

WSR 16-15-001
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 16-169—Filed July 6, 2016, 1:40 p.m., effective July 9, 2016, 4:00 a.m.]

Effective Date of Rule: July 9, 2016, 4:00 a.m.

Purpose: Amend rules in the recreational spot shrimp fishery.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-56-32500Y and 220-56-31000A; and 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. Harvestable amounts of spot shrimp are available for eight additional days of fishing in Marine Area 7 South. 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Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 2, Amended 0, Repealed 2.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.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: July 6, 2016.

Ron Warren
for J. W. Unsworth
Director

NEW SECTION

WAC 220-56-32500Z Shrimp—Areas and seasons. Notwithstanding the provisions of WAC 220-56-325, effective immediately 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) Effective immediately through 10:00 p.m. July 16, 2016, the portion of Marine Area 7 west of a line projected due south from Point Colville on Lopez Island, then south of a line from Davis Point on Lopez Island to Cattle Point on San Juan Island, then south of a line projected due west from Lime Kiln Point light to the international boundary (defined as Marine Area 7 South): Open to the harvest of all shrimp species.

(b) 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 (defined as Marine Area 7 West): Open to the harvest of all shrimp species.

(c) 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 (defined as Marine Area 7 East):

(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 220-56-31000B Shellfish—Daily limits. (1) Notwithstanding the provisions of WAC 220-56-310, effective immediately, 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.

(2) Notwithstanding the provisions of WAC 220-56-310, effective immediately until 10:00 p.m. July 16, 2016, in Marine Area 7 South it is permissible for any one person to take up to 160 shrimp for personal use in any one day.

REPEALER

The following sections of the Washington Administrative Code are repealed effective 4:00 a.m. July 9, 2016:

WAC 220-56-32500Y Shrimp—Areas and seasons. (16-125)

WAC 220-56-31000A Shellfish—Daily limits. (16-125)

WSR 16-15-002
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 16-173—Filed July 6, 2016, 4:28 p.m., effective July 7, 2016]

Effective Date of Rule: July 7, 2016.

Purpose: Amend recreational fishing rules for the Columbia River.

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

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 sockeye run has exceeded the preseason forecast of one hundred two thousand fish returning to the river mouth (currently upgraded to three hundred fifty thousand). Barring extreme high water temperatures like 2015 that caused unprecedented prespawning mortality, sufficient escapement of fish to meet spawning needs in the Wenatchee and Okanogan rivers should be realized. Increasing the daily limit and allowing retention of sockeye salmon 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 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: July 6, 2016.

J. W. Unsworth
Director

NEW SECTION

WAC 220-310-20000W Freshwater exceptions—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) For all subsections listed below the following rules apply:

(a) Daily limit six salmon, up to two may be adult hatchery Chinook and up to three may be sockeye.

(b) Release coho and wild adult Chinook.

(c) Minimum size 12 inches.

(d) Release all sockeye with colored anchor (floy) tag attached.

(2) July 7 through August 31, 2016, from Priest Rapids Dam to 400 feet below Rock Island Dam.

(3) July 7 through October 15, 2016, from Rock Island Dam to 400 feet below Wells Dam.

(4) July 16 through August 31, 2016, from Wells Dam to Hwy 173 Bridge in Brewster.

(5) July 7 through October 15, 2016, from Hwy 173 Bridge in Brewster to Chief Joseph Dam.

REPEALER

The following section of the Washington Administrative Code is repealed effective October 16, 2016:

WAC 220-310-20000W Freshwater exceptions—Columbia River.

WSR 16-15-003
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 16-174—Filed July 6, 2016, 4:34 p.m., effective July 7, 2016, 7:00 p.m.]

Effective Date of Rule: July 7, 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 220-33-01000P; 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 wild-

life 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 summer Chinook. The inseason summer Chinook forecast is ninety-one thousand fish. A run of this size allocates about two thousand five hundred Chinook available for harvest in mainstem commercial fisheries. The inseason sockeye forecast is three hundred fifty thousand fish. Sets additional select area commercial seasons to access local spring Chinook. The fishery is consistent with the *U.S. v. Oregon* Management Agreement and the associated biological opinion. Conforms Washington state rules with Oregon state rules. Regulation is consistent with compact action of June 9 and July 6, 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: July 6, 2016.

J. W. Unsworth
Director

NEW SECTION

WAC 220-33-01000Q 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:** 9:00 PM July 11 to 5:00 AM July 12, 2016.

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

(c) **Sanctuaries:** Elochoman-A, Cowlitz River, Kalama-A, Lewis-A, Sandy, and Washougal rivers.

(d) **Allowable Possession:** Chinook, sockeye and shad.

(e) **Gear:** Drift nets only. 8-inch minimum mesh size.

(2) Tongue Point/South Channel

(a) **Dates:** 7 PM July 7 to 7 AM July 8 and 7 PM July 12 to 7 AM July 13, 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:** Salmon and shad

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

(3) Blind Slough/Knappa Slough Select Area

(a) **Dates:** 7 PM July 7 to 7 AM July 8 and 7 PM July 12 to 7 AM July 13, 2016.

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

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

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

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

(4) **24-hour quick reporting** is in effect for Washington buyers (WAC 220-69-240 (14)(d)). Permanent transportation rules in effect.

(5) **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)).

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

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

REPEALER

The following section of the Washington Administrative Code is repealed effective 7:00 p.m. July 7, 2016:

WAC 220-33-01000P Columbia River seasons below Bonneville. (16-167)

WSR 16-15-005
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 16-175—Filed July 7, 2016, 9:59 a.m., effective July 8, 2016, 7:01 p.m.]

Effective Date of Rule: July 8, 2016, 7:01 p.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 220-32-05100X; 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: Eliminates net mesh restrictions on a gill net season that was previously set. Allows the sale of fish caught in Zone 6 Columbia River tribal net, platform and hook and line gear for the summer season. The sale of fish caught in Yakama Nation tributary fisheries is also allowed when open under Yakama Nation regulations. The area downstream of Bonneville Dam (SMCRA 1E1) is open to sales of fish when open under tribal regulations. The inseason forecast for summer Chinook is ninety-one thousand fish and three hundred fifty thousand sockeye. There are twenty-eight thousand two hundred fifty-two Chinook and twenty-four thousand five hundred sockeye available for harvest for the treaty tribes. Fisheries are consistent with the 2008-2017 Management Agreement and the associated biological opinion. Rule is consistent with action of the Columbia River Compact on June 9 and July 6, 2016. Conforms state rules with tribal rules. There is insufficient time to promulgate permanent regulations.

The Yakama, Warm Springs, Umatilla, and Nez Perce Indian tribes have treaty fishing rights in the Columbia River and inherent sovereign authority to regulate their fisheries. Washington and Oregon also have some authority to regulate fishing by treaty Indians in the Columbia River, authority that the states exercise jointly under the congressionally ratified Columbia River Compact. *Sohappy v. Smith*, 302 F. Supp. 899 (D. Or. 1969). The tribes and the states adopt parallel regulations for treaty Indian fisheries under the supervision of the federal courts. A court order sets the current parameters. *United States v. Oregon*, Civil No. 68-513-KI (D. Or.), Order Adopting 2008-2017 *United States v. Oregon* Management Agreement (Aug. 12, 2008) (Doc. No. 2546). Some salmon and steelhead stocks in the Columbia River are listed as threatened or endangered under the federal ESA. On May 5, 2008, the National Marine Fisheries Service issued a biological opinion under 16 U.S.C. § 1536 that allow 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 1, Amended 0, Repealed 1.

