

**WSR 17-05-001**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**

[Order 17-24—Filed February 1, 2017, 1:37 p.m., effective February 6, 2017, 7:00 p.m.]

Effective Date of Rule: February 6, 2017, 7:00 p.m.

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

Citation of Existing Rules Affected by this Order: 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 the 2017 winter and spring select area commercial seasons. Impacts to nonlocal stocks are expected to be minimal and local Chinook stocks reared for the select area sites are available for harvest. The fishery is consistent with the *U.S. v. Oregon* Management Agreement and the associated biological opinion. Conforms Washington state rules with Oregon state rules. Regulation is consistent with compact action of January 31, 2017. There is insufficient time to promulgate permanent rules.

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

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

Washington and Oregon fish and wildlife commissions have developed policies to guide the implementation of such biological opinions in the states' regulation of nontreaty fisheries.

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

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

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

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

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

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

Date Adopted: February 1, 2017.

J. W. Unsworth  
Director

NEW SECTION

**WAC 220-33-01000X 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) Deep River Select Area**

(a) **Dates:** Winter Season: Open hours are 7 PM to 7 AM Monday and Thursday nights from February 6 through March 28, 2017. Spring Season: Open hours are 7 PM to 7 AM Tuesday and Thursday nights from April 20 through April 28, 2017 and Monday and Thursday nights from May 1, 2017, until further notice.

(b) **Area:** From USCG navigation marker #16 southwest to a marker on the Washington shore, upstream to the Highway 4 Bridge.

(c) **Gear:** Gillnets. Winter season: 7-inch minimum mesh. Spring season: 9 3/4-inch maximum mesh. Nets are restricted to 100 fathoms in length with no weight restriction on leadline. Use of additional weights and/or anchors attached directly to the leadline is allowed. Nets cannot be tied off to stationary structures. Nets may not fully cross navigation channel. It is unlawful to operate in any river, stream

or channel any gillnet longer than three-fourths the width of the stream (WAC 220-20-015)(1). It shall be unlawful in any area to use, operate, or carry aboard a commercial fishing vessel a licensed net or combination of such nets, whether fished singly or separately, in excess of the maximum lawful size or length prescribed for a single net in that area, except as otherwise provided for in the rules and regulations of the department (WAC 220-20-010)(17).

(d) **Miscellaneous:** Transportation or possession of fish outside the fishing area (except to the sampling station) is unlawful until WDFW staff has biologically sampled individual catch. After sampling, fishers will be issued a transportation permit by WDFW staff. **During the winter season, fishers are required to call 360-795-0319** to confirm the place and time of sampling. In the spring season, a sampling station will be established at WDFW's Oneida Road boat ramp, about 0.5 miles upstream of the lower Deep River area boundary (USCG navigation marker #16).

## (2) Tongue Point/South Channel

(a) **Dates:** Winter Season: Open hours are 7 PM to 7 AM. Monday and Thursday nights from February 6 through March 10, 2017 and Monday night March 13, 2017 from 7 PM to 11 PM.

Spring Season: Open Thursday night April 20 from 2 PM to 6 PM. Open 7 PM to 7 AM on: Tuesday night April 25 and Thursday night April 27, 2017, then Monday and Thursday nights from May 1, 2017, until further notice.

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

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

(c) **Gear:** Gillnets. Winter season: 7-inch minimum mesh. Spring season: 9 3/4-inch maximum mesh. In the Tongue Point fishing area, gear restricted to a maximum net length of 250 fathoms, and weight not to exceed two pounds on any one fathom. In the South Channel fishing area, gear restricted to a maximum net length of 250 fathoms, no weight restriction on leadline, and use of additional weights or anchors attached directly to the leadline is allowed.

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

## (3) Blind Slough/Knappa Slough Select Area

(a) **Dates:** Winter Season: Open hours are 7 PM to 7 AM. Open Monday, Wednesday, and Thursday nights from February 6 through March 10 and Monday and Thursday nights from March 13 through March 31, 2017.

Spring Season: Open hours are 7 PM to 7 AM. Open Tuesday and Thursday nights from April 20 through April 28, 2017 and Monday and Thursday nights from May 1, 2017, until further notice.

(b) **Area:** Winter season: Blind Slough and Knappa Slough are both open through March 17 and only Blind Slough is open March 20 through March 31, 2017. Spring season: Blind Slough and Knappa Slough areas are both open. From May 1, 2017, until further notice, the lower boundary of the Knappa Slough fishing area is extended downstream to boundary lines defined by markers on the west end of Minaker Island to markers on Karlson Island and the Oregon Shore (fall season boundary).

(c) **Gear:** Gillnets. Winter season: 7-inch minimum mesh. Spring Season: 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.

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

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

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

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

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

**Reviser's note:** The typographical 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 17-05-004 EMERGENCY RULES DEPARTMENT OF FISH AND WILDLIFE

[Order 17-25—Filed February 1, 2017, 3:37 p.m., effective February 1, 2017, 3:37 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: Amend recreational harvest rules for razor clams.

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

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

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

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

Reasons for this Finding: Survey results show that adequate clams are available for harvest in Razor Clam Areas 3, 4 and 5 for recreational harvest. Washington department of health has certified clams from this beach to be safe for human consumption. There is insufficient time to adopt permanent rules.

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

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

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

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

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

Date Adopted: February 1, 2017.

J. W. Unsworth  
Director

#### NEW SECTION

**WAC 220-56-36000A Razor clams—Areas and seasons.** Notwithstanding the provisions of WAC 220-56-360, it is unlawful to take, dig for or possess razor clams taken for personal use from any beaches in any razor clam area except as provided for in this section:

(1) Effective 12:01 p.m. February 7, 2017 through 11:59 p.m. February 12, 2017, razor clam digging is permissible in Razor Clam Area 3. Digging is permissible from 12:01 p.m. to 11:59 p.m. each day only.

(2) Effective 12:01 p.m. February 7, 2017 through 11:59 p.m. February 9, 2017, razor clam digging is permissible in Razor Clam Area 4. Digging is permissible from 12:01 p.m. to 11:59 p.m. each day only.

(3) Effective 12:01 p.m. February 7, 2017 through 11:59 p.m. February 12, 2017, razor clam digging is permissible in Razor Clam Area 5. Digging is permissible from 12:01 p.m. to 11:59 p.m. each day only.

(4) It is unlawful to dig for razor clams at any time in the Copalis Clam sanctuaries defined in WAC 220-56-372.

#### REPEALER

The following section of the Washington Administrative Code is repealed effective 12:01 a.m. February 13, 2017:

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

### WSR 17-05-010 EMERGENCY RULES BUILDING CODE COUNCIL

[Filed February 3, 2017, 8:37 a.m., effective February 3, 2017, 8:37 a.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: This emergency rule is being filed to continue provisions filed for WAC 51-54A-3800, under WSR 16-21-015, on October 7, 2016; the renewal of this emergency rule-making filing reflects the changes made during the permanent rule making, i.e., changes made by the council upon adoption of the permanent rules. The purpose of the rules is to provide regulatory guidance to ensure safe operations in marijuana growing, processing and extraction facilities. Permanent rule making has been filed under WSR 17-03-104 with an effective date of May 1, 2017.

Citation of Existing Rules Affected by this Order: Amending WAC 51-54A-3800.

Statutory Authority for Adoption: RCW 19.27.031, 19.27.074.

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: Permanent rule making is underway; the emergency rules will continue to be in effect to ensure safe operations for the marijuana industry until the permanent rule takes effect on May 1, 2017.

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

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

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

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

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

Date Adopted: November 18, 2016.

