Dam. (16-102)

WSR 16-12-040

EMERGENCY RULES

DEPARTMENT OF REVENUE

[Filed May 25, 2016, 11:03 a.m., effective May 25, 2016, 11:03 a.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: WAC 458-20-183 (Rule 183) explains the tax reporting instructions for persons who provide amusement, recreation, and physical fitness services. RCW 82.04.050 is the statute that explains the taxability of these same activities and services. The statute was significantly amended in 2015 due to legislation (HB 1550) which changed the taxability of many of these activities and services. The department will begin the standard rule-making process in 2016 to reflect these changes, but until the final rule is adopted the department wants the public to be aware that many of the tax reporting instructions in Rule 183 are only valid through December 31, 2015.

There are no changes from the previous emergency rule filed February 3, 2016, under WSR 16-05-002.

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

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

Other Authority: RCW 34.05.350.

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

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

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

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

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

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

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

Date Adopted: May 25, 2016.

Kevin Dixon
Rules Coordinator

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

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

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

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

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

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

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

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

(c) "Any additional charge" means a price or payment other than bona fide initiation fees or dues, paid by persons

for particular goods and services received. The additional charge must be reasonable and any business and/or sales taxes must be paid upon such charges in order to qualify other income denominated as "bona fide dues" or "fees" to be deductible. The reasonableness of any additional charge will be based on one of the following two criteria:

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

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

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

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

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

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

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

(i) "Initiation fees" means those amounts paid solely to initially admit a person as a member to a club or organization. "Bona fide initiation fees" within the context of this rule shall include only those one-time amounts paid which genuinely represent the value of membership in a club or similar organization. It shall not include any amount paid for or attributable to the privilege of receiving any goods or services other than mere nominal membership.

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

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

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

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

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

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

(3) Business and occupation tax.

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

(b) **Service and other activities classification.** Gross receipts from activities not defined to be retail sales, such as tennis lessons, golf lessons, and other types of instructional lessons, are taxable under the service and other activities classification. Persons providing licenses to use real estate, such as separately itemized billings for locker rentals, are also taxable under this classification. See WAC 458-20-118 (Sale or rental of real estate, license to use real estate).

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

(a) **General principles.** For the purposes of the business and occupation tax, all amounts derived from initiation fees and dues must be reported as gross income which then must be apportioned between taxable and deductible income. The

following general principles apply to providing amusement, recreation, and physical fitness services when income is received in the form of dues and/or initiation fees:

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

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

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

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

(b) **Allocation of income.** Persons who derive income from initiation fees and dues may find that they have incurred business and occupation tax liability under both the retailing and service and other activities classifications. For example, an organization may furnish exercise equipment as well as provide lessons in martial arts to its members in return for

payment of dues. The former is a retailing taxable activity while the latter is taxable under the service business tax. These taxes are at different rates. Once the income has been allocated between taxable and deductible amounts, the parts of taxable income attributable to either retailing activities or service activities must be reported on the combined excise tax return under the appropriate classification and under the prevailing tax rates. In addition, state and local retail sales taxes measured by the retailing portions must be separately collected from dues paying members, reported, and remitted with the same excise tax return.

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

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

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

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

(C) Organizations which provide more than one kind of "goods or services" as defined in subsection (2)(g) of this section, may provide such actual records for each separate kind of goods or services rendered. Based upon this method, the total of apportioned "taxable" income may be subtracted from total gross income to derive the amount of gross income which is entitled to deduction as "bona fide initiation fees and dues" under RCW 82.04.4282; or

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

(A) The cost of production allocation method is based upon the cost of production of goods or services rendered. Persons using this method are advised to seek the department's review of the cost accounting methods applied, in order to avoid possible tax deficiency assessment if records

are audited. In such cases, the cost of production shall include all items of expense attributable to the particular facility (goods or services) made available to members, including direct and indirect overhead costs.