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: July 7, 2016.

J. W. Unsworth
Director

NEW SECTION

WAC 220-32-05100Y 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 1E1, 1F, 1G, and 1H, and in the Wind River, Klickitat River, Drano Lake, Yakima River and Icicle Creek. However, those individuals possessing treaty fishing rights under the Yakama, Warm Springs, Umatilla, and Nez Perce treaties may fish for salmon, steelhead, sturgeon, shad, carp, catfish, walleye, bass, or yellow perch under the following provisions.

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

(a) Season: 6:00 AM Monday July 11 to 6:00 PM Thursday July 14, 2016

(b) Gear: Gillnets. No minimum mesh restrictions.

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

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

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

(a) Season: Immediately until 11:59 PM Sunday July 31, 2016

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

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

Live release of all oversize and under-size sturgeon is required.

(d) All sanctuaries for these gear types are in effect, except Spring Creek.

(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: Wind River, Drano Lake, Icicle Creek, Yakima River and Klickitat River.

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

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

(4) Open Area: SMCRA 1E1. Each of the four Columbia River treaty tribes has an MOA or MOU with the Washington Department of Fish and Wildlife for tribal fisheries in the area just downstream of Bonneville Dam. Tribal fisheries in this area may only occur in accordance with the appropriate MOA or MOU specific to each tribe, and only within any specific regulations set by each tribe.

(a) Participants:

(i) Tribal members may participate under the conditions described in the 2007 Memorandum of Agreement (MOA) with the Yakama Nation (YN), in the 2010 Memorandum of Understanding (MOU) with the Confederated Tribes of the Umatilla Indian Reservation (CTUIR), in the 2010 MOU with the Confederated Tribes of the Warm Spring Reservation (CTWS), and in the 2013 MOU with the Nez Perce Tribe.

(ii) Tribal members fishing below Bonneville Dam must carry an official tribal enrollment card.

(b) Season: Immediately until 11:59 PM July 31, 2016. Open only during those days and hours when allowed under lawfully enacted tribal subsistence fishery regulations for enrolled tribal members.

(c) Allowable gear: Hoop nets, dip bag nets, and rod and reel with hook and line.

(d) Allowable Sales: Salmon, steelhead, shad, yellow perch, bass, walleye, catfish, or carp. Sturgeon retention is prohibited for any purpose. Sale of platform or hook-and-line-caught fish is allowed. Sales may not occur on USACE property.

(5) 24-hour quick reporting is required as provided in WAC 220-69-240, for Washington wholesale dealers for all areas, except that all landings from treaty fisheries described above must be reported within 24-hours of completing the fish ticket.

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

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

REPEALER

The following section of the Washington Administrative Code is repealed effective 7:01 p.m. July 8, 2016:

WAC 220-32-05100X Columbia River salmon seasons above Bonneville Dam. (16-166)

WSR 16-15-021
EMERGENCY RULES
HEALTH CARE AUTHORITY
(Washington Apple Health)

[Filed July 11, 2016, 11:22 a.m., effective July 11, 2016, 11:22 a.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: The state's authority granted by the Centers for Medicare and Medicaid Services under section 1902 (e)(14)(A) of the Social Security Act to continue its use of income rules described in the United States Court of Appeals Ninth Circuit decision in *Sneede v. Kizer*, 951 F.2d 362 (1991) has expired. The state must now comply with the requirements of 42 C.F.R. 435.603.

Citation of Existing Rules Affected by this Order: Amending WAC 182-509-0360.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160.

Other Authority: 42 C.F.R. 435.603.

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: This rule is necessary to comply with federal regulations and to preserve coverage for individuals and families.

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

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

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

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

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

Date Adopted: July 11, 2016.

Wendy Barcus
Rules Coordinator

AMENDATORY SECTION (Amending WSR 14-01-021, filed 12/9/13, effective 1/9/14)

WAC 182-509-0360 MAGI income—How (~~a child's~~) the income of a child age eighteen or younger or a tax dependent is counted. (~~For purposes of~~) The medical aid agency determines income counted when determining eligibility for modified adjusted gross income (MAGI)-based Washington apple health ((WAH)-(see)) under WAC 182-509-0300(~~;~~)

~~(1) Income received by a child claimed as a tax dependent by someone else is not counted when determining the eligibility of the tax filers who claim the tax dependent.~~

~~(2) Income received by a child in a nonfiling medical assistance unit (as described in WAC 182-506-0010) is not counted when determining the eligibility of the child or the other household members in the nonfiling household.~~

~~(3) Income received by a child age eighteen or younger who is required to file his or her own tax return but who is also claimed as a tax dependent by another person is counted when determining eligibility for WAH for the child, but not the person that claims them.~~

~~(4) Income of a sibling is not counted when determining the eligibility of any other sibling in the household).~~

(1) When determining countable income for persons described in subsections (2) through (5) of this section, the income of a child age eighteen or younger or a tax dependent is counted only when it meets the threshold required for tax filing under 26 U.S.C. Sec. 1.

(2) Determining countable income of a tax filer. The countable income includes the income of each member in the tax filer's medical assistance unit (MAU) under WAC 182-506-0012(1).

(3) Determining countable income of a tax dependent. The countable income includes the income of each member in the tax dependent's MAU under WAC 182-506-0012(2).

(4) Determining countable income of a nonfiler. The countable income includes the income of each member in the tax dependent's MAU under WAC 182-506-0012(3).

(5) Determining countable income of a child who lives with a parent who is age eighteen or younger. If a parent is age eighteen or younger and:

(a) Is a tax dependent, the countable income of the child does not include the income of the parent, and includes only the income of the child.

(b) Is not a tax dependent, the countable income of the child includes the income of the parent and the child.

WSR 16-15-025
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 16-177—Filed July 11, 2016, 3:23 p.m., effective July 14, 2016]

Effective Date of Rule: July 14, 2016.

Purpose: Amend recreational fishing rules in the Klickitat River.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-310-19500N; 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 area to retention of hatchery adult Chinook salmon because to date, only three hundred sixty adult Chinook have entered the hatchery. The escapement goal for the facility is five hundred Chinook. The closure will allow more hatchery adults to enter the hatchery. 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: July 11, 2016.

J. W. Unsworth
Director

NEW SECTION

WAC 220-310-19500N Freshwater exceptions to statewide rules—Eastside. Notwithstanding the provisions of WAC 220-310-195, effective July 14 through July 31, 2016, it is unlawful to retain hatchery adult Chinook salmon in those waters of the Klickitat River from posted markers above Klickitat Salmon Hatchery to Summit Creek Bridge, 5 miles downstream.

REPEALER

The following section of the Washington Administrative Code is repealed effective August 1, 2016:

WAC 220-310-19500N Freshwater exceptions to statewide rules—Eastside.

WSR 16-15-037
EMERGENCY RULES
LIQUOR AND CANNABIS
BOARD

[Filed July 13, 2016, 1:06 p.m., effective July 13, 2016, 1:06 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: New rules are needed to create a process to recall marijuana and marijuana products that pose a risk to consumers. This emergency rule establishes a recall process similar to the recall process used by other state and federal agencies for products that pose risks to consumers.

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 licensed retail stores are a consumable product and it is important that they are safe for human consumption. In the event that product posing a risk to public health is discovered, regulations and a process need to be in place to allow for affected product to be identified and removed from the marketplace in a fast and efficient manner. The emergency rules are needed to ensure the public health, and safety of the citizens of Washington. Permanent rule making is currently underway. This emergency rule is being refiled to ensure emergency rule requirements remain in place to protect public safety until permanent rules become effective.

