

WSR 16-19-001
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 16-237—Filed September 7, 2016, 12:01 p.m., effective September 7, 2016, 12:01 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: Amend recreational freshwater fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-310-19500T; 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: These two lakes are scheduled to be treated with rotenone to remove nuisance fish species as part of an effort to restore the quality of trout fishing in those waters. Rotenone is an organic substance derived from the roots of tropical plants, which has been approved for use as a fish pesticide by the United States Environmental Protection Agency. Prior to the treatment, fishery managers are allowing current license holders to harvest fish without size or daily limits and to extend the fishing season. There is insufficient time to adopt permanent rules.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 1, Amended 0, Repealed 1.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: September 7, 2016.

Ron Warren
for J. W. Unsworth
Director

NEW SECTION

WAC 220-310-19500T Freshwater exceptions to statewide rules—Eastside. Notwithstanding the provisions of WAC 220-310-195, it is unlawful to violate the provisions below. Unless otherwise amended all permanent rules remain in effect:

(1) **Blue Lake (Grant Co):** Effective immediately through October 21, 2016, it is permissible to fish in the waters of Blue Lake.

(a) Size and daily limits for game fish do not apply.

(2) **Park Lake (Grant Co.):** Effective immediately through October 28, 2016, it is permissible to fish in the waters of Park Lake.

(a) Size and daily limits for game fish do not apply.

REPEALER

The following section of the Washington Administrative Code is repealed effective October 29, 2016:

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

WSR 16-19-003
EMERGENCY RULES
LIQUOR AND CANNABIS
BOARD

[Filed September 7, 2016, 12:53 p.m., effective September 7, 2016, 12:53 p.m.]

Effective Date of Rule: Immediately upon filing.

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

Statutory Authority for Adoption: RCW 69.50.342 and 69.50.345.

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

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

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

Action levels for disallowed pesticides does not negate prohibitions against the use of such pesticides. Action levels do, however, account for the instance in which a producer has not used the disallowed pesticide, such as cross-contamination or residual pesticides from former farms on the land. Conversely, even if the producer does not use a disallowed

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

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

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

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

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

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

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

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

Date Adopted: September 7, 2016.

Jane Rushford
Chair

NEW SECTION

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

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

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

(3) Pesticide action levels:

Analyte	Chemical Abstract Services (CAS) Registry number	Action level ppm
Abamectin	71751-41-2	0.5
Acephate	30560-19-1	0.4
Acequinocyl	57960-19-7	2
Acetamiprid	135410-20-7	0.2
Aldicarb	116-06-3	0.4
Azoxystrobin	131860-33-8	0.2
Bifenazate	149877-41-8	0.2
Bifenthrin	82657-04-3	0.2
Boscalid	188425-85-6	0.4
Carbaryl	63-25-2	0.2
Carbofuran	1563-66-2	0.2
Chlorantraniliprole	500008-45-7	0.2
Chlorfenapyr	122453-73-0	1
Chlorpyrifos	2921-88-2	0.2
Clofentezine	74115-24-5	0.2
Cyfluthrin	68359-37-5	1
Cypermethrin	52315-07-8	1
Daminozide	1596-84-5	1
DDVP (Dichlorvos)	62-73-7	0.1
Diazinon	333-41-5	0.2
Dimethoate	60-51-5	0.2
Ethoprophos	13194-48-4	0.2
Etofenprox	80844-07-1	0.4
Etoxazole	153233-91-1	0.2
Fenoxycarb	72490-01-8	0.2
Fenpyroximate	134098-61-6	0.4
Fipronil	120068-37-3	0.4
Flonicamid	158062-67-0	1
Fludioxonil	131341-86-1	0.4
Hexythiazox	78587-05-0	1
Imazalil	35554-44-0	0.2
Imidacloprid	138261-41-3	0.4
Kresoxim-methyl	143390-89-0	0.4
Malathion	121-75-5	0.2
Metalaxyl	57837-19-1	0.2
Methiocarb	2032-65-7	0.2
Methomyl	16752-77-5	0.4

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

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

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

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

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

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

WSR 16-19-004
EMERGENCY RULES
LIQUOR AND CANNABIS
BOARD

[Filed September 7, 2016, 12:53 p.m., effective September 7, 2016, 12:53 p.m.]

Effective Date of Rule: Immediately upon filing.

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

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

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

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

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

This emergency rule is a refiling of an emergency previously filed May 18, 2016, that was effective July 1, 2016, and is intended to keep the requirements in effect until permanent rules on the same topic are effective. Permanent rules on this topic were also adopted by the board on September 7, 2016, and will become effective on October 8, 2016.

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

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

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

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

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

Date Adopted: September 7, 2016.

Jane Rushford
Chair

NEW SECTION

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

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

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

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

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

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

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

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

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

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

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

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

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

**WSR 16-19-007
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE**

[Order 16-236—Filed September 8, 2016, 9:05 a.m., effective September 9, 2016, 6:00 p.m.]

Effective Date of Rule: September 9, 2016, 6:00 p.m.

Purpose: Amend commercial fishing rules for Puget Sound shrimp.

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

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

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

Reasons for this Finding: The 2016 state/tribal shrimp harvest management plans for the Strait of Juan de Fuca and Puget Sound require adoption of harvest seasons contained in this emergency rule. This emergency rule closes the shrimp trawl fishery in Shrimp Management Area 1B/20B, as the quota will be taken. 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: September 8, 2016.

Ron Warren
for J. W. Unsworth
Director

NEW SECTION

WAC 220-52-05100Y Puget Sound shrimp pot and trawl fishery—Season. Notwithstanding the provisions of WAC 220-52-051, effective immediately, until further notice, it is unlawful to fish for shrimp for commercial purposes in Puget Sound except as provided for in this section:

(1) Shrimp pot gear:

(a) Effective immediately, until further notice, all waters of Shrimp Management Areas 2W and 3 are open to the harvest of all shrimp species, except as provided for in this section:

(i) All waters of the Discovery Bay Shrimp District are closed.

(ii) All waters of Shrimp Management Area 2W and Marine Fish/Shellfish Management and Catch Reporting Area (Catch Area) 23A-E, 23A-C, 23A-W, 23B and 25A are closed to the harvest of spot shrimp.

(iii) All waters of Catch Areas 23A-S, 23C, 23D and 29 are open to the harvest of all shrimp species until closing to the harvest of spot shrimp at 6:00 p.m. September 13, 2016.

(b) Effective 6:00 p.m. September 2, 2016, until 6:00 p.m. September 13, 2016, it is unlawful for the combined total harvest of spot shrimp by a fisher and/or the fisher's alternate operator to exceed 1,075 pounds in Catch Area 23A-S/23D, or to exceed 240 pounds in Catch Area 23C.

(c) Only pots with a minimum mesh size of 1 inch may be pulled on calendar days when fishing for or retaining spot shrimp. Mesh size of 1 inch is defined as a mesh opening that a 7/8-inch square peg will pass through, excluding the entrance tunnels, except for flexible (web) mesh pots, where the mesh must be a minimum of 1 3/4-inch stretch measure. Stretch measure is defined as the distance between the inside of one knot to the outside of the opposite vertical knot of one mesh, when the mesh is stretched vertically. There is no size restriction for spot shrimp.

