

**WSR 17-18-066**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**SOCIAL AND HEALTH SERVICES**  
(Developmental Disabilities Administration)

[Filed September 1, 2017, 2:16 p.m., effective September 1, 2017, 2:16 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: The department is amending and repealing existing sections and creating new sections [in] chapter 388-845 WAC as part of the developmental disabilities administration's (DDA) waiver renewal process. These emergency rules reflect the changes approved by the Centers for Medicare and Medicaid Services (CMS) in August 2017.

Citation of Rules Affected by this Order: New WAC 388-845-0515, 388-845-0520 and 388-845-0525; repealing WAC 388-845-1200, 388-845-1205, 388-845-1210, 388-845-1840, 388-845-1845 and 388-845-1850; and amending WAC 388-845-0110, 388-845-0210, 388-845-0215, 388-845-0220, 388-845-0225, 388-845-0230, 388-845-0425, 388-845-0500, 388-845-0501, 388-845-0505, 388-845-0506, 388-845-0510, 388-845-0700, 388-845-0820, 388-845-0910, 388-845-1000, 388-845-1015, 388-845-1150, 388-845-1650, 388-845-1655, 388-845-1660, 388-845-1700, 388-845-1710, 388-845-1865, 388-845-1900, 388-845-2010, and 388-845-2170.

Statutory Authority for Adoption: RCW 71A.12.030, 71A.12.120.

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

Reasons for this Finding: DDA must not authorize waiver services unless they are part of a waiver application approved by CMS. CMS has approved DDA's waiver applications. These emergency rules are necessary for DDA to provide the services approved by CMS, and for DDA to receive federal funding.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 3, Amended 27, Repealed 6.

Number of Sections Adopted at the Request of a Non-governmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 3, Amended 27, Repealed 6.

Date Adopted: September 1, 2017.

Katherine I. Vasquez  
Rules Coordinator

AMENDATORY SECTION (Amending WSR 16-17-009, filed 8/4/16, effective 9/4/16)

**WAC 388-845-0110** ~~What are ((there limitations)) the limits to the waiver services you ((can)) may receive?~~ ~~((There are limitations))~~ The following limits apply to the waiver services((-Those are)) you may receive:

(1) A service must be available in your waiver and address an unmet need identified in your person-centered service plan.

(2) ~~((The need for a service must be identified and authorized in your person-centered service plan/individual support plan.~~

~~((3))~~ Behavioral health stabilization services may be added to your person-centered service ~~((plan/individual support))~~ plan after the services ~~((are))~~ have been provided.

~~((4))~~ (3) Waiver services are limited to services required to prevent ICF/IID placement.

~~((5))~~ (4) The daily cost of your waiver services ~~((cannot))~~ must not exceed the average daily cost of care in an ICF/IID.

~~((6))~~ (5) Waiver services ~~((cannot))~~ must not replace or duplicate other available paid or unpaid supports or services. You must first pursue benefits available to you through private insurance, the medicaid state plan~~((;))~~ -including early and periodic screening, diagnosis, and treatment- or other resources.

~~((7))~~ (6) Waiver funding ~~((cannot))~~ must not be authorized for treatments determined by DSHS to be experimental or investigational under WAC 182-531-0550.

(7) DDA does not authorize the use of waiver funding for:

(a) Restrictive technology;

(b) Location tracking services; or

(c) Audio or video technology to survey the client.

(8) For IFS and basic plus waivers, services must not exceed the yearly limits specified in these programs for specific services or combinations of services.

(9) Your choice of qualified providers and services is limited to the most cost-effective option that meets your health and welfare needs.

(10) Services provided out-of-state, other than in recognized bordering cities, are limited to respite care and personal care during vacations of not more than thirty consecutive days.

(a) You may receive services in a recognized out-of-state bordering city on the same basis as in-state services.

(b) The only recognized bordering cities ~~((per))~~ under WAC 182-501-0175 are:

(i) Coeur d'Alene, Moscow, Sandpoint, Priest River, and Lewiston, Idaho; and

(ii) Portland, The Dalles, Hermiston, Hood River, Rainier, Milton-Freewater, and Astoria, Oregon.

(11) Other out-of-state waiver services require an approved exception to rule before DDA ~~((can))~~ will authorize payment.

(12) Waiver services ~~((do))~~ does not cover copays, deductibles, dues, membership fees, or subscriptions.

AMENDATORY SECTION (Amending WSR 16-17-009, filed 8/4/16, effective 9/4/16)

**WAC 388-845-0210** What ~~((is the scope of))~~ services ~~((for))~~ are available under the basic plus waiver? The following services are available under the basic plus waiver:

| <del>((BASIC-PLUS-WAIVER))</del> | SERVICES   | YEARLY LIMIT  |
|----------------------------------|--|---|
|                                  | AGGREGATE SERVICES:<br><u>Positive</u> behavior support and consultation<br>Community guide<br>Environmental adaptations<br><br>Occupational therapy<br><u>Chemical extermination of bedbugs (cimex lectularius)</u><br>Physical therapy<br>Skilled nursing<br>Specialized medical equipment/supplies<br>Specialized psychiatric services<br>Speech, hearing and language services<br>Staff/family consultation and training<br>Transportation | May not exceed <del>((6192))</del> <u>six thousand one hundred ninety-two dollars</u> per year on any combination of these services   |
|                                  | Wellness education<br>EMPLOYMENT SERVICES:<br>Prevocational services<br>Supported employment<br>Individual technical assistance<br><br>Community <del>((access))</del> <u>inclusion</u>  | Limits are determined by DDA assessment and employment status; no new enrollment in prevocational services after September 1, 2015<br><br>Limits are determined by DDA assessment |

| <del>((BASIC-PLUS-WAIVER))</del> | SERVICES  | YEARLY LIMIT  |
|----------------------------------|---|---|
|                                  | BEHAVIORAL HEALTH STABILIZATION SERVICES:<br><u>Positive</u> behavior support and consultation<br>Behavioral health crisis diversion bed services<br>Specialized psychiatric services | Limits determined by a behavioral health professional or DDA                        |
|                                  | Personal care   | Limits determined by the CARE tool used as part of the DDA assessment               |
|                                  | Respite care  | Limits are determined by the DDA assessment   |
|                                  | <del>((Sexual deviancy evaluation))</del> <u>Risk assessment</u>  | Limits are determined by DDA  |
|                                  | Emergency assistance is only for basic plus waiver aggregate services   | <del>((6000))</del> <u>Six thousand dollars</u> per year; preauthorization required |

AMENDATORY SECTION (Amending WSR 16-17-009, filed 8/4/16, effective 9/4/16)

**WAC 388-845-0215** What ~~((is the scope of))~~ services ~~((for))~~ are available under the core waiver? The following services are available under the core waiver:

| <del>((CORE-WAIVER))</del> | SERVICES   | YEARLY LIMIT  |
|----------------------------|--|---|
|                            | <u>Positive</u> behavior support and consultation<br>Community guide<br>Community transition<br>Environmental adaptations<br>Occupational therapy<br><u>Chemical extermination of bedbugs (cimex lectularius)</u><br>Physical therapy<br><del>((Sexual deviancy evaluation))</del> <u>Risk assessment</u><br><br>Skilled nursing<br>Specialized medical equipment/supplies | Determined by the person-centered service <del>((plan/individual support))</del> plan, not to exceed the average cost of an ICF/IID for any combination of services |

| ((CORE-WAIVER)) | SERVICES  | YEARLY LIMIT  |
|-----------------|---|---|
|                 | Specialized psychiatric services<br>Speech, hearing and language services<br>Staff/family consultation and training<br>Transportation<br>Wellness education                           |   |
|                 | Residential habilitation  |   |
|                 | Community <del>((access))</del> <u>inclusion</u><br><br>Employment services<br><br>Prevocational services<br>Supported employment<br>Individualized technical assistance              | Limits are determined by DDA assessment<br><br>Limits are determined by DDA assessment and employment status; no new enrollment in prevocational services after September 1, 2015 |
|                 | BEHAVIORAL HEALTH STABILIZATION SERVICES:<br><u>Positive behavior support and consultation</u><br>Behavioral health crisis diversion bed services<br>Specialized psychiatric services | Limits determined by a behavioral health professional or DDA  |
|                 | Respite care  | Limits are determined by the DDA assessment   |