Steven K. Simpson  
Chair

#### NEW SECTION

**WAC 51-54A-3800 Marijuana processing or extraction facilities.**

##### SECTION 3801—ADMINISTRATION

**3801.1 Scope.** Facilities used for marijuana processing or extraction that utilize chemicals or equipment as regulated by the International Fire Code shall comply with this chapter and the International Building Code. The extraction process includes the act of extraction of the oils and fats by use of a

solvent, desolventizing of the raw material and production of the miscella, distillation of the solvent from the miscella and solvent recovery. The use, storage, transfilling, and handling of hazardous materials in these facilities shall comply with this chapter and the International Building Code.

**3801.2 Application.** The requirements set forth in this chapter are requirements specific only to marijuana processing and extraction facilities and shall be applied as exceptions or additions to applicable requirements set forth elsewhere in this code.

**3801.2.1** For the purposes of this chapter, marijuana processing and extraction shall be limited to those processes and extraction methods that utilize chemicals defined as hazardous by the International Fire Code and are regulated as such. Such processes and extraction methods shall meet the requirements of this chapter and other applicable requirements elsewhere in this code and its referenced standards.

EXCEPTION: Provisions of WAC 314-55-104 do not apply to this chapter.

**3801.2.2** The use of equipment regulated by the International Fire Code for either marijuana processing or marijuana extraction shall meet the requirements of this chapter and other applicable requirements elsewhere in this code.

**3801.3 Multiple hazards.** Where a material, its use or the process it is associated with poses multiple hazards, all hazards shall be addressed in accordance with Section 5001.1 and other material specific chapters.

**3801.4 Existing building or facilities.** Existing buildings or facilities used for the processing of marijuana shall comply with this chapter.

**3801.5 Permits.** Permits shall be required as set forth in Section 105.6 and 105.7.

#### SECTION 3802—DEFINITIONS

**Desolventizing.** The act of removing a solvent from a material.

**Finding.** The results of an inspection, examination, analysis or review.

**Marijuana processing.** Processing that uses chemicals or equipment as regulated by the International Fire Code; this does not include the harvesting, trimming, or packaging of the plant.

**Miscella.** A mixture, in any proportion, of the extracted oil or fat and the extracting solvent.

**Observation.** A practice or condition not technically non-compliant with other regulations or requirements, but could lead to noncompliance if left unaddressed.

**Transfilling.** The process of taking a gas source, either compressed or in liquid form (usually in bulk containers), and transferring it into a different container (usually a smaller compressed cylinder).

#### SECTION 3803—PROCESSING OR EXTRACTION OF MARIJUANA

**3803.1 Location.** Marijuana processing shall be located in a building complying with the International Building Code and this code. Requirements applied to the building shall be based upon the specific needs for mitigation of the specific hazards identified.

**3803.2 Systems, equipment and processes.** Systems, equipment, and processes shall be in accordance with Sections 3803.2.1 through 3803.2.7. In addition to the requirements of this chapter, electrical equipment shall be listed or evaluated for electrical fire and shock hazard in accordance with RCW 19.28.010(1).

**3803.2.1 Application.** Systems, equipment and processes shall include, but are not limited to, vessels, chambers, containers, cylinders, tanks, piping, tubing, valves, fittings, and pumps.

**3803.2.2 General requirements.** In addition to the requirements in Section 3803, systems, equipment and processes shall also comply with Section 5003.2, other applicable provisions of this code, the International Building Code, and the International Mechanical Code. The use of ovens in post-process purification or winterization shall comply with Section 3803.2.7.

**3803.2.3 Systems and equipment.** Systems or equipment used for the extraction of oils from plant material shall be listed and approved for the specific use. If the system used for extraction of oils and products from plant material is not listed, then a technical report prepared by a Washington licensed engineer shall be provided to the code official for review and approval.

**3803.2.4 Change of extraction medium.** Where the medium of extraction or solvent is changed from the material indicated in the technical report, or as required by the manufacturer, the technical report shall be revised at the cost of the facility owner, and submitted for review and approval by the fire code official prior to the use of the equipment with the new medium or solvent.

**3803.2.5 Required technical report.** The technical report documenting the equipment design shall be submitted for review and approval by the fire code official prior to the equipment being installed at the facility.

**3803.2.5.1 Content of technical report and engineering analysis.** All, but not limited to, the items listed below shall be included in the technical report.

1. Manufacturer information.
2. Engineer of record information.
3. Date of review and report revision history.
4. Signature page shall include:
  - 4.1 Author of the report;
  - 4.2 Date of report;
  - 4.3 Seal, date and signature of engineer of record performing the design; and
  5. Model number of the item evaluated. If the equipment is provided with a serial number, the serial number shall be included for verification at the time of site inspection.

6. Methodology of the design review process used to determine minimum safety requirements. Methodology shall consider the basis of design, and shall include a code analysis and code path to demonstrate the reason why specific codes or standards are applicable or not.

7. Equipment description. A list of all components and subassemblies of the system or equipment, indicating the material, solvent compatibility, maximum temperature and pressure limits.

8. A general flow schematic or general process flow diagram (PFD) of the process, including maximum temperatures, pressures and solvent state of matter shall be identified in each step or component. It shall provide maximum operating temperature and pressure in the system.

9. Analysis of the vessel(s) if pressurized beyond standard atmospheric pressure. Analysis shall include purchased and fabricated components.

10. Structural analysis for the frame system supporting the equipment.

11. Process safety analysis of the extraction system, from the introduction of raw product to the end of the extraction process.

12. Comprehensive process hazard analysis considering failure modes and points of failure throughout the process. This portion of the review should include review of emergency procedure information provided by the manufacturer of the equipment or process and not that of the facility, building or room.

13. Review of the assembly instructions, operational and maintenance manuals provided by the manufacturer.

14. Report shall include findings and observations of the analysis.

15. List of references used in the analysis.

**3803.2.6 Building analysis.** The technical report, provided by the engineer of record, shall include a review of the construction documents for location, room, space or building and include recommendations to the fire code official.

**3803.2.6.1 Site inspection.** The engineer of record of the equipment shall inspect the installation of the extraction equipment for conformance with the technical report and provide documentation to the fire code official that the equipment was installed in conformance with the approved design.

**3803.2.7 Post-process purification and winterization.** Post-processing and winterization involving the heating or pressurizing of the miscella shall be approved and performed in an appliance listed for such use. Domestic or commercial cooking appliances shall not be used. The use of industrial ovens shall comply with Chapter 30.

EXCEPTION: An automatic fire extinguishing system shall not be required for batch-type Class A ovens having less than 3.0 cubic feet of work space.

### **3803.3 Construction requirements.**

**3803.3.1 Location.** Marijuana extraction shall not be located in any building containing a Group A, E, I or R occupancy.

**3803.3.1.1 Extraction room.** The extraction equipment and processes utilizing hydrocarbon solvents shall be located in a room or area dedicated to extraction.

**3803.3.2 Egress.** Any egress door serving an extraction room shall swing in the direction of egress travel and be equipped with panic hardware and self-closing hardware.

**3803.3.2.1 Facility egress.** Egress requirements shall be in compliance with Chapter 10 of the International Building Code.

**3803.3.3 Ventilation.** Ventilation shall be provided in compliance with Chapter 4 of the International Mechanical Code.

**3803.3.4 Control area.** Control areas shall comply with Section 5003.8.3.

**3803.3.5 Ignition source control.** Extraction equipment and processes using flammable or combustible gas or liquid solvents shall be provided with ventilation rates for the room to maintain the concentration of flammable constituents in air below 25% of the lower flammability limit of the respective solvent. If not provided with the required ventilation rate, Class I Division II electrical requirements shall apply to the entire room.