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

(2) Shrimp trawl gear:

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

(b) Those portions of Catch Areas 21A and 22A within SMA 1B are open.

(c) Catch Area 20A is open.

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

REPEALER

The following section of the Washington Administrative Code is repealed effective 6:00 p.m. September 9, 2016:

WAC 220-52-05100X Puget Sound shrimp pot and beam trawl fishery—Season. (16-233)

WSR 16-19-011 EMERGENCY RULES DEPARTMENT OF FISH AND WILDLIFE

[Order 16-242—Filed September 8, 2016, 1:56 p.m., effective September 12, 2016]

Effective Date of Rule: September 12, 2016.

Purpose: Amend commercial sea cucumber fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-52-07100T; and amending WAC 220-52-071.

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 sea cucumber harvest in Districts [District] 2E because the quota has been reached for the season. Harvestable surpluses of sea cucumbers exist in the districts [district] specified to allow for commercial harvest. There is insufficient time to adopt permanent rules.

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

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

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

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

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

Date Adopted: September 8, 2016.

J. W. Unsworth
Director

NEW SECTION

WAC 220-52-07100U Sea cucumbers Notwithstanding the provisions of WAC 220-52-071, effective September

12, 2016, it is unlawful to take or possess sea cucumbers taken for commercial purposes except in the marine fish-shellfish catch reporting areas provided for in this section:

(1) Sea cucumber harvest using shellfish diver gear is allowed in the following areas of Sea Cucumber District 1 Monday through Friday of each week: 20A and B, 21A and B, and 22A and B.

(2) The maximum cumulative landing of sea cucumbers for each weekly fishery opening period is 2,500 pounds per valid designated sea cucumber harvest license. It is permissible for all or any fraction of the maximum 2,500 pound total to be harvested during any legal harvest date within any legal harvest area so long as the cumulative total for the fishery week does not exceed the maximum.

REPEALER

The following section of the Washington Administrative Code is repealed effective September 12, 2016:

WAC 220-52-07100T Sea cucumbers. (16-230)

WSR 16-19-016
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 16-243—Filed September 8, 2016, 4:30 p.m., effective September 8, 2016, 4:30 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: Amend commercial fishing rules for coastal crab.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-52-04400C and 220-52-04500S; and amending WAC 220-52-044 and 220-52-045.

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

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

Reasons for this Finding: In order to protect crab during the typical fall molting period and to meet the stipulations found in state tribal agreements it is necessary to close the commercial crab fishery. Washington department of fish and wildlife permitted gear recovery is allowed by permanent regulation fifteen days following the close of the commercial season to allow fish and wildlife officers time to enforce rules relative to fishing during the closed season. An earlier start to the permitted gear recovery gives participants more time to recover lost gear before weather conditions becomes [become] prohibitive to safe gear recovery efforts. 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: September 8, 2016.

David Giglio
for J. W. Unsworth
Director

NEW SECTION

WAC 220-52-04400C Coastal crab fishery—Coastal crab gear recovery permit. Notwithstanding the provisions of WAC 220-52-044:

(1) Effective 12:01 am September 21, 2016 through 11:59 p.m. October 31, 2016, a coastal crab gear recovery permit may be granted by the director or his or her designee for licensed coastal Dungeness crab fishers to recover crab pots belonging to state licensed fishers that remain in the ocean in the coastal waters between the Washington/Oregon border (46°15.00) and the US/Canada border, including the Columbia River, Willapa Bay and Grays Harbor.

(2) No crab may be retained on any vessel engaged in permitted gear recovery activities or while recovered gear is on board the vessel.

NEW SECTION

WAC 220-52-04500S Coastal crab seasons. Notwithstanding the provisions of WAC 220-52-045, effective immediately through 11:59 p.m. September 15, 2016, it is unlawful to fish for Dungeness crab in Washington coastal waters, the Pacific Ocean, Grays Harbor, Willapa Bay, or the Columbia River, except as provided for in this section.

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

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

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

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

- (b) Northwest 47°24.50 N. 124°32.40 W.
Corner: Lat. Lon.
- (c) Southwest 47°08.00 N. 124°25.50 W.
Corner: Lat. Lon.
- (d) Southeast Corner 47°08.00 N. 124°11.20 W.
(Copalis River): Lat. Lon.

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

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

Date Adopted: September 8, 2016.

REPEALER

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

WAC 220-52-04400C Coastal crab fishery—Coastal crab gear recovery permit.

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

WAC 220-52-04500S Coastal crab seasons

WSR 16-19-017
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 16-241—Filed September 8, 2016, 4:42 p.m., effective September 16, 2016]

Effective Date of Rule: September 16, 2016.

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

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

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

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

Reasons for this Finding: This area had been closed under a comanager agreement to protect coho salmon. Early season fish counts at the Ballard Locks indicate that the coho return is strong enough to support a recreational fishery for coho salmon in Lake Washington. This emergency rule is needed to open the closed area and 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.

NEW SECTION

WAC 220-310-19000Q Freshwater exceptions to statewide rules—Puget Sound. Notwithstanding the provisions of WAC 220-310-190, effective September 16 through October 31, 2016, in the waters of Lake Washington North of the Hwy. 520 Bridge and East of the Montlake Bridge and including that portion of Sammamish River from 68th Ave. NE Bridge downstream): Daily limit of two coho salmon, minimum size 12 inches.

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

REPEALER

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

WAC 220-310-19000Q Freshwater exceptions to statewide rules—Puget Sound.

WSR 16-19-022
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 16-244—Filed September 9, 2016, 5:10 p.m., effective September 11, 2016, 7:00 p.m.]

Effective Date of Rule: September 11, 2016, 7:00 p.m.

Purpose: Amend commercial fishing rules for Puget Sound salmon.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-47-41100U; and amending WAC 220-47-411.

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

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

Reasons for this Finding: There is harvestable surplus of Chinook remaining in Salmon Management and Catch

Reporting Area 7C (Samish Bay) to allow for a commercial fishery. 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: September 9, 2016.

David Giglio
for J. W. Unsworth
Director

NEW SECTION

WAC 220-47-41100U Gillnet—Open periods. Notwithstanding the provisions of WAC 220-47-411, effective immediately until further notice, it is unlawful to take, fish for, or possess salmon taken for commercial purposes in Puget Sound Salmon Management and Catch Reporting Areas except during the periods provided in this section, provided that unless otherwise amended, all permanent rules remain in effect:

Open Areas	Open Periods	Mesh Size
7C	7 PM September 11 - 7 AM September 16	Minimum 7 inch

REPEALER

The following sections of the Washington Administrative Code are repealed effective 7:01 a.m. September 16, 2016:

WAC 220-47-41100U Gillnet—Open periods.

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

**WSR 16-19-023
EMERGENCY RULES
DEPARTMENT OF HEALTH**

[Filed September 12, 2016, 11:57 a.m., effective September 12, 2016, 11:57 a.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: Chapter 246-70 WAC; creating a new chapter to establish rules required by RCW 69.50.375 regarding mar-

ijuana products beneficial for medical use by qualifying patients, quality assurance testing (pesticides, mycotoxins, heavy metals, terpenes), product labeling, employee training and safe handling. The filing replaces emergency rules filed on May 18, 2016, WSR 16-11-095. No changes have been made as a result of the adoption of this emergency rule.