| ((COMMUNITY-PROTECTION-WAIVER)) | SERVICES   | YEARLY LIMIT  |
|---------------------------------|--|---|
|                                 | <u>Positive behavior support and consultation</u><br>Community transition<br>Environmental adaptations<br>Occupational therapy<br><u>Chemical extermination of bedbugs (cimex lectularius)</u><br>Physical therapy<br><del>((Sexual deviancy evaluation))</del> <u>Risk assessment</u><br>Skilled nursing<br>Specialized medical equipment and supplies<br>Specialized psychiatric services<br>Speech, hearing and language services<br>Staff/family consultation and training<br>Transportation | Determined by the person-centered service <del>((plan/individual support))</del> plan, not to exceed the average cost of an ICF/IID for any combination of services |
|                                 | Residential habilitation   |   |
|                                 | Employment Services:<br><br>Prevocational services<br>Supported employment<br>Individual technical assistance  | Limits determined by DDA assessment and employment status; no new enrollment in prevocational services after September 1, 2015                                      |
|                                 | BEHAVIORAL HEALTH STABILIZATION SERVICES:<br>Behavioral support and consultation<br>Behavioral health crisis diversion bed services  | Limits determined by a behavioral health professional or DDA  |

AMENDATORY SECTION (Amending WSR 16-17-009, filed 8/4/16, effective 9/4/16)

**WAC 388-845-0220** What is the scope of services for the community protection waiver? The following services are available under the community protection waiver:

| <del>((COMMUNITY-PROTECTION-WAIVER))</del> | SERVICES                         | YEARLY LIMIT |
|--|----------------------------------|--------------|
|  | Specialized psychiatric services |              |

**Reviser's note:** The spelling 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.

**AMENDATORY SECTION** (Amending WSR 16-17-009, filed 8/4/16, effective 9/4/16)

**WAC 388-845-0225** What is the scope of services for the children's intensive in-home behavioral support (CIIBS) waiver? The following services are available under the children's intensive in-home behavioral support (CIIBS) waiver:

| <del>((CIIBS-Waiver))</del> | Services  | Yearly Limit  |
|-----------------------------|---|---|
|                             | <ul style="list-style-type: none"> <li><del>((•))</del> Positive behavior support and consultation</li> <li><del>((•))</del> Staff/family consultation and training</li> <li><del>((•))</del> Environmental adaptations</li> <li><del>((• Occupational therapy</del></li> <li><del>• Physical therapy</del></li> <li><del>• Sexual deviancy evaluation))</del> Risk assessment</li> <li><del>((•))</del> Nurse delegation</li> <li><del>((•))</del> Specialized medical equipment/supplies</li> <li><del>((• Specialized psychiatric services</del></li> <li><del>• Speech, hearing and language services</del></li> <li><del>•))</del> Transportation</li> <li><del>((•))</del> Assistive technology</li> <li><del>((•))</del> Therapeutic equipment and supplies</li> <li><del>((•))</del> Specialized <del>((nutrition and))</del> clothing</li> <li><del>((•))</del> Vehicle modifications</li> </ul> | Determined by the person-centered service <del>((plan/individual support))</del> plan. Total cost of waiver services <del>((cannot))</del> <u>must not</u> exceed the average cost of <del>(((\$4,000))</del> <u>four thousand dollars</u> per month per participant. |
|                             | Respite care  | Limits determined by the DDA assessment. Costs are included in the total average cost of <del>(((\$4000))</del> <u>four thousand dollars</u> per month per participant for all waiver services.   |

| <del>((CIIBS-Waiver))</del> | Services   | Yearly Limit                                      |
|-----------------------------|--|---|
|                             | Behavioral health stabilization services:<br><del>((Behavioral))</del> <u>Positive behavior</u> support and consultation<br>Crisis diversion bed services<br><del>((Specialized psychiatric services))</del> | Limits determined by behavioral health specialist |

**AMENDATORY SECTION** (Amending WSR 16-17-009, filed 8/4/16, effective 9/4/16)

**WAC 388-845-0230** What ~~((is the scope of))~~ ~~((for))~~ are available under the individual and family services (IFS) waiver? (1) IFS waiver services include:

| <del>((IFS-Waiver))</del> | Services  | Yearly Limit  |
|---------------------------|---|---|
|                           | <ul style="list-style-type: none"> <li><del>((•))</del> Assistive technology</li> <li><del>((•))</del> <u>Positive behavior</u> support and consultation</li> <li><del>((•))</del> Community engagement</li> <li><del>((•))</del> Staff/family consultation and training</li> <li><del>((•))</del> Environmental adaptations</li> <li><del>((•))</del> Occupational therapy</li> <li><del>((•))</del> Physical therapy</li> <li><del>((• Sexual deviancy evaluation (paid for outside of annual allocation)</del></li> <li><del>•))</del> Nurse delegation</li> <li><del>((•))</del> Peer mentoring</li> <li><del>((•))</del> Person-centered plan facilitation</li> <li><del>((•))</del> Respite care</li> <li><del>((•))</del> Specialized clothing</li> <li><del>((•))</del> Specialized medical equipment/supplies</li> <li><del>((• Specialized nutrition))</del></li> <li><del>((•))</del> Specialized psychiatric services</li> <li><del>((•))</del> Speech, hearing and language services</li> <li><del>((•))</del> Supported parenting services</li> <li><del>((•))</del> Transportation</li> <li><del>((•))</del> Therapeutic equipment and supplies</li> </ul> | Total cost of waiver services <del>((cannot))</del> <u>must not</u> exceed annual allocation determined by the person-centered service <del>((plan/ISP))</del> <u>plan.</u> |

| ((IFS-Waiver)) | Services  | Yearly Limit                                       |
|----------------|---|--|
|                | ((*) Vehicle modifications<br>((*) Wellness education   |  |
|                | <u>Risk assessment</u>  | <u>Limits determined by DDA</u>                    |
|                | ((*) Behavioral health stabilization services:<br>((*) Behavioral support and consultation<br>((*) Specialized psychiatric services | Limits determined by behavioral health specialist. |

(2) Your IFS waiver services annual allocation is based upon the DDA assessment described in chapter 388-828 WAC. The DDA assessment determines your service level and annual allocation based on your assessed need. Annual allocations are as follows:

- (a) Level 1 = one thousand two hundred dollars;
- (b) Level 2 = one thousand eight hundred dollars;
- (c) Level 3 = two thousand four hundred dollars; or
- (d) Level 4 = three thousand six hundred dollars.

AMENDATORY SECTION (Amending WSR 16-17-009, filed 8/4/16, effective 9/4/16)

**WAC 388-845-0425 Are there limits to the assistive technology you ~~(can)~~ may receive?** The assistive technology you may receive has the following limits:

- (1) Clinical and support needs for assistive technology are identified in your DDA assessment and documented in the person-centered service ~~((plan/individual support))~~ plan.
- (2) Assistive technology may be authorized as a waiver service by obtaining an initial denial of funding or information showing that the technology is not covered by medicaid or private insurance.
- (3) The department does not pay for experimental technology as defined in WAC 182-531-0550.
- (4) The department requires your treating professional's written recommendation regarding your need for the technology. This recommendation must take into account that:
  - (a) The treating professional has personal knowledge of and experience with the requested assistive technology; and
  - (b) The treating professional has recently examined you, reviewed your medical records, and conducted a functional evaluation of your use of the equipment and determined its effectiveness in meeting your identified need.
- (5) Assistive technology requires prior approval by the DDA regional administrator or designee.
- (6) The department may require a written second opinion from a department selected professional that meets the same criteria in subsection (4) of this section.
- (7) The dollar amounts for your IFS waiver annual allocation limit the amount of assistive technology you are authorized to receive.
- (8) Assistive technology excludes any item that is for recreational or diversion purposes such as a television, cable, or DVD player.

