

**WSR 17-08-004**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**

[Order 17-53—Filed March 23, 2017, 11:30 a.m., effective April 16, 2017]

Effective Date of Rule: April 16, 2017.

Purpose: Amend recreational fishing rules for the Chehalis River.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-312-02000D; and amending WAC 220-312-020.

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 a portion of the Chehalis River to salmon angling because the forecasted abundance of spring Chinook salmon returning to the Chehalis River basin is less than the spawning escapement goal. There are no fish available for recreational 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Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 1, Amended 0, Repealed 1.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.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: March 23, 2017.

J. W. Unsworth  
 Director

**NEW SECTION**

**WAC 220-312-02000D Freshwater exceptions to statewide rules—Coast.** Notwithstanding the provisions of WAC 220-312-020, effective April 16 through June 30, 2017, it is unlawful to fish for salmon in those waters of the Chehalis River from the mouth (Hwy 101 Bridge) to the Hwy 6 Bridge in the town of Adna.

**REPEALER**

The following section of the Washington Administrative Code is repealed effective July 1, 2017:

WAC 220-312-02000D Freshwater exceptions to statewide rules—Coast.

**WSR 17-08-005**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**

[Order 17-58—Filed March 23, 2017, 4:35 p.m., effective March 24, 2017, 8:00 a.m.]

Effective Date of Rule: March 24, 2017, 8:00 a.m.

Purpose: Amend fishing rules for the Puget Sound commercial crab fishery.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-340-42000B [220-340-42000A] and 220-340-45500B [220-340-45500A]; and amending WAC 220-340-420 and 220-340-455.

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

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

Reasons for this Finding: This regulation extends the Region 3-2 fishery starting March 24 through March 26 for the remaining 45,000 pounds of state allocation that remains. This rule will keep the commercial crab harvest open in Regions 1, 3-1 and 3-3 until 8 p.m. March 31. There is sufficient allocation available in these regions to accommodate the continued fishery. This regulation maintains the closure of the fishery in Region 2 East. This regulation will maintain the closure of the commercial crab fishery in Region 2 West. The commercial fishery has reached its current allocation in that region. 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 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: March 23, 2017.

J. W. Unsworth  
Director

#### NEW SECTION

**WAC 220-340-42000B Commercial crab fishery—Unlawful acts.** Notwithstanding the provisions of WAC 220-340-420:

(1) Effective at 8:00 AM, Friday, March 24, 2017, until 8:00 PM, Sunday, March 26, 2017, it is unlawful for any person to fish for crabs for commercial purposes with more than 30 pots per license per buoy tag number in Crab Management Region 3-2. This region includes Marine Fish-Shellfish Catch Reporting Areas 23D, 25A, and 25E.

(3) 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 1, and Region 3-3. These regions include Marine Fish-Shellfish Catch Reporting Areas 20A, 20B, 21A, 21B, 22A, 22B, 23C and 29.

(4) 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 3-1. The region includes Marine Fish-Shellfish Catch Reporting Areas 23A, and 23B.

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

(2) Effective at 8:01 PM, Sunday, March 26, 2017, Crab Management Region 3-2 is CLOSED. This region includes Marine Fish-Shellfish Catch Reporting Areas 23D, 25A, and 25E.

(2) Effective at 8:01 PM, Friday, March 31, 2017, Crab Management Region 1, Region 3-1 and Region 3-3 are CLOSED. These regions include Marine Fish-Shellfish Catch Reporting Areas 20A, 20B, 21A, 21B, 22A, 22B, 23A, 23B, 23C and 29.

(6) Effective immediately, 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.

(7) 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.

**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.

#### NEW SECTION

**WAC 220-340-45500B Commercial crab fishery—Seasons and areas—Puget Sound.** Notwithstanding the provisions of WAC 220-340-455:

(1) Effective at 8:00 AM, Tuesday, March 24, 2017, until 8:00 PM, Friday, March 26, 2017, the following areas are closed to commercial crab fishing:

(a) That portion of Marine Fish-Shellfish Management and Catch Reporting Area 25A west of the 123° 7.0' longitude line projected from the new Dungeness light due south to the shore of Dungeness Bay.

(b) That portion of Marine Fish-Shellfish Management and Catch Reporting Area 23D west of a line from the eastern tip of Ediz Hook to the ITT Rayonier Dock.

#### REPEALER

The following sections of the Washington Administrative Code are repealed effective 7:59 a.m. March 24, 2017:

WAC 220-340-42000A Commercial crab fishery—Lawful and unlawful gear, methods, and other unlawful acts. (17-52)

WAC 220-340-45500A Commercial crab fishery—Seasons and areas—Puget Sound. (17-52)

#### **WSR 17-08-006**

#### **EMERGENCY RULES**

#### **DEPARTMENT OF**

#### **FISH AND WILDLIFE**

[Order 17-59—Filed March 23, 2017, 4:35 p.m., effective April 1, 2017]

Effective Date of Rule: April 1, 2017.

Purpose: Amend recreational fishing rules in the Klickitat River.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-312-05000A; and amending WAC 220-312-050.

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 correct an error in permanent WAC 220-312-050, which allows fishing on Sundays, Mondays, Wednesdays and Saturdays only from April 1 through May 31, 2017. The days fishing will be open are Mondays, Wednesdays and Saturdays only. 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: March 23, 2017.

J. W. Unsworth  
Director

#### NEW SECTION

**WAC 220-312-05000A Freshwater exceptions to statewide rules—Eastside.** Notwithstanding the provisions of WAC 220-312-050, effective April 1 through May 31, 2017, in those waters of the Klickitat River from the mouth (Burlington Northern Railroad Bridge) to Fisher Hill Bridge fishing is only allowed Mondays, Wednesdays and Saturdays.

#### REPEALER

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

WAC 220-312-05000A Freshwater exceptions to statewide rules—Eastside.

**WSR 17-08-007**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**

[Order 17-60—Filed March 24, 2017, 9:29 a.m., effective March 24, 2017, 9:29 a.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: Amend Puget Sound saltwater recreational fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 232-28-62100T; and amending WAC 220-313-060.

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: This emergency rule is needed to reopen waters of Marine Area 7 because sufficient capacity exists within the guideline of 10,248 Chinook encounters including both retain and released fish which was agreed to by the tribal comanagers before this year's recreational salmon fishery began. Reopening of Marine Area 7 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: March 24, 2017.