**3803.3.6 Interlocks.** When a hazardous exhaust system is provided, all electrical components within the extraction room or area shall be interlocked with the hazardous exhaust system, and when provided, the gas detection system. When the hazardous exhaust system is not operational, then light switches and electrical outlets shall be disabled. Activation of the gas detection system shall disable all light switches and electrical outlets.

### **3803.3.7 Emergency power.**

**3803.3.7.1 Emergency power for extraction process.** Where power is required for the operation of the extraction process, an automatic emergency power source in accordance with Section 5004.7 and 604 shall be provided. The emergency power source shall have sufficient capacity to allow safe shutdown of the extraction process plus an additional 2 hours of capacity beyond the shutdown process.

**3803.3.7.2 Emergency power for other than extraction process.** An automatic emergency power system in accordance with Section 604 shall be provided when any of the following items are installed:

1. Extraction room lighting;
2. Extraction room ventilation system;
3. Solvent gas detection system;
4. Emergency alarm systems;
5. Automatic fire extinguishing systems.

**3803.3.8 Continuous gas detection system.** For extraction processes utilizing gaseous hydrocarbon-based solvents, a continuous gas detection system shall be provided. The gas detection threshold shall not exceed 25% of the LEL/LFL limit of the materials.

**3803.4 Carbon dioxide enrichment or extraction.** Extraction processes using carbon dioxide shall comply with this section.

**3803.4.1 Scope.** Carbon dioxide systems with more than 100 pounds of carbon dioxide shall comply with Sections 3803.4 through 3803.4.3. This section is applicable to carbon dioxide

systems utilizing compressed gas systems, liquefied-gas systems, dry ice, or on-site carbon dioxide generation.

**3803.4.2 Permits.** Permits shall be required as set forth in Sections 105.6 and 105.7.

**3803.4.3 Signage.** At the entrance to each area using or storing carbon dioxide, signage shall be posted indicating the hazard. Signs shall be durable and permanent in nature and not less than 7 inches wide by 10 inches tall. Signs shall bear the warning "DANGER! POTENTIAL OXYGEN DEFICIENT ATMOSPHERE." NFPA 704 signage shall be provided at the building main entry and the rooms where the carbon dioxide is used and stored.

**3803.5 Flammable or combustible liquid.** The use of a flammable or combustible liquid for the extraction of oils and fats from marijuana shall comply with this section.

**3803.5.1 Scope.** The use of flammable and combustible liquids for liquid extraction processes where the liquid is boiled, distilled, or evaporated shall comply with this section and NFPA 30.

**3803.5.2 Location.** The process using a flammable or combustible liquid shall be located within a hazardous exhaust fume hood, rated for exhausting flammable vapors. Electrical equipment used within the hazardous exhaust fume hood shall be listed or approved for use in flammable atmospheres. Heating of flammable or combustible liquids over an open flame is prohibited.

**WSR 17-05-028**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**

[Order 17-26—Filed February 7, 2017, 1:30 p.m., effective February 7, 2017, 1:30 p.m.]

Effective Date of Rule: Immediately upon filing.

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

Citation of Existing Rules Affected by this Order: Repealing WAC 220-32-05100I and 220-32-05100J; 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: Extends the treaty winter fishery in the John Day Pool. The Columbia River treaty tribes have delayed the use of gillnets in SMCRA 1F, however sales of fish caught with platform/hook and line gear in that area is allowed (as described in subsection (2)(c)). Harvestable sturgeon are available under the current harvest guidelines for each pool. The season is consistent with the 2008-2017 Management Agreement and the associated biological opinion. Rule is consistent with action of the Columbia River Compact on January 31 and February 7, 2017. 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 allows for some incidental take of these species in the fisheries as described in the 2008-2017 *U.S. v. Oregon* Management Agreement.

Columbia River fisheries are monitored very closely to ensure consistency with court orders and ESA guidelines. Because conditions change rapidly, the fisheries are managed almost exclusively by emergency rule. As required by court order, the Washington (WDFW) and Oregon (ODFW) departments of fish and wildlife convene public hearings and invite tribal participation when considering proposals for new emergency rules affecting treaty fishing rights. *Sohappy*, 302 F. Supp. at 912. WDFW and ODFW then adopt regulations reflecting agreements reached.

Number of Sections Adopted in Order to Comply with Federal Statute: New 1, Amended 0, Repealed 2; Federal Rules or Standards: New 1, Amended 0, Repealed 2; or Recently Enacted State Statutes: New 1, Amended 0, Repealed 2.

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: February 7, 2017.

J. W. Unsworth  
Director

#### NEW SECTION

**WAC 220-32-05100J Columbia River salmon seasons above Bonneville Dam.** Notwithstanding the provisions of WAC 220-32-050, WAC 220-32-051, WAC 220-32-052 and WAC 220-32-058, effective immediately until further notice, it is unlawful for a person to take or possess salmon, steelhead, sturgeon, shad, carp, catfish, walleye, bass, or yellow perch taken for commercial purposes in Columbia River Salmon Management and Catch Reporting Areas 1F, 1G, and 1H. However, those individuals possessing treaty fishing rights under the Yakima, Warm Springs, Umatilla, and Nez Perce treaties may fish for salmon, steelhead, sturgeon, shad, carp, catfish, walleye, bass, or yellow perch under the following provisions:

(1) Open Areas: SMCRA 1G and 1H (The Dalles Pool and John Day Pool):

(a) Season: Immediately through 6:00 p.m. February 15, 2017 in the John Day Pool and immediately through 6:00 p.m. February 18, 2017 in The Dalles Pool.

(b) Gear: Gill nets, hoop nets, dip bag nets, and rod and reel with hook and line. No mesh restriction on gillnets.

(c) Allowable sale: Salmon, steelhead, shad, carp, catfish, walleye, bass, or yellow perch. Sturgeon between 43-54 inches in fork length may be sold or kept for subsistence. Live release of all oversize and under-size sturgeon is required.

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

(a) Season: Immediately through 6:00 p.m. March 21, 2017.

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

(c) Allowable sale: Salmon, steelhead, shad, carp, catfish, walleye, bass, or yellow perch. Sturgeon from 43-54 inches caught in the John Day and Dalles pools may be sold only if caught during open commercial gillnet periods for that pool. Sturgeon between 38-54 inches in fork length in SMCRA 1F may only be kept for subsistence. Live release of all oversize and under-size sturgeon is required.

(3) 24-hour quick reporting is required for Washington wholesale dealers for all areas as provided in WAC 220-69-240, except that all landings from treaty fisheries described above must be reported within 24-hours of completing the fish ticket (not 24-hours after the period concludes).

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

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

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

#### REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 220-32-05100I Columbia River salmon seasons above Bonneville Dam. (17-23)

The following section of the Washington Administrative Code is repealed effective 6:01 p.m. March 21, 2017:

WAC 220-32-05100J Columbia River salmon seasons above Bonneville Dam.

#### **WSR 17-05-042**

#### **EMERGENCY RULES**

#### **DEPARTMENT OF**

#### **FISH AND WILDLIFE**

[Order 17-27—Filed February 8, 2017, 4:34 p.m., effective February 14, 2017, 8:00 a.m.]

Effective Date of Rule: February 14, 2017, 8:00 a.m.

Purpose: Amend commercial fishing rules for coastal crab.

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

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

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

Reasons for this Finding: This emergency rule is needed because the provisions in state/tribal management agreements will be achieved by the opening dates contained herein. The special management areas are listed in accordance with state/tribal management agreements. 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: February 8, 2017.