AMENDATORY SECTION (Amending WSR 13-24-045, filed 11/26/13, effective 1/1/14)

**WAC 388-845-0500 What is positive behavior support and consultation?** (1) Positive behavior support and consultation may be provided to persons on any of the DDA HCBS waivers and includes the development and implementation of programs designed to support waiver participants using:

- (a) Individualized strategies for effectively relating to caregivers and other people in the waiver participant's life; and
- (b) Direct interventions with the person to decrease aggressive, destructive, and sexually inappropriate or other behaviors that compromise their ability to remain in the community (i.e., training, specialized cognitive counseling, conducting a functional assessment, and development and implementation of a positive behavior support plan).

(2) Positive behavior support and consultation may also be provided as a behavioral health stabilization service in accordance with WAC 388-845-1150 through 388-845-1160.

AMENDATORY SECTION (Amending WSR 13-24-045, filed 11/26/13, effective 1/1/14)

**WAC 388-845-0501 What is included in positive behavior support and consultation for the children's intensive in-home behavioral support (CIIBS) waiver?** (1) In addition to the definition in WAC 388-845-0500, positive behavior support and consultation in the CIIBS waiver must include the following characteristics:

- (a) Treatment must be evidence based, driven by individual outcome data, and consistent with DDA's positive behavior support guidelines as outlined in contract;
- (b) The following written components will be developed in partnership with the child and family by a behavior specialist as defined in WAC 388-845-0506:
  - (i) Functional behavioral assessment; and
  - (ii) Positive behavior support plan based on functional behavioral assessment(-);
- (c) Treatment goals must be objective and measurable. The goals must relate to an increase in skill development and a resulting decrease in challenging behaviors that impede quality of life for the child and family; and
- (d) Behavioral support strategies will be individualized and coordinated across all environments, such as home, school, and community, in order to promote a consistent approach among all involved persons.

(2) Positive behavior support and consultation in the CIIBS waiver may also include the following components:

- (a) Behavioral technicians (as defined in WAC 388-845-0506) may implement positive behavior support plans which may include 1:1 behavior interventions and skill development activity.
- (b) Positive behavior support plans may include recommendations by either a music ~~((and/or))~~ or recreation therapist, or both, as defined in WAC 388-845-2005.

AMENDATORY SECTION (Amending WSR 16-17-009, filed 8/4/16, effective 9/4/16)

**WAC 388-845-0505 Who is a qualified provider of positive behavior support and consultation?** Under the basic plus, core, ~~((CP))~~ community protection (CP), and IFS waivers, the provider of positive behavior support and consultation must be one of the following professionals contracted with DDA and duly licensed, registered, or certified to provide this service:

- (1) Marriage and family therapist;
- (2) Mental health counselor;
- (3) Psychologist;
- (4) Sex offender treatment provider;
- (5) Social worker;
- (6) Registered nurse (RN) or licensed practical nurse (LPN);
- (7) Psychiatrist;
- (8) Psychiatric advanced registered nurse practitioner (ARNP);
- (9) Physician assistant working under the supervision of a psychiatrist;
- (10) Counselor~~((s))~~ registered or certified ~~((in accordance with the requirements of))~~ under chapter 18.19 RCW;
- (11) Polygrapher; or
- (12) State-operated positive behavior support agency limited to behavioral health stabilization services.

AMENDATORY SECTION (Amending WSR 13-24-045, filed 11/26/13, effective 1/1/14)

**WAC 388-845-0506 Who is a qualified provider of positive behavior support and consultation for the children's intensive in-home behavioral supports (CIIBS) waiver?** ~~((+))~~ Under the CIIBS waiver, providers of positive behavior support and consultation must be contracted with DDA to provide CIIBS intensive services as one of the following ~~((two provider types))~~:

~~((a))~~ (1) Master's or PhD-level behavior specialist, licensed, certified, or ~~((certified))~~ registered to provide behavioral assessment, intervention, and training; or

~~((b))~~ (2) Behavior technician, licensed, certified, or ~~((certified))~~ registered to provide behavioral intervention and training, following the lead of the behavior specialist.

~~((2))~~ Providers of behavior support and consultation per WAC 388-845-0505 may be utilized to provide counseling and/or therapy services to augment the work of the CIIBS intensive service provider types.

AMENDATORY SECTION (Amending WSR 16-17-009, filed 8/4/16, effective 9/4/16)

**WAC 388-845-0510 Are there limits to the positive behavior support and consultation you ~~((can))~~ may receive?** (1) Clinical and support needs for positive behavior support and consultation are identified in your DDA assessment and documented in the person-centered service ~~((plan/individual support))~~ plan.

(2) DDA and the treating professional will determine the need and amount of service you will receive, subject to the ~~((limitations))~~ limits in subsection (3) of this section.

(3) The dollar amounts for aggregate services in your basic plus waiver or the dollar amounts in the annual allocation for the ~~((IFS))~~ individual and family services (IFS) waiver limit the amount of service unless provided as a behavioral health stabilization service.

(4) DDA ~~((reserves the right to))~~ may require a second opinion from a department-selected provider.

(5) Positive behavior support and consultation not provided as a behavioral health stabilization service requires prior approval by the DDA regional administrator or designee for the following waivers:

(a) Basic plus;

(b) Core;

(c) Children's intensive in-home behavior support (CIIBS); and

(d) IFS.

(6) Positive behavior support and consultation services are limited to services:

(a) Consistent with waiver objectives of avoiding institutionalization; and

(b) Not otherwise covered under the medicaid state plan, including early and periodic screening, diagnosis, and treatment.

#### NEW SECTION

**WAC 388-845-0515 What is chemical extermination of bedbugs?** (1) Chemical extermination of cimex lectularius (bedbugs) is professional chemical extermination of bedbugs.

(2) DDA covers professional chemical extermination of bedbugs in your primary residence if you:

(a) Receive residential habilitation services; or

(b) Live in a private house or apartment for which you are financially responsible.

#### NEW SECTION

**WAC 388-845-0520 Who are qualified providers of chemical extermination of bedbugs?** A qualified chemical extermination provider must be:

(1) Licensed as a chemical pesticide applicator by the Washington state department of agriculture; and

(2) Contracted with DDA to provide chemical extermination of bedbugs.

#### NEW SECTION

**WAC 388-845-0525 Are there limits to the chemical extermination of bedbugs services I may receive?** (1) Chemical extermination services covers only:

(a) The assessment or inspection by the qualified provider;

(b) Application of chemical-based pesticide; and

(c) One follow-up visit.

(2) Chemical extermination of bedbugs is limited to two treatments per plan year.

(3) Chemical extermination of bedbugs excludes:

(a) Lodging during the chemical extermination process; and

(b) Preparatory housework associated with the extermination process.

(4) DDA does not cover chemical extermination of bedbugs for a client who lives with their family.

(5) DDA requires prior approval by the regional administrator or designee for chemical extermination of bedbugs.

**AMENDATORY SECTION** (Amending WSR 13-24-045, filed 11/26/13, effective 1/1/14)

**WAC 388-845-0700 What ~~((is a))~~ are community guide services?** Community guide services ~~((increases))~~ increase access to informal community supports. Community guide services are short-term ~~((and))~~ services designed to develop creative, flexible, and supportive community resources for individuals with developmental disabilities to meet an identified goal indicated in the waiver participant's person-centered service plan. ~~((This service is))~~ These services are available in basic plus and core waivers.

**AMENDATORY SECTION** (Amending WSR 16-17-009, filed 8/4/16, effective 9/4/16)

**WAC 388-845-0820 Are there limits to your use of emergency assistance?** All of the following ~~((limitations))~~ limits apply to your use of emergency assistance:

(1) Prior approval by the DDA regional administrator or designee is required based on a reassessment of your person-centered service ~~((plan/individual support))~~ plan to determine the need for emergency services;

(2) Payment authorizations are reviewed every thirty days and ~~((cannot))~~ must not exceed six thousand dollars per twelve months based on the effective date of your current person-centered service ~~((plan/individual support))~~ plan;

(3) Emergency assistance services are limited to the following basic plus waiver aggregate services ~~((and))~~ :

(a) Positive behavior support and consultation;

(b) Community guide;

(c) Environmental adaptations;

(d) Occupational therapy;

(e) Physical therapy;

(f) Specialized medical equipment and supplies;

(g) Specialized psychiatric services;

(h) Speech hearing and language services;

(i) Skilled nursing;

(j) Staff and family consultation and training, which excludes individual and family counseling; and

(k) Transportation;

(4) Emergency assistance may be used for interim services until:

(a) The emergency situation has been resolved; ~~((or))~~

(b) You are transferred to alternative supports that meet your assessed needs; or

(c) You are transferred to an alternate waiver that provides the service you need.