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: July 13, 2016.

Jane Rushford
Chair

NEW SECTION

WAC 314-55-225 Marijuana recalls. (1) Definitions. For the purposes of this section, the following definitions apply:

(a) "Affected product" means marijuana, usable marijuana, marijuana concentrates, or marijuana-infused products subject to a recall.

(b) "Affected licensee" means a licensee whose marijuana, usable marijuana, marijuana concentrates, or marijuana-infused products are subject to a recall. More than one licensee may be an affected licensee in a recall.

(2) Exempt market withdrawals.

(a) A licensee may withdraw from the market marijuana, usable marijuana, marijuana concentrates, or marijuana-infused products by its own determination for reasons that do not pose a risk to consumers such as for aesthetic reasons or other similar deficiencies in product or packaging.

(b) If a licensee initiates a market withdrawal for a reason that does not pose a risk to consumers, the licensee must notify the WSLCB by contacting the local WSLCB enforcement officer assigned to the local area within forty-eight hours of beginning the market withdrawal. Licensees withdrawing marijuana, usable marijuana, marijuana concentrates, or marijuana-infused products under this subsection (2), for reasons other than risk to consumers, are exempt from the remaining requirements of this section.

(3)(a) When a recall is required. A recall is required when circumstances exist that pose a risk to consumers. Factors that contribute to a determination of a recall situation include, but are not limited to, the following:

(i) Evidence that pesticides not approved by the board are present on or in marijuana, usable marijuana, marijuana concentrates, or marijuana-infused products above the action levels prescribed by board rule;

(ii) Evidence that residual solvents are present on or in marijuana, usable marijuana, marijuana concentrates, or marijuana-infused products at levels above the action levels prescribed by board rule; or

(iii) Evidence of another condition that poses a risk to consumers including, but not limited to, ingredients in marijuana-infused products that are unfit for human consumption.

(b) Licensee-initiated recalls.

(i) If a licensee initiates a recall due to a condition that poses a risk to consumers and would make a recall appropriate under this subsection (3), the licensee must:

(A) Immediately notify the local WSLCB enforcement officer; and

(B) Secure, isolate, and prevent the distribution of all marijuana, usable marijuana, marijuana concentrates, or marijuana-infused products that may have been exposed to the condition warranting the recall. The licensee is prohibited from destroying any affected product prior to notifying the WSLCB and coordinating with the local WSLCB officer on destruction activities.

(ii) If the WSLCB determines the licensee fails to engage in recall efforts that meet the urgency of the risk to consumers, the WSLCB may seek a board-directed recall as provided in this section depending on the circumstances.

(c) WSLCB investigation-initiated recalls.

(i) If the WSLCB determines that a recall is not appropriate after an investigation, the WSLCB enforcement division may release administrative holds placed on marijuana, usable marijuana, marijuana concentrates, or marijuana-infused products as part of the investigation as appropriate, unless an

administrative hold is necessary under a continuing investigation.

(ii) If the WSLCB determines that a recall is appropriate after an investigation, the WSLCB notifies the board and requests the board issue a recall. If the board issues a recall, the WSLCB notifies the affected licensee that is the source of the issue giving rise to a recall.

(d) Recall plans. All licensees must develop a recall plan within sixty days of the effective date of this section that sets the procedures the licensee will follow in the event of a recall of the licensee's product or products under the licensee's control. If a licensee becomes an affected licensee as part of a recall and the affected licensee distributed affected product to consumers or to retailers, the affected licensee must immediately notify all licensees that received affected product, and issue a press release and other appropriate public notification to inform consumers of the recall and identifying information about the affected product recalled.

(i) A recall plan must include, at a minimum, the following:

(A) Designation of a member of the licensee's staff who serves as the licensee's recall coordinator;

(B) Procedures for identifying and isolating product to prevent or minimize its distribution to consumers;

(C) Procedures to retrieve and destroy product; and

(D) A communications plan to notify those affected by the recall, including:

(I) How the affected licensee will notify other licensees in possession of product subject to the recall; and

(II) The use of press releases and other appropriate notifications to ensure consumers are notified of the recall and affected product information if the affected product was distributed to consumers.

(ii) A recall must follow the procedures outlined in the recall plan unless otherwise agreed by the WSLCB and the licensee. The affected licensee must ensure recall procedures are conducted to maximize recall of affected product and minimize risks to consumers.

(e) Destruction of affected product. An affected licensee must coordinate destruction of affected product with the local WSLCB enforcement officer and allow WSLCB enforcement to oversee the destruction of affected product recalled to ensure the destruction of affected product that poses risks to consumers.

(f) Recall reports and audit. The affected licensee must track the total amount of affected product and the amount of affected product returned to the affected licensee as part of the recall effort. The affected licensee must report to the WSLCB periodically on the progress of the recall efforts. The periodic reports must occur at a minimum of once a week or as otherwise specified and agreed to by the WSLCB and the affected licensee in the recall plan.

(g) Recall closure. If the WSLCB determines that the recall efforts are successful and risks to public health and safety are no longer present, the WSLCB may recommend closure of the recall to the board.

(4) Board-directed recall.

(a) Upon the recommendation by the WSLCB enforcement division, the board may issue a directed recall if:

(i) The affected licensee does not comply with a recall under subsection (3) of this section;

(ii) The affected licensee does not comply with the recall plan or recall reporting requirements under subsection (3) of this section; or

(iii) The WSLCB enforcement division determines that affected product may be diverted or is being diverted from the licensed business, or another circumstance that makes the affected licensee's destruction of the product inadvisable or a risk to consumers.

(b) If the board issues a directed recall, the WSLCB will notify consumers of the recall and all licensees that may possess product affected by the recall if notice has not yet occurred.

(c) Under a directed recall, the WSLCB enforcement division may seek an order for destruction of the affected product from the board.

(i) If the board issues an order for destruction, the WSLCB enforcement division may seize and conduct the destruction of affected product.

(ii) An order for destruction will include notice to the licensee and opportunity for hearing before destruction, unless there is evidence of an immediate danger to public health, safety, or welfare to justify an immediate order for destruction, with an opportunity for an expedited hearing after the destruction.

(d) If a destruction order is issued and the WSLCB seizes product affected by the recall and conducts the destruction of the product, the affected licensee may be responsible for reimbursing the WSLCB for costs associated with product destruction.

(e) If the board finds that an immediate danger to the public health, safety, or welfare requires immediate WSLCB action, a licensee may also be subject to summary suspension under RCW 66.08.150(4).

(5) The WSLCB will maintain a recall web page on its web site of all current and closed recalls of record.

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 additional select area commercial seasons to access local spring Chinook. The fishery is consistent with the *U.S. v. Oregon* Management Agreement and the associated biological opinion. Conforms Washington state rules with Oregon state rules. Regulation is consistent with compact action of January 27 and July 13, 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.

WSR 16-15-039
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 16-181—Filed July 14, 2016, 9:40 a.m., effective July 14, 2016, 7:00 p.m.]

Effective Date of Rule: July 14, 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 220-33-01000Q; 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.

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: July 14, 2016.

J. W. Unsworth
Director

NEW SECTION

WAC 220-33-01000R 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) Tongue Point/South Channel

(a) Dates: 7 PM July 14 to 7 AM July 15 and 7 PM July 18 to 7 AM July 19, 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: Salmon and shad

(e) Miscellaneous: Permanent transportation rules in effect.