Joe Stohr  
for J. W. Unsworth  
Director

NEW SECTION

**WAC 220-52-04500V Commercial crab fishery—Seasons and areas—Coastal.** Notwithstanding the provisions of WAC 220-52-045, effective immediately until further notice, it is unlawful to fish for Dungeness crab in Washington coastal waters, the Pacific Ocean, Grays Harbor, Willapa Bay, or the Columbia River, except as provided for in this section.

(1) The area from and the U.S./Canada border to the WA/OR border (46°15.00) and Willapa Bay is open.

(2) For the purposes of this section, 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 primary special management area (PSMA) is closed to fishing for Dungeness crab until further notice. The PSMA includes the area shoreward of a line approximating the 27-fathom depth curve between Raft River (47°28.00) and Copalis River (47°08.00) according to the following coordinates:

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

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

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

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

(4) The Quileute special management area (SMA) is closed to fishing for Dungeness crab until further notice. The SMA includes the area shoreward of a line approximating the 30-fathom depth curve between Destruction Island and Cape Johnson according to the following points:

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

(b) Northwest Corner: 47°58.00' N. Lat. 124°49.00' W. Lon.

(c) Southwest Corner: 47°40.50' N. Lat. 124°40.00' W. Lon.

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

(5) Effective 8:00 AM February 14, 2017, the Makah special management area (SMA) is open to fishing. The SMA includes the waters between 48°02.15 N. Lat. and 48°19.50 N. Lat. east of a line connecting those points and approximating the 25-fathom line according to the following coordinates:

(a) Northeast Corner: Tatoosh Island

(b) Northwest Corner: 48°19.50 N. Lat. 124°50.45 W. Lon.

(c) Southwest Corner: 48°02.15 N. Lat. 124°50.45 W. Lon.

(d) Southeast Corner: 48°02.15 N. Lat. 124°41.00 W. Lon.

(6) It is unlawful for a vessel to use more than 200 pots in the Makah SMA beginning 8:00 A.M. February 14, 2017, until 8:00 A.M. March 16, 2017. Fishers must pre-register with the Department of Fish and Wildlife 24 hours prior to deploying gear in this area by one of the three following methods:

- Fax transmission to Carol Henry at 360-249-1229;
- E-mail to Carol Henry at [Carol.Henry@dfw.wa.gov](mailto:Carol.Henry@dfw.wa.gov); or
- Telephone call to Carol Henry at 360-249-1296.

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

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

REPEALER

The following section of the Washington Administrative Code is repealed effective 8:00 a.m. February 14, 2017:

WAC 220-52-045000U Coastal crab seasons (17-08)

**Reviser's note:** The section above appears as filed by the agency pursuant to RCW 34.08.040; however, the reference to WAC 220-52-045000U is probably intended to be WAC 220-52-04500U.

**WSR 17-05-043  
EMERGENCY RULES  
DEPARTMENT OF  
FISH AND WILDLIFE**

[Order 17-21—Filed February 8, 2017, 4:34 p.m., effective February 11, 2017]

Effective Date of Rule: February 11, 2017.

Purpose: Amend Puget Sound saltwater recreational fishing rules.

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

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: Washington department of fish and wildlife and tribal comanagers agreed to a limited number of Chinook encounters that anglers are allowed in Marine Areas 6, 7, 8-1, 8-2, 9, and 10. This emergency rule is needed to modify these fisheries to stay within the agreed to number of encounters and increasing the possibility of providing season-long fisheries which will provide additional angling opportunity. State and tribal comanagers previously agreed to keep the area closed to wild and hatchery coho retention due to the low number of coho projected to return this year. The comanagers agree there are sufficient numbers [of] hatchery



coho in Area 13 to allow the retention of hatchery coho. 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: February 8, 2017.

Joe Stohr  
for J. W. Unsworth  
Director

#### NEW SECTION

**WAC 232-28-62100T Puget Sound salmon—Saltwater seasons and daily limits.** Notwithstanding the provisions of WAC 232-28-621, it is unlawful to violate the provisions below. Unless otherwise amended, all permanent rules remain in effect.

(1) **Marine Area 6:** Effective February 16, 2017, until further notice, daily limit of 2 salmon, no more than 1 Chinook. Release coho and wild Chinook.

(2) **Marine Area 7:** Closed effective February 11, 2017.

(3) **Marine Areas 8-1 and 8-2:** Effective immediately until further notice, daily limit of 2 salmon, no more than 1 Chinook. Release coho and wild Chinook.

(4) **Marine Area 9 (excluding year-round piers):** Effective immediately until February 15, 2017, closed. Effective February 16, 2017, until further notice, daily limit of 2 salmon, no more than 1 Chinook. Release coho and wild Chinook.

(5) **Marine Area 10 (excluding year-round piers):** Effective immediately through February 28, 2017, closed.

(6) **Marine Area 13:** Effective immediately until further notice, it is permissible to retain hatchery coho salmon as part of the daily limit.

#### REPEALER

The following sections of the Washington Administrative Code are repealed effective February 11, 2017:

WAC 232-28-62100N Puget Sound salmon—Saltwater seasons and daily limits. (16-296)

The following section of the Washington Administrative Code is repealed:

WAC 232-28-62100S Puget Sound salmon—Saltwater seasons and daily limits. (17-16)

**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 17-05-055**

#### **EMERGENCY RULES**

#### **HEALTH CARE AUTHORITY**

[Filed February 9, 2017, 12:29 p.m., effective February 9, 2017, 12:29 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: The WAC needs to be amended to implement Title V, Sec. 5007 the 21st Century Cures Act to allow for a person to create his or her own D4A special needs trust. The agency also needs to revise references to incorrect WAC citations in WAC 182-516-0100.

Citation of Existing Rules Affected by this Order: Amending WAC 182-516-0100.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160, 21st Century Cures Act, Title V - Savings, Sec. 5007 Fairness in Medicaid supplemental needs trusts (Section 1917 (d)(4)(A) of the Social Security Act/42 U.S.C. 1396p (d)(4)(A)).

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

Reasons for this Finding: To incorporate changes prompted by Title V - Savings, Sec. 5007 Fairness in Medicaid supplemental needs trusts of the 21st Century Cures Act, signed on December 13, 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 1, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

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

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

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

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

Date Adopted: February 10, 2017.

Wendy Barcus  
Rules Coordinator

AMENDATORY SECTION (Amending WSR 13-01-017, filed 12/7/12, effective 1/1/13)

**WAC 182-516-0100 Trusts.** (1) The department determines how trusts affect eligibility for medical programs.

(2) The department disregards trusts established, on or before April 6, 1986, for the sole benefit of a client who lives in an intermediate care facility for the mentally retarded (ICMR).

(3) For trusts established on or before August 10, 1993, the department counts the following:

(a) If the trust was established by the client, client's spouse, or the legal guardian, the maximum amount of money (payments) allowed to be distributed under the terms of the trust is considered available income to the client if all of the following conditions apply:

(i) The client could be the beneficiary of all or part of the payments from the trust;

(ii) The distribution of payments is determined by one or more of the trustees; and

(iii) The trustees are allowed discretion in distributing payments to the client.

(b) If an irrevocable trust doesn't meet the conditions under ~~((subsection (3))~~(a) of this subsection then it is considered either:

(i) An **unavailable** resource, if the client established the trust for a beneficiary other than the client or the client's spouse; or

(ii) An **available** resource in the amount of the trust's assets that:

(A) The client could access; or

(B) The trustee distributes as actual payments to the client and the department applies the transfer of assets rules of WAC ~~((388-513-1363, 388-513-1364 or 388-513-1365))~~ 182-513-1363.

(c) If a revocable trust doesn't meet the description under ~~((subsection (3))~~(a) of this subsection:

(i) The full amount of the trust is an available resource of the client if the trust was established by:

(A) The client;

(B) The client's spouse, and the client lived with the spouse; or

(C) A person other than the client or the client's spouse only to the extent the client had access to the assets of the trust.