**AMENDATORY SECTION** (Amending WSR 16-17-009, filed 8/4/16, effective 9/4/16)

**WAC 388-845-0910 What ~~((limitations))~~ limits apply to environmental adaptations?** The following service ~~((limitations))~~ limits apply to environmental adaptations:

(1) Clinical and support needs for environmental adaptations are identified in the waiver participant's DDA assessment and documented in the person-centered service ~~((plan/individual support))~~ plan.

(2) Environmental adaptations require prior approval by the DDA regional administrator or designee and must be supported by itemized and written bids from licensed contractors. For an adaption that costs:

(a) One ~~((bid is required for adaptations costing one))~~ thousand five hundred dollars or less ~~((Two bids are required for adaptations costing))~~, one bid is required;

(b) More than one thousand five hundred dollars and equal to or less than five thousand dollars ~~((Three bids are required for adaptations costing))~~, two bids are required; or

(c) More than five thousand dollars, three bids are required.

(3) All bids must include:

(a) The cost of all required permits and sales tax; and

(b) An itemized and clearly outlined scope of work.

(3) DDA may require an occupational therapist, physical therapist, or construction consultant to review and recommend an appropriate environmental adaptation statement of work prior to the waiver participant soliciting bids or purchasing adaptive equipment.

(4) Environmental adaptations ~~((or improvements))~~ to the home are excluded if they are of general utility without direct medical or remedial benefit to the individual, such as carpeting, roof repair, or central air conditioning.

(5) Environmental adaptations must meet all local and state building codes. Evidence of any required completed inspections must be submitted to DDA prior to authorizing payment for work.

(6) ~~((Deteriorated))~~ The condition of the dwelling or other ~~((remodeling))~~ projects in progress in the dwelling may prevent or limit some or all environmental adaptations at the discretion of DDA.

(7) Location of the dwelling in a flood plain, landslide zone, or other hazardous area may limit or prevent any environmental adaptations at the discretion of DDA.

(8) Written consent from the dwelling landlord is required prior to starting any environmental adaptations for a rental property. The landlord must not require removal of the environmental adaptations at the end of the waiver participant's tenancy as a condition of the landlord approving the environmental adaptation to the waiver participant's dwelling.

(9) Environmental adaptations ~~((cannot))~~ must not add to the total square footage of the home.

(10) The dollar amounts for aggregate services in your basic plus waiver or the dollar amount of your annual IFS allocation limit the amount of service you may receive.

(11) For core, community protection, and CIIBS waivers, annual environmental adaptation costs must not exceed twelve thousand one hundred ninety-two dollars.

(12) Damage repairs under the CIIBS and IFS waivers are subject to the following restrictions:

(a) Limited to the cost of restoration to the original ~~((condition))~~ function;

(b) Limited to the dollar amounts of the IFS waiver participant's annual allocation;

(c) Behaviors of waiver participants that resulted in damage to the dwelling must be addressed in a positive behavior support plan prior to the repair of damages; ~~((and))~~

(d) Repairs to personal property such as furniture ~~(;)~~ and appliances ~~((and normal wear and tear))~~ are excluded; ~~and~~

(e) Repairs due to normal wear and tear are excluded.

~~((12))~~ (13) The following adaptations are not ((included in this service)) covered as an environmental adaption:

(a) Building fences and fence repairs; ~~((and))~~

(b) Carpet or carpet replacement;

(c) Air conditioning, heat pumps, or ceiling fans; and

(d) Roof repair or siding.

**Reviser's note:** The spelling 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.

AMENDATORY SECTION (Amending WSR 13-24-045, filed 11/26/13, effective 1/1/14)

**WAC 388-845-1000 What are extended state plan services?** (1) Extended state plan services ((refer to)) means physical therapy(;) occupational therapy(;) and speech, hearing, and language services not available to you under the medicaid ((without regard to your waiver status. They are "extended" services when the waiver pays for more services than is provided under the)) state ((medicaid)) plan. ((These services are available under all DDA HCBS waivers))

(2) Extended state plan services are available to clients age twenty-one and older under the following waiver programs:

(a) Basic plus;

(b) Core;

(c) Individual and family services; and

(d) Community protection;

(3) Extended state plan services are available to clients if the therapy:

(a) Addresses a remedial need and allows the client to remain in the home; or

(b) Is medically necessary and all state plan services have been exhausted.

AMENDATORY SECTION (Amending WSR 16-17-009, filed 8/4/16, effective 9/4/16)

**WAC 388-845-1015 Are there limits to the extended state plan services you ((can)) may receive?** (1) ((Clinical and support needs for)) Extended state plan services are limited to ((those)) therapies identified in your DDA assessment and ((documented in the)) person-centered service plan((individual support plan)).

(2) ((Additional therapy may be authorized as a waiver service only after you have accessed what is available to you under medicaid and any other private health insurance plan.

(3)) The department does not pay for treatment determined by DSHS to be experimental as described in WAC 182-531-0550.

~~((4) The department and the treating professional))~~ (3) The department determines the need for and amount of service you ((can)) may receive(;;).

(a) The department may require a second opinion from a ~~((department))~~ DDA-selected provider.

(b) The department will require evidence that you have accessed your full benefits through the medicaid state plan, your private health insurance, or other resources before authorizing this waiver service.

~~((5))~~ (4) The dollar amount for basic plus waiver aggregate services limit the amount of service you may receive.

~~((6))~~ (5) The dollar amount for your annual allocation on the IFS waiver limit the amount of service you may receive.

AMENDATORY SECTION (Amending WSR 16-17-009, filed 8/4/16, effective 9/4/16)

**WAC 388-845-1150 What are behavioral health stabilization services?** Behavioral health stabilization services assist persons who are experiencing a behavioral health crisis or meet criteria for enhanced respite or community crisis stabilization services. These services are available in the basic plus, core, CIIBS, IFS, and community protection waivers to individuals determined by behavioral health professionals or DDA to be at risk of institutionalization or hospitalization who need one or more of the following services:

(1) Positive behavior support and consultation;

(2) Specialized psychiatric services for people age twenty-one and older; or

(3) Behavioral health crisis diversion bed services not available to participants on the IFS waiver.

AMENDATORY SECTION (Amending WSR 13-24-045, filed 11/26/13, effective 1/1/14)

**WAC 388-845-1650 What are ((sexual deviancy evaluations)) is a risk assessment?** (1) ((Sexual deviancy evaluations)) A risk assessment:

(a) ~~((Are))~~ Is a professional evaluation((s)) that ((assess the)) assesses a person's needs and the person's level of risk of ((sexual offending or sexual recidivism)) sexual predatory behavior or aggression;

(b) Determines the need for psychological, medical, and therapeutic services; and

(c) Provides treatment recommendations to mitigate any assessed risk.

(2) ((Sexual deviancy evaluations are)) A risk assessment is available in all DDA HCBS waivers.

AMENDATORY SECTION (Amending WSR 13-24-045, filed 11/26/13, effective 1/1/14)

**WAC 388-845-1655 Who is a qualified provider of ((sexual deviancy evaluations)) a risk assessment?** The provider of ~~((sexual deviancy evaluations))~~ a risk assessment must:

(1) Be a ~~((certified sexual offender treatment provider (SOTP); and))~~ licensed psychologist under chapter 246-924 WAC; or



(2) ~~((Meet the standards contained in))~~ Be a certified sexual offender treatment provider (SOTP) and meet requirements under WAC 246-930-030 ~~((education required prior to certification))~~ and WAC 246-930-040 ~~((professional experience required prior to examination))~~ if the provider is performing a sexual deviancy evaluation.