J. W. Unsworth  
Director

#### NEW SECTION

**WAC 220-313-06000A Puget Sound salmon—Saltwater seasons and daily limits.** Notwithstanding the provisions of WAC 220-313-060, it is unlawful to violate the provisions below. Unless otherwise amended, all permanent rules remain in effect.

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

(2) **Marine Area 7:** Closed through March 24, 2017. Reopens March 25, daily limit of 2 salmon, no more than 1 Chinook. Release coho and wild Chinook.

(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 further notice, daily limit of 2 salmon, no more than 1 Chinook. Release coho and wild Chinook.

(5) **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 section of the Washington Administrative Code repealed:

WAC 232-28-62100T Puget Sound salmon—Saltwater seasons and daily limits. (17-21)

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

**WSR 17-08-010**  
**EMERGENCY RULES**  
**HEALTH CARE AUTHORITY**

(Washington Apple Health)

[Filed March 24, 2017, 11:37 a.m., effective March 24, 2017, 11:37 a.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: To add prior authorization requirements for providers prescribing thickeners to clients younger than one year of age.

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

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160.

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

Reasons for this Finding: The Food and Drug Administration (FDA) has issued a warning not to give infants thickeners, particularly those born prematurely, because there is substantive evidence it puts them at risk of necrotizing enterocolitis. The recommendation is supported by American Academy of Pediatrics. This rule change is intended to follow the FDA's warning. The agency held a public hearing for this rule on January 5, 2016. As a result of comments received at the public hearing, the agency revised the rule. The agency held a second public hearing on December 27, 2016. The agency amended the rule based on public hearing comments and the final rules were filed under WSR 17-08-008, effective May 1, 2017. This filing extends the current emergency filing until the 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 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: March 24, 2017.

Wendy Barcus  
Rules Coordinator

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

**WAC 182-554-500 Covered enteral nutrition products, equipment and related supplies—Orally administered—Clients twenty years of age and younger only.** (1)

The department covers orally administered enteral nutrition products for clients twenty years of age and younger only, as follows:

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

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

(i) Independently; or

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

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

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

(A) Be in a wasting state;

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

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

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

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

(D) Have a BMI of:

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

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

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

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

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

(iii) Cancer(s).

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

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

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

(iv) Chronic renal failure.

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

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

(v) Decubitus pressure ulcers.

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

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

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

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

(B) The client must have:

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

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

(III) A BMI of:

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

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

(IV) Have a BMI of:

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

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

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

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

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

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

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

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

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

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

(d) If four years of age or younger.

(i) The client must:

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

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

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

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

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

(C) Meet one of the following clinical criteria:

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

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

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

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

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

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

(i) The client must:

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

(B) Meet one of the following clinical criteria:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**WSR 17-08-022**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**

[Order 17-61—Filed March 28, 2017, 10:19 a.m., effective March 28, 2017, 10:19 a.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: Amend recreational freshwater fishing rules for Silver Lake.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-312-04000B; and amending WAC 220-312-040.

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

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

Reasons for this Finding: Reports indicate that there are a number of hatchery-origin coho salmon that residualized in Lake Sammamish. This emergency rule is needed to allow anglers to retain residual salmon greater than twelve inches in length as part of the trout daily limit 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 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: March 28, 2017.

J. W. Unsworth  
Director

NEW SECTION

**WAC 220-312-04000B Freshwater exceptions to statewide rules—Puget Sound.** Notwithstanding the provisions of WAC 220-312-040, effective immediately through May 31, 2017, landlocked salmon rules apply in those waters of Lake Sammamish. 12 inch minimum size for any salmon retained as part of the trout daily limit and all kokanee must be released. Unless otherwise amended, all other permanent rules remain in effect.

REPEALER

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

WAC 220-312-04000B Freshwater exceptions to statewide rules—Puget Sound.

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

**WSR 17-08-026**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**

[Order 16-49—Filed March 28, 2017, 1:27 p.m., effective April 15, 2017, 6:20 a.m.]

Effective Date of Rule: April 15, 2017, 6:20 a.m.

Purpose: Amend recreational freshwater fishing rules for Silver Lake.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-312-04000A; and amending WAC 220-312-040.

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

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

Reasons for this Finding: Silver Lake in Pierce County is being opened for one day of fishing to provide angling opportunity for Hero on the Waters NW Chapter fishing event. Pre-registered veterans only will be permitted to fish throughout the lake. 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: March 28, 2017.

J. W. Unsworth  
Director

#### NEW SECTION

**WAC 220-312-04000A Freshwater exceptions to statewide rules—Silver Lake.** Notwithstanding the provisions of WAC 220-312-040, effective 6:20 a.m. through 8:00 p.m. April 15, 2017, it is permissible for anglers participating in the project Hero on the Waters NW Chapter fishing event to fish in the waters of Silver Lake (Pierce County). Unless otherwise amended, all permanent rules remain in effect.

#### REPEALER

The following section of the Washington Administrative Code is repealed effective 8:01 p.m. April 15, 2017:

WAC 220-312-04000A Freshwater exceptions to statewide rules—Silver Lake.

**WSR 17-08-027  
EMERGENCY RULES  
DEPARTMENT OF  
FISH AND WILDLIFE**

[Order 17-57—Filed March 28, 2017, 1:28 p.m., effective April 6, 2017]

Effective Date of Rule: April 6, 2017.

Purpose: Amend recreational fishing rules for Klineline Pond.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-312-03000A; and amending WAC 220-312-030.

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 necessary to ensure a safe and successful fishing event for juvenile anglers. Fish will be planted in Klineline Pond one day prior to the Klineline Kids Fishing Event to better acclimate them before the event. Fish will be placed into netted areas along

the shoreline of the pond. On the days of the fishing event, preregistered kids will be allowed to fish within these netted areas. There is insufficient time to adopt permanent rules.

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

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

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

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

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

Date Adopted: March 28, 2017.

J. W. Unsworth  
Director

#### NEW SECTION

**WAC 220-312-03000A Exceptions to statewide rules—Klineline Pond (Clark Co.)** Notwithstanding the provisions of WAC 220-312-030, effective 12:01 a.m. April 6 through April 8, 2017, it is unlawful to fish in those waters of Klineline Pond, except as provided in this section:

(1) Open to fishing 8:00 a.m. to 4:00 p.m. April 7 and 8, 2017, in the netted area, to juvenile anglers participating in the Klineline Kids Fishing Event.