(ii) Only the amount of money actually paid to the client from the trust is an available resource when the trust was established by:

(A) The client's spouse, and the client did not live with the spouse; or

(B) A person other than the client or the client's spouse; and

(C) Payments were distributed by a trustee of the trust.

(iii) The department considers the funds a resource, not income.

(4) For trusts established on or after August 11, 1993:

(a) The department considers a trust as if it were established by the client when:

(i) The assets of the trust, as defined under WAC 388-470-0005, are at least partially from the client;

(ii) The trust is not established by will; and

(iii) The trust was established by:

(A) The client or the client's spouse;

(B) A person, including a court or administrative body, with legal authority to act in place of, or on behalf of, the client or the client's spouse; or

(C) A person, including a court or administrative body, acting at the direction of or upon the request of the client or the client's spouse.

(b) Only the assets contributed to the trust by the client are available to the client when part of the trust assets were contributed by any other person.

(c) The department does not consider:

(i) The purpose for establishing a trust;

(ii) Whether the trustees have, or exercise, any discretion under the terms of the trust;

(iii) Restrictions on when or whether distributions may be made from the trust; or

(iv) Restrictions on the use of distributions from the trust.

(d) For a revocable trust established as described under ~~((subsection (4))~~(a) of this ~~((section))~~ subsection:

(i) The full amount of the trust is an available resource of the client;

(ii) Payments from the trust to or for the benefit of the client are income of the client; and

(iii) Any payments from the trust, other than payments described under ~~((subsection (4))~~(d)(ii) of this subsection, are considered a transfer of client assets.

(e) For an irrevocable trust established as described under ~~((subsection (4))~~(a) of this ~~((section))~~ subsection:

(i) Any part of the trust from which payment can be made to or for the benefit of the client is an available resource. When payment is made from such irrevocable trusts, we will consider the payments as:

(A) Income to the client when payment is to or for the client's benefit; or

(B) The transfer of an asset when payment is made to any person for any purpose other than the client's benefit;

(ii) A trust from which a payment cannot be made to or for the client's benefit is a transfer of assets. For such a trust, the transfer of assets is effective the date:

(A) The trust is established; or

(B) The client is prevented from receiving benefit, if this is after the trust is established.

(iii) The value of the trust includes any payments made from the trust after the effective date of the transfer.

(5) For trusts established on or after August 1, 2003:

(a) The department considers a trust as if it were established by the client when:

(i) The assets of the trust, as defined under WAC 388-470-0005, are at least partially from the client or the client's spouse;

(ii) The trust is not established by will; and

(iii) The trust was established by:

(A) The client or the client's spouse;

(B) A person, including a court or administrative body, with legal authority to act in place of, or on behalf of, the client or the client's spouse; or

(C) A person, including a court or administrative body, acting at the direction of or upon the request of the client or the client's spouse.

(b) Only the assets contributed other than by will to the trust by either the client or the client's spouse are available to the client or the client's spouse when part of the trust assets were contributed by persons other than the client or the client's spouse.

- (c) The department does not consider:
- (i) The purpose for establishing a trust;
  - (ii) Whether the trustees have, or exercise, any discretion under the terms of the trust;
  - (iii) Restrictions on when or whether distributions may be made from the trust; or
  - (iv) Restrictions on the use of the distributions from the trust.
- (d) For a revocable trust established as described under ~~((subsection (5)))~~(a) of this ~~((section))~~ subsection:
- (i) The full amount of the trust is an available resource of the client;
  - (ii) Payments from the trust to or for the benefit of the client are income of the client; and
  - (iii) Any payments from the trust, other than payments described under ~~((subsection (5)))~~(d)(ii) of this subsection, are considered a transfer of client assets.
- (e) For an irrevocable trust established as described under ~~((subsection (5)))~~(a) of this ~~((section))~~ subsection:
- (i) Any part of the trust from which payment can be made to or for the benefit of the client or the client's spouse is an available resource. When payment is made from such irrevocable trusts, the department will consider the payment as:
    - (A) Income to the client or the client's spouse when payment is to or for the benefit of either the client or the client's spouse; or
    - (B) The transfer of an asset when payment is made to any person for any purpose other than the benefit of the client or the client's spouse;
  - (ii) A trust from which a payment cannot be made to or for the benefit of the client or client's spouse is a transfer of assets. For such a trust, the transfer of assets is effective the date:
    - (A) The trust is established; or
    - (B) The client or client's spouse is prevented from receiving benefit, if this is after the trust is established.
  - (iii) The value of the trust includes any payments made from the trust after the effective date of the transfer.
- (6) Trusts established on or after August 11, 1993, are not considered available resources if they contain the assets of either:
- (a) A person sixty-four years of age or younger who is disabled as defined by SSI criteria (as described in WAC ~~((388-475-0050))~~ 182-512-0050) and the trust:
    - (i) Is established for the sole benefit of this person by their parent, grandparent, legal guardian, or a court; and
    - (ii) Stipulates that the state will receive all amounts remaining in the trust upon the death of the client, up to the amount of medicaid spent on the client's behalf; or
  - (b) A person regardless of age, who is disabled as defined by SSI criteria (as described in WAC ~~((388-475-0050))~~ 182-512-0050), and the trust meets the following criteria:
    - (i) It is irrevocable;
    - (ii) It is established and managed by a nonprofit association;
    - (iii) A separate account is maintained for each beneficiary of the trust but for purposes of investment and management of funds the trust pools the funds in these accounts;

- (iv) Accounts in the trust are established solely for the benefit of the disabled individual as defined by the SSI program;
- (v) Accounts in the trust are established by:
  - (A) The individual;
  - (B) The individual's spouse, where the spouse is acting in the place of or on behalf of the individual;
  - (C) The individual's parent, grandparent, legal guardian;
  - (D) A person, including a court or administrative body, with legal authority to act in place of or on behalf of the individual or the individual's spouse; or
  - (E) A person, including a court or administrative body, acting at the direction or upon the request of the individual or the individual's spouse.
- (vi) It stipulates that either:
  - (A) The state will receive all amounts remaining in the client's separate account upon the death of the client, up to the amount of medicaid spent on the client's behalf; or
  - (B) The funds will remain in the trust to benefit other disabled beneficiaries of the trust.
- (7) Trusts established on or after August 1, 2003, are not considered available resources if they contain the assets of either:
  - (a) A person sixty-four years of age or younger who is disabled as defined by SSI criteria (as described in WAC ~~((388-475-0050))~~ 182-512-0050) and the trust:
    - (i) Is irrevocable;
    - (ii) Is established for the sole benefit of this person by ~~((their))~~ the person's parent, grandparent, legal guardian, ~~((or))~~ a court, or after December 13, 2016, the person; and
    - (iii) Stipulates that the state will receive all amounts remaining in the trust upon the death of the client, the end of the disability, or the termination of the trust, whichever comes first, up to the amount of medicaid spent on the client's behalf; or
  - (b) A person regardless of age, who is disabled as defined by SSI criteria (as described in WAC ~~((388-475-0050))~~ 182-512-0050), and the trust meets the following criteria:
    - (i) It is irrevocable;
    - (ii) It is established and managed by a nonprofit association;
    - (iii) A separate account is maintained for each beneficiary of the trust but for purposes of investment and management of funds the trust pools the funds in these accounts;
    - (iv) Accounts in the trust are established solely for the benefit of the disabled individual as defined by the SSI program;
- (v) Accounts in the trust are established by:
  - (A) The individual;
  - (B) The individual's spouse, where the spouse is acting in the place of or on behalf of the individual;
  - (C) The individual's parent, grandparent, legal guardian;
  - (D) A person, including a court or administrative body, with legal authority to act in place of or on behalf of the individual or the individual's spouse; or
  - (E) A person, including a court or administrative body, acting at the direction or upon the request of the individual or the individual's spouse.