Statutory Authority for Adoption: RCW 69.50.375.

Other Authority: RCW 80.08.9998.

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 filing replaces emergency rules filed on May 18, 2016, as WSR 16-11-095. The department of health (department) is pursuing permanent rule making while it continues to review public comment from supplemental proposed rules filed as WSR 16-12-058. Soon after this emergency rule filing, the department will be filing for adoption of permanent rules. Because permanent rule making will not become effective prior to the expiration of the emergency rule filed on May 18, 2016, the department is adopting an additional emergency rule to prevent a gap in the enforcement and to meet the deadlines mandated in statute. No changes have been made to the requirements in the existing emergency rule as a result of this new emergency rule.

The department enacted prior emergency rules on marijuana product compliance to ensure that a safe, reliable supply of products is available by July 1, 2016, in licensed retail stores with a medical marijuana endorsement. The deadline of July 1, 2016, is established in statute. July 1, 2016, is also the date in statute by which all existing collective gardens must obtain a state license or cease operations. On October 5, 2015, the department filed emergency rules on marijuana products beneficial for medical use, so those businesses submitting applications for medical marijuana endorsements would be aware of what they were agreeing to sell, as well as providing notice to producers and processors who would be providing product for the medically endorsed retail outlets. Simultaneously, the department filed a notice to begin the permanent rule-making process.

Since that time, the department has conducted numerous stakeholder meetings and held two separate public comment periods and public hearings, one for the original proposed rule and another for the supplemental proposal filed on May 26, 2016, as WSR 16-12-058. As changes to the rule have been worked on through the supplemental process, additional emergency rules have been necessary as a temporary placeholder. The process for permanent adoption is well underway. The continuation of the emergency product rules is necessary to provide continued guidance to the producers, processors, and medically endorsed retail outlets 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 9, 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 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 9, Amended 0, Repealed 0.

Date Adopted: September 7, 2016.

John Wiesman, DrPH, MPH
Secretary

Chapter 246-70 WAC

MARIJUANA PRODUCT COMPLIANCE

NEW SECTION

WAC 246-70-010 Findings. Anecdotal and limited scientific evidence indicates that the use of marijuana may be beneficial to alleviate the symptoms of certain physical and mental conditions. However, due to the current federal classification of marijuana as a schedule 1 controlled substance, scientific research has not been performed that would allow for standardized indications of particular strains, which can vary radically in cannabinoid composition; standard, reproducible formula or dosage; or accepted standards for drug purity, potency and quality for the various conditions for which the medical use of marijuana may be authorized. At this time, the decision of what marijuana products may be beneficial is best made by patients in consultation with their health care practitioners. For this reason, the department will not limit the types of products available to qualifying patients. Instead, the department intends to create standards for products that any consumer can rely upon to be reasonably safe and meet quality assurance measures.

NEW SECTION

WAC 246-70-020 Applicability of WSLCB rules. The requirements in this chapter are in addition to all WSLCB requirements in chapter 314-55 WAC. They are intended to build upon all other requirements for licensed marijuana producers, processors and retailers, and certified third-party labs.

NEW SECTION

WAC 246-70-030 Definitions. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Allowed pesticide" means a pesticide registered by the Washington state department of agriculture under chapter 15.58 RCW as allowed for use in the production, processing, and handling of marijuana.

(2) "Batch" means a quantity of marijuana-infused product containing material from one or more lots of marijuana.

(3) "CBD concentration" means the percent of cannabidiol content per dry weight of any part of the plant *Cannabis*, or per volume or weight of marijuana product.

(4) "Certified third-party testing lab" means a laboratory certified by the WSLCB or its vendor under WAC 314-55-102.

(5) "Data base" means the medical marijuana authorization data base created pursuant to RCW 69.51A.230.

(6) "Department" means the Washington state department of health.

(7) "Designated provider" has the same meaning as RCW 69.51A.010(4).

(8) "Harvest" means the marijuana plant material derived from plants of the same strain that were brought into cultivation at the same time, grown in the same manner and physical space, and gathered at the same time.

(9) "Imported cannabinoid" means any cannabinoid derived of the plant *Cannabis* with a THC concentration 0.3 percent or less that is not produced by a licensed marijuana producer.

(10) "Lot" means either of the following:

(a) The flowers from one or more marijuana plant(s) of the same strain. A single lot of flowers cannot weigh more than five pounds; or

(b) The trim, leaves, or other plant matter from one or more marijuana plant(s). A single lot of trim, leaves, or other plant matter cannot weigh more than fifteen pounds.

(11) "Marijuana" means all parts of the plant *Cannabis*, whether growing or not, with a THC concentration greater than 0.3 percent on a dry weight basis; the seeds thereof; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds or resin. The term does not include the mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture, or preparation of the mature stalks (except the resin extracted therefrom), fiber, oil, or cake, or the sterilized seed of the plant which is incapable of germination.

(12) "Marijuana concentrates" means products consisting wholly or in part of the resin extracted from any part of the plant *Cannabis* and having a THC concentration greater than ten percent.

(13) "Marijuana-infused products" means products that contain marijuana or marijuana extracts, are intended for human use, are derived from marijuana as defined in subsection (11) of this section, and have a THC concentration no greater than ten percent. The term "marijuana-infused products" does not include either usable marijuana or marijuana concentrates.

(14) "Marijuana processor" means a person licensed by the WSLCB under RCW 69.50.325 to process marijuana into marijuana concentrates, usable marijuana and marijuana-infused products, package and label marijuana concentrates, usable marijuana and marijuana-infused products for sale in retail outlets, and sell marijuana concentrates, usable marijuana and marijuana-infused products at wholesale to marijuana retailers.

(15) "Marijuana producer" means a person licensed by the WSLCB under RCW 69.50.325 to produce and sell mari-

juana at wholesale to marijuana processors and other marijuana producers.

(16) "Marijuana product" means marijuana, marijuana concentrates, usable marijuana, and marijuana-infused products as defined in this section.

(17) "Medical use of marijuana" has the same meaning as RCW 69.51A.010(16).

(18) "Plant" means a marijuana plant.

(19) "Production" includes the manufacturing, planting, cultivating, growing, or harvesting of marijuana.

(20) "Qualifying patient" or "patient" has the same meaning as RCW 69.51A.010(19).

(21) "Pesticide" means, but is not limited to: (a) Any substance or mixture of substances intended to prevent, destroy, control, repel, or mitigate any insect, rodent, snail, slug, fungus, weed, and any other form of plant or animal life or virus, except virus on or in a living person or other animal which is normally considered to be a pest; (b) any substance or mixture of substances intended to be used as a plant regulator, defoliant, or desiccant; and (c) any spray adjuvant. Pesticides include substances commonly referred to as herbicides, fungicides, insecticides, and cloning agents.

(22) "Recognition card" means a card issued to qualifying patients and designated providers by a marijuana retailer with a medical marijuana endorsement that has entered them into the medical marijuana data base.