(2) Blind Slough/Knappa Slough Select Area

(a) Dates: 7 PM July 14 to 7 AM July 15, 2016 and 7 PM July 18 to 7 AM July 19, 2016

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

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

(d) Allowable Possession: Salmon and shad

(e) Miscellaneous: Permanent transportation rules in effect.

(3) 24-hour quick reporting is in effect for Washington buyers (WAC 220-69-240 (14)(d)). Permanent transportation rules in effect.

(4) 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)).

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

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

REPEALER

The following section of the Washington Administrative Code is repealed effective 7:00 p.m. July 14, 2016:

WAC 220-33-01000Q Columbia River seasons below Bonneville. (16-174)

**WSR 16-15-046
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE**

[Order 16-179—Filed July 14, 2016, 2:22 p.m., effective July 14, 2016, 2:22 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: Amend recreational fishing rules for Okanogan and Similkameen rivers.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-310-19500Q; 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: The sockeye run has exceeded the preseason forecast of one hundred two thousand fish returning to the river mouth (currently upgraded to three hundred forty thousand). Sufficient escapement of fish to meet spawning needs in the Okanogan River has occurred. Increasing the daily limit and allowing retention of sockeye salmon 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 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: July 14, 2016.

J. W. Unsworth
Director

NEW SECTION

WAC 220-310-19500Q Freshwater exceptions to statewide rules—Eastside Notwithstanding the provisions of WAC 220-310-195, it is unlawful to violate the following provisions, provided that unless otherwise amended, all permanent rules remain in effect:

(1) For all subsections listed below the following rules apply:

(a) Daily limit six salmon, up to two may be adult hatchery Chinook and up to three may be sockeye.

(b) Release coho and wild adult Chinook.

(c) Minimum size 12 inches.

(d) Release all sockeye with colored anchor (floy) tag attached.

(2) Okanogan River:

(a) Effective immediately through October 15, 2016, from the mouth to the Highway 97 Bridge immediately upstream of the mouth. Anglers may fish with two poles, with the Two-Pole Endorsement through August 31, 2016.

(b) Effective immediately through September 15, 2016, from the Highway 97 Bridge immediately upstream of the mouth to the first Highway 97 bridge downstream of Zosel Dam.

(3) Similkameen River: Effective immediately through September 15, 2016, from the mouth to 400 feet below Enloe Dam.

REPEALER

The following section of the Washington Administrative Code is repealed effective October 16, 2016:

WAC 220-310-19500Q Freshwater exception to statewide rules—Eastside.

WSR 16-15-047
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 16-180—Filed July 14, 2016, 2:27 p.m., effective July 14, 2016, 6:01 p.m.]

Effective Date of Rule: July 14, 2016, 6:01 p.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 220-32-05100Y; 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 net, platform and hook and line gear for the summer season. The sale of fish caught in Yakama Nation tributary fisheries is also allowed when open under Yakama Nation regulations. The area downstream of Bonneville Dam (SMCRA 1E1) is open to sales of fish when open under tribal regulations. The inseason forecast for summer Chinook is ninety-one thousand fish and three hundred forty thousand sockeye. There are twenty-eight thousand two hundred fifty-two Chinook and twenty-three thousand eight hundred sockeye available for harvest for the treaty tribes. Fisheries are consistent with the 2008-2017 Management Agreement and the associated biological opinion. Rule is consistent with action of the Columbia River Compact on June 9 and July 13, 2016. Conforms state rules with tribal rules. There is insufficient time to promulgate permanent regulations.

The Yakama, Warm Springs, Umatilla, and Nez Perce Indian tribes have treaty fishing rights in the Columbia River and inherent sovereign authority to regulate their fisheries. Washington and Oregon also have some authority to regulate fishing by treaty Indians in the Columbia River, authority that the states exercise jointly under the congressionally ratified Columbia River Compact. *Sohappy v. Smith*, 302 F. Supp. 899 (D. Or. 1969). The tribes and the States adopt parallel regulations for treaty Indian fisheries under the supervision of the federal courts. A court order sets the current parameters. *United States v. Oregon*, Civil No. 68-513-KI (D. Or.),

Order Adopting 2008-2017 *United States v. Oregon* Management Agreement (Aug. 12, 2008) (Doc. No. 2546). Some salmon and steelhead stocks in the Columbia River are listed as threatened or endangered under the federal ESA. On May 5, 2008, the National Marine Fisheries Service issued a biological opinion under 16 U.S.C. § 1536 that allow[s] for some incidental take of these species in the fisheries as described in the 2008-2017 *U.S. v. Oregon* Management Agreement. Columbia River fisheries are monitored very closely to ensure consistency with court orders and ESA guidelines. Because conditions change rapidly, the fisheries are managed almost exclusively by emergency rule. As required by court order, the Washington (WDFW) and Oregon (ODFW) departments of fish and wildlife convene public hearings and invite tribal participation when considering proposals for new emergency rules affecting treaty fishing rights. *Sohappy*, 302 F. Supp. at 912. WDFW and ODFW then adopt regulations reflecting agreements reached.

Number of Sections Adopted in Order to Comply with Federal Statute: New 1, Amended 0, Repealed 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 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: July 14, 2016.

J. W. Unsworth
Director

NEW SECTION

WAC 220-32-05100Z 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 1E1, 1F, 1G, and 1H, and in the Wind River, Klickitat River, Drano Lake, Yakima River and Icicle Creek. However, those individuals possessing treaty fishing rights under the Yakama, Warm Springs, Umatilla, and Nez Perce treaties may fish for salmon, steelhead, sturgeon, shad, carp, catfish, walleye, bass, or yellow perch under the following provisions.

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

(a) Season: 6:00 AM Monday July 18 to 6:00 PM Friday July 22, 2016 6:00 AM Monday July 25 to 6:00 PM Friday July 30, 2016

(b) Gear: Gillnets. No minimum mesh restrictions.

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

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

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

(a) Season: Immediately until 11:59 PM Sunday July 31, 2016

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

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

(d) All sanctuaries for these gear types are in effect, except Spring Creek.

(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: Wind River, Drano Lake, Icicle Creek, Yakima River and Klickitat River.

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

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

(4) Open Area: SMCRA 1E1. Each of the four Columbia River treaty tribes has an MOA or MOU with the Washington Department of Fish and Wildlife for tribal fisheries in the area just downstream of Bonneville Dam. Tribal fisheries in this area may only occur in accordance with the appropriate MOA or MOU specific to each tribe, and only within any specific regulations set by each tribe.

(a) Participants:

(i) Tribal members may participate under the conditions described in the 2007 Memorandum of Agreement (MOA) with the Yakama Nation (YN), in the 2010 Memorandum of Understanding (MOU) with the Confederated Tribes of the Umatilla Indian Reservation (CTUIR), in the 2010 MOU with the Confederated Tribes of the Warm Spring Reservation (CTWS), and in the 2013 MOU with the Nez Perce Tribe.

(ii) Tribal members fishing below Bonneville Dam must carry an official tribal enrollment card.

(b) Season: Immediately until 11:59 PM July 31, 2016. Open only during those days and hours when allowed under lawfully enacted tribal subsistence fishery regulations for enrolled tribal members.

(c) Allowable gear: Hoop nets, dip bag nets, and rod and reel with hook and line.