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

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

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

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

(5) **Retail sales tax.**

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

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

(c) The retail sales tax applies upon the purchase or rental of all equipment and supplies by persons providing amusement, recreation, and physical fitness services, other than merchandise that is actually resold by them. For example, the retail sales tax applies to purchases of such things as

soap or shampoo provided at no additional charge to members of a health club.

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

WSR 16-12-041
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 16-116—Filed May 25, 2016, 11:17 a.m., effective May 25, 2016,
11:17 a.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: Amend recreational fishing rules for freshwater areas.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-310-18500G and 220-310-18500K; 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: The department is in the process of adopting permanent rules that are necessary to implement the personal use fishing plans agreed-to with resource comanagers at the North of Falcon proceedings. These emergency rules are necessary to comply with agreed-to management plans, and are interim until permanent rules take effect.

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: May 25, 2016.

J. W. Unsworth
Director

NEW SECTION

WAC 220-310-18500L 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 immediately until further notice:

(a) **Kalama River from the boundary markers at the mouth upstream to 1,000 feet below fishway at the upper salmon hatchery** - Salmon daily limit is 6 fish of which no more than 2 may be adults. Only hatchery Chinook and hatchery coho may be retained. Minimum size is 12 inches.

(2) Effective immediately through June 30:

(a) **Drano Lake** - The hatchery Chinook and hatchery steelhead daily limit is 4 fish of which no more than 2 may be steelhead.

(3) Effective July 1 until further notice:

(a) **Blue Creek (Lewis Co.) from the mouth to the posted sign above the rearing pond outlet** All species: When the anti-snagging rule is in effect, only fish hooked inside the mouth may be retained.

(b) **Cispus River from the mouth (posted markers at the Lewis Co. PUD kayak launch) upstream to the falls** - Salmon daily limit is 6 fish of which no more than 2 may be adults. Only hatchery Chinook and hatchery coho may be retained. Minimum size is 12 inches. Trout: Catch-and-release except 2 hatchery steelhead may be retained. Other game fish: Statewide minimum size/daily limit. All species: Fly fishing only from the North Fork upstream to the falls.

(c) **Cowlitz River from the boundary markers at the mouth upstream to 400 feet below the Mayfield Dam powerhouse** - Closed waters within a 100 feet radius of the Cowlitz Salmon Hatchery wheelchair ramp structure (within the posted fishing boundary) except for anglers with disabilities AND who have a designated harvester companion card.

(d) **Cowlitz River from the posted PUD sign on Peters Road upstream to the Forest 1270 (old Jody's Bridge)**: Salmon daily limit is 6 fish of which no more than 2 may be adults. Only hatchery Chinook and hatchery coho may be retained. Minimum size is 12 inches. Trout: Catch-and-release except 2 hatchery steelhead may be retained. Other game fish: Statewide minimum size/daily limit.

(e) **Elochoman River from the mouth upstream to the West Fork** - Closed waters are rescinded from a point 50 feet above to 100 feet below the outlet pipes from the most downstream Elochoman Hatchery rearing pond and extending 30'

out from the south bank of the river and from 100 feet above the upper hatchery rack downstream to the Elochoman Hatchery Bridge located 400 feet below the upper hatchery rack.

(f) **Elochoman River from the West Fork upstream** - Salmon daily limit is 6 fish of which no more than 2 may be adults. Only hatchery Chinook and hatchery coho may be retained. Minimum size is 12 inches.

(g) **Goble Creek** - All gamefish: Catch-and-release except daily limit 3 hatchery steelhead may be retained. Selective gear rules are in effect.

(h) **Grays River (East, South, and the West Fork from the hatchery intake/footbridge upstream)** - Salmon daily limit is 6 fish of which no more than 2 may be adults. Only hatchery Chinook and hatchery coho may be retained. Effective August 1, all Chinook must be adipose and/or ventral fin clipped. Minimum size is 12 inches. Selective gear rules are in effect.

(i) **Mulholland Creek** - All gamefish: Catch-and-release except daily limit 3 hatchery steelhead may be retained. Selective gear rules are in effect.