(2) Daily limit of two fish.

#### REPEALER

The following section of the Washington Administrative Code is repealed effective April 9, 2017:

WAC 220-312-03000A Exceptions to statewide rules—  
Klineline Pond (Clark Co.)

**WSR 17-08-029  
EMERGENCY RULES  
DEPARTMENT OF  
FISH AND WILDLIFE**

[Order 17-63—Filed March 28, 2017, 2:22 p.m., effective March 30, 2017]

Effective Date of Rule: March 30, 2017.

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. 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 220-312-06000A; and amending WAC 220-312-060.

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: This emergency rule is needed to close waters of the Columbia River and tributaries from Bonneville Dam upstream to John Day Dam because the harvest guidelines for both pools are expected to be reached by the effective date of this rule. There is insufficient time to adopt permanent rules.

Number of Sections Adopted in Order to Comply with Federal Statute: New 1, Amended 0, Repealed 1; Federal Rules or Standards: New 1, Amended 0, Repealed 1; 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: March 28, 2017.

J. W. Unsworth  
Director

#### NEW SECTION

**WAC 220-312-06000B Exceptions to statewide rules—Columbia River sturgeon.** Notwithstanding the provisions of WAC 220-312-060 and WAC 220-316-010, effective March 30, 2017, until further notice, it is unlawful to retain sturgeon caught in those waters of the Columbia River and tributaries from Bonneville Dam upstream to McNary Dam. Catch and release is permissible except from May 1, 2017, until further notice, in the sturgeon spawning Sanctuary located from The Dalles Dam downstream 1.8 miles, in the sturgeon spawning Sanctuary located from John Day Dam downstream 2.4 miles, and in the sturgeon spawning Sanctuary located from McNary Dam downstream 1.5 miles.

#### REPEALER

The following section of the Washington Administrative Code is repealed effective March 30, 2017:

WAC 220-312-06000A Exceptions to statewide rules—  
Columbia River sturgeon.

**WSR 17-08-032  
EMERGENCY RULES  
DEPARTMENT OF  
FISH AND WILDLIFE**

[Order 17-62—Filed March 28, 2017, 4:17 p.m., effective March 30, 2017]

Effective Date of Rule: March 30, 2017.

Purpose: Amend recreational razor clam rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-360-16000B [220-330-16000B]; and amending chapter 220-360 [220-330] WAC.

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 open razor clam beaches for recreational harvest because survey results show that adequate clams are available for harvest in Razor Clam Areas 4 and 5 which will provide for recreational harvest opportunity. 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: March 28, 2017.

J. W. Unsworth  
Director

#### NEW SECTION

**WAC 220-330-16000B Razor clams—Areas and seasons.** Notwithstanding the provisions of WAC 220-360-160,



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 a.m. March 31, 2017 through 11:59 a.m. March 31, 2017 razor clam digging is permissible in Razor Clam Area 4. Digging is permissible from 12:01 a.m. to 11:59 a.m. only.

(2) Effective 12:01 a.m. April 2, 2017 through 11:59 a.m. April 2, 2017 razor clam digging is permissible in Razor Clam Area 4. Digging is permissible from 12:01 a.m. to 11:59 a.m. only.

(3) Effective 12:01 a.m. March 30, 2017 through 11:59 a.m. March 30, 2017 razor clam digging is permissible in Razor Clam Area 5. Digging is permissible from 12:01 a.m. to 11:59 a.m. only.

(4) Effective 12:01 a.m. April 1, 2017 through 11:59 a.m. April 1, 2017 razor clam digging is permissible in Razor Clam Area 5. Digging is permissible from 12:01 a.m. to 11:59 a.m. only.

(5) It is unlawful to dig for razor clams at any time in the Copalis Clam sanctuary defined in WAC 220-320-130.

#### REPEALER

The following section of the Washington Administrative Code is repealed effective 12:01 p.m. April 2, 2017.

WAC 220-330-16000B Razor clams—Areas and seasons.

**WSR 17-08-036**  
**EMERGENCY RULES**  
**PROFESSIONAL EDUCATOR**  
**STANDARDS BOARD**

[Filed March 29, 2017, 11:19 a.m., effective March 29, 2017, 11:19 a.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: Repeals WAC 181-78A-507 and amends WAC 181-78A-540 to remove regulations governing administration and principal profession certification programs. Also amends WAC 181-79A-211 and 181-79A-2510 to address certificate holder issues relating to the deregulation of the programs.

Citation of Existing Rules Affected by this Order: Repealing WAC 181-78A-507; and amending WAC 181-78A-540, 181-79A-211, and 181-79A-2510.

Statutory Authority for Adoption: RCW 28A.410.210.

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: Existing principals and administrator in education are facing expiration at the same time that the programs for obtaining the professional certification are closing. Permanent rules to deregulate these programs is under process.

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

Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

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

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

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

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

Date Adopted: March 29, 2017.

David Brenna  
Senior Policy Analyst

AMENDATORY SECTION (Amending WSR 13-14-026, filed 6/25/13, effective 7/26/13)

**WAC 181-78A-540 Approval standard—Knowledge and skills.** ~~((1) Principal/program administrator. A successful candidate for the principal/program administrator professional certificate shall demonstrate the knowledge and skills at the professional certificate benchmark levels for the six standards pursuant to WAC 181-78A-270 (2)(b).~~

~~(2))~~ **Educational staff associate - School counselor or school psychologist.** A successful candidate for the ESA professional certificate shall demonstrate the knowledge and skills at the professional certificate benchmark levels for the standards in the specific ESA role pursuant to WAC 181-78A-270 (5), (7), or (9).

#### REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 181-78A-507 Overview—Principal/program administrator professional certificate programs.

AMENDATORY SECTION (Amending WSR 13-11-081, filed 5/17/13, effective 6/17/13)

**WAC 181-79A-211 Academic and experience requirements for certification—Administrators.** Candidates for the respective administrative certificate shall complete the following requirements in addition to those set forth in WAC 181-79A-150 and 181-79A-213.

(1) Superintendent.

(a) Initial.

(i) The candidate shall hold an approved master's degree and have completed subsequent to the baccalaureate degree at least forty-five quarter credit hours (thirty semester credit hours) of graduate level course work in education.