(vi) It stipulates that either:

(A) The state will receive all amounts remaining in the client's separate account upon the death of the client, the end of the disability, or the termination of the trust, whichever comes first, up to the amount of medicaid spent on the client's behalf; or

(B) The funds will remain in the trust to benefit other disabled beneficiaries of the trust.

(8) Trusts described in subsections (6)(a) and (7)(a) of this section continue to be considered an unavailable resource even after the individual becomes age sixty-five. However, additional transfers made to the trust after the individual reaches age sixty-five would be considered an available resource and would be subject to a transfer penalty.

(9) The department does not apply a penalty period to transfers into a trust described in subsections (6)(b) and (7)(b) of this section if the trust is established for the benefit of a disabled individual under age sixty-five as described in WAC ((~~388-513-1363 and 388-513-1364~~) 182-513-1363) and the transfer is made to the trust before the individual reaches age sixty-five.

(10) The department considers any payment from a trust to the client to be unearned income. Except for trusts described in subsection (6) of this section, the department considers any payment to or for the benefit of either the client or client's spouse as described in subsections (4)(e) and (5)(e) of this section to be unearned income.

(11) The department will only count income received by the client from trusts and not the principal, if:

(a) The beneficiary has no control over the trust; and

(b) It was established with funds of someone other than the client, spouse or legally responsible person.

(12) This section does not apply when a client establishes that undue hardship exists.

(13) WAC ((~~388-513-1363, 388-513-1364, 388-513-1365, and 388-513-1366~~) 182-513-1363) apply under this section when the department determines that a trust or a portion of a trust is a transfer of assets.

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

Reasons for this Finding: This rule will keep the commercial crab harvest open in Regions 1, 3-1 and 3-3. There is sufficient allocation available in these regions to accommodate the continued fishery. This regulation closes the fishery in Region 2 East based on an agreed to final closure date. This regulation eliminates the language on extra subarea closures that lie within the closed Region 3-2 and Region 2 East. This regulation will maintain the closure of the commercial crab fishery in Region 2 West and Region 3-2. The commercial fishery has reached its current allocation in these regions. These provisions are in conformity with agreed management plans with applicable tribes. These management plans are entered into as required by court order. The Puget Sound commercial season is structured to meet harvest allocation objectives negotiated with applicable treaty tribes and outlined in the management plans. There is insufficient time to adopt permanent rules.

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

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

Number of Sections Adopted on the Agency's Own Initiative: New 2, Amended 0, Repealed 3.

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: February 14, 2017.

Joe Stohr  
for J. W. Unsworth  
Director

**WSR 17-05-090**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**

[Order 17-28—Filed February 14, 2017, 11:25 a.m., effective February 15, 2017, 5:30 p.m.]

Effective Date of Rule: February 15, 2017, 5:30 p.m.

Purpose: Amend Puget Sound commercial crab fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-52-04000C, 220-52-04600Y and 220-69-24000T; and amending WAC 220-52-040 and 220-69-240.

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

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

NEW SECTION

**WAC 220-52-04000D Commercial crab fishery—Lawful and unlawful gear, methods, and other unlawful acts.** Notwithstanding the provisions of WAC 220-52-040:

(1) Effective immediately, until further notice, it is unlawful for any person to fish for crabs for commercial purposes with more than 50 pots per license per buoy tag number in Crab Management Region 1, and Region 3-1. These regions include Marine Fish-Shellfish Catch Reporting Areas 20A, 20B, 21A, 21B, 22A, 22B, 23A, and 23B.

(2) Effective immediately, until further notice, it is unlawful for any person to fish for crabs for commercial purposes with more than 75 pots per license per buoy tag number in Crab Management Region 3-3. The region includes Marine Fish-Shellfish Catch Reporting Areas 23C and 29.

(3) All remaining buoy tags per license per region must be onboard the designated vessel and available for inspection.

(4) Effective 5:30 pm, Wednesday, February 15, 2017, until further notice, Crab Management Region 2 East is

CLOSED. This region includes Marine Fish-Shellfish Catch Reporting Areas 24A, 24B, 24C, 24D and 26A East.

(5) Effective immediately, until further notice, Crab Management Region 2 West is CLOSED. This region includes Marine Fish-Shellfish Catch Reporting Areas 25B, 25D and 26A West.

(6) Effective immediately, until further notice, Crab Management Region 3-2 is CLOSED. This region includes Marine Fish-Shellfish Catch Reporting Areas 23D, 25A, and 25E.

#### NEW SECTION

**WAC 220-69-24000U Duties of commercial purchasers and receivers.** Notwithstanding the provisions of WAC 220-69-240, effective immediately, until further notice, it is unlawful for any wholesale dealer acting in the capacity of an original receiver of Dungeness crab taken by non-treaty fishers from Puget Sound to fail to report to the department the previous day's purchases by 10:00 a.m. the following business day. Reports must be made by fax to (425) 338-1066 or by e-mail at [crabreport@dfw.wa.gov](mailto:crabreport@dfw.wa.gov), and must specify the dealer name, dealer phone number, date of delivery of crab to the original receiver, and the total number of pounds of crab caught by non-treaty fishers, by Crab Management Region or by Marine Fish-Shellfish Management and Catch Reporting Area.

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

#### REPEALER

The following sections of the Washington Administrative Code are repealed effective 5:30 p.m. February 15, 2017:

- WAC 220-52-04000C Commercial crab fishery—Lawful and unlawful gear, methods, and other unlawful acts. (17-14)
- WAC 220-52-04600Y Puget Sound crab fishery—Seasons and areas. (16-333)
- WAC 220-69-24000T Duties of commercial purchasers and receivers. (16-311)

### **WSR 17-05-093**

#### **EMERGENCY RULES**

#### **BUILDING CODE COUNCIL**

[Filed February 14, 2017, 11:28 a.m., effective February 14, 2017, 11:28 a.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: The purpose of this action is to continue the provisions of an emergency rule last filed on October 21, 2016, as WSR 16-22-017. It deletes certain provisions adopted in WAC 51-50-0907 and 51-54A-0907. This action will eliminate currently adopted language in Section 907.2.3 Group E, and Section 907.2.6.4 Group I-4 occupancies, which required certain voice/alarm communications in

Group E buildings/schools and Group I-4 facilities. The 2016 legislature took action to remove the current provisions per a budget proviso, as noted below.

Citation of Existing Rules Affected by this Order: Amending WAC 51-50-0907 and 51-54A-0907.

Statutory Authority for Adoption: Chapter 19.27 RCW.

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 legislature took action to modify the requirements of this section under ESHB 2380.SL/New Section 6012. A new section is added to 2015 3rd sp. sess. chapter 3 (uncodified) to read as follows: To avoid unnecessary duplication of infrastructure installation and reduce school construction costs funded through the school construction assistance program in this budget, the building code council adopted emergency amendments providing that buildings classed as E occupancies, as defined in the state building code, are not required to install an emergency voice alarm system as defined in the 2012 International Building Code and International Fire Code section 907.2.3. The school district must comply with RCW 28A.320.126 by working collaboratively with local law enforcement agencies to develop an emergency response system using evolving technologies and the school district must adopt a safe school plan under RCW 28A.320.125. Note: The SBCC Fire Code TAG is currently working with stakeholders to develop proposed language for 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 2.

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

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

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

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

Date Adopted: October 21, 2016.