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 220-310-18500G Freshwater exceptions to statewide rules—Southwest. (16-35)

WAC 220-310-18500K Freshwater exceptions to statewide rules—Southwest. (16-100)

WSR 16-12-042 EMERGENCY RULES DEPARTMENT OF FISH AND WILDLIFE

[Order 16-120—Filed May 25, 2016, 12:37 p.m., effective May 27, 2016]

Effective Date of Rule: May 27, 2016.

Purpose: The purpose of this rule making is to allow nontreaty recreational fishing opportunity in the Columbia River while protecting fish 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, 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 220-310-20000M; and amending WAC 220-310-200.

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 com-

mission 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: The regulation extends the 2016 spring recreational salmon season in the Columbia River from Tongue Point/Rocky Point line upstream to Bonneville Dam. ESA impacts for wild fish are available to recreational fisheries in order to access hatchery fish. 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 May 24, 2016. 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 1, Amended 0, Repealed 1.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 1, Amended 0, Repealed 1.

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

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

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

Date Adopted: May 25, 2016.

Joe Stohr for
J. W. Unsworth
Director

NEW SECTION

WAC 220-310-20000M Exceptions to statewide rules—Columbia River. Notwithstanding the provisions of WAC 220-310-200, it is unlawful to violate the following provisions, provided that unless otherwise amended, all permanent rules remain in effect:

(1) Effective May 27 through May 30, 2016 and June 3 through June 15, 2016.

(a) Open for fishing for salmonids. From the Tongue Point/Rocky Point Line upstream to 600 feet downstream of the fish ladder at the new Bonneville Dam powerhouse #2.

(b) HOWEVER, closed to salmonid fishing from boats upstream of Beacon Rock (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).

(c) 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.

(d) Release all wild Chinook, wild steelhead and sock-eye.

(e) Salmon minimum size is 12 inches.

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 June 16, 2016:

WAC 220-310-20000M Exceptions to statewide rules—
Columbia River.

**WSR 16-12-043
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE**

[Order 16-121—Filed May 25, 2016, 12:39 p.m., effective May 25, 2016, 12:39 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: The purpose of this rule making is to allow nontreaty recreational fishing opportunity in the Columbia

River while protecting fish 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, 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 220-310-20000I; and amending WAC 220-310-200.

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: Closes John Day Pool and adjacent tributaries for the retention of white sturgeon. The harvest guideline of five hundred fish is expected to be reached. The summer period white sturgeon retention season in Bonneville Reservoir remains in place. Catch and release is allowed during nonretention periods, except within the May-July sturgeon spawning sanctuaries. This emergency rule is consistent with the joint Washington-Oregon action of May 24, 2016, and conforms Washington state rules with Oregon state rules. There is insufficient time to adopt permanent rules.

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; and Recently Enacted State Statutes: New 1, Amended 0, Repealed 1.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 1, Amended 0, Repealed 1.

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

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

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

Date Adopted: May 25, 2016.

Joe Stohr
for J. W. Unsworth
Director

NEW SECTION

WAC 220-310-20000N Exceptions to statewide rules—Columbia River sturgeon. Notwithstanding the provisions of WAC 220-310-200:

(1) June 18 and July 1, 2016, it is permissible to retain white sturgeon between 38-inches minimum and 54-inches maximum fork length caught in those waters of the Columbia River and tributaries from Bonneville Dam upstream to sturgeon spawning Sanctuary boundary located 1.8 miles downstream of The Dalles Dam.

(2) Effective immediately until further notice, except for the specific dates described in subsection (1) of this section, it is unlawful to retain sturgeon caught in those waters of the Columbia River and tributaries from Bonneville Dam upstream to The Dalles Dam. Catch and release is permissible except from May 1 through July 31, 2016 in the sturgeon spawning Sanctuary located from The Dalles Dam downstream 1.8 miles.