(d) Allowable Sales: Salmon, steelhead, shad, yellow perch, bass, walleye, catfish, or carp. Sturgeon retention is prohibited for any purpose. Sale of platform or hook-and-line-caught fish is allowed. Sales may not occur on USACE property.

(5) 24-hour quick reporting is required as provided in WAC 220-69-240, for Washington wholesale dealers for all areas, except that all landings from treaty fisheries described above must be reported within 24-hours of completing the fish ticket.

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

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

REPEALER

The following section of the Washington Administrative Code is repealed effective 6:01 p.m. July 14, 2016:

WAC 220-32-05100Y Columbia River salmon seasons above Bonneville Dam. (16-175)

WSR 16-15-049
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 16-178—Filed July 15, 2016, 9:46 a.m., effective July 15, 2016, 9:46 a.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: Amend freshwater recreational fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-310-19000H; and amending WAC 220-310-190 and 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: 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 2, 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: July 15, 2016.

J. W. Unsworth
Director

NEW SECTION

WAC 220-310-19500P Freshwater exceptions to statewide rules—Eastside Notwithstanding the provisions of WAC 220-310-195, effective immediately, until further notice, it is unlawful to violate the following provisions, provided that unless otherwise amended, all permanent rules remain in effect:

(1) **Klickitat River from the mouth (Burlington Northern Railroad Bridge) upstream to the Fisher Hill Bridge and from 400 feet above #5 fishway upstream to boundary markers below the salmon hatchery** - Beginning August 1, 2016, salmon daily limit is 6 fish, no more than 3 may be adults of which only 2 may be coho. Minimum size is 12 inches.

(2) **White Salmon River from the mouth (Burlington Northern Railroad Bridge) upstream to the county road bridge below the former location of the powerhouse**: Beginning August 1, 2016:

(a) Salmon: only hatchery Chinook and hatchery coho may be retained.

(b) All species: When the anti-snagging rule is in effect, only fish hooked inside the mouth may be retained.

(3) **White Salmon River from the county road bridge below the former location of the powerhouse upstream to 400 feet below Big Brother Falls** - Beginning August 1, 2016:

(a) Salmon and steelhead:

(i) Daily limit is 6 fish and up to 3 may be adults of which no more than 2 may be hatchery salmon.

(ii) Salmon minimum size is 12 inches.

(b) Upstream of the Northwestern Road Bridge to 400 feet below the Big Brothers Falls, release all fish through July 31, except anglers may retain up to 3 hatchery steelhead.

(4) **Chelan River (Chelan County): From the railroad bridge to the Chelan P.U.D. safety barrier below the powerhouse**: Salmon: Limit 4; no more than 2 adult hatchery Chinook and no more than 3 sockeye may be retained. Release coho and wild adult Chinook.

(5) **Icicle River and all tributaries (Creek) (Chelan County)**:

(a) **From shoreline markers where Cyo Road would intersect the Icicle River at the Sleeping Lady Resort upstream to Leland Creek, and all tributaries including Leland Creek**: Open through October 31:

(i) Selective gear rules apply. It is unlawful to fish from a floating device equipped with an internal combustion motor. Night closure in effect through July 31.

(ii) Trout: Eastern brook trout: Limit 16. Eastern brook trout do not count toward the trout limit. However, once the limit of trout other than eastern brook trout is reached, the limit for all species of trout is reached and the angler must cease fishing for trout.

(iii) Salmon: Open for hatchery Chinook only; minimum length 12 inches; limit 2.

(b) **From Leland Creek upstream, and all tributaries not including Leland Creek:** Open through October 31.

(6) **Okanogan River (Okanogan County):**

(a) From the mouth to Highway 97 Bridge immediately upstream of the mouth: Salmon: Limit 6; no more than 2 adult hatchery Chinook and no more than 3 sockeye may be retained. Release coho and wild adult Chinook. It is permissible to fish two poles from July 1 through August 31 so long as the angler possesses a two-pole endorsement.

(b) From Highway 97 Bridge immediately upstream of the mouth, upstream: Salmon: through September 15, limit 4; no more than 2 adult hatchery Chinook may be retained. Release sockeye, coho and wild adult Chinook. It is not permissible to use two poles.

(7) **Similkameen River (Okanogan County): From the mouth to 400 feet below Enloe Dam:** Salmon: Limit 4; no more than 2 adult hatchery Chinook may be retained. Release sockeye, coho and wild adult Chinook.

(8) **Ahtanum Creek (Yakima County):** In the Middle Fork, open from the mouth to the A2000 Road Spur Road Bridge in NE Section 34 and upstream of the A2800 Road Bridge at Tree Phones Campground.

(9) **Entiat River (Chelan County):** From mouth (railroad bridge) to the upper Roaring Creek Road Bridge (immediately downstream of the Entiat National Fish Hatchery): Salmon open July 25 through September 30: limit 2 adult hatchery Chinook salmon; release wild adult Chinook.

(10) **Grande Ronde River (Asotin County):** From the mouth to County Road Bridge, about 2.5 miles upstream:

(a) Trout minimum length 10 inches, maximum length 20 inches.

(b) Steelhead catch and release only.

(11) **San Poil River (Ferry County):** From the western shoreline at the mouth of the San Poil Arm (as marked by a regulatory buoy) directly eastward across the San Poil Arm to the eastern shoreline of the San Poil Arm (as marked by a regulatory buoy) upstream to the north shore of the outlet of French Johns Lake (Manila Creek) northeast across the San Poil Arm to the north shore of the outlet of Dick Creek: Trout limit 5; it is lawful to retain more than 2 trout over 20 inches.

(12) **Spokane River (Spokane County):** From SR 25 Bridge upstream to 400 feet below Little Falls Dam: Trout minimum size 8 inches, and release rainbow trout with adipose fin intact.

(13) **Wenatchee Lake (Chelan County):**

(a) Open year-round.

(b) Release bull trout, steelhead trout, sockeye, and Chinook salmon.

(c) Night closure is rescinded.

(d) Fishing with two poles is not permissible.

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

NEW SECTION

WAC 220-310-19000J Exceptions to statewide rules —Puget Sound. Notwithstanding the provisions of WAC 220-310-190 effective immediately until further notice, it is unlawful to violate the following provisions, provided that unless otherwise amended, all permanent rules remain in effect:

(1) Baker River (Skagit Co): Closed from the mouth to the Baker River fish barrier dam.

(2) Big Quilcene River (Jefferson County): Closed waters from the Highway 101 Bridge to the electric weir at Quilcene National Fish Hatchery.

(3) Boulder River (Snohomish County) (N.F. Stillaguamish River tributary): Closed from the mouth to Boulder Falls as of September 1.

(4) Canyon Creek (Snohomish County) (S.F. Stillaguamish River): Closed as of September 1.

(5) Clarks Creek (Pierce County): Closed as of September 1.

(6) Fiske Creek (Pierce County) (Puyallup River tributary): Closed upstream from Fiske Road East as of September 1.

(7) Fox Creek (Pierce County) (Puyallup River tributary): Closed upstream from Fiske Road East as of September 1.

(8) Green (Duwamish) River (King County): Closed from the First Avenue South Bridge to South 277th Bridge in Auburn as of August 1.

(9) Green (Duwamish) River (King County): Closed from South 277th Bridge to Auburn-Black Diamond Road Bridge as of August 16.

(10) Green (Duwamish) River (King County), from the Auburn-Black Diamond Road Bridge to the water pipeline walk bridge (1/2 mile downstream of Tacoma Head-works Dam):

(a) Closed waters within 150 feet of the mouth of Keta (Crisp) Creek.