AMENDATORY SECTION (Amending WSR 16-17-009, filed 8/4/16, effective 9/4/16)

**WAC 388-845-1660** ~~Are there ~~((limitations))~~ limits to the ~~((sexual deviancy evaluations))~~ risk assessment you ~~((can))~~ may receive? (1) Clinical and support needs for ~~((sexual deviancy evaluations))~~ a risk assessment are limited to those identified in your DDA assessment and documented in the person-centered service ~~((plan/individual support))~~ plan. ~~((Sexual deviancy evaluations))~~ A risk assessment must meet the standards ~~((contained))~~ in WAC 246-930-320.~~

(2) ~~((Sexual deviancy evaluations require))~~ A risk assessment requires prior approval by the DDA regional administrator or designee.

(3) The ~~((costs))~~ cost of ~~((sexual deviancy evaluations ~~de~~))~~ a risk assessment does not count toward the dollar limits for aggregate services in the basic plus waiver~~((s))~~ or the annual allocation in the IFS waiver.

AMENDATORY SECTION (Amending WSR 16-17-009, filed 8/4/16, effective 9/4/16)

**WAC 388-845-1700** What is waiver skilled nursing? (1) Waiver skilled nursing ~~((is continuous))~~ means long-term, intermittent, ~~((or part time))~~ and hourly skilled nursing services~~((These services are))~~;

(a) Available in the basic plus, core, IFS, and ~~((CP))~~ community protection (CP) waivers; and

(b) That address nursing care tasks not available to you under the medicaid state plan - including early and periodic screening, diagnosis, and treatment.

(2) Waiver skilled nursing services include nurse delegation services~~((per))~~ provided by a registered nurse under WAC 388-845-1170~~((provided by a registered nurse, including the initial visit, follow-up instruction, and supervisory visits))~~.

**Reviser's note:** The spelling 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.

AMENDATORY SECTION (Amending WSR 16-17-009, filed 8/4/16, effective 9/4/16)

**WAC 388-845-1710** ~~Are there ~~((limitations))~~ limits to the skilled nursing services you ~~((can))~~ may receive?~~ The following ~~((limitations))~~ limits apply to your receipt of skilled nursing services:

(1) Clinical and support needs for skilled nursing services are limited to those identified in your DDA assessment and documented in the person-centered service ~~((plan/individual support))~~ plan.

(2) Skilled nursing services with the exception of nurse delegation and nursing evaluations require prior approval by the DDA regional administrator or designee.

(3) ~~((DDA and the treating professional determine the need for and amount of service))~~ Skilled nursing hours must not exceed the number of hours determined by the nursing care consultant skilled nursing assessment.

(4) DDA ~~((reserves the right to))~~ may require a second opinion by a department-selected provider.

(5) The dollar amount for aggregate services in your basic plus waiver or the dollar amount of your annual allocation in your IFS waiver limits the amount of skilled nursing services you may receive.

AMENDATORY SECTION (Amending WSR 16-17-009, filed 8/4/16, effective 9/4/16)

**WAC 388-845-1865** ~~Are there ~~((limitations))~~ limits to your receipt of specialized clothing?~~ (1) The following ~~((limitations))~~ limits apply to your receipt of specialized clothing:

(a) Clinical and support needs for specialized clothing are limited to those identified in your DDA assessment and documented in the person-centered service ~~((plan/individual support))~~ plan.

(b) Specialized clothing may be authorized as a waiver service if the service is not covered by medicaid or private insurance. You must assist the department in determining whether third-party payments are available.

(c) The department requires written documentation from an appropriate health professional regarding your need for the service. This recommendation must take into account that the health professional has recently examined you, reviewed your medical records, and conducted an assessment.

(d) The department may require a second opinion from a department selected provider that meets the criteria in subsection (1)(c) of this section.

(2) For the IFS waiver, the dollar amount for your annual allocation limits the amount of service you may receive.

(3) You must receive prior approval from the DDA regional administrator or designee to receive specialized clothing.

AMENDATORY SECTION (Amending WSR 13-24-045, filed 11/26/13, effective 1/1/14)

**WAC 388-845-1900** What are specialized psychiatric services? (1) Specialized psychiatric services are specific to the individual needs of persons with developmental disabilities who are experiencing behavioral health symptoms. These services are available ~~((in all DDA HCBS waivers))~~ to people age twenty-one and older.

(2) ~~((Service))~~ Specialized psychiatric services may be any of the following:

(a) Psychiatric evaluation~~((s))~~;

(b) Medication evaluation and monitoring~~((s))~~;

(c) Psychiatric consultation.

(3) These services are also available as a behavioral health stabilization service in accordance with WAC 388-845-1150 through 388-845-1160.

AMENDATORY SECTION (Amending WSR 16-17-009, filed 8/4/16, effective 9/4/16)

**WAC 388-845-2010** Are there ~~((limitations))~~ limits to the ~~((staff/family))~~ staff and family consultation and training you ~~((can))~~ may receive? (1) Clinical and support needs for ~~((staff/family))~~ staff and family consultation and training are limited to those identified in your DDA assessment and documented in the person-centered service ~~((plan/individual support))~~ plan.

(2) Expenses to the family or provider for room and board or attendance, including registration, at conferences are excluded as a service under ~~((staff/family))~~ staff and family consultation and training.

(3) The dollar amounts for aggregate service in your basic plus waiver or the dollar amount of the annual allocation in your IFS waiver limit the amount of ~~((staff/family))~~ staff and family consultation and training you may receive.

(4) Basic plus waiver individual and family counseling is limited to family members who:

(a) Live with the waiver participant; and

(b) Have been assaulted by the waiver participant and the assaultive behavior was:

(i) Documented in a therapeutic plan; and

(ii) Addressed in the waiver participant's positive behavior support plan or other treatment plan by a mental health professional.

AMENDATORY SECTION (Amending WSR 16-17-009, filed 8/4/16, effective 9/4/16)

**WAC 388-845-2170** Are there ~~((limitations on))~~ limits to your receipt of therapeutic equipment and supplies? The following ~~((limitations))~~ limits apply to your receipt of therapeutic equipment and supplies under the CIIBS and IFS waivers:

(1) Therapeutic equipment and supplies may be authorized as a waiver service if the service is not covered by medicaid or private insurance. You must assist the department in determining whether third party payments are available.

(2) The department does not pay for experimental equipment and supplies.

(3) The department requires your treating professional's written recommendation regarding your need for the service. This recommendation must take into account that the treating professional has recently examined you, reviewed your medical records, and conducted a functional evaluation.

(4) The department may require a written second opinion from a department selected professional that meets the same criteria in subsection (3) of this section.

(5) The dollar amount of your annual allocation in your IFS waiver limits the amount of therapeutic equipment and supplies you are authorized to receive.

(6) Therapeutic equipment and supplies requires a prior approval by the DDA regional administrator or designee.

(7) Therapeutic equipment and supplies excludes non-specialized recreational items such as trampolines, swing sets, or hot tubs.

## REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 388-845-1200 What are "person-to-person" services?

WAC 388-845-1205 Who are qualified providers of person-to-person services?

WAC 388-845-1210 Are there limits to the person-to-person service I can receive?

WAC 388-845-1840 What is specialized nutrition?

WAC 388-845-1845 Who are qualified providers of specialized nutrition?

WAC 388-845-1850 Are there limitations to your receipt of specialized nutrition?

## **WSR 17-19-001**

### **EMERGENCY RULES**

### **DEPARTMENT OF**

### **FISH AND WILDLIFE**

[Order 17-239—Filed September 6, 2017, 4:40 p.m., effective September 6, 2017, 4:40 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: Amends Puget Sound commercial bottomfish drag seine fishery to allow for retention of Atlantic salmon.

Citation of Rules Affected by this Order: Amending WAC 220-355-020.

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 facilitate removal of Atlantic salmon, a nonnative species. Cooke Aquaculture Pacific, the owner of net pen facility near Cypress Island, Washington (near the San Juan Islands) has indicated that structural damage to one of their Atlantic salmon net pens resulted in the escape of Atlantic salmon adults. 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 the Request of a Non-governmental Entity: New 0, Amended 0, Repealed 0.

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

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

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

Date Adopted: September 6, 2017.

J. W. Unsworth  
Director

#### NEW SECTION

**WAC 220-355-02000A Puget Sound bottomfish—General provisions.** Notwithstanding the provisions of WAC 220-355-020, effective immediately until further notice, it is permissible to retain Atlantic salmon while fishing in the commercial Puget Sound bottomfish drag seine fishery.