(3) Effective immediately until further notice, it is unlawful to retain white sturgeon caught in those waters of the Columbia River and in all adjacent Washington tributaries from The Dalles Dam upstream to John Day Dam. Catch and release is permissible except from May 1 through July 31, 2016 in the sturgeon spawning Sanctuary located from John Day Dam downstream 2.4 miles.

(4) Effective May 29, 2016, until further notice, it is unlawful to retain white sturgeon caught in those waters of the Columbia River and in all adjacent Washington tributaries from John Day upstream to McNary Dam. Catch and release is permissible except through July 31, 2016 in the sturgeon spawning Sanctuary located from McNary Dam downstream 1.5 miles under permanent regulations.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 220-310-20000I Exceptions to statewide rules—
Columbia River sturgeon. (16-87)

WSR 16-12-046
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 16-122—Filed May 25, 2016, 3:37 p.m., effective May 25, 2016,
3:37 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: Amend recreational fishing rules for the Snake River.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-310-19500I and 220-310-19500J; 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: This emergency rule is needed to close the Ice Harbor and Clarkston spring Chinook fisheries while allowing an additional two days of angling for the Little Goose fishery. This decision was made because there are only one hundred ninety spring Chinook remaining in Washington department of fish and wildlife's catch share allotted to the Snake River. The projected harvest of all three fishery areas if left open for an additional week would exceed the remaining allotment. 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: May 25, 2016.

Joe Stohr
for J. W. Unsworth
Director

NEW SECTION

WAC 220-310-19500J Freshwater exceptions to statewide rules—Snake River. Notwithstanding the provisions of WAC 220-310-195 and WAC 220-56-180, effective immediately through 8:30 p.m. May 30, 2016:

(1) A person may fish for and possess salmon in the following waters of the Snake River from Texas Rapids boat launch (south side of the river approximately 3.5 miles upstream of the mouth of Tucannon River) to the fishing restriction boundary below Little Goose Dam. Minimum size for Chinook is 12 inches in length. This zone includes the area between the juvenile bypass return pipe and Little Goose Dam along the south shoreline of the facility (includes the walkway area locally known as "the wall" in front of the juvenile collection facility). Open Sunday and Monday each week. Daily limit of six hatchery Chinook, of which not more than two may be an adult Chinook.

(a) All Chinook with the adipose fin intact, and all steelhead, must be released immediately, unharmed.

(b) Hooks must be barbless when fishing for all species during times and in locations open for salmon fishing and retention, and only single barbless hooks are allowed when fishing for sturgeon.

(c) It is unlawful to use any hook larger than 5/8-inch (point of hook to shank) for all species except sturgeon.

(d) Night closure is in effect for salmon and sturgeon.

(e) For all areas open for Chinook, anglers must cease fishing for Chinook when the adult limit has been retained for the day.

(f) Anglers may possess 1 daily limit in fresh form in addition to the 2 daily limits in fresh form allowed by permanent rule.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 220-310-19500I Freshwater exceptions to statewide rules—Snake River. (16-107)

REPEALER

The following section of the Washington Administrative Code is repealed effective 8:31 p.m. May 30, 2016:

WAC 220-310-19500J Freshwater exceptions to statewide rules—Snake River.

out these services some families may be unable to continue to care for their children in their own home and out of home placement could be necessary.

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 39, Amended 2, 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 39, Amended 2, Repealed 0.

Date Adopted: May 17, 2016.

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 16-13 issue of the Register.

WSR 16-12-061

EMERGENCY RULES

DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Developmental Disabilities Administration)

[Filed May 26, 2016, 12:27 p.m., effective May 28, 2016]

Effective Date of Rule: May 28, 2016.

Purpose: The department is creating new rules that support the 2015-2017 biennium budgets for overnight planned respite services as found on pages 63 and 64 of ESSB 6052.SL (chapter 4, Laws of 2015 3rd sp. sess.). The department is in the process of permanent adoption. The public hearing is scheduled for June 21, 2016, 10:00 a.m. at 1115 Washington Street S.E., Olympia, WA.