Steve Simpson, Chair  
Building Code Council

AMENDATORY SECTION (Amending WSR 16-03-064, filed 1/19/16, effective 7/1/16)

**WAC 51-50-0907 Section 907—Fire alarm and detection systems.**

**[F] 907.2.3 Group E.** A manual fire alarm system that initiates the occupant notification signal (~~utilizing an emergency voice/alarm communication system~~) meeting the require-

ments of Section 907.5.2.2 and installed in accordance with Section 907.6 shall be installed in Group E occupancies. When automatic sprinkler systems or smoke detectors are installed, such systems or detectors shall be connected to the building fire alarm system.

- EXCEPTIONS:
1. A manual fire alarm system is not required in Group E occupancies with an occupant load of 50 or less.
  2. ~~((Emergency voice/alarm communication systems meeting the requirements of Section 907.5.2.2 and installed in accordance with Section 907.6 shall not be required in Group E occupancies with occupant loads of 100 or less, provided that activation of the manual fire alarm system initiates an approved occupant notification signal in accordance with Section 907.5.))~~ Reserved.
  3. Manual fire alarm boxes are not required in Group E occupancies where all of the following apply:
    - 3.1 Interior corridors are protected by smoke detectors.
    - 3.2 Auditoriums, cafeterias, gymnasiums and similar areas are protected by heat detectors or other approved detection devices.
    - 3.3 Shops and laboratories involving dusts or vapors are protected by heat detectors or other approved detection devices.
  4. Manual fire alarm boxes shall not be required in Group E occupancies where ~~((the building is equipped throughout with an approved automatic sprinkler system installed in accordance with Section 903.3.1.1, the emergency voice/alarm communication system will activate on sprinkler water flow and manual activation.))~~ all of the following apply:
    - 4.1 The building is equipped throughout with an approved automatic sprinkler system installed in accordance with Section 903.3.1.1.
    - 4.2 The notification appliances will activate on sprinkler water flow.
    - 4.3 Manual activation is provided from a normally occupied location.

**[F] 907.2.6 Group I.** A manual fire alarm system that activates the occupant notification system shall be installed in Group I occupancies. An automatic smoke detection system that notifies the occupant notification system shall be provided in accordance with Sections 907.2.6.1, 907.2.6.2, 907.2.6.3.3 and 907.2.6.4.

- EXCEPTIONS:
1. Manual fire alarm boxes in resident or patient sleeping areas of Group I-1 and I-2 occupancies shall not be required at exits if located at nurses' control stations or other constantly attended staff locations, provided such stations are visible and continually accessible and that travel distances required in Section 907.4.2 are not exceeded.
  2. Occupant notification systems are not required to be activated where private mode signaling installed in accordance with NFPA 72 is approved by the fire code official.

**[F] 907.2.6.1 Group I-1.** An automatic smoke detection system shall be installed in *corridors*, waiting areas open to *corridors* and *habitable spaces* other than *sleeping units* and *kitchens*. The system shall be activated in accordance with Section 907.4.

- EXCEPTIONS:
1. For Group I-1 Condition I occupancies, smoke detection in *habitable spaces* is not required where the facility is equipped throughout with an *automatic sprinkler system* installed in accordance with Section 903.3.1.1.
  2. Smoke detection is not required for exterior balconies.

**[F] 907.2.6.4 Group I-4 occupancies.** A manual fire alarm system that initiates the occupant notification signal ~~((utilizing an emergency voice/alarm communication system))~~ meeting the requirements of Section ~~((907.5.2.2))~~ 907.5 and installed in accordance with Section 907.6 shall be installed in Group I-4 occupancies. When automatic sprinkler systems or smoke detectors are installed, such systems or detectors shall be connected to the building fire alarm system.

- EXCEPTION((S)): ~~((+))~~ A manual fire alarm system is not required in Group I-4 occupancies with an occupant load of 50 or less.
- ~~((2- Emergency voice alarm communication systems meeting the requirements of Section 907.5.2.2 and installed in accordance with Section 907.6 shall not be required in Group I-4 occupancies with occupant loads of 100 or less, provided that activation of the manual fire alarm system initiates an approved occupant notification signal in accordance with Section 907.5.))~~

**907.5.2.1.2 Maximum sound pressure.** The maximum sound pressure level for audible alarm notification appliances shall be 110 dBA at the minimum hearing distance from the audible appliance. For systems operating in public mode, the maximum sound pressure level shall not exceed 30 dBA over the average ambient sound level. Where the average ambient noise is greater than 95 dBA, visible alarm notification appliances shall be provided in accordance with NFPA 72 and audible alarm notification appliances shall be required.

## **907.10 NICET: National Institute for Certification in Engineering Technologies.**

**907.10.1 Scope.** This section shall apply to new and existing fire alarm systems.

**907.10.2 Design review.** All construction documents shall be reviewed by a NICET III in fire alarms or a licensed professional engineer (PE) in Washington prior to being submitted for permitting. The reviewing professional shall submit a stamped, signed, and dated letter; or a verification method approved by the local authority having jurisdiction indicating the system has been reviewed and meets or exceeds the design requirements of the state of Washington and the local jurisdiction. (Effective July 1, 2017.)

**907.10.3 Testing/maintenance.** All inspection, testing, maintenance and programming not defined as "electrical construction trade" by chapter 19.28 RCW shall be completed by a NICET II in fire alarms. (Effective July 1, 2017.)

**Reviser's note:** The brackets and enclosed material in the text of 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.

AMENDATORY SECTION (Amending WSR 16-03-055, filed 1/16/16, effective 7/1/16)

**WAC 51-54A-0907 Fire alarm and detection systems.**

**907.2.3 Group E.** A manual fire alarm system that initiates the occupant notification signal (~~((utilizing an emergency voice/alarm communication system))~~) meeting the requirements of Section ~~((907.5.2.2))~~ 907.5 and installed in accordance with Section 907.6 shall be installed in Group E occupancies. When automatic sprinkler systems or smoke detectors are installed, such systems or detectors shall be connected to the building fire alarm system.

EXCEPTIONS:

1. A manual fire alarm system is not required in Group E occupancies with an occupant load of 50 or less.
2. ~~((Emergency voice/alarm communication systems meeting the requirements of Section 907.5.2.2 and installed in accordance with Section 907.6 shall not be required in Group E occupancies with occupant loads of 100 or less, provided that activation of the manual fire alarm system initiates an approved occupant notification signal in accordance with Section 907.5.))~~ Reserved.
3. Manual fire alarm boxes are not required in Group E occupancies where all of the following apply:
  - 3.1 Interior corridors are protected by smoke detectors.
  - 3.2 Auditoriums, cafeterias, gymnasiums and similar areas are protected by heat detectors or other approved detection devices.
  - 3.3 Shops and laboratories involving dusts or vapors are protected by heat detectors or other approved detection devices.
4. Manual fire alarm boxes shall not be required in Group E occupancies where ~~((the building is equipped throughout with an approved automatic sprinkler system installed in accordance with Section 903.3.1.1, the emergency voice/alarm communication system will activate on sprinkler water flow and manual activation.))~~ all of the following apply:
  - 4.1 The building is equipped throughout with an approved automatic sprinkler system installed in accordance with Section 903.3.1.1.
  - 4.2 The notification appliances will activate on sprinkler water flow.
  - 4.3 Manual activation is provided from a normally occupied location.

**907.2.6 Group I.** A manual fire alarm system that activates the occupant notification system shall be installed in Group I occupancies. An automatic smoke detection system that notifies the occupant notification system shall be provided in accordance with Sections 907.2.6.1, 907.2.6.2, 907.2.6.3.3 and 907.2.6.4.