(ii) The candidate shall hold a valid teacher, educational staff associate, program administrator or principal certificate;

excluding certificates issued under WAC 181-79A-231, or comparable out-of-state certificates.

(b) Continuing.

(i) The candidate shall hold an approved master's degree and have completed subsequent to the baccalaureate degree at least sixty quarter credit hours (forty semester credit hours) of graduate level course work in education or shall hold a doctorate in education.

(ii) The candidate shall hold a valid teacher, educational staff associate, program administrator or principal certificate; excluding certificates issued under WAC 181-79A-231, or comparable out-of-state certificates.

(iii) Candidates applying for continuing superintendent's certificate shall provide documentation of one hundred eighty days or full-time equivalent or more employment in the respective role with an authorized employer—i.e., school district, educational service district, state agency, college or university, private school, or private school system—and at least thirty days of such employment with the same employer.

(2) Principal.

(a) Residency.

(i) The candidate shall hold an approved master's degree.

(ii) The candidate shall have completed an approved program for the preparation of principals.

(iii) The candidate shall have three years of documented successful school-based experience in an instructional role with students; provided, candidates who were enrolled in an approved principal program prior to July 1, 2013, are not subject to the three-year minimum experience requirement.

(iv) The candidate shall hold or have held:

(A) A valid teacher's certificate, excluding certificates issued under WAC 181-79A-231; or

(B) A valid education staff associate certificate, excluding certificates issued under WAC 181-79A-231.

(v) Persons whose teacher or educational staff associate certificates were revoked, suspended or surrendered are not eligible for principals certificates.

(b) Continuing.

(i) The candidate shall hold a valid initial principal's certificate, an approved master's degree and shall have completed at least fifteen quarter (ten semester) credit hours of graduate course work offered by a college or university with a state approved principal program or one hundred fifty clock hours of study, which meet the state continuing education clock hour criteria pursuant to chapter 181-85 WAC, or a combination of credits and clock hours equivalent to the above. Such study shall:

(A) Be based on the principal performance domains included in WAC 181-78A-270 (2)(a) or (b);

(B) Be taken subsequent to the issuance of the initial principal's certificate; and

(C) Be determined in consultation with and approved by the candidate's employer or the administrator of a state approved principal preparation program.

(ii) Provided, That a candidate who held a valid initial principal's certificate on August 31, 1998, may meet the academic requirement for the continuing certificate described in WAC 181-79A-211 (2)(c)(i), if the candidate meets requirements for and applies for the continuing certificate by the expiration date on that initial certificate.

(iii) The candidate must meet requirements for a principal's certificate pursuant to WAC 181-79A-150(4).

(iv) Candidates applying for the continuing principal's certificate shall provide documentation of three contracted school years of full-time employment as a principal or assistant principal.

(c) Professional certificate.

(i) The candidate shall have completed an approved professional certificate program by September 2018.

(ii) The candidate shall have documentation of three contracted school years of employment as a principal or assistant principal.

(3) Program administrator.

(a) Initial.

The candidate shall hold an approved master's degree and have completed subsequent to the baccalaureate degree at least twenty-four quarter credit hours (sixteen semester credit hours) of graduate level course work in education.

(b) Residency certificate.

The candidate shall hold an approved master's degree and have completed an approved program for the preparation of program administrators.

(c) Continuing.

(i) The candidate shall hold a valid initial program administrator's certificate, an approved master's degree and have completed subsequent to the baccalaureate degree at least thirty quarter credit hours (twenty semester credit hours) of graduate level course work in education or shall hold a doctorate in education.

(ii) Candidates applying for continuing program administrator's certificate shall provide documentation of one hundred eighty days or full-time equivalent or more employment in the respective role with an authorized employer—i.e., school district, educational service district, state agency, college or university, private school, or private school system—and at least thirty days of such employment with the same employer.

(d) Professional certificate.

The candidate shall have completed an approved professional certificate program by September 2018.

**AMENDATORY SECTION** (Amending WSR 16-07-103, filed 3/18/16, effective 4/18/16)

**WAC 181-79A-2510 Principal and program administrator residency and professional certification—Renewal and reinstatement.** (1) Principals/program administrators may renew their residency certificate in one of the following ways:

~~((a) Individuals who hold, or have held, a residency certificate and who qualify for enrollment in a professional educator standards board approved professional certificate program pursuant to WAC 181-78A-507 and 181-79A-145 may have the certificate renewed for one additional two-year period upon verification by the professional certificate program administrator that the candidate is enrolled in a state approved professional certificate program.~~

~~((b))~~ Individuals who hold, or have held, residency certificates who are not in the role of principal or program administrator may have their residency certificates renewed

for an additional five-year period by the completion of fifteen quarter credits (ten semester credits) of college credit course work from a regionally accredited institution of higher education or completion of one hundred fifty continuing education credit hours, directly related to the current performance-based leadership standards as defined in WAC 181-78A-270 (2)(b) from a regionally accredited institution of higher education taken since the issuance of the residency certificate.

(2) Professional certificate. A professional certificate may be renewed for additional five-year periods for individuals in the role as a principal, assistant principal, or program administrator in a public school or approved private school by completion of four professional growth plans developed annually since the certificate was issued, in collaboration with the professional growth team as defined in WAC 181-79A-030.

(a) Individuals may apply their focused evaluation professional growth activities of the evaluation system toward the professional growth plan for certificate renewal.

(b) Individuals who complete the requirements of the annual professional growth plan to renew their professional certificate shall receive the equivalent of thirty hours of continuing education credit hours.

(c) The professional growth plans must document formalized learning opportunities and professional development activities that relate to the standards and "career level" benchmarks defined in WAC 181-78A-540(1).

(d) Provided, as per RCW 28A.410.278(2) beginning September 1, 2016, in-service training, continuing education, or professional growth plans shall incorporate professional development on the revised teacher and principal evaluation systems under RCW 28A.405.100 as a requirement for renewal of continuing or professional level certificates. Certificates with a renewal date of June 30, 2019, and beyond for all principals and program administrators must document completion of at least fifteen clock hours, or at least one goal from an annual professional growth plan, related to knowledge and competency of the teacher and principal evaluation criteria or system.