Citation of Existing Rules Affected by this Order: Amending WAC 388-845-1610 and 388-845-1615.

Statutory Authority for Adoption: RCW 74.08.090.

Other Authority: ESSB 6052.SL

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 2015-2017 biennium budgets provided funding to develop eight community respite beds for adults with developmental disabilities for the provision of short-term community-based planned respite services and eight enhanced respite beds across the state for children. The purpose for these respite beds is to provide family and caregivers relief from the intensity of personal caregiving and an opportunity for behavioral stabilization for children. With-

WSR 16-12-066

EMERGENCY RULES

DEPARTMENT OF

FISH AND WILDLIFE

[Order 16-123—Filed May 27, 2016, 11:22 a.m., effective May 31, 2016, 7:00 p.m.]

Effective Date of Rule: May 31, 2016, 7:00 p.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 220-33-01000J; 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. This season allows the commercial mainstem fishery to access some of its allocation of spring Chinook. Spring season select area commercial seasons also remain in place. 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 27 and May 26, 2016. 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 27, 2016.

Joe Stohr
for J. W. Unsworth
Director

NEW SECTION

WAC 220-33-0100K 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:** 7:00 p.m. Tuesday May 31 to 7:00 a.m. Wednesday June 1, 2016.

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

c) **Sanctuaries:** Grays River, Elochoman-B, 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. 8-inch minimum mesh size. 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.

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; pumps must continue to run until the net is fully retrieved and completely on board the vessel. Pumps shall continue to run whenever a fish is in the recovery box. 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 non-legal 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 personnel 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 hours are 7 PM to 7 AM Monday and Thursday nights immediately through June 14, 2016.

b) **Area:** From USCG navigation marker #16 southwest to a marker on the Washington shore, 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 and/or anchors attached directly to the leadline is allowed. Nets cannot be tied off to stationary structures. Nets may not fully cross 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 shall be unlawful in any area to use, operate, or carry aboard a commercial fishing vessel a licensed net or combination of such nets, whether fished singly or separately, in excess of the maximum lawful size or length prescribed for a single net in that area, except as otherwise provided for in the rules and regulations of the department (WAC 220-20-010)(17).

d) **Allowable Possession:** Chinook salmon and shad

e) **Miscellaneous:** Transportation or possession of fish outside the fishing area (except to the sampling station) is unlawful until WDFW staff has biologically sampled individual catch. 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, about 0.5 miles upstream of the lower Deep River area boundary (USCG navigation marker #16).

(3) Tongue Point/South Channel

a) **Dates:** Open hours are 7 PM to 7 AM Monday and Thursday nights immediately through June 14, 2016.

b) **Area:** 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.

The South Channel area includes all waters bounded by a line from a marker on John Day Point 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 restricted to a maximum net length of 250 fathoms, and weight not to exceed two pounds on any one fathom. In the South Channel fishing area, gear restricted to a maximum net length of 250 fathoms, no weight restriction on leadline, and use of additional weights or anchors attached directly to the leadline is allowed.

d) **Allowable Possession:** Chinook salmon and shad

e) **Miscellaneous:** Permanent transportation rules in effect.

(4) Blind Slough/Knappa Slough Select Area

f) **Dates:** Open hours are 7 PM to 7 AM Monday and Thursday nights immediately through June 14, 2016.

a) **Area:** Blind Slough and Knappa Slough areas are both open. Immediately until further notice, 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).

b) **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 and/or anchors attached directly to the leadline is allowed.

c) **Allowable Possession:** Chinook salmon and shad

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

(5) **24-hour quick reporting** is in effect for Washington buyers (WAC 220-69-240 (14)(d)). Permanent transportation rules in effect.

(6) **Multi-Net Rule:** Nets not specifically authorized for use in these areas may be onboard a vessel if properly stored (WAC 220-33-001(2)).

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

Reviser's note: The 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 7:00 p.m. May 31, 2016:

WAC 220-33-01000J Columbia River seasons below Bonneville. (16-115)

WSR 16-12-071
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 16-124—Filed May 27, 2016, 1:34 p.m., effective June 2, 2016, 6:00 a.m.]