(b) Closed as of September 1.

(11) Greenwater River (King County): Closed from Greenwater Lakes upstream as of September 1.

(12) Kendall Creek (Whatcom County) (N.F. Nooksack tributary):

(a) Open above the hatchery grounds.

(b) Selective gear rule is rescinded.

(13) Kennedy Creek (Mason County): From the Highway 101 Bridge to 400 feet below the falls, trout catch and release only; selective gear rules apply.

(14) King's Creek (Pierce County) (Puyallup River tributary): Closed as of September 1.

(15) Lyle Creek (King County) (White River tributary): Closed as of September 1.

(16) McAllister Creek (Thurston County): Release coho.

(17) Nisqually River (Pierce County), from the mouth to Military Tank Crossing Bridge:

(a) Immediately through August 31, release all coho and wild Chinook.

(b) Salmon fishing closed as of September 1.

(18) Nisqually River (Pierce County), from Alder Reservoir upstream including all tributaries to mainstem and reservoir:

(a) Selective gear rules apply.

(b) Trout minimum length 14 inches.

(19) Nooksack River (Whatcom County), from the Lummi Indian Reservation boundary to the yellow marker at the FFA High School barn at Deming:

(a) Beginning September 1, salmon limit 2, plus 2 additional hatchery coho.

(b) Release wild coho and wild Chinook.

(20) Pilchuck Creek (Snohomish County): Closed from the mouth to Pilchuck Falls as of September 1.

(21) Puyallup River (Pierce County): Closed from the mouth to the 11th Street Bridge.

(22) Puyallup River (Pierce County): Closed to salmon fishing from the 11th Street Bridge to the Carbon River.

(23) Raging River (King County): Closed from the mouth upstream as of September 1.

(24) Samish River (Skagit County), from the Old Highway 99 Bridge to the WDFW salmon rack: Closed.

(25) Samish River (Skagit County), from the I-5 Bridge to the Old Highway 99 Bridge: Closed as of September 1.

(26) Samish River (Skagit County), from the WDFW hatchery rack to Hickson Bridge:

(a) Open through November 30.

(b) Selective gear rules apply.

(c) Release all fish except mandatory hatchery steelhead retention.

(27) Samish River (Skagit County), from Hickson Bridge upstream:

(a) Open through October 31.

(b) Selective gear rules apply.

(c) Mandatory hatchery steelhead retention.

(28) Sauk River (Skagit/Snohomish counties), from the mouth to Darrington Bridge:

(a) Open through September 15.

(b) It is unlawful to fish from a floating device equipped with an internal combustion motor.

(29) Sauk River (Skagit/Snohomish counties), from Darrington Bridge to the mouth of the White Chuck River: Open through September 15.

(30) Sauk River (Skagit/Snohomish counties), waters from the Whitechuck River to the headwaters, including the North Fork from mouth to North Fork Falls and the South Fork from mouth to Elliot Creek: Open through September 15.

(31) Skagit River (Skagit/Whatcom counties): Mandatory hatchery steelhead retention.

(32) Skagit River (Skagit/Whatcom counties), from the mouth to the Memorial Highway Bridge (Highway 536 at Mt. Vernon):

(a) Through September 15, selective gear rules apply, except anglers fishing for sturgeon must use bait.

(b) Through September 15, it is unlawful to use hooks other than those measuring 1/2 inch or less from point to shank, except anglers fishing for sturgeon may use single-point barbless hooks of any size.

(c) Closed to salmon fishing.

(33) Skagit River (Skagit/Whatcom counties), from Memorial Highway Bridge (Highway 536 at Mt. Vernon) upstream to Gilligan Creek:

(a) Closed waters July 17 through July 20, and July 24 through July 27.

(b) Night closure in effect through September 15.

(c) From July 16 through September 15, selective gear rules apply (except for sturgeon), and it is unlawful to use hooks other than those measuring 1/2 inch or less from point to shank, except anglers fishing for sturgeon may use single-point barbless hooks of any size.

(d) Closed to salmon fishing as of July 16.

(34) Skagit River (Skagit/Whatcom counties), from Gilligan Creek to The Dalles Bridge at Concrete:

(a) Closed waters July 17 through July 20 and July 24 through July 27.

(b) Through September 15, selective gear rules apply, it is unlawful to use hooks other than those measuring 1/2 inch or less from point to shank, and night closure in effect.

(c) Closed to salmon fishing.

(35) Skagit River (Skagit/Whatcom counties), from The Dalles Bridge at Concrete to the Highway 530 Bridge at Rockport:

(a) Closed waters July 17 through July 20 and July 24 through July 27.

(b) Through September 15, selective gear rules apply, it is unlawful to use hooks other than those measuring 1/2 inch or less from point to shank, and night closure in effect.

(c) Closed to salmon fishing.

(36) Skagit River (Skagit/Whatcom counties), from the Highway 530 Bridge at Rockport to the Cascade River Road (Marblemount Bridge):

(a) Anti-snagging rule applies through July 15.

(b) From July 16 through September 15, selective gear rules apply, it is unlawful to use hooks other than those measuring 1/2 inch or less from point to shank.

(c) Through September 15, trout catch and release only (except mandatory hatchery steelhead retention), night closure in effect.

(d) Closed to salmon fishing as of July 16.

(37) Skokomish River (Mason County):

(a) Selective gear rules apply.

(b) Catch and release only.

(c) Closed to all fishing from the mouth to the Bonneville Powerlines.

(38) Skykomish River (Snohomish County), from the mouth to the mouth of Wallace River:

(a) Closed as of September 1.

(b) Anti-snagging rule applies and night closure in effect through August 31 above the Lewis Street Bridge and August 1 through August 31 below the Lewis Street Bridge.

(c) Salmon fishing open through July 31, release all salmon except hatchery Chinook, limit 4, and no more than 2 of which may be adults.

(39) Skykomish River (Snohomish County), from the mouth of the Wallace River to the forks:

(a) Closed as of September 1.

(b) From August 1 through August 31, anti-snagging rule applies and night closure in effect from Wallace River to Gold Bar/Big Eddy Access.

(c) Beginning August 1, anti-snagging rule applies and night closure in effect from Gold Bar/Big Eddy Access to the forks.

(d) Closed to salmon fishing.

(40) Skykomish River, North Fork (Snohomish County), from the mouth to 1,000 feet downstream of Bear Creek Falls: Closed as of September 1.

(41) Skykomish River, South Fork (King/Snohomish counties): From the mouth upstream, closed as of September 1.

(42) Snohomish River (Snohomish County), from the Burlington-Northern Railroad bridges to Highway 9 Bridge, including all channels, sloughs, and interconnected waterways, but excluding all tributaries:

(a) Sturgeon catch and release is closed as of September 1.

(b) Gamefish closed as of September 1.

(c) Closed to salmon fishing.

(d) August 1 through August 31 night closure in effect.

(e) August 1 through August 31 anti-snagging rule applies, except for sturgeon

(43) Snohomish River (Snohomish County), from the Highway 9 Bridge to the confluence of the Skykomish and Snoqualmie rivers (all channels):

(a) August 1 through August 31 night closure and anti-snagging rule applies.

(b) Closed as of September 1.

(c) Closed to salmon fishing.

(44) Snoqualmie River (King County), from the mouth to Snoqualmie Falls:

(a) Closed from the mouth to the falls as of September 1.

(b) Selective gear rules apply through August 31.

(c) Night closure not in effect until November 1.