(23) "Retail outlet" means a location licensed by the WSLCB under RCW 69.50.325 for the retail sale of usable marijuana and marijuana-infused products.

(24) "Retail outlet with a medical marijuana endorsement" means a location licensed by the WSLCB under RCW 69.50.325 for the retail sale of marijuana products to the public and, under RCW 69.50.375, to qualifying patients and designated providers for medical use.

(25) "Secretary" means the secretary of the department of health or the secretary's designee.

(26) "THC concentration" means the percent of Delta 9 tetrahydrocannabinol content per dry weight of any part of the plant *Cannabis*, or per volume or weight of marijuana product, or the combined percent of Delta 9 tetrahydrocannabinol and tetrahydrocannabinolic acid in any part of the plant *Cannabis* regardless of moisture content.

(27) "Tincture" means a solution containing marijuana extract. A single unit of tincture cannot exceed two fluid ounces.

(28) "Topical product" means a product intended for use only as an application to human body surfaces, does not cross the blood-brain barrier, and is not meant to be ingested by humans or animals.

(29) "Unit" means an individually packaged marijuana product containing up to ten servings or applications.

(30) "Usable marijuana" means dried marijuana flowers. The term "usable marijuana" does not include either marijuana-infused products or marijuana concentrates.

(31) "WSLCB" means the Washington state liquor and cannabis board.

NEW SECTION

WAC 246-70-040 Marijuana products compliant with this chapter. To be classified as a compliant marijuana product, the product must meet all requirements of this chapter. Compliant marijuana products must fall into one of the following classifications:

(1) General use.

(a) "General use compliant product" means any marijuana product approved by the WSLCB and meeting the requirements of this chapter including edible marijuana-infused products and marijuana products with CBD/THC ratios that do not qualify as "high CBD compliant products" under subsection (3) of this section.

(b) General use marijuana-infused compliant products may be packaged in servings or applications containing up to ten milligrams of active THC. A unit must not contain more than ten servings or applications and must not exceed one hundred total milligrams of active THC.

(c) General use compliant products must be labeled "Chapter 246-70 WAC, Compliant - General Use" and must use the logo found in WAC 246-70-090 to indicate compliance with this chapter.

(d) General use compliant products may be purchased by any adult age twenty-one or older, and qualifying patients between the ages of eighteen and twenty who are entered into the data base and hold a valid recognition card.

(e) General use compliant products may be sold at retail outlets and retail outlets with a medical marijuana endorsement.

(2) High THC.

(a) "High THC compliant product" means a marijuana product containing more than ten but no more than fifty milligrams of THC per serving or application and meeting the requirements of this chapter.

(b) The following is an exclusive list of marijuana products that may qualify for classification as a high THC compliant product:

(i) Capsules;

(ii) Tinctures;

(iii) Transdermal patches; and

(iv) Suppositories.

(c) No other marijuana products can be classified as a high THC compliant product or contain more than ten milligrams of active THC per serving or application.

(d) High THC compliant products may be packaged in servings or applications containing up to fifty milligrams of active THC. A unit must not contain more than ten servings or applications and must not exceed five hundred total milligrams of active THC.

(e) High THC compliant products must be labeled "Chapter 246-70 WAC Compliant - High THC" and must use the logo found in WAC 246-70-090 to indicate compliance with this chapter.

(f) High THC compliant products may be purchased only by qualifying patients age eighteen and older and designated providers who are entered into the data base and hold a valid recognition card.

(g) High THC compliant products may be sold only at retail outlets with a medical marijuana endorsement.

(3) High CBD.

(a) "High CBD compliant product" means any marijuana product, except usable marijuana or other plant material intended for smoking, approved by the WSLCB, including edibles, meeting the requirements of this chapter and containing the following ratios:

(i) Marijuana extracts containing not more than two percent THC concentration and at least twenty-five times more CBD concentration by weight.

(ii) Marijuana-infused edible products containing not more than two milligrams of active THC and at least five times more CBD per serving by weight for solids or volume for liquids.

(iii) Marijuana-infused topical products containing at least five times more CBD concentration than THC concentration.

(b) High CBD compliant products must be labeled "Chapter 246-70 WAC Compliant - High CBD" and must use the logo found in WAC 246-70-090 to indicate compliance with this chapter.

(c) High CBD compliant products may be purchased by any adult age twenty-one or older, and qualifying patients between the ages of eighteen and twenty who are entered into the data base and hold a valid recognition card.

(d) High CBD compliant products may be sold at retail outlets and retail outlets with a medical marijuana endorsement.

NEW SECTION

WAC 246-70-050 Quality assurance testing. (1) Testing. In addition to the tests required under WAC 314-55-102, the following tests shall be performed at the intervals indicated by a third-party testing lab certified by the WSLCB:

(a) Pesticide screening and heavy metal screening are required at the time of harvest for all marijuana flowers, trim, leaves, or other plant matter.

(i) Minimum sample size is three grams for every three pounds of harvested product.

(ii) Harvest amounts will be rounded up to the next three-pound interval. For example, a harvest of less than three pounds requires at least three grams for testing; a harvest of three or more pounds but less than six pounds requires at least six grams for testing.

(b) Mycotoxin screening is required whenever microbial testing for any marijuana product is required by the WSLCB.

(c) In addition to the pesticide screening required in subsection (1)(a) of this section, additional pesticide screening is required for:

(i) Each batch of finished concentrates and extracts; and

(ii) Any imported cannabinoid intended for use in a marijuana product.

The minimum sample size for each batch of finished concentrates and extracts is two grams. The sample size for imported cannabinoids is one percent of the product as packaged by the manufacturer of the imported cannabinoid but in no case shall the sample be less than two grams.

(d) In addition to the heavy metal screening required in (a) of this subsection, additional heavy metal screening is required for any imported cannabinoid intended for use in a marijuana product. The sample size for imported cannabi-

noids is one percent of the product as packaged by the manufacturer of the imported cannabinoid but in no case shall the sample be less than two grams.

(e) Licensed marijuana producers, licensed marijuana processors, and certified third-party labs must follow the sampling protocols in chapter 314-55 WAC.

(f) At the request of the producer or processor, the WSLCB may authorize a retest to validate a failed test result on a case-by-case basis. All costs of the retest will be borne by the producer or processor.

(2) Pesticide screening.

(a) Only allowed pesticides shall be used in the production, processing, and handling of marijuana. Pesticide use must be consistent with the manufacturer's label requirements.

(b) Certified third-party labs must screen for any pesticides that are not allowed and are designated as having the potential for misuse on a list created, maintained, and periodically updated by the department in consultation with the Washington state department of agriculture and the WSLCB. Certified third-party labs must also screen for pyrethrins and piperonyl butoxide (PBO) in samples of finished concentrates and extracts. Certified third-party labs may also screen for additional pesticides.

(c) For purposes of the pesticide screening:

(i) A sample of any marijuana product shall be deemed to have failed if a pesticide that is not allowed is detected above the action level for that pesticide as determined by the WSLCB under chapter 314-55 WAC.

(ii) A sample of finished concentrate or extract shall be deemed to have failed if more than 1.0 ppm of allowed pyrethrins or 2.0 ppm of piperonyl butoxide (PBO) is detected.