(e) Provided, any educator holding a professional certificate which requires completion of four PGPs in five years, may renew the professional certificate for one time only by completing one hundred fifty continuing education credit hours as defined in chapter 181-85 WAC, or with completion of fifteen quarter credit hours related to job responsibilities, in lieu of completion of four professional growth plans. Individuals with valid certificates must show completion of the hours as described in this section since the professional certificate was issued. Individuals with an expired professional certificate must complete the hours as described in this section within the five years prior to the date of the renewal application: Provided, That this section is no longer in effect after June 30, 2020.

(f) For educators holding multiple certificates as described in WAC 181-79A-251, 181-79A-2510, 181-79A-2511, or 181-79A-2512 of this chapter, or in chapter 181-85 WAC, a professional growth plan for teacher, administrator, or education staff associate shall meet the requirement for all certificates held by an individual which is affected by this section.

(g) The one-time renewal option of using clock hours or credits in lieu of professional growth plans as required applies to any/all professional certificates an educator may hold, and is only available to the individual one time. This section is no longer in effect after June 30, 2020.

**WSR 17-08-040**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**

[Order 17-64—Filed March 29, 2017, 3:51 p.m., effective March 30, 2017, 10:00 a.m.]

Effective Date of Rule: March 30, 2017, 10:00 a.m.

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

Citation of Existing Rules Affected by this Order: Repealing WAC 220-358-03000A; and amending WAC 220-358-030.

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: Adds addition[al] days to the winter season in Deep River, Tongue Point, and Knappa Slough select areas. 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 and March 28, 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, 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 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: March 29, 2017.

Joe Stohr  
for J. W. Unsworth  
Director

## NEW SECTION

**WAC 220-358-03000B Columbia River seasons below Bonneville.** Notwithstanding the provisions of WAC 220-358-030, WAC 220-358-040, and WAC 220-358-050, 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 Thursday night March 30, 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 through June 13, 2017.

(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 220-354-010(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 220-305-010)(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: Thursday March 30, 2017 from 10 AM to 2 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 through June 13, 2017.

(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: Knappa Slough is open 7 PM to 7 AM Thursday night March 30, 2017. Blind Slough is open 7 PM to 7 AM Monday and Thursday nights from March 30 to April 7, 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 through June 13, 2017.

(b) **Area:** 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 220-352-180 (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 220-358-010(2)).

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

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

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

**REPEALER**

The following section of the Washington Administrative Code is repealed effective 10:00 a.m. March 30, 2017:

WAC 220-358-03000A Columbia River seasons below Bonneville. (17-55)

**WSR 17-08-048****EMERGENCY RULES****DEPARTMENT OF****FISH AND WILDLIFE**

[Order 17-65—Filed March 30, 2017, 4:38 p.m., effective April 15, 2017, 6:20 a.m.]

Effective Date of Rule: April 15, 2017, 6:20 a.m.

Purpose: Amend recreational fishing rules for Langlois Lake.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-312-04000C; and amending WAC 220-312-040.

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

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

Reasons for this Finding: Langlois Lake is being opened for one day of fishing to provide angling opportunity for Project Healing Waters which is dedicated to the physical and emotional rehabilitation of disabled active military service personnel and disabled veterans through fishing. 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: March 30, 2017.

J. W. Unsworth  
Director

**NEW SECTION**

**WAC 220-312-04000C Freshwater exceptions to statewide rules—Langlois Lake.** Notwithstanding the provisions of WAC 220-312-040, effective 6:20 a.m. through 8:00 p.m. April 15, 2017, it is permissible for anglers participating in the Project Healing Waters fishing event to fish in the waters of Langlois Lake. Statewide size and daily limits apply.

**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 8:01 p.m. n April 15, 2017:

WAC 220-312-04000C Freshwater exceptions to statewide rules—Langlois Lake.

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

**WSR 17-08-049**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**SOCIAL AND HEALTH SERVICES**

(Economic Services Administration)

[Filed March 31, 2017, 8:26 a.m., effective April 1, 2017]

Effective Date of Rule: April 1, 2017.

Purpose: The department is amending WAC 388-492-0070 How are my WASHCAP food benefits calculated?, in order to increase the high shelter standard from \$400 to \$425.

Citation of Existing Rules Affected by this Order: Amending WAC 388-492-0070.

Statutory Authority for Adoption: RCW 74.04.055, 74.04.057, 74.04.500, 74.04.510, 74.08.090.

Other Authority: Washington state combined application project demonstration project renewal request waivers and requirements.

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: Increases access to supplemental nutrition assistance program benefits for individuals with disabilities.

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

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

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

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

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

Date Adopted: March 28, 2017.

Katherine I. Vasquez  
Rules Coordinator

AMENDATORY SECTION (Amending WSR 16-24-034, filed 11/30/16, effective 12/31/16)

**WAC 388-492-0070 How are my WASHCAP food benefits calculated?** We calculate your Washington state combined application project (WASHCAP) food benefits as follows:

- (1) We begin with your gross income.
- (2) We subtract the current standard deduction for one person under WAC 388-450-0185 from your gross income to get your countable income.
- (3) We figure your shelter cost based on information we receive from the Social Security Administration (SSA) unless you report a change as described under WAC 388-492-0080.
  - (a) If you pay three hundred twenty dollars or more a month for shelter, we use four hundred twenty-five dollars as your shelter cost.
  - (b) If you pay less than three hundred twenty dollars a month for shelter, we use two hundred and thirty-five dollars as your shelter cost.
  - (c) We add the current standard utility allowance under WAC 388-450-0195 to the shelter cost we use under either (~~subsection (3)~~)(a) or (b) of this (~~section~~) subsection to determine your total shelter cost.
  - (4) We figure your shelter deduction by subtracting one half of your countable income from your total shelter cost under subsection (3)(c) of this section.
  - (5) We figure your net income by subtracting your shelter deduction from your countable income and rounding the resulting figure up from fifty cents and down from forty-nine cents to the nearest whole dollar.
  - (6) We figure your WASHCAP food benefits (allotment) by:
    - (a) Multiplying your net income by thirty percent and rounding up to the next whole dollar; and
    - (b) Subtracting the result from the maximum allotment under WAC 388-478-0060.
  - (7) If you are eligible for WASHCAP, you will get at least the minimum monthly benefit for basic food under WAC 388-412-0015.

**WSR 17-08-050**

**EMERGENCY RULES**

**DEPARTMENT OF**

**SOCIAL AND HEALTH SERVICES**

(Economic Services Administration)

[Filed March 31, 2017, 8:41 a.m., effective April 1, 2017]

Effective Date of Rule: April 1, 2017.