Effective Date of Rule: June 2, 2016, 6:00 a.m.

Purpose: Amend Puget Sound recreational crab fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-56-33000Y; and amending WAC 220-56-330.

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: An emergency rule is needed to open the recreational crab harvest in Marine Areas 12, 13 and a portion of Marine Area 9 to achieve the 50/50 harvest defined by the federal court order. Recreational crab fisheries will open at 6:00 a.m. on the first day instead of 7:00 a.m. in each of the marine areas. 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 27, 2016.

Joe Stohr
for J. W. Unsworth
Director

NEW SECTION

WAC 220-56-33000Y Crab—Areas and seasons. Notwithstanding the provisions of WAC 220-56-330, effective immediately until further notice, it is unlawful to fish for crab for personal use in Puget Sound in all waters of Marine Areas, 4, 5, 6, 7, 8-1, 8-2, 9, 10, 11, 12 and 13, except as provided herein;

(1) Marine Area 13: Effective 6:00 a.m. June 2, 2016, through 11:59 p.m. September 5, 2016, it is permissible to fish for crab for personal use on Thursdays, Fridays, Saturdays, Sundays and Mondays.

(2) That portion of Marine Area 9 north of the Hood Canal Bridge to a line connecting Foulweather Bluff to Olele Point: Effective 6:00 a.m. June 16, 2016, through 11:59 p.m. September 5, 2016, it is permissible to fish for crab for personal use on Thursdays, Fridays, Saturdays, Sundays and Mondays.

(3) Marine Area 12: Effective 6:00 a.m. June 16, 2016, through 11:59 p.m. September 5, 2016, it is permissible to fish for crab for personal use on Thursdays, Fridays, Saturdays, Sundays and Mondays.

REPEALER

The following section of the Washington Administrative Code is repealed effective September 6, 2016:

WAC 220-56-33000Y Crab—Areas and seasons.

WSR 16-12-093
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 16-125—Filed May 31, 2016, 2:01 p.m., effective June 1, 2016]

Effective Date of Rule: June 1, 2016.

Purpose: Amend rules in the recreational spot shrimp fishery.

Citation of Existing Rules Affected by this Order: Amending WAC 220-56-325 and 220-56-310.

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 ensure an orderly fishery, manage within court-ordered sharing requirements, and to ensure conservation. Sufficient amounts of spot shrimp remain available in Marine Areas 6 and 7 West to raise the daily bag limit on a trial basis. In addition, harvestable amounts of nonspot shrimp are available in several marine areas, and the depth restrictions and area closures are in effect to protect spot shrimp. 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 2, Amended 0, Repealed 0.

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

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

Date Adopted: May 31, 2016.

J. W. Unsworth
Director

NEW SECTION

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

Notwithstanding the provisions of WAC 220-56-325, effective June 1, 2016, until further notice:

(1) Marine Areas 4 (east of the Bonilla-Tatoosh line), 5 and 6 (excluding the Discovery Bay Shrimp District) are open to the harvest of all shrimp species.

(2) It is unlawful to fish for or possess shrimp taken for personal use in all waters of Marine Area 7, except as follows:

(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 to the harvest of all shrimp species.

(b) The portion of Marine Area 7 north of a line from the Biz Point on Fidalgo Island to Cape Saint Mary on Lopez Island, then east of a line projected from the number 2 buoy at the entrance to Fisherman Bay to the southern tip of Shaw Island, then east of a line projected true north and south from the western tip of Crane Island, then east of a line from Point Doughty on Orcas Island to the bell buoy at the international boundary:

(i) Open to the harvest of all shrimp species except spot shrimp. It is unlawful to possess spot shrimp, and all spot shrimp must immediately be returned to the water unharmed.

(ii) It is unlawful to set or pull shrimp gear in waters greater than 200 feet deep.