(d) A harvest or batch deemed to have failed pesticide screening must be destroyed according to chapter 314-55 WAC. Marijuana flowers, trim, leaves, or other plant matter deemed to have failed pesticide screening must not be used to create extracts or concentrates. Imported cannabinoids deemed to have failed pesticide screening must not be added to any marijuana product.

(e) Pesticides containing allowed pyrethrins or piperonyl butoxide (PBO) may not be applied less than seven days prior to harvest.

(f) All individuals applying pesticides shall adhere to the agricultural use requirements on the label. Pesticide applications that do not follow the pesticide product label may pose risks to public health and safety and are a violation of chapter 15.58 RCW.

(3) Heavy metal screening.

(a) For the purposes of heavy metal screening, a sample shall be deemed to have passed if it meets the following standards:

Metal	Limit, µg/daily dose (5 grams)
Inorganic arsenic	10.0
Cadmium	4.1
Lead	6.0
Mercury	2.0

(b) A harvest deemed to have failed heavy metal screening must be destroyed according to chapter 314-55 WAC. Marijuana flowers, trim, leaves, or other plant matter deemed to have failed heavy metal screening must not be used to create extracts or concentrates. Imported cannabinoids deemed to have failed heavy metal screening must not be added to any marijuana product.

(4) For purposes of mycotoxin screening, a sample shall be deemed to have passed if it meets the following standards:

Test	Specification
The total of aflatoxin B1, aflatoxin B2, aflatoxin G1 and aflatoxin G2	<20 µG/kg of substance
Ochratoxin A	<20 µG/kg of substance

(5) Terpenes.

(a) Terpene analysis is not required. If terpene content is listed on product packaging or label, a terpene analysis from a certified third-party lab must be available for review by the consumer upon request.

(b) The addition of any terpene to useable marijuana is prohibited. Only the following terpenes may be added to a marijuana product other than useable marijuana.

(i) Terpenes naturally occurring in marijuana; or

(ii) Terpenes permitted or generally recognized as safe by, and used in accordance with, 21 C.F.R., Chapter I, subchapter B.

NEW SECTION

WAC 246-70-060 Compliant product labeling. (1)

Products meeting the requirements of this chapter must be readily identifiable to the consumer by placement on the product's label of the appropriate logo found in WAC 246-70-090. A logo must be used in compliance with this chapter and any guidance for use developed by the department. A logo may not be used on any object or merchandise other than a compliant marijuana product. A logo used in accordance with this chapter must be printed in either black or dark blue.

(2) Labels for compliant products must not:

(a) Use any word(s), symbol, or image commonly used in or by medical or pharmaceutical professions including, but not limited to: Depiction of a caduceus, staff of Asclepius, bowl of Hygieia, or mortar and pestle; or use of the word "prescription" or letters "RX";

(b) State or imply any specific medical or therapeutic benefit; or

(c) Mimic a brand of over-the-counter or legend drug.

(3) The label must prominently display the following statement: "This product is not approved by the FDA to treat, cure, or prevent any disease."

(4) Only marijuana products complying with this chapter may use a logo found in WAC 246-70-090. Marijuana products that use a logo but do not meet the requirements in this chapter will be reported to the WSLCB.

NEW SECTION

WAC 246-70-070 Compliant product safe handling.

(1) Marijuana processors shall ensure all processing facilities that create or handle marijuana-infused products are constructed, kept, and maintained in a clean and sanitary condition in accordance with rules as prescribed by the Washington state department of agriculture under chapters 16-165 and 16-167 WAC.

(2) Marijuana processors that do not create or handle marijuana-infused products and all marijuana producers shall adopt and enforce policies and procedures to ensure that operations involving the growing, receiving, inspecting, transporting, segregating, preparing, production, packaging, and storing of marijuana or marijuana products are conducted in accordance with adequate sanitation principles including:

(a) Any person who, by medical examination or supervisory observation, is shown to have, or appears to have, an illness, open lesion, including boils, sores or infected wounds, or any other abnormal source of microbial contamination for whom there is a reasonable possibility of contact with marijuana, marijuana plants, or marijuana products shall be excluded from any operations that may be expected to result in microbial contamination until the condition is corrected.

(b) Hand-washing facilities must be available and furnished with running water. Hand-washing facilities shall be located in the permitted premises and where good sanitary practices require employees to wash or sanitize their hands, and provide effective hand-cleaning and sanitizing preparations and sanitary towel service or suitable drying devices.

(c) All persons working in direct contact with marijuana, marijuana plants, or marijuana products must conform to hygienic practices while on duty including, but not limited to:

(i) Maintaining personal cleanliness;

(ii) Washing hands thoroughly in hand-washing areas before starting work and at any other time when the hands may have become soiled or contaminated;

(iii) Refraining from having direct contact with marijuana, marijuana plants, or marijuana products if the person has or may have an illness, open lesion, including boils, sores or infected wounds, or any other abnormal source of microbial contamination, until the condition is corrected.

(d) Litter and waste are properly removed and the operating systems for waste disposal are maintained in a manner so that they do not constitute a source of contamination in areas where marijuana, marijuana plants, or marijuana products may be exposed.

(e) Floors, walls and ceilings are constructed in such a manner that they may be adequately cleaned and kept clean and in good repair.

(f) There is adequate lighting in all areas where marijuana, marijuana plants, or marijuana products are stored and where equipment or utensils are cleaned.

(g) There is adequate screening or other protection against the entry of pests. Rubbish must be disposed of so as to minimize the development of odor and minimize the potential for the waste becoming an attractant, harborage, or breeding place for pests.

(h) Any buildings, fixtures, and other facilities are maintained in a sanitary condition.

(i) Toxic cleaning compounds, sanitizing agents, and solvents used in the production of marijuana concentrates must be identified, held and stored in a manner that protects against contamination of marijuana, marijuana plants, and marijuana products, and in a manner that is in accordance with any applicable local, state, or federal law, rule, regulation, or ordinance.

(j) All contact surfaces, including utensils and equipment used for the preparation of marijuana, marijuana plants, or marijuana products must be cleaned and sanitized regularly to protect against contamination. Equipment and utensils must be designed and be of such material and workmanship as to be adequately cleanable, and must be properly maintained. Sanitizing agents must be used in accordance with labeled instructions.

(k) The water supply must be sufficient for the operations and capable of providing a safe, potable, and adequate supply of water to meet the facility's needs. Each facility must provide its employees with adequate and readily accessible toilet facilities that are maintained in a sanitary condition and good repair.

NEW SECTION

WAC 246-70-080 Employee training. (1) Marijuana producers, processors and retailers that create, handle, or sell compliant marijuana products shall adopt and enforce policies and procedures to ensure employees and volunteers receive training about the requirements of this chapter.

(2) Marijuana retailers holding a medical marijuana endorsement shall also adopt and enforce policies and procedures to ensure employees and volunteers receive training about:

(a) Procedures regarding the recognition of valid authorizations and the use of equipment to enter qualifying patients and designated providers into the medical marijuana authorization data base;

(b) Identification of valid recognition cards;

(c) Adherence to confidentiality requirements; and

(d) Science-based information about cannabinoids, strains, varieties, THC concentration, CBD concentration, and THC to CBD ratios of marijuana concentrates, usable marijuana, and marijuana-infused products available for sale when assisting qualifying patients and designated providers at the retail outlet.