Purpose: The department is amending WAC 388-450-0195 Does the department use my utility costs when calculating my basic food or WASHCAP benefits?, to provide a standard utility allowance for basic food households that do not qualify for the low income home energy assistance program solely due to immigration status requirements.

Citation of Existing Rules Affected by this Order: Amending WAC 388-450-0195.

Statutory Authority for Adoption: RCW 74.04.005, 74.04.050, 74.04.055, 74.04.057, 74.04.500, 74.04.510, 74.08.090, 74.08A.120, 7 C.F.R. 273.9 (d)(6)(iii)(B).

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: Changes proposed under this filing are expected to impact benefits for certain households receiving the Washington basic food program and the state-funded food assistance program (FAP) for legal immigrants.

Under RCW 74.08A.120, rules for FAP shall follow exactly the rules of the federal food stamp program (SNAP) except for the provisions pertaining to immigrant status.

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

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

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

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

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

Date Adopted: March 16, 2017.

Katherine I. Vasquez  
Rules Coordinator

**AMENDATORY SECTION** (Amending WSR 16-24-051, filed 12/1/16, effective 1/1/17)

**WAC 388-450-0195 Does the department use my utility costs when calculating my basic food or WASH-CAP benefits?** (1) The department uses utility allowances instead of the actual utility costs your assistance unit (AU) pays when we determine your:

(a) Monthly benefits under WAC 388-492-0070 if you receive Washington state combined application project (WASHCAP); or

(b) Shelter cost income deduction under WAC 388-450-0190 for basic food.

(2) We use the amounts in this subsection if you have utility costs separate from your rent or mortgage payment:

(a) If your AU has heating or cooling costs ~~((or))~~ or receives more than twenty dollars in low income home energy assistance program (LIHEAP) benefits each year, you get a standard utility allowance (SUA) of four hundred eleven dollars.

(b) If your household does not receive a LIHEAP payment and the reason is solely because of your immigration status, you get a SUA of four hundred eleven dollars.

(c) If your AU does not qualify for the SUA and you have any two utility costs listed in subsection (3) of this section, you get a limited utility allowance (LUA) of three hundred nineteen dollars.

~~((or))~~ (d) If your AU has only telephone costs and no other utility costs, you get a telephone utility allowance (TUA) of fifty-seven dollars.

(3) "Utility costs" include the following:

(a) Heating or cooling fuel;

(b) Electricity or gas;

(c) Water;

(d) Sewer;

(e) Well installation/maintenance;

(f) Septic tank installation/maintenance;

(g) Garbage/trash collection; and

(h) Telephone service.

(4) If you do not have a utility cost separate from your rent or mortgage payment and do not receive low income energy assistance program (LIHEAP), you do not receive a utility allowance.

### WSR 17-08-052

#### EMERGENCY RULES

#### DEPARTMENT OF

#### SOCIAL AND HEALTH SERVICES

(Economic Services Administration)

[Filed March 31, 2017, 8:56 a.m., effective April 1, 2017]

Effective Date of Rule: April 1, 2017.

Purpose: The department is amending WAC 388-400-0047 What is the heat and eat program and are you eligible?, in order to remove the pure food assistance program (FAP) households from the heat and eat program to be consistent with federal requirements for the low income home energy assistance program.

Citation of Existing Rules Affected by this Order: Amending WAC 388-400-0047.

Statutory Authority for Adoption: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.510, 74.04.515, 74.08.090, 74.04.500, 74.08A.010, 74.08A.903, Food and Nutrition Act of 2008 (P.L. 110-246, 7 U.S.C.) as amended by P.L. 113-79. Other Authority: RCW 74.08A.120.

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

Reasons for this Finding: Changes proposed under this filing are expected to impact benefits for certain households receiving the Washington basic food program and the state-funded FAP for legal immigrants.

Under RCW 74.08A.120, rules for FAP shall follow exactly the rules of the federal food stamp program (SNAP) except for the provisions pertaining to immigrant status.

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

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

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

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

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

Date Adopted: March 17, 2017.

Katherine I. Vasquez  
Rules Coordinator

**AMENDATORY SECTION** (Amending WSR 16-24-050, filed 12/1/16, effective 1/1/17)

**WAC 388-400-0047 What is the heat and eat program and are you eligible?** (1) What is the heat and eat program?

(a) The heat and eat program is a special energy assistance program for certain assistance units that receive basic food, Washington combined application project (WASH-CAP), or the food assistance program for legal immigrants (FAP).

(b) An assistance unit (AU) in heat and eat program receives up to twenty dollars and one cent in federal low income home energy assistance program (LIHEAP) benefits. This U.S. Department of Health and Human Services, Administration for Children and Families LIHEAP benefit makes the AU eligible for the standard utility allowance under WAC 388-450-0195 for twelve months.

(2) If you receive WASHCAP, you will get LIHEAP and your AU is eligible for the standard utility allowance under WAC 388-450-0195 for twelve months.

(3) Is your (~~assistance unit~~) AU eligible for heat and eat?

Your AU is eligible for heat and eat if you meet all of the following:

(a) You receive at least one dollar in basic food or FAP benefits prior to any recoupments;

(b) Your basic food or FAP AU includes at least one U.S. citizen or qualified alien as defined under WAC 388-424-0001 as required by 8 U.S.C. Sec. 1611 (a)(1);

(c) You do not receive transitional food assistance (TFA);

~~((e))~~ (d) You are not eligible for the standard utility allowance (SUA) under WAC 388-450-0195 based on having out-of-pocket costs for heating or cooling;

~~((d))~~ (e) You have not received a regular LIHEAP benefit amount of more than twenty dollars in the past twelve months; and

~~((e))~~ (f) You (~~do not~~) do not receive the maximum allotment for your AU size under WAC 388-478-0060 without using the SUA.

(4) How do you receive heat and eat?

(a) If you are eligible for heat and eat, we deposit the benefit on your EBT card.

(b) The heat and eat benefit is good for twelve months.

(c) After twelve months, we look at your circumstances to see if you are still eligible for heat and eat.

(5) How do you apply for heat and eat?

(a) You do not apply for heat and eat.

(b) We will determine if your AU is eligible to receive heat and eat and automatically provide the benefit to you.

**WSR 17-08-053**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**

[Order 17-66—Filed March 31, 2017, 9:12 a.m., effective March 31, 2017, 9:12 a.m.]