(3) All waters equal to or less than 150 feet in depth in Marine Areas 8-1, 8-2, 9 and 11 are open to the harvest of all shrimp species except spot shrimp. All spot shrimp caught must be immediately returned to the water unharmed. It is unlawful to set or pull shrimp gear in waters greater than 150 feet deep.

(4) All waters equal to or less than 250 feet in depth in Marine Area 13 are open to the harvest of all shrimp species except spot shrimp. All spot shrimp caught must be immediately returned to the water unharmed. It is unlawful to set or pull shrimp gear in waters greater than 250 feet deep.

NEW SECTION

WAC 220-56-31000A Shellfish—Daily limits. Notwithstanding the provisions of WAC 220-56-310, effective 12:01 a.m. June 1, 2016, until further notice, in Marine Areas 6 and 7 West it is permissible for any one person to take up to 160 shrimp for personal use in any one day. Marine Area 7 West defined as 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.

WSR 16-12-095

EMERGENCY RULES

DEPARTMENT OF

FISH AND WILDLIFE

[Order 16-129—Filed May 31, 2016, 2:23 p.m., effective May 31, 2016, 2:23 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: Amend Puget Sound recreational crab fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-56-33000Y and 220-56-33000Z; and amending WAC 220-56-330.

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: An emergency rule is needed to open the recreational crab harvest in Marine Areas 4 east of the Bonilla-Tatoosh Line, 5, 12, 13 and a portion of Marine Area 9 to achieve the 50/50 harvest defined by the federal court order. Recreational crab fisheries will open at 6:00 a.m. on the first day instead of 7:00 a.m. in each of the marine areas. 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: May 31, 2016.

J. W. Unsworth
Director

NEW SECTION

WAC 220-56-33000Z Crab—Areas and seasons. Notwithstanding the provisions of WAC 220-56-330, effective immediately until further notice, it is unlawful to fish for crab for personal use in Puget Sound in all waters of Marine Areas, 4, 5, 6, 7, 8-1, 8-2, 9, 10, 11, 12 and 13, except as provided herein;

(1) Marine Area 13: Effective 6:00 a.m. June 2, 2016, through 11:59 p.m. September 5, 2016, it is permissible to fish for crab for personal use on Thursdays, Fridays, Saturdays, Sundays and Mondays.

(2) Marine Area 4 east of the Bonilla-Tatoosh line, Marine Area 5, that portion of Marine Area 9 north of the Hood Canal Bridge to a line connecting Foulweather Bluff to Olele Point, and Marine Area 12: Effective 6:00 a.m. June 16, 2016, through 11:59 p.m. September 5, 2016, it is permissible to fish for crab for personal use on Thursdays, Fridays, Saturdays, Sundays and Mondays.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 220-56-33000Y [Crab—Areas and seasons.] (16-124)

The following section of the Washington Administrative Code is repealed effective September 6, 2016:

WAC 220-56-33000Z Crab—Areas and seasons.

Reviser's note: The bracketed material above was supplied by the code reviser's office.

**WSR 16-12-096
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE**

[Order 16-127—Filed May 31, 2016, 2:24 p.m., effective June 1, 2016]

Effective Date of Rule: June 1, 2016.

Purpose: Amend recreational fishing rules for Puget Sound.

Citation of Existing Rules Affected by this Order: Repealing WAC 232-28-62100C and 220-56-51000C; and amending WAC 232-28-621 and 220-56-510.

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: Endangered Species Act (ESA) coverage for Chinook and steelhead impacts expired April 30, 2016. This emergency rule modifies salmon fisheries to ensure compliance with ESA take and coverage for Chinook and steelhead until a permit is approved. 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 2, Amended 0, Repealed 2.

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

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

Date Adopted: May 31, 2016.