(3) Nothing in subsection (2) of this section allows any owner, employee, or volunteer to:

(a) Perform the duties of a medical marijuana consultant or represent themselves as a medical marijuana consultant unless the person holds a valid certificate issued by the secretary under chapter 246-72 WAC;

(b) Offer or undertake to diagnose or cure any human or animal disease, ailment, injury, infirmity, deformity, pain, or other condition, physical or mental, real or imaginary, by use of marijuana products or any other means or instrumentality; or

(c) Recommend or suggest modification or elimination of any course of treatment that does not involve the medical use of marijuana or marijuana products.

NEW SECTION

WAC 246-70-090 Marijuana product compliant logos.





WSR 16-19-034
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 16-245—Filed September 13, 2016, 3:48 p.m., effective September 15, 2016]

Effective Date of Rule: September 15, 2016.

Purpose: Amends freshwater recreational fishing in the Columbia River.

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

Statutory Authority for Adoption: RCW 77.04.012, 77.04.020, 77.04.055, and 77.12.047.

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

Reasons for this Finding: The total (hatchery and wild fish) forecast for the upper Columbia River (UCR) steelhead passage at Priest Rapids Dam this year is much less than expected. UCR steelhead are listed as threatened under the federal Endangered Species Act. Passage projections are well below broodstock and natural escapement targets. This emergency rule is needed to reduce the steelhead daily limit which will provide additional conservation measures intended to increase the number of natural spawners. 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: September 13, 2016.

Joe Stohr
for J. W. Unsworth
Director

NEW SECTION

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

(1) Effective September 15 through December 31, 2016, in waters from McNary Dam to Hwy. 395 Bridge at Pasco, including the Snake River Confluence Protection Area, the steelhead daily limit is reduced to one hatchery steelhead.

(2) Effective November 1 through December 31, 2016, in waters from Hwy. 395 Bridge to the Old Hanford townsite wooden powerline towers, only steelhead with both adipose fin clipped and ventral fin clipped may be retained.

REPEALER

The following section of the Washington Administrative Code is repealed effective January 1, 2017:

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

WSR 16-19-035
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 16-246—Filed September 13, 2016, 3:51 p.m., effective September 13, 2016, 3:51 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: Amend recreational fishing rules for South Pond.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-310-18000W and 220-310-18000Y; and amending WAC 220-310-180.

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

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

notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.

Reasons for this Finding: The South Pond is continuing to see fishing activity, and catchable numbers of trout are present in the pond. The pond was initially opened to trout fishing because of recent restrictions to general public access to Wentworth Lake, where hatchery trout were normally planted. This emergency rule is needed to extend the fishery which will provide additional angling opportunity. There is insufficient time to adopt permanent rules.

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

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

Number of Sections Adopted on the Agency's Own Initiative: New 1, Amended 0, Repealed 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: September 13, 2016.

Joe Stohr
for J. W. Unsworth
Director

NEW SECTION

WAC 220-310-18000Y Freshwater exceptions to statewide rules—Coastal. Notwithstanding the provisions of WAC 220-310-180, effective immediately through January 2, 2017, it is permissible to fish in waters of South Pond at the Bogachiel Hatchery:

- (1) Open days per week.
- (2) Statewide rules apply with a daily limit of 5 trout.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 220-310-18000W Freshwater exceptions to statewide rules—Coastal. (16-112)

The following section of the Washington Administrative Code is repealed effective January 3, 2017:

WAC 220-310-18000Y Freshwater exceptions to statewide rules—Coastal.

WSR 16-19-042 EMERGENCY RULES DEPARTMENT OF FISH AND WILDLIFE

[Order 16-247—Filed September 14, 2016, 3:32 p.m., effective September 15, 2016]

Effective Date of Rule: September 15, 2016.

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

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

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

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

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

Reasons for this Finding: Chinook catch in the recreational fishery is less than anticipated. Extending the retentions season beyond the September 14 scheduled closure date will provide additional opportunity. The seasons are consistent with the *U.S. v. Oregon* 2008-2017 Interim Management Agreement and the fall Chinook allocation agreement developed through the North of Falcon process. The rule is consistent with compact action of September 14, 2016. There is insufficient time to adopt permanent rules.

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

Some Columbia River Basin salmon and steelhead stocks are listed as threatened or endangered under the federal ESA. On May 5, 2008, the National Marine Fisheries Service issued a biological opinion under 16 U.S.C. § 1536 that allows for some incidental take of these species in treaty

and nontreaty Columbia River fisheries governed by the 2008-2017 *U.S. v. Oregon* Management Agreement. The Washington and Oregon fish and wildlife commissions have developed policies to guide the implementation of such biological opinions in the states' regulation of nontreaty fisheries.

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

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

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

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

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

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

Date Adopted: September 14, 2016.

J. W. Unsworth
Director

NEW SECTION

WAC 220-310-20000C Freshwater exceptions to statewide rules—Columbia River. Notwithstanding the provisions of WAC 220-310-200, effective September 15 through September 22, 2016, it is unlawful to violate the following provisions, provided that unless otherwise amended, all permanent rules remain in effect:

(1) **Columbia River:** From a true north/south line through Buoy 10 to a projected line from Rocky Point on the Washington bank through Red Buoy 44 to the navigation light at Tongue Point on the Oregon bank:

(a) Hatchery Chinook retention allowed.

(b) Adipose or left-ventral fin clipped Chinook may be retained.

(c) Daily limit is two fish, but only one maybe a hatchery Chinook.

(d) Chinook minimum size is 24 inches.

(2) **Columbia River:** From a line projected from Rocky Point on the Washington bank through Red Buoy 44 to the navigation light at Tongue Point on the Oregon bank upstream to the Warrior Rock deadline:

(a) Hatchery Chinook retention allowed.

(b) Adipose fin or left-ventral clipped Chinook may be retained.

(c) Daily limit is two fish, but only one maybe a hatchery Chinook.

(d) Minimum size is 12 inches.

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 September 23, 2016:

WAC 220-310-20000C Freshwater exceptions to statewide rules—Columbia River.

WSR 16-19-044 EMERGENCY RULES DEPARTMENT OF FISH AND WILDLIFE

[Order 16-248—Filed September 14, 2016, 3:53 p.m., effective September 17, 2016]

Effective Date of Rule: September 17, 2016.

Purpose: Amends recreational fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 232-28-62100J; and amending WAC 232-28-621.

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 allow the harvest of surplus hatchery coho that are available in Tulalip Bay. Allowing the retention of hatchery coho 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: September 14, 2016.

J. W. Unsworth
Director

NEW SECTION

WAC 232-28-62100J Puget Sound salmon—Saltwater seasons and daily limits. Notwithstanding the provisions of WAC 232-28-621, effective September 17 through September 25, 2016 on Saturdays and Sundays only, it is unlawful to violate the provisions below. Unless otherwise amended, all permanent rules remain in effect:

(1) **Catch Record Card Area 8-2:** Waters west of Tulalip Bay and within 2,000 feet of shore from the pilings at Old Bower's Resort, to a fishing boundary marker approximately 1.4 miles northwest of Hermosa Point:

a. Daily limit 2 salmon. Release wild Chinook and wild coho.