**WSR 17-19-002**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**

[Order 17-238—Filed September 6, 2017, 4:43 p.m., effective September 6, 2017, 4:43 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: Amends recreational fishing rules for Hog Canyon Creek.

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

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 adds Hog Canyon Creek to the list of lakes that are scheduled for rotenone treatment as its waters will be affected as well. The rotenone treatment is designed to remove nuisance fish species as part of an effort to restore the quality of trout fishing in those waters. Rotenone is an organic substance derived from the roots of tropical plants, which has been approved for use as a fish pesticide by the United States Environmental Protection Agency. Prior to the treatment, fishery managers are allowing current license holders to harvest fish without size or daily limits and to extend the fishing season. There is insufficient time to adopt permanent rules.

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

Number of Sections Adopted at the Request of a Non-governmental Entity: New 0, Amended 0, Repealed 0.

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

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

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

Date Adopted: September 6, 2017.

J. W. Unsworth  
Director

#### NEW SECTION

**WAC 220-312-05000V Freshwater exceptions to statewide rules—Eastside.** Notwithstanding the provisions of WAC 220-312-050, it is unlawful to violate the provisions below. Unless otherwise amended all permanent rules remain in effect:

(1) Effective immediately through October 15, 2017, the following waters are open for fishing with no size or daily limits for all game fish. Selective gear rules do not apply.

(a) Rigley Lake (Stevens Co.) - Closed effective October 16, 2017 until further notice.

(b) Rocky Lake (Stevens Co.) - Closed effective October 16, 2017, until further notice.

(c) Williams Lake (Stevens Co.) - Closed effective October 16, 2017, until further notice.

(2) Effective immediately through October 22, 2017, the following waters are open for fishing with no size or daily limits for all game fish.

(a) Hog Lake (Spokane Co.) - Closed effective October 23, 2017, until further notice.

(b) Fishtrap Lake (Spokane Co.) - Closed effective October 23, 2017, until further notice.

(c) Hog Canyon Creek (Spokane Co.), from Hog Canyon Dam to Scroggie Rd. - Closed effective October 23, 2017, until further notice.

#### REPEALER

The following section of the Washington Administrative Code is repealed effective immediately:

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

**WSR 17-19-004**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**SOCIAL AND HEALTH SERVICES**

(Developmental Disabilities Administration)

[Filed September 7, 2017, 9:06 a.m., effective September 7, 2017, 9:06 a.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: The department is amending WAC 388-845-1615 and 388-845-1620 as part of the developmental disabilities administration's (DDA) waiver renewal process. These

emergency rules reflect the changes approved by the Centers for Medicare and Medicaid Services (CMS) in August 2017.

Citation of Rules Affected by this Order: Amending WAC 388-845-1615 and 388-845-1620.

Statutory Authority for Adoption: RCW 71A.12.030, 71A.12.120.

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

Reasons for this Finding: DDA must not authorize waiver services unless they are part of a waiver application approved by CMS. CMS has approved DDA's waiver applications. These emergency rules are necessary for DDA to provide the services approved by CMS, and for DDA to receive federal funding.

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 2, Repealed 0.

Number of Sections Adopted at the Request of a Non-governmental 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 2, Repealed 0.

Date Adopted: September 6, 2017.

Katherine I. Vasquez  
Rules Coordinator

**AMENDATORY SECTION** (Amending WSR 17-12-011, filed 5/26/17, effective 6/26/17)

**WAC 388-845-1615 Who may be qualified providers of respite care?** Providers of respite care may be any of the following individuals or agencies contracted with the developmental disabilities administration (DDA) for respite care:

- (1) Individuals who meet the provider qualifications under chapter 388-825 WAC;
- (2) Homecare/home health agencies licensed under chapter 246-335 WAC, Part 1;
- (3) Licensed and contracted group homes, foster homes, child placing agencies, staffed residential homes, and foster group care homes;
- (4) Licensed and contracted adult family homes;
- (5) Licensed and contracted adult residential care facilities;
- (6) Licensed and contracted adult residential treatment facilities under chapter 246-337 WAC;
- (7) Licensed child care centers under chapter 170-295 WAC;
- (8) Licensed child day care centers under chapter 170-295 WAC;

(9) Adult day care providers under chapter 388-71 WAC contracted with DDA;

(10) Certified providers under chapter 388-101 WAC when respite is provided within the DDA contract for certified residential services; or

(11) A licensed practical nurse (LPN) or registered nurse (RN) acting within the scope of the standards of nursing conduct or practice under chapter 246-700 WAC and contracted with DDA to provide this service; or

(12) Other DDA contracted providers such as a community center, senior center, parks and recreation, and summer programs.

**AMENDATORY SECTION** (Amending WSR 16-17-009, filed 8/4/16, effective 9/4/16)

**WAC 388-845-1620 Are there limits to the respite care you can receive?** The following limitations apply to the respite care you can receive:

(1) For basic plus, core, and CIIBS waivers, the DDA assessment will determine how much respite you can receive per chapter 388-828 WAC.

(2) For the IFS waiver, the dollar amount for your annual allocation in your IFS waiver limits the amount of respite care you may receive.

(3) Respite cannot replace:

- (a) Day care while your parent or guardian is at work; or
- (b) Personal care hours available to you. When determining your unmet need, DDA will first consider the personal care hours available to you.

(4) Respite providers have the following limitations and requirements:

(a) If respite is provided in a private home, the home must be licensed unless it is the client's home or the home of a relative of specified degree per WAC 388-825-345;

(b) The respite provider cannot be the spouse of the caregiver receiving respite if the spouse and the caregiver reside in the same residence; and

(c) If you receive respite from a provider who requires licensure, the respite services are limited to those age-specific services contained in the provider's license.

(5) Your individual respite provider may not provide:

- (a) Other DDA services for you during your respite care hours; or
- (b) DDA paid services to other persons during your respite care hours.

(6) Your primary caregivers may not provide other DDA services for you during your respite care hours.

(7) If your personal care provider is your parent and you live in your parent's adult family home you may not receive respite.

(8) DDA may not pay for any fees associated with the respite care; for example, membership fees at a recreational facility, or insurance fees.

(9) If you require respite care from a licensed practical nurse (LPN) or a registered nurse (RN), respite services may be authorized (~~as skilled nursing services per WAC 388-845-1700~~) using an LPN or RN. Respite services are limited to the assessed respite care (from a) hours identified in your person-centered service plan. Respite provided by an LPN or

RN requires a prior approval (~~(per WAC 388-845-1700(2). If you are on the IFS or basic plus waiver, skilled nursing services are limited to the dollar amounts of your basic plus aggregate services or IFS annual allocation per WAC 388-845-0210 and 388-845-0230))~~ by the regional administrator or designee.

John Carmichael  
Rules Coordinator

**WSR 17-19-010**  
**EMERGENCY RULES**

**THE EVERGREEN STATE COLLEGE**

[Filed September 7, 2017, 11:28 a.m., effective September 7, 2017, 11:28 a.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: This filing replaces an emergency rule filed on June 12, 2017 (WSR 17-13-021), with a more narrowly constructed emergency rule regulating certain weapons on campus, on college-owned property, and at college-sponsored events.

Citation of Rules Affected by this Order: New WAC 174-136-043.

Statutory Authority for Adoption: RCW 28B.40.120.

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 Evergreen State College has experienced disruption including harassing, intimidating and threatening behavior directed at members of the campus community. Some individuals have obstructed law enforcement representatives who had responded and were attempting to verify individuals' safety. College operations were suspended for two and a half days based on threats that included a threat to shoot people on campus. Recent violence at the University of Virginia and the University of California Berkeley, along with a recent threat received by the college, further demonstrate that immediate prohibition of weapons is a necessary step to providing for safety on campus and at college-sponsored events.

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 the Request of a Non-governmental 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 0, Repealed 0.

Date Adopted: September 7, 2017.

NEW SECTION

**WAC 174-136-043 Weapons prohibited.** (1) Possession, display, storage, wearing, or use of firearms, explosives (including fireworks), dangerous chemicals or other weapons are prohibited on the college campus, college-owned property, college-approved housing, and at college-sponsored events, unless prior written approval has been obtained consistent with subsection (6) of this section.