(d) Closed to salmon fishing.

(45) South Prairie Creek (Pierce County): Closed from the city of Buckley diversion dam upstream as of September 1.

(46) Squire Creek (Snohomish County) (N.F. Stillaguamish River tributary): Closed as of September 1.

(47) Stillaguamish River (Snohomish County), from the mouth to Marine Drive, including all sloughs:

(a) Closed as of September 1.

(b) August 1 through August 31, anti-snagging rule applies, except anglers fishing for sturgeon may use single-point barbless hooks of any size.

(c) Closed to salmon fishing.

(48) Stillaguamish River (Snohomish County), from Marine Drive to the forks:

(a) Closed as of September 1.

(b) Night closure in effect from August 1 through August 31.

(c) Closed to salmon fishing.

(49) Stillaguamish River, North Fork (Snohomish County), from the North Fork mouth to the falls approximately one mile upstream of Cascade Creek: Closed as of September 1.

(50) Stillaguamish River, South Fork (Snohomish County), from the mouth up-stream to the source: Closed as of September 1.

(51) Sultan River (Snohomish County), from the mouth to a point 400 feet downstream from the diversion dam at river mile 9.7: Closed as of September 1.

(52) Tolt River (King County), from the mouth to the USGS trolley cable near the confluence of the North and South Forks: Closed as of September 1.

(53) Tye River (King County), from Foss River to Alpine Falls: Closed as of September 1.

(54) Voight Creek (Pierce County): Closed as of September 1.

(55) Wallace River (Snohomish County), from the mouth to 363rd Ave. S.E./Reece Rd: Closed as of September 1.

(56) Whatcom Creek (Whatcom County), from the mouth to the markers below the footbridge below Dupont Street in Bellingham: Release wild coho.

(57) Wilkeson Creek (Pierce County) (South Prairie Creek tributary) upstream of confluence with Gale Creek: Closed as of September 1.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 220-310-19000H Freshwater exceptions to statewide rules—Puget Sound. (16-168)

WSR 16-15-063 EMERGENCY RULES DEPARTMENT OF FISH AND WILDLIFE

[Order 16-183—Filed July 18, 2016, 11:43 a.m., effective July 20, 2016]

Effective Date of Rule: July 20, 2016.

Purpose: Amend recreational fishing rules for Lake Wenatchee.

Citation of Existing Rules Affected by this Order: 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: Based on current sockeye passage analysis at both Tumwater Dam and mainstem Columbia River dams, at least sixty thousand total sockeye are projected to be destined for Lake Wenatchee. This provides an estimated thirty-seven thousand sockeye to be available for harvest above the natural spawning escapement goal of twenty-three thousand fish. Opening Lake Wenatchee for a sockeye fishery will provide 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: July 18, 2016.

J. W. Unsworth
Director

NEW SECTION

WAC 220-310-19500R Freshwater exceptions to statewide rules—Lake Wenatchee. Notwithstanding the provisions of WAC 220-310-195, effective July 20, 2016, one hour before official sunrise, until further notice, it is permissible to fish for sockeye salmon in Lake Wenatchee:

(1) Daily limit 6 sockeye, minimum size 12 inches in length.

(2) Selective gear rules and night closure in effect for all species.

(3) Anglers may fish with 2 poles so long as they possess a valid two-pole endorsement.

(4) Bull trout, steelhead, and Chinook salmon must be released unharmed without removing the fish from the water.

**WSR 16-15-097
EMERGENCY RULES
SUPERINTENDENT OF
PUBLIC INSTRUCTION**

[Filed July 20, 2016, 10:56 a.m., effective July 20, 2016, 10:56 a.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: WAC 392-169-020 requires updating to align the definition of an eligible running start student with WAC 392-172A-02000 that addresses a student's right to a free appropriate public education. This change will address the age discrepancy for students whose birthday is September 1.

Citation of Existing Rules Affected by this Order: Amending WAC 392-169-020.

Statutory Authority for Adoption: RCW 28A.600.390.

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 change is required for WAC 392-169-020 to ensure that this change is in effect for the 2016-17 school year.

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 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: July 13, 2016.

Randy Dorn
State Superintendent

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

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

(1) The ~~((person is under the age of twenty-one years of age as of))~~ person's twenty first birthday occurs on or after September 1st of the school year.

(2) The person is eligible by reason of his or her residence or other criterion established by law to enroll in the school district through which the person seeks to obtain the award of running start program high school credit. See RCW 28A.225.160 (residents of a school district), RCW 28A.225.-170 (residents of the United States and Indian Reservations), RCW 28A.225.210 (residents of "nonhigh" school districts), and RCW 28A.225.220 ("choice" students). Note: A running start student who changes his or her school district of residence, including after a rescindment of a choice transfer agreement following enrollment in running start, solely for the purpose of attending an institution of higher education under this chapter shall be deemed to have retained his or her residence in the school district of initial running start enrollment for high school graduation, funding and other purposes under this chapter.

(3) The person is eligible under the grade placement policies of the school district through which the person seeks to obtain running start program high school credit to be in the eleventh or the twelfth grade.

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

(5) The person has not as of the beginning of the school year received a high school diploma or its equivalent. Note: A general education development certificate is not consid-

ered to be the equivalent of a high school diploma for purposes of this subsection.

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

WSR 16-15-099
EMERGENCY RULES
SUPERINTENDENT OF
PUBLIC INSTRUCTION

[Filed July 20, 2016, 10:57 a.m., effective July 20, 2016, 10:57 a.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: WAC 392-121-106 requires updating to align the definition of an enrolled student with WAC 392-172A-02000 that addresses a student's right to a free appropriate public education. This change will address the age discrepancy for students whose birthday is September 1.

Citation of Existing Rules Affected by this Order: Amending WAC 392-121-106.

Statutory Authority for Adoption: RCW 28A.150.290.

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

Reasons for this Finding: An emergency rule change is required for WAC 392-121-106 to ensure that this change is in effect for the 2016-17 school year.

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 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: July 13, 2016.

Randy Dorn
State Superintendent

AMENDATORY SECTION (Amending WSR 15-18-078, filed 8/28/15, effective 9/28/15)

WAC 392-121-106 Definition—Enrolled student. As used in this chapter, "enrolled student" means a person residing in Washington state who:

(1) Is eligible to enroll in the school district's education programs because he or she:

(a) Resides in the school district with or without an address (RCW 28A.225.010, 28A.225.160 and 28A.225-215);

(b) Resides on a United States reservation, national park, national forest, or Indian reservation contiguous to the school district (RCW 28A.225.170);

(c) Resides in a school district not offering the grade for which they are eligible to enroll such as a nonhigh district (RCW 28A.225.210);

(d) Has been released from the school district he or she resides in and has been accepted by the school district claiming enrollment (RCW 28A.225.225 and 28A.225.230);

(e) Will be attending the school district as part of an interdistrict cooperative program (RCW 28A.225.250);

(f) Will be attending school in a school district in another state per a reciprocity agreement pursuant to RCW 28A.225.260; or

(g) Will be attending a public charter school, as defined by RCW 28A.710.010, located within Washington state.

(2) After the close of the prior school year has presented himself or herself, or has been presented, to the school district's or charter school's appropriate official to be entered on the school district's or charter school's rolls for the purpose of attending school in grades kindergarten through twelve;

(3) ~~((Is under twenty-one years of age at the beginning))~~
Whose twenty first birthday occurs on or after September 1st of the school year;

(4) Actually participated on a school day during the first four school days of the current school term (semester or quarter), or on a school day during the current school year on or prior to the date being counted, in a course of study offered by the school district or charter school as defined in WAC 392-121-107; and

(5) Does not qualify for any of the enrollment exclusions set forth in WAC 392-121-108.