REPEALER

The following section of the Washington Administrative Code is repealed effective September 26, 2016:

WAC 232-28-62100J Puget Sound recreational salmon

WSR 16-19-050
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 16-240—Filed September 15, 2016, 10:55 a.m., effective September 19, 2016, 6:00 a.m.]

Effective Date of Rule: September 19, 2016, 6:00 a.m.

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

Citation of Existing Rules Affected by this Order: Repealing WAC 220-32-05100B; 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 sales of fish in during the treaty commercial gillnet fisheries in SMCRA 1F, 1G, 1H commonly known as Zone 6. The regulation continues to allow the sale of fish caught in Zone 6 Columbia River tribal

net, platform and hook and line gear, in the Yakama Nation tributary fisheries when open under Yakama Nation regulations and in the area downstream of Bonneville Dam (SMCRA 1E1) when open under tribal regulations. The inseason update for fall Chinook is eight hundred sixty thousand two hundred fish. 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 July 27 and September 14, 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: September 15, 2016.

Joe Stohr
for J. W. Unsworth
Director

NEW SECTION

WAC 220-32-05100C 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: 2016 fall season: 6:00 AM September 19 to 6:00 PM September 23, 2016

(b) Gear: Gill nets. 8-inch minimum mesh restriction.

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

(d) All sanctuaries for this gear type are in effect, except the Spring Creek Hatchery sanctuary will be reduced to a 150 foot radius around the hatchery ladder.

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

(a) Season: immediately until further notice.

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

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

(d) All sanctuaries for these gear types are in effect, including the Spring Creek Hatchery sanctuary.

(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, 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 may not be sold. Sturgeon may be kept for subsistence if from 38 to 54 inches fork length. 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 October 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: Hook and line and/or platform gear identified in tribal rules.

(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 error in the above section occurred in the copy filed by the agency and appears in the Register pursuant to the requirements of RCW 34.08.040.

REPEALER

The following section of the Washington Administrative Code is repealed effective 6:00 a.m. September 19, 2016:

WAC 220-32-05100B Columbia River salmon seasons above Bonneville Dam. (16-205)

WSR 16-19-051**EMERGENCY RULES****DEPARTMENT OF****FISH AND WILDLIFE**

[Order 16-249—Filed September 15, 2016, 10:59 a.m., effective September 18, 2016, 8:00 p.m.]

Effective Date of Rule: September 18, 2016, 8:00 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 relation-

ship with Oregon, and Washington fish and wildlife commission policy guidance for Columbia River fisheries.

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

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

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

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

Reasons for this Finding: Sets two additional fishing periods for the 2016 fall season for non-Indian commercial fisheries in the mainstem Columbia River and select area sites. The inseason update for the Columbia River return of fall Chinook is eight hundred sixty thousand three hundred fish. This forecast provides harvestable Chinook for commercial purposes. Harvest estimates for the seasons are well within ESA limits and sharing guidelines. 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 July 27 and September 14, 2016. There is insufficient time to adopt 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: September 15, 2016.

Joe Stohr
for J. W. Unsworth
Director

NEW SECTION

WAC 220-33-01000U 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) **Season:** 8:00 PM Sunday September 18 to 5:00 AM Monday September 19, 2016

8:00 PM Thursday September 22 to 6:00 AM Friday September 23, 2016

(b) **Area:** SMCRA 1D and 1E (Zones 4-5). The deadline at the lower end of SMCRA 1D is defined as a straight line projected from the Warrior Rock Lighthouse on the Oregon shore easterly through the green navigation buoy #1 and continuing to the Washington shore.

(c) **Sanctuaries:** Washougal and Sandy rivers.

(d) **Season:** 8:00 PM Wednesday September 28 to 6:00 AM Thursday September 29, 2016

(e) **Area:** SMCRA 1A - 1E (Zones 1-5).

(f) **Sanctuaries:** Elokomin-A, Cowlitz River, Kalama-A, Lewis-A, Washougal and Sandy rivers

(g) **Allowable Possession:** Chinook, coho, sockeye and pink salmon and shad.

(h) **Gear:** Drift nets only. 8-inch minimum mesh size. Nets not specifically authorized for use may be onboard the vessel if properly stored, consistent with WAC 220-33-001.

(2) Deep River Select Area.

(a) **Season:** Monday, Tuesday, Wednesday, Thursday and Friday nights immediately through September 24, 2016, then

Monday, Tuesday, Wednesday, and Thursday nights September 26-October 19, 2016

Open hours are 6 PM to 9 AM.

(b) **Area:** The Deep River Select Area. All waters downstream of the town of Deep River to the mouth defined by a line from USCG navigation marker #16 southwest to a marker on the Washington shore. Concurrent-jurisdiction waters extend downstream of the Highway 4 Bridge.

(c) **Gear:** Gillnets. Maximum mesh size restriction is 6-inch. Maximum net length is 100 fathoms. No weight restriction on leadline. Use of additional weights or anchors attached directly to the leadline is allowed. No nets can be tied off to stationary structures. Nets may not fully cross the navigation channel. It is unlawful to operate in any river, stream or channel any gillnet gear longer than three-fourths the width of the river, stream, or channel. "River, stream, or channel width" is defined as bank-to-bank, where the water meets the banks, regardless of the time of tide or the water level. This emergency provision shall supersede the permanent regulation and all other regulations that conflict with it. All other provisions of the permanent regulation remain in effect (WAC 220-20-015(1)).

(3) Tongue Point/South Channel

(a) **Season:** Monday, Tuesday, Wednesday, and Thursday nights immediately through October 28, 2016

Open Hours: 4 PM-10 AM

(b) **Area:** Tongue Point fishing area includes all waters bounded by a line from a marker midway between the red USCG navigation light #2 at the tip of Tongue Point and the downstream (northern most) pier (#8) at the Tongue Point Job Corps facility, to the flashing green USCG navigation light #3 on the rock jetty at the west end of 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 through the green USCG buoy #7 to a marker on the southwest end of Lois Island upstream to an upper boundary line from a marker on Settler Point northwesterly to the flashing red USCG marker #10, northwesterly to a marker on Burnside Island defining the upstream terminus of South Channel.

(c) **Gear:** Gillnets. 6-inch maximum mesh size. Maximum net length of 250 fathoms. In the Tongue Point fishing area: weight not to exceed two pounds on any one fathom. Fishers participating in the Tongue Point fishery may have un-stored gillnets legal for the South Channel fishing area onboard the vessel. In the South Channel fishing area: no weight restriction on leadline, and use of additional weights or anchors attached directly to the leadline is allowed.