(2) Firearm means a weapon or device from which a projectile or projectiles may be fired by an explosive such as gunpowder, whether loaded or unloaded.

(3) Weapon includes, but is not limited to:

(a) Any weapon that it is unlawful to possess under Washington law including, but not limited to, slungshot, sand club, metal knuckles, or spring blade knife;

(b) Stun guns, electroshock weapons, longbows, hunting bows, throwing weapons, air guns, pellet guns, paint ball guns, or other pneumatic propellant;

(c) Dagger, sword, weapon replica, knife or other cutting or stabbing instrument with a blade longer than three inches, club, bat, or any other object or instrument apparently capable of producing bodily harm, that is carried, exhibited, displayed or drawn in a manner, under circumstances, and at a time and place that either manifests an intent to intimidate another or that warrants alarm for the safety of other persons.

(4) Possession of a valid concealed pistol license authorized by the state of Washington is not an exemption under this section. However, nothing in this section shall prevent an individual holding a valid concealed pistol license from securing their pistol in a vehicle as authorized under RCW 9.41.050, provided the vehicle is locked and the weapon is concealed from view; or securing their pistol with Evergreen police services under subsection (6) of this section.

(5) Individuals authorized to carry firearms or other weapons on the college campus, college-owned property, college-approved housing, and at college-sponsored events include, but are not limited to:

(a) Bank-related security personnel required by their office to carry such firearms or weapons;

(b) Duly appointed and commissioned law enforcement officers in the state of Washington, or commissioned by agencies of the United States government while on duty and engaged in their regular duties. A law enforcement agent must notify Evergreen police services of their presence on campus on arrival.

(6) Individuals seeking to bring a firearm or other weapon onto campus, college-owned property, or a college-sponsored event for display or demonstration purposes directly related to a legitimate pedagogical and/or other authorized or educational activity, must obtain prior written authorization from Evergreen police services, or any other person designated by the president of the college. Evergreen police services, or authorized designees, will review any such request and, if it is granted, may establish conditions to the authorization. If the request is denied, the requestor will be informed of the available appeal process, if any.

Other than individuals referenced in subsection (5) of this section, individuals who bring firearms or other weapons to campus must immediately place the firearms or weapons in the college provided storage facility. The storage facility is located at Evergreen police services.

Weapons that are owned by the college for use in organized recreational activities or by special groups, such as college-sponsored clubs or teams, must be stored in a location approved by the Evergreen police services. These weapons must be checked out by the advisor or coach and are to be used only in organized recreational activities or by legitimate members of the club or team in the normal course of the club or team's related activity.

Individuals may possess a personal protection spray device, as authorized by RCW 9.91.160, when possessed and/or used for self-defense while on college-owned property.

(7) Violations of the subsections of this section are subject to appropriate disciplinary or legal action including, but not limited to, exclusion from campus or expulsion.

**WSR 17-19-012**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**

[Order 17-237—Filed September 7, 2017, 2:13 p.m., effective September 7, 2017, 2:13 p.m.]

Effective Date of Rule: Immediately upon filing.

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

Citation of Rules Affected by this Order: Repealing WAC 220-359-02000F; and amending WAC 220-359-020.

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 order continues the fall treaty commercial gillnet fishery and allows the sale of fish caught in Zone 6. The treaty fishery is expected to be within the preseason ESA guidelines. The platform and hook and line fisheries were set at a previous compact hearing. The sale of fish caught in Yakama Nation tributary fisheries is also

allowed when open under Yakama Nation regulations. The area downstream of Bonneville Dam (SMCRA 1E1) is open to sales of fish when open under tribal regulations. The forecast for upriver fall Chinook is four hundred eighty-four thousand one hundred fish. Fisheries are consistent with the 2008-2017 Management Agreement and the associated biological opinion. This rule is consistent with actions of the Columbia River Compact on September 6, August 16, and July 27, 2017. This action conforms state rules with tribal rules. There is insufficient time to promulgate permanent regulations.

The Yakama, Warm Springs, Umatilla, and Nez Perce Indian tribes have treaty fishing rights in the Columbia River and inherent sovereign authority to regulate their fisheries. Washington and Oregon also have some authority to regulate fishing by treaty Indians in the Columbia River, authority that the states exercise jointly under the congressionally ratified Columbia River Compact. *Sohappy v. Smith*, 302 F. Supp. 899 (D. Or. 1969). The tribes and the states adopt parallel regulations for treaty Indian fisheries under the supervision of the federal courts. A court order sets the current parameters. *United States v. Oregon*, Civil No. 68-513-KI (D. Or.), Order Adopting 2008-2017 *United States v. Oregon* Management Agreement (Aug. 12, 2008) (Doc. No. 2546). Some salmon and steelhead stocks in the Columbia River are listed as threatened or endangered under the federal ESA. On May 5, 2008, the National Marine Fisheries Service issued a biological opinion under 16 U.S.C. § 1536 that allow[s] for some incidental take of these species in the fisheries as described in the 2008-2017 *U.S. v. Oregon* Management Agreement. Columbia River fisheries are monitored very closely to ensure consistency with court orders and ESA guidelines. Because conditions change rapidly, the fisheries are managed almost exclusively by emergency rule. As required by court order, the Washington (WDFW) and Oregon (ODFW) departments of fish and wildlife convene public hearings and invite tribal participation when considering proposals for new emergency rules affecting treaty fishing rights. *Sohappy*, 302 F. Supp. at 912. WDFW and ODFW then adopt regulations reflecting agreements reached.

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

Number of Sections Adopted at the Request of a Non-governmental Entity: New 0, Amended 0, Repealed 0.

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

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

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

Date Adopted: September 7, 2017.

James B. Scott, Jr.  
for J. W. Unsworth  
Director

NEW SECTION

**WAC 220-359-02000G Columbia River salmon seasons above Bonneville Dam.** Notwithstanding the provisions of WAC 220-359-010, WAC 220-359-020, WAC 220-359-030 and WAC 220-359-090, effective immediately until further notice, it is unlawful for a person to take or possess salmon, steelhead, sturgeon, shad, carp, catfish, walleye, bass, or yellow perch taken for commercial purposes in Columbia River Salmon Management and Catch Reporting Areas 1E1, 1F, 1G, and 1H, and in the Wind River, Klickitat River, Drano Lake, Yakima River and Icicle Creek. However, those individuals possessing treaty fishing rights under the Yakama, Warm Springs, Umatilla, and Nez Perce treaties may fish for salmon, steelhead, sturgeon, shad, carp, catfish, walleye, bass, or yellow perch under the following provisions.

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

(a) Season: Immediately to 6:00 PM September 8, 2017

(b) 6:00 AM September 11 to 6:00 PM September 15, 2017

(c) Gear: Set nets and drift gillnets. 8-inch minimum mesh restriction.

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

(e) Standard river mouth and dam sanctuaries are in place, including the Spring Creek Hatchery sanctuary.

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

(a) Season: Immediately through October 31, 2017

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

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

(d) All sanctuaries for these gear types are in effect.

(3) Columbia River Tributaries upstream of Bonneville Dam:

(a) Season: Immediately until further notice, and only during those days and hours when the tributaries listed below are open under lawfully enacted Yakama Nation tribal subsistence fishery regulations for enrolled Yakama Nation members.

(b) Area: Drano Lake, and Klickitat River.

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

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

(4) Open Area: SMCRA 1E1. Each of the four Columbia River treaty tribes has an MOA or MOU with the Washington Department of Fish and Wildlife for tribal fisheries in the

area just downstream of Bonneville Dam. Tribal fisheries in this area may only occur in accordance with the appropriate MOA or MOU specific to each tribe, and only within any specific regulations set by each tribe.

(a) Participants:

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

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

(b) Season: Immediately through October 31, 2017. Open only during those days and hours when allowed under lawfully enacted tribal subsistence fishery regulations for enrolled tribal members.

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

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

(5) 24-hour quick reporting is required as provided in WAC 220-352-180, for Washington wholesale dealers for all areas, except that all landings from treaty fisheries described above must be reported within 24-hours of completing the fish ticket.