WSR 16-15-104
EMERGENCY RULES
UNIVERSITY OF WASHINGTON

[Filed July 20, 2016, 11:57 a.m., effective July 20, 2016, 11:57 a.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: To update WAC 478-160-163 Waivers of tuition and fees, with waivers recently enacted through state legislation, and to make corrections that reflect current statute citations and University of Washington information sources.

Citation of Existing Rules Affected by this Order: Amending WAC 478-160-163.

Statutory Authority for Adoption: Chapter 28B.15 RCW and RCW 28B.20.130.

Other Authority: RCW 28B.15.380 and 28B.15.558; and *Board of Regents Governance*, Standing Orders, Chapter 8, Section 2.

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

Reasons for this Finding: The waivers being included in this amendment were mandated by recent state law, are currently in effect and available to eligible students. The amendment of WAC 478-160-163 is intended to keep the University of Washington's waivers of tuition and fees accurate and up-to-date [up-to-date] for current and incoming students.

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: July 20, 2016.

Rebecca Goodwin Deardorff
Director of Rules Coordination

AMENDATORY SECTION (Amending WSR 12-07-016, filed 3/12/12, effective 4/12/12)

WAC 478-160-163 Waivers of tuition and fees. (1) The board of regents is authorized to grant tuition and fee waivers to students pursuant to RCW 28B.15.910 and the laws identified therein. A number of these statutes authorize, but do not require, the board of regents to grant waivers for different categories of students and provides for waivers of different fees. For the waivers that are authorized but not required by state law, the board of regents must affirmatively act to implement the legislature's grant of authority under each individual law. A list of waivers that the board has implemented can be found (~~in the University of Washington General Catalog, which is published biennially. The most recent list may be found in the online version of the General Catalog~~) online at www.washington.edu/students/reg/tuition_exempt_reductions.html.

(2) Even when it has decided to implement a permissive waiver listed in RCW 28B.15.910, the university, for specific reasons and a general need for flexibility in the management of its resources, may choose not to award waivers to all students who may be eligible under the terms of the laws. Where the university has chosen to impose specific limitations on a permissive waiver listed in RCW 28B.15.910, those limitations are delineated in subsection (5) of this section. If the university has not imposed specific limitations on a permissive waiver listed in RCW 28B.15.910, the waiver is not mentioned in subsection (5) of this section. The university's description of the factors it may consider to adjust a waiver program to meet emergent or changing needs is found in subsection (8) of this section. All permissive waivers are subject to subsection (8) of this section.

(3) The board of regents also has the authority under RCW 28B.15.915 to grant waivers of all or a portion of operating fees as defined in RCW 28B.15.031. Waiver programs adopted under RCW 28B.15.915 are (~~described in the General Catalog. The most recent list may be~~) found (~~in the~~) online (~~version of the General Catalog~~) at www.washington.edu/students/reg/tuition_exempt_reductions.htm l. Waivers granted under RCW 28B.15.915 are subject to subsection (8) of this section.

(4) Waivers will not be awarded to students participating in self-sustaining courses or programs because they do not pay "tuition," "operating fees," "services and activities fees," or "technology fees" as defined in RCW 28B.15.020, 28B.15.031, 28B.15.041, or 28B.15.051, respectively.

(5) Specific limitations on waivers are as follows:

(a) Waivers authorized by RCW 28B.15.621(2)(~~(a)~~) for eligible veterans and National Guard members, shall be awarded only to:

(i) Undergraduate students pursuing their first bachelor's degree to a maximum of 225 college-level credits, including credits transferred from other institutions of higher education; and

(ii) Full-time graduate or professional degree students, provided however, that the waiver may be applied only toward a single degree program at the University of Washington, and, provided further, that graduate and professional degree students who received a waiver authorized by RCW 28B.15.621(2)(~~(a)~~) as undergraduates at the University of Washington shall not be eligible for this waiver.

To qualify an individual as an "eligible veteran or National Guard member," the person seeking the waiver must present proof of domicile in Washington state and a DD form 214 (Report of Separation) indicating their service as an active or reserve member of the United States military or naval forces, or a National Guard member called to active duty, who served in active federal service, under either Title 10 or Title 32 of the United States Code, in a war or conflict fought on foreign soil or in international waters or in another location in support of those serving on foreign soil or in international waters, and if discharged from services, has received an honorable discharge.

(b) Waivers of nonresident tuition authorized by RCW 28B.15.014 for university faculty and classified or professional staff shall be restricted to four consecutive quarters from their date of employment with the University of Washington. The recipient of the waiver must be employed by the first day of the quarter for which the waiver is awarded. Waivers awarded to immigrant refugees, or the spouses or dependent children of such refugees, shall be restricted to persons who reside in Washington state and to four consecutive quarters from their arrival in Washington state.

(c) All waivers authorized by RCW 28B.15.558 shall be subject to such additional limitations as determined by the provost, pursuant to the terms of subsection (8) of this section. In addition, waivers authorized by RCW 28B.15.558 shall be awarded only to the classes of employees described in (i) of this subsection before considering waivers for the employees described in (ii) (~~and (iii)~~) through (iv) of this subsection:

(i) University of Washington employees who are employed half-time or more, hold qualifying appointments as of the first day of the quarter for which the waivers are requested, are paid monthly, and, for classified staff new to the university, have completed their probationary periods prior to the first day of the quarter; or

(ii) State of Washington permanent employees who are employed half-time or more, are not University of Washington permanent classified employees, are permanent classified or exempt technical college paraprofessional employees, or are permanent faculty members, counselors, librarians or exempt employees at other state of Washington public higher education institutions; or

(iii) Teachers and other certificated instructional staff employed at public common and vocational schools, holding or seeking a valid endorsement and assignment in a state-identified shortage area; or

(iv) Classified staff employed at K-12 public schools using a waiver for course work relevant to their work assignment as verified by their employing school district.

(6) Waivers mandated by RCW 28B.15.621(4), as amended by section 1, chapter 450, Laws of 2007, for children and spouses or surviving spouses of eligible veterans and National Guard members who became totally disabled, or lost their lives, while engaged in active federal military or naval service, or who are prisoners of war or missing in action, shall be awarded in accordance with, and subject to the limitations set forth in state law.

(7) Waivers mandated by RCW 28B.15.380, as amended by section 4, chapter 261, Laws of 2010, for children and surviving spouses of any law enforcement officer (as defined in chapter 41.26 RCW), firefighter (as defined in chapter 41.24 or 41.26 RCW), highway worker, or Washington state patrol officer, who lost his or her life or became totally disabled in the line of duty while employed by any public law enforcement agency or full-time volunteer fire department in this state, or was a highway worker while employed by a transportation agency, shall be awarded in accordance with, and subject to the limitations set forth in, state law.

(8) The university may modify its restrictions or requirements pursuant to changes in state or federal law, changes in programmatic requirements, or in response to financial or other considerations, which may include, but are not limited to, the need to adopt fiscally responsible budgets, the management of the overall levels and mix of enrollments, management initiatives to modify enrollment demand for specific programs and management decisions to eliminate or modify academic programs. The university may choose not to exercise the full funding authority granted under RCW 28B.15.-910 and may limit the total funding available under RCW 28B.15.915.