Effective Date of Rule: Immediately upon filing.

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

Citation of Existing Rules Affected by this Order: Repealing WAC 220-310-20000K and 220-312-06000C; and amending WAC 220-312-060.

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 2017 spring recreational salmon season in the Columbia River in the area from Buoy 10 upstream to the Oregon/Washington border. The regulation allows for the retention of shad and hatchery steelhead during days and in areas that are open for hatchery Chinook. ESA impacts for wild fish are available to recreational fisheries in order to access hatchery fish. The fishery is consistent with the *U.S. v. Oregon* Management Agreement and the associated biological opinion. Conforms Washington state rules with Oregon state rules. Regulation is consistent with compact action of March 30, 2017.

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. There is insufficient time to promulgate permanent rules.

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 1, Amended 0, Repealed 2.

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: March 31, 2017.

J. W. Unsworth  
Director

#### NEW SECTION

**WAC 220-312-06000C Freshwater exceptions to statewide rules—Columbia River.** Notwithstanding the provisions of WAC 220-312-060, it is unlawful to violate the provisions, provided that unless otherwise amended, all permanent rules remain in effect:

(1) Open effective immediately through April 10, 2017 in waters of the Columbia River from Buoy 10 upstream to Bonneville Dam:

(a) The hatchery salmonid daily limit is 6 fish of which no more than 2 may be adults and no more than 1 may be a hatchery adult Chinook. Only adipose fin-clipped fish may be retained.

(b) Closed to fishing for salmonids and shad from boats between Beacon Rock and Bonneville Dam (bank fishing only). The legal upstream boat boundary is defined as: "A deadline marker on the Oregon bank (approximately 4 miles downstream from Bonneville Dam Powerhouse One) in a straight line through the western tip of Pierce Island to a deadline marker on the Washington bank at Beacon Rock."

(c) No angling is allowed within the Lewis River sanctuary. This area is defined as: "A line from marker on the lower end of Bachelor Island through USCG buoy Red #4 to the Oregon shore, downstream to a line from the lower (north) end of Sauvie Island across the Columbia River to the downstream range marker (0.7 miles downstream of the Lewis River) and continuing along the wing jetty to the Washington shore."

(2) Effective through May 15, the Columbia River is open for retention of adipose fin-clipped steelhead from Buoy 10 upstream to the Highway 395 Bridge and shad from Buoy 10 upstream to Bonneville Dam during days and areas open for retention of adipose fin-clipped spring Chinook.

(3) Effective immediately through May 5, 2017:

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

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

(c) Release all wild Chinook and wild steelhead.

(d) Salmon minimum size is 12 inches.

#### REPEALER

The following section of the Washington Administrative Code is repealed:

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

The following section of the Washington Administrative Code is repealed effective May 15, 2017.

WAC 220-312-06000C Freshwater exceptions to statewide rules—Columbia River. (17-36)

**WSR 17-08-085  
EMERGENCY RULES  
DEPARTMENT OF  
FISH AND WILDLIFE**

[Order 17-67—Filed April 4, 2017, 1:38 p.m., effective April 4, 2017, 1:38 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 220-330-16000C; and amending WAC 220-330-160.

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 open razor clam beaches for recreational harvest because survey results show that adequate clams are available for harvest in Razor Clam Area 3 which will provide for recreational harvest opportunity. Washington department of health has certified clams from these beaches 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: April 4, 2017.

J. W. Unsworth  
Director

#### NEW SECTION

**WAC 220-330-16000C Razor clams—Areas and seasons.** Notwithstanding the provisions of WAC 220-330-160, 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. April 5, 2017 through 11:59 p.m. April 8, 2017 razor clam digging is permissible in Razor Clam Area 3. Digging is permissible from 12:01 p.m. to 11:59 p.m. only.

(2) Effective 12:01 a.m. April 9, 2017 through 11:59 a.m. April 9, 2017 razor clam digging is permissible in Razor Clam Area 3. Digging is permissible from 12:01 a.m. to 11:59 a.m. only.

(3) It is unlawful to dig for razor clams at any time in the Twin Harbors Clam sanctuaries defined in WAC 220-320-130.

#### REPEALER

The following section of the Washington Administrative Code is repealed effective 12:01 p.m. April 9, 2017.

WAC 220-330-16000C Razor clams—Areas and seasons.

**WSR 17-08-087**  
**EMERGENCY RULES**  
**HEALTH CARE AUTHORITY**  
(Washington Apple Health)

[Filed April 4, 2017, 3:20 p.m., effective April 4, 2017, 3:20 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: As required by new federal rules, the agency is creating a new section under chapter 182-526 WAC, Administrative hearings, to allow for expedited administrative hearings for urgent health care needs.

Statutory Authority for Adoption: 42 C.F.R. Part 431, Subpart E - Fair Hearings for Applicants and Beneficiaries, RCW 41.05.021, 41.05.160.

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

Reasons for this Finding: This emergency is necessary to comply with new federal rules, effective January 20, 2017, requiring expedited administrative hearings while the permanent rule process is completed. The new federal rules were announced in Federal Register 81 F.R. 86382, published on November 30, 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 0, Amended 0, Repealed 0.

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

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

Date Adopted: April 4, 2017.

Wendy Barcus  
Rules Coordinator

#### NEW SECTION

**WAC 182-526-100 Expedited administrative hearings for urgent health care needs. (1) Requesting an expedited hearing.**

(a) An expedited hearing may be requested only in matters involving applicants or recipients.

(b) An applicant or recipient may request an expedited administrative hearing when the applicant or recipient believes there is an urgent health care need as defined in subsection (3) of this section.

(c) The applicant or recipient bears the burden of proof to establish an urgent health care need and must submit evidence to the office of administrative hearings (OAH) with the expedited hearing request to support the need for an expedited hearing.

(d) A recipient may be eligible for continued coverage according to WAC 182-504-0130.

(2) **Exception to notice requirements.** The notice requirements in this section prevail over notice requirements in WAC 182-526-0250.