J. W. Unsworth
Director

NEW SECTION

WAC 232-28-62100D Puget Sound salmon—Saltwater seasons and daily limits. Notwithstanding the provisions of WAC 232-28-621, effective immediately until further notice, it is unlawful to fish for salmon in Marine Area 8-2 (including Tulalip Terminal Area Fishery), Marine Area 10, Marine Area 11, Marine Area 13, and year-round piers (Marine Areas 9, 10, 11, and 13). Unless otherwise amended, all permanent rules remain in effect.

[NEW SECTION]

WAC 220-56-51000D Game fish possession limits and size limits. Notwithstanding the provisions of WAC 220-56-510, effective immediately until further notice, it is unlawful to retain steelhead in Marine Areas 6, 7, 8-1, 8-2, 9, 10, 11, 12, and 13. Unless otherwise amended, all permanent rules remain in effect.

Reviser's note: The bracketed material preceding the section above was supplied by the code reviser's office.

REPEALER

The following sections of the Washington Administrative Code are repealed:

- WAC 232-28-62100C Puget Sound salmon—Saltwater seasons and daily limits. (16-89)
- WAC 220-56-51000C Game fish possession limits and size limits. (16-89)

WSR 16-12-097
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 16-126—Filed May 31, 2016, 2:25 p.m., effective June 4, 2016]

Effective Date of Rule: June 4, 2016.

Purpose: Amend recreational fishing rules in Lake Washington to allow for a one day kids fishing event.

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

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: An emergency rule is needed to reopen portions of Lake Washington previously closed by WSR 16-10-068 which was needed because Endangered Species Act coverage for Chinook and steelhead impacts expired April 30, 2016. This emergency rule will allow for two fishing events that will offer youths an opportunity to participate and learn about fishing who would otherwise not get the chance. 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 31, 2016.

J. W. Unsworth
Director

NEW SECTION

WAC 220-310-19000G Freshwater exceptions to statewide rules—Puget Sound. Notwithstanding the provisions of WAC 220-310-190, effective immediately the following waters are closed to fishing:

(1) Lake Washington (King Co.)

(a) Effective June 4, 2016, from 9:00 a.m. to 1:00 p.m. it is permissible for youth anglers participating in the CAST for Kids Fishing event to fish in the nets pens in Lake Washington at Gene Coulon Memorial Beach Park.

(b) Effective June 4, 2016, from 8:00 a.m. to 12:00 p.m. it is permissible for youth anglers participating in the Northshore Chapter Trout Unlimited Kids Fishing event to fish in the net pens in Lake Washington at Tracy Owen Station at Log Boom Park.

(2) Lake Union (King Co.)

(3) Lake Sammamish (King Co.)

(4) Monte Cristo Lake (Snohomish Co.)

(5) Cushman Lake (Mason Co.)

(6) Barney Lake (Skagit Co.)

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 220-310-19000E Freshwater exceptions to statewide rules—Puget Sound (16-95)

WSR 16-12-114
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 16-128—Filed June 1, 2016, 11:43 a.m., effective June 2, 2016]

Effective Date of Rule: June 2, 2016.

Purpose: The purpose of this emergency rule is to allow residents who did not purchase a combination license due to the potential closure of the Puget Sound and surrounding tributaries an opportunity now to purchase a combination license at the difference in cost of their annual license and the combination license.

Citation of Existing Rules Affected by this Order: Amending WAC 220-55-040.

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: With recent changes in the Puget Sound fishing season, there is a need to clarify and provide the opportunity to recreational anglers to purchase a

combination license at the difference in cost of their annual license and the combination license. An emergency rule is needed to clarify this process which will make it easier for anglers to obtain a combination license. There is insufficient time to promulgate permanent rules.

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

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

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

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

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

Date Adopted: May 31, 2016.

J. W. Unsworth
Director

NEW SECTION

WAC 220-55-04000A Recreational license, tag, permit, and stamp refunds, replacements, and exchanges. Notwithstanding the provisions of WAC 220-55-040, effective immediately until further notice the following rules apply:

(8) A resident who has purchased an annual freshwater or saltwater license may upgrade to an annual combination license for the difference in cost between their current annual fishing license and the cost of the annual combination license.

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.