EXCEPTIONS:

1. Manual fire alarm boxes in resident or patient sleeping areas of Group I-1 and I-2 occupancies shall not be required at exits if located at nurses' control stations or other constantly attended staff locations, provided such stations are visible and continually accessible and that travel distances required in Section 907.4.2 are not exceeded.
2. Occupant notification systems are not required to be activated where private mode signaling installed in accordance with NFPA 72 is approved by the fire code official.

**907.2.6.1 Group I-1.** An automatic smoke detection system shall be installed in *corridors*, waiting areas open to *corridors* and *habitable spaces* other than *sleeping units* and *kitchens*. The system shall be activated in accordance with Section 907.4.

EXCEPTIONS:

1. For Group I-1 Condition 1 occupancies, smoke detection in *habitable spaces* is not required where the facility is equipped throughout with an *automatic sprinkler system* installed in accordance with Section 903.3.1.1.
2. Smoke detection is not required for exterior balconies.

**907.2.6.4 Group I-4 occupancies.** A manual fire alarm system that initiates the occupant notification signal (~~((utilizing an emergency voice/alarm communication system))~~) meeting the requirements of Section ~~((907.5.2.2))~~ 907.5 and installed in accordance with Section 907.6 shall be installed in Group I-4 occupancies. When automatic sprinkler systems or smoke detectors are installed, such systems or detectors shall be connected to the building fire alarm system.

EXCEPTION(S): ~~((1-))~~ A manual fire alarm system is not required in Group I-4 occupancies with an occupant load of 50 or less.  
~~((2- Emergency voice alarm communication systems meeting the requirements of Section 907.5.2.2 and installed in accordance with Section 907.6 shall not be required in Group I-4 occupancies with occupant loads of 100 or less, provided that activation of the manual fire alarm system initiates an approved occupant notification signal in accordance with Section 907.5.))~~

**907.5.2.1.2 Maximum sound pressure.** The maximum sound pressure level for audible alarm notification appliances shall be 110 dBA at the minimum hearing distance from the audible appliance. For systems operating in public mode, the maximum sound pressure level shall not exceed 30 dBA over the average ambient sound level. Where the average ambient noise is greater than 95 dBA, visible alarm notification appliances shall be provided in accordance with NFPA 72 and audible alarm notification appliances shall be required.

**907.10 NICET: National Institute for Certification in Engineering Technologies.**

**907.10.1 Scope.** This section shall apply to new and existing fire alarm systems.

**907.10.2 Design review:** All construction documents shall be reviewed by a NICET III in fire alarms or a licensed professional engineer (PE) in Washington prior to being submitted for permitting. The reviewing professional shall submit a stamped, signed, and dated letter; or a verification method approved by the local authority having jurisdiction indicating the system has been reviewed and meets or exceeds the design requirements of the state of Washington and the local jurisdiction (effective July 1, 2017).

**907.10.3 Testing/maintenance:** All inspection, testing, maintenance and programming not defined as "*electrical construction trade*" by chapter 19.28 RCW shall be completed by a NICET II in fire alarms (effective July 1, 2017).

**WSR 17-05-103**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**

[Order 17-30—Filed February 15, 2017, 9:58 a.m., effective February 15, 2017, 9:58 a.m.]

Effective Date of Rule: Immediately upon filing.

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

Citation of Existing Rules Affected by this Order: Repealing WAC 220-32-05100J and 220-32-05100K; 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: Extends the treaty winter fishery in The Dalles and John Day pools. The Columbia River treaty tribes have delayed the use of gillnets in SMCRA 1F, however sales of fish caught with platform/hook and line gear in that area is allowed (as described in subsection (2)(c)). Harvestable sturgeon are available under the current harvest guidelines for each pool. The season is consistent with the 2008-2017 Management Agreement and the associated biological opinion. Rule is consistent with action of the Columbia River Compact on January 31, February 7 and 14, 2017. 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 bio-

logical opinion under 16 U.S.C. § 1536 that allows for some incidental take of these species in the fisheries as described in the 2008-2017 *U.S. v. Oregon* Management Agreement.

Columbia River fisheries are monitored very closely to ensure consistency with court orders and ESA guidelines. Because conditions change rapidly, the fisheries are managed almost exclusively by emergency rule. As required by court order, the Washington (WDFW) and Oregon (ODFW) departments of fish and wildlife convene public hearings and invite tribal participation when considering proposals for new emergency rules affecting treaty fishing rights. *Sohappy*, 302 F. Supp. at 912. WDFW and ODFW then adopt regulations reflecting agreements reached.

Number of Sections Adopted in Order to Comply with Federal Statute: New 1, Amended 0, Repealed 2; Federal Rules or Standards: New 1, Amended 0, Repealed 2; or Recently Enacted State Statutes: New 1, Amended 0, Repealed 2.

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: February 15, 2017.

Joe Stohr  
for J. W. Unsworth  
Director

NEW SECTION

**WAC 220-32-05100K Columbia River salmon seasons above Bonneville Dam.** Notwithstanding the provisions of WAC 220-32-050, WAC 220-32-051, WAC 220-32-052 and WAC 220-32-058, effective immediately until further notice, it is unlawful for a person to take or possess salmon, steelhead, sturgeon, shad, carp, catfish, walleye, bass, or yellow perch taken for commercial purposes in Columbia River Salmon Management and Catch Reporting Areas 1F, 1G, and 1H. However, those individuals possessing treaty fishing rights under the Yakima, Warm Springs, Umatilla, and Nez Perce treaties may fish for salmon, steelhead, sturgeon, shad, carp, catfish, walleye, bass, or yellow perch under the following provisions:

(1) Open Areas: SMCRA 1G and 1H (The Dalles Pool and John Day Pool):

Season: Immediately through 6:00 p.m. February 22, 2017

(a) Gear: Gill nets, hoop nets, dip bag nets, and rod and reel with hook and line. No mesh restriction on gillnets.

(b) Allowable sale: Salmon, steelhead, shad, carp, catfish, walleye, bass, or yellow perch. Sturgeon between 43-54 inches in fork length may be sold or kept for subsistence. Live release of all oversize and under-size sturgeon is required.



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

(a) Season: Immediately through 6:00 p.m. March 21, 2017.

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

(c) Allowable sale: Salmon, steelhead, shad, carp, catfish, walleye, bass, or yellow perch. Sturgeon from 43-54 inches caught in the John Day and Dalles pools may be sold only if caught during open commercial gillnet periods for that pool. Sturgeon between 38-54 inches in fork length in SMCRA 1F may only be kept for subsistence. Live release of all oversize and under-size sturgeon is required.

(3) 24-hour quick reporting is required for Washington wholesale dealers for all areas as provided in WAC 220-69-240, except that all landings from treaty fisheries described above must be reported within 24-hours of completing the fish ticket (not 24-hours after the period concludes).

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

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

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

#### REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 220-32-05100J Columbia River salmon seasons  
above Bonneville Dam. (17-26)

The following section of the Washington Administrative Code is repealed effective 6:01 p.m. March 21, 2017:

WAC 220-32-05100K Columbia River salmon seasons  
above Bonneville Dam.

### **WSR 17-05-104**

#### **RECISSION OF EMERGENCY RULES WESTERN WASHINGTON UNIVERSITY**

[Filed February 15, 2017, 10:05 a.m.]

Upon the effective date of the permanent rule, chapter 516-21 WAC, Student rights and responsibilities code, filed as WSR 17-05-100 on February 15, 2017, Western Washington University rescinds the emergency rule filed as WSR 17-01-135 on December 20, 2016. The permanent rule varies from the emergency rule and is effective Saturday, March 18, 2017.

Jennifer L. Sloan  
Rules Coordinator