(3) **Standard for granting an expedited hearing request.**

(a) For the purposes of this section an urgent health care need means that waiting for an otherwise timely scheduled hearing could seriously jeopardize the applicant's or recipient's life, health or ability to attain, maintain, or regain maximum function;

(b) The administrative law judge (ALJ) grants a request for an expedited hearing only if the ALJ finds by a preponderance of the evidence submitted with the applicant's or recipient's expedited hearing request and the information listed below that the applicant or recipient has an urgent health care need;

(c) Information the ALJ may consider when determining whether the applicant or recipient has an urgent health care need and whether to subsequently grant or deny an expedited hearing request includes, but is not limited to:

(i) The documentation submitted with the expedited hearing request to show an urgent health care need;

(ii) Whether the recipient is eligible for continued coverage of the benefits denied, reduced, or terminated by the agency or the agency's designee pending resolution of the appeal as an expedited hearing request may not be granted for individuals receiving continued coverage;

(iii) The length of time between the applicant's or recipient's receipt of the agency's or the agency designee's adverse notice and the applicant's or recipient's request for an expedited hearing; and

(iv) Whether the documentation submitted with the expedited hearing request shows that an appointment with a provider for a health care procedure or treatment to address the applicant's or recipient's stated urgent health care need:

(A) Is scheduled; or

(B) Cannot be scheduled due to a lack of coverage.

(4) **Time frame and notice requirements for expedited hearing request determination.** The ALJ must grant or deny the expedited hearing request, and issue the determination within four business days of receipt of the request by OAH, or as expeditiously as possible. OAH must immediately notify the parties orally and in writing of the ALJ's determination, unless notification in writing is waived by the parties. The oral and written notice must clearly state:

(a) Whether the expedited hearing request was approved or denied;

(b) That a hearing has been or will be scheduled; and

(c) The information listed in subsection (3)(c) of this section that the ALJ relied upon.

(5) **Scheduling an expedited hearing.** If the ALJ grants a request for an expedited hearing, OAH will schedule a hearing and provide notice as expeditiously as possible, allowing

for a reasonable amount of notice and time for the parties to prepare for hearing. The notice rules in WAC 182-526-0250 do not apply.

(6) **Denial of expedited hearing.** If the ALJ denies an expedited hearing request, OAH will schedule the hearing based on standard scheduling practices and the notice rules in WAC 182-526-0250.

(7) **Appeal right.** There is no right to appeal an ALJ's determination to grant or deny an expedited hearing request.

(8) **Expedited hearing initial order.** If an expedited hearing request is granted and an expedited hearing is held, the ALJ must issue an initial order as expeditiously as possible.

(9) **Expedited final order.** Any party may request administrative review of the initial order with the health care authority board of appeals pursuant to WAC 182-526-0560 through 182-526-0600. The board of appeals will issue a final order as expeditiously as possible.

(10) **Delayed expedited hearing request determination or expedited hearing initial order.** The ALJ has a duty to determine whether to grant or deny an expedited hearing request and, if granted, to issue an expedited hearing initial order as expeditiously as possible, except in unusual circumstances which include:

(a) Being unable to reach a decision because the applicant or recipient requests a delay or does not take a required action; or

(b) An administrative or other emergency beyond OAH's or the agency's control.

## WSR 17-08-088

### EMERGENCY RULES

### HEALTH CARE AUTHORITY

(Washington Apple Health)

[Filed April 4, 2017, 3:22 p.m., effective April 4, 2017, 3:22 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: The agency recently filed the permanent rules for chapter 182-526 WAC under WSR 17-05-066, filed February 13, 2017. This emergency rule corrects an error in subsections (4) and (6) of WAC 182-526-0290. In subsection (4), if an appellant fails to appear at the scheduled prehearing conference to address the petition to vacate, the order becomes a final order. The administrative law judge (ALJ) or review judge does not dismiss the matter with prejudice. In subsection (6), if the petition to vacate is not filed timely or the appellant fails to establish good cause to excuse any default or to reinstate the matter for hearing, the ALJ must issue an initial order, not a final order, dismissing the appeal.

Citation of Existing Rules Affected by this Order: Amending WAC 182-526-0290.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160.

Other Authority: 42 C.F.R. 431.10.

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 is necessary to accurately reflect the agency's process for reinstating a hearing after an order of default or an order of dismissal and to comply with the federal single state agency regulation in 42 C.F.R. 431.10.

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

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

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

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

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

Date Adopted: April 4, 2017.

Wendy Barcus  
Rules Coordinator

**AMENDATORY SECTION** (Amending WSR 17-05-066, filed 2/13/17, effective 3/16/17)

**WAC 182-526-0290 Reinstating a hearing after an order of default or an order of dismissal.** (1) If an order of default was entered under WAC 182-526-0284, or an order of dismissal was entered under WAC 182-526-0285, the appellant may file a petition (request) to vacate (set aside) the order.

(a) The petition to vacate must be filed with the office of administrative hearings (OAH) or the board of appeals (BOA) for nursing home rates cases.

(b) BOA forwards any petition to vacate to OAH except for nursing home rates cases.

(c) The appellant must specify in the petition to vacate the reason why the order should be vacated.

(2) The petition to vacate must be filed within twenty-one calendar days of service (mailing) of the order to the parties. If the petition to vacate is not filed by the deadline, the order of default or order of dismissal becomes a final order.

(3) If OAH receives a petition to vacate, OAH schedules a prehearing conference and serves all parties with a notice of a prehearing conference under WAC 182-526-0250.

(4) If the appellant fails to appear at the scheduled prehearing conference to address the petition to vacate(~~(=~~ ~~(a))~~) the order becomes ~~((the))~~ a final order(~~(= and~~ ~~(b) The ALJ or review judge must dismiss the matter with prejudice)).~~

(5)(a) If the appellant appears for the scheduled prehearing conference:

(b) The ALJ or review judge will receive evidence and argument from the parties regarding whether:

(i) The petition to vacate was timely filed; and

(ii) The appellant has established good cause to excuse any default and to reinstate the matter for hearing.

(6) The ALJ (~~(or review judge)~~) must issue ~~((a final))~~ an initial order or the review judge must issue a final order dismissing the appeal (~~(and terminating the hearing process)~~) if:

(a) The petition to vacate was not filed timely; or

(b) The appellant fails to establish good cause to excuse any default or to reinstate the matter for hearing.

(7) If the ALJ or review judge rules that the order of default or order of dismissal is vacated, the matter may proceed to hearing and the parties may present argument and evidence about the issues identified in the original request for hearing. The hearing may occur:

(a) Immediately following the prehearing conference if agreed to by the parties and the ALJ; or

(b) At a hearing date scheduled by OAH under WAC 182-526-0250.