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

(4) Blind Slough/Knappa Slough Select Area

(a) **Dates:** Monday, Tuesday, Wednesday, and Thursday nights immediately through October 28, 2016

Open Hours: 6 PM-10 AM

(b) **Area:** Blind Slough and Knappa Slough areas are both open. The Blind Slough fishing area includes all waters from markers at the mouth of Gnat Creek located approximately 1/2-mile upstream of the county road bridge, downstream to markers at the mouth of Blind Slough. The Knappa Slough fishing area includes all waters bounded by a line from a marker at the mouth of Blind Slough, westerly to a marker on Karlson Island, downstream to boundary lines defined by markers on the west end of Minaker Island to markers on Karlson Island and the Oregon shore. The area within a 100-foot radius of the mouth of Big Creek is closed.

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

(5) Additional requirements for all Select Area commercial fisheries:

(a) Nets not specifically authorized for use may be onboard the vessel if properly stored, consistent with WAC 220-33-001.

(b) ALLOWABLE POSSESSION: Chinook, Coho, Pink and Sockeye salmon and shad.

(6) **24-hour quick reporting** is in effect for Washington buyers (WAC 220-69-240 (14)(d)). Permanent transportation rules in effect.

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

Reviser's note: The 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 8:00 p.m. September 18, 2016:

WAC 220-33-01000T Columbia River seasons below Bonnevillle. (16-224)

**WSR 16-19-053
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE**

[Order 16-251—Filed September 15, 2016, 3:30 p.m., effective September 16, 2016]

Effective Date of Rule: September 16, 2016.

Purpose: Amend freshwater recreational fishing rules for the Green River.

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

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

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

Reasons for this Finding: This area had been closed under a comanager agreement to protect coho salmon. Early season test fisheries have indicated that the coho return is strong enough to support limited sport and tribal fisheries in the lower Green River. This emergency rule is needed to open the closed area and 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 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: September 15, 2016.

Joe Stohr
for J. W. Unsworth
Director

NEW SECTION

WAC 220-310-19000P Freshwater exceptions to statewide rules—Puget Sound Notwithstanding the provisions of WAC 220-310-190, effective September 16 through October 31, 2016, it is permissible to fish in waters of the Green River (King Co.) from the 1st Ave. South Bridge upstream to I-405. The following rules apply:

(1) Salmon: Daily limit two salmon, minimum size 12 inches and release Chinook.

(2) Trout: Daily limit two, minimum size 14 inches.

(3) Other game fish: Statewide minimum size/daily limit.

(3) Night closure and anti-snagging rule is in effect for all species.

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

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 220-310-19000J Freshwater exceptions to statewide rules—Puget Sound. (16-178)

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

WAC 220-310-19000P Freshwater exceptions to statewide rules—Puget Sound.

WSR 16-19-076 EMERGENCY RULES DEPARTMENT OF FISH AND WILDLIFE

[Order 16-253—Filed September 20, 2016, 10:17 a.m., effective September 26, 2016]

Effective Date of Rule: September 26, 2016.

Purpose: Amend commercial fishing rules for sea urchins.

Citation of Existing Rules Affected by this Order: Amending WAC 220-52-073.

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: Harvestable surpluses of sea urchin exist in the districts specified to allow for commercial harvest. There is insufficient time to adopt permanent rules.

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

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

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

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

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

Date Adopted: September 20, 2016.

J. W. Unsworth
Director

NEW SECTION

WAC 220-52-07300X Sea urchins Notwithstanding the provisions of WAC 220-52-073, effective September 26, 2016, until further notice, it is unlawful to take or possess sea

urchins taken for commercial purposes except as provided for in this section:

(1) The following areas are open for red sea urchin harvest seven days-per-week: Sea Urchin District 3 east of a line projected true north from the shoreline at 123 degrees 48.3 minutes west longitude, and District 4 west of a line projected true north from the shoreline at 123 degrees 52.7 minutes west longitude. It is unlawful to harvest red sea urchins smaller than 3.25 inches or larger than 5.0 inches (size is largest test diameter exclusive of spines).

(2) The following areas are open for green sea urchin harvest seven days-per-week: Sea Urchin District 1, District 2, District 3 east of a line projected true north from the shoreline at 123 degrees 48.3 minutes west longitude, District 4 west of a line projected true north from the shoreline at 123 degrees 52.7 minutes west longitude, District 6, and District 7 except all waters of Hale Passage and Wollochet Bay within the following lines: west of a line projected true south from the shoreline near Point Fosdick at 122° 35 minutes west longitude to 47° 14 minutes north latitude, and thence projected true west to the shoreline of Fox Island, and east of a line projected true south from the shoreline near Green Point at 122° 41 minutes west longitude to 47° 16.5 minutes north latitude, and thence projected true east to the shoreline of Fox Island. It is unlawful to harvest green sea urchins smaller than 2.25 inches (size is largest test diameter exclusive of spines).

(3) The maximum cumulative landing of red sea urchins for each weekly fishery opening period is 1,000 pounds per valid designated sea urchin harvest license. The maximum cumulative landing of green sea urchins for each weekly fishery opening period is 3,000 pounds per valid designated sea urchin harvest license. Each fishery week begins Monday and ends Sunday.

WSR 16-19-087
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 16-252—Filed September 20, 2016, 4:04 p.m., effective September 23, 2016, 6:00 p.m.]

Effective Date of Rule: September 23, 2016, 6:00 p.m.

Purpose: Amend commercial fishing rules for Puget Sound shrimp.

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

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

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

Reasons for this Finding: The 2016 state/tribal shrimp harvest management plans for the Strait of Juan de Fuca and Puget Sound require adoption of harvest seasons contained in

this emergency rule. This emergency rule (1) closes the shrimp trawl fishery in Shrimp Management Area 1B/21A-22A, as the quota will be taken; (2) closes the shrimp trawl fishery in Shrimp Management Area 3 the following week; and (3) closes the remaining pot and trawl fisheries in all areas for the 2016 season on October 16. There is insufficient time to adopt permanent rules.

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

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

Number of Sections Adopted on the Agency's Own Initiative: New 1, Amended 0, Repealed 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: September 20, 2016.

J. W. Unsworth
Director

NEW SECTION

WAC 220-52-05100Z Puget Sound shrimp pot and trawl fishery—Season. Notwithstanding the provisions of WAC 220-52-051, effective immediately, until further notice, it is unlawful to fish for shrimp for commercial purposes in Puget Sound except as provided for in this section:

(1) Shrimp pot gear:

(a) Effective immediately, until further notice, all waters of Shrimp Management Areas 2W and 3 are open to the harvest of all shrimp species, except as provided for in this section:

(i) All waters of the Discovery Bay Shrimp District are closed.

(ii) All waters of Shrimp Management Areas 2W and 3 are closed to the harvest of spot shrimp.

(iii)

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

(2) Shrimp trawl gear:

(a) Effective immediately, until 6:00 p.m. September 30, 2016, Shrimp Management Area (SMA) 3 (outside of the Discovery Bay Shrimp District, Sequim Bay and Catch Area 23D) is open. Sequim Bay includes those waters of Catch Area 25A south of a line projected west from Travis Spit on the Miller Peninsula.

(b) Catch Area 20A is open.

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

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

REPEALER

The following section of the Washington Administrative Code is repealed effective 6:00 p.m. September 23, 2016:

WAC 220-52-05100Y Puget Sound shrimp pot and beam trawl fishery—Season. (16-236)

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

WAC 220-52-05100Z Puget Sound shrimp pot and beam trawl fishery—Season.