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

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

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 220-359-02000F Columbia River salmon seasons above Bonneville Dam. (17-201)

**WSR 17-19-013****EMERGENCY RULES****DEPARTMENT OF****FISH AND WILDLIFE**

[Order 17-243—Filed September 7, 2017, 3:11 p.m., effective September 8, 2017, 6:00 a.m.]

Effective Date of Rule: September 8, 2017, 6:00 a.m.

Purpose: Amend commercial shrimp rules in Puget Sound.

Citation of Rules Affected by this Order: Repealing WAC 220-340-52000K; and amending WAC 220-340-520.

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

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

Reasons for this Finding: The 2017 state/tribal shrimp harvest management plans for the Strait of Juan de Fuca and Puget Sound require adoption of harvest seasons contained in this emergency rule. This emergency rule (1) opens the spot and/or nonspot shrimp pot "clean up" fishery in Shrimp Management Areas 1A, 1B, 1C and portions of 3; (2) lowers the shrimp limit in these areas to harvest the relatively small amounts of quota remaining; and (3) closes all areas remaining open for spot shrimp on September 15 to protect female spot shrimp at the onset of the egg-bearing period. 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 the Request of a Non-governmental Entity: New 0, Amended 0, Repealed 0.

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

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

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

Date Adopted: September 7, 2017.

Joe Stohr  
for J. W. Unsworth  
Director

## NEW SECTION

**WAC 220-340-52000L Puget Sound shrimp pot and trawl fishery—Season.** Notwithstanding the provisions of WAC 220-340-520, effective immediately until further notice, it is unlawful to fish for shrimp for commercial purposes in Puget Sound except as provided for in this section:

(1) Shrimp pot gear:

(a) All waters of Shrimp Management Areas 1A, 1B, 1C, 2W and 3 are open to the harvest of all shrimp species, effective immediately until further notice, except as provided for in this section:

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

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

(iii) All waters of Shrimp Management Areas 1A and 1B are open to the harvest of spot shrimp only until 6:00 p.m. September 10, 2017.

(iv) All waters of Catch Area 25A are open to the harvest of all shrimp species. The harvest of spot shrimp closes at 6:00 p.m. September 10, 2017.

(v) All waters of Catch Areas 23A-S, 23C, 23D and 29 are open to the harvest of all shrimp species. The harvest of spot shrimp closes at 6:00 p.m. September 15, 2017.

(vi) Effective 6:00 a.m. September 11, 2017, all waters of Shrimp Management Areas 1A, 1B and 1C are open to the harvest of non-spot shrimp until closing at 6:00 p.m. September 17, 2017.

(b) Effective immediately, until 6:00 p.m. September 10, 2017, it is unlawful for the combined total harvest of spot shrimp by a fisher or the fisher's alternate operator to exceed 150 pounds in Shrimp Management Area 1A, or to exceed 130 pounds in Shrimp Management Area 1B, or to exceed 240 pounds in Catch Area 25A.

(c) Effective immediately, until 6:00 p.m. September 15, 2017, it is unlawful for the combined total harvest of spot shrimp by a fisher or the fisher's alternate operator to exceed 1,390 pounds in Catch Areas 23A-S and 23D.

(d) Effective 6:00 a.m. September 11, 2017, through 6:00 p.m. September 17, 2017, it is unlawful for the combined total harvest of non-spot shrimp by a fisher or the fisher's alternate operator to exceed 600 pounds in Shrimp Management Areas 1A, 1B and 1C.

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

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

(2) Shrimp trawl gear:

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

(b) That portion of Catch Area 22A within SMA 1B is open.

(c) That portion of Catch Area 20B within SMA 1B is open.

(d) That portion of Catch Area 21A within SMA 1B is open.

(e) Catch Area 20A is open.

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



REPEALER

The following section of the Washington Administrative Code is repealed effective 6:00 a.m. September 8, 2017:

WAC 220-340-52000K Puget Sound shrimp pot and beam trawl fishery—Season. (17-218)

**WSR 17-19-014**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**

[Order 17-241—Filed September 7, 2017, 3:13 p.m., effective September 7, 2017, 10:00 p.m.]

Effective Date of Rule: September 7, 2017, 10:00 p.m.

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

Citation of Rules Affected by this Order: Repealing WAC 220-356-20000A, 220-356-19000A, 220-356-06000A and 220-356-05000A; and amending WAC 220-356-190.

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 close Puget Sound to commercial smelt fishing, as the annual quota is expected to be reached. 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 the Request of a Non-governmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 1, Amended 0, Repealed 4.

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

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

Date Adopted: September 7, 2017.

Joe Stohr  
for J. W. Unsworth  
Director

NEW SECTION

**WAC 220-356-19000A Puget Sound smelt commercial fishery—Seasons.** Notwithstanding the provisions of WAC 220-356-190, effective 10:00 p.m. September 7

through December 31, 2017, it is unlawful to take, fish for or possess smelt for commercial purposes in Puget Sound.

REPEALER

The following sections of the Washington Administrative Code are repealed effective 10:00 p.m. September 7, 2017:

WAC 220-356-20000A Puget Sound smelt commercial fishery—Weekly periods. (17-228)

WAC 220-356-06000A Puget Sound herring, anchovy and smelt commercial fisheries. (17-220)

WAC 220-356-05000A Puget Sound forage fish commercial fisheries—General provisions. (17-220)

The following section of the Washington Administrative Code is repealed effective January 1, 2018:

WAC 220-356-19000A Puget Sound smelt commercial fishery—Seasons.

**WSR 17-19-020**  
**EMERGENCY RULES**  
**SUPERINTENDENT OF**  
**PUBLIC INSTRUCTION**

[Filed September 8, 2017, 9:14 a.m., effective September 8, 2017, 9:14 a.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: The purpose of this emergency rule is to align the office of superintendent of public instruction's (OSPI) citizen complaint procedures for federally funded programs under the Elementary and Secondary Education Act (ESEA), as amended by the Every Student Succeeds Act (ESSA) in 2016. The procedures are set forth in chapter 392-168 WAC, and are amended as follows: (1) Federal terms and references are updated to be brought in line with ESSA; and (2) a forty-five day timeline is established for OSPI to investigate and resolve citizen complaints regarding equitable services provided to private school students. The emergency rule also includes clarifying nonsubstantive amendments to chapter 392-168 WAC.

Citation of Rules Affected by this Order: Amending chapter 392-168 WAC.

Statutory Authority for Adoption: RCW 28A.300.070, 34.05.220 (1)(a).

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

Reasons for this Finding: Since the passage of ESEA in 1965, school districts have been required to provide equitable services to private school students and teachers, and in some cases, other education personnel and parent[s], under a number of ESEA programs. Private school services must start at

the same time as public school services. In 2016, ESSA made changes to ESEA's timelines for filing complaints regarding equitable services. School districts and participating private schools are now required under federal law to conduct consultation for services. This typically occurs in spring and summer before the school year starts. OSPI is filing emergency rules so that the federally required process for citizen complaints regarding programs under ESEA is in place in time for consultation of equitable services in the 2017-18 school year. In May 2017, OSPI initiated the permanent rule-making process for these changes and anticipates a hearing will be held in late fall 2017.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 6, 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 the Request of a Non-governmental 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 2, Repealed 0.

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

Date Adopted: September 8, 2017.

Chris P. S. Reykdal  
State Superintendent  
of Public Instruction

AMENDATORY SECTION (Amending WSR 05-19-033, filed 9/12/05, effective 10/13/05)

**WAC 392-168-115 Applicability.** This chapter shall apply to federal programs authorized under the Elementary and Secondary Education Act and administered by the superintendent of public instruction, including the following:

(1) Title I, Part A: Improving Basic Programs Operated by Local Educational Agencies;

(2) Title I, Part B(~~(, Subpart 1: Reading First)~~): State Assessment Grants;

(3) (~~(Title I, Part B, Subpart 3: William F. Goodling Even Start Family Literacy Program~~;

(4)) Title I, Part C: Education of Migratory Children;

(~~(5)~~) (4) Title I, Part D: Prevention and Intervention Programs for Children and Youth Who Are Neglected, Delinquent, or At-Risk;

(~~(6) Title I, Part F: Comprehensive School Reform~~;

(7)) (5) Title II, Part A: (~~(Teacher and Principal Training and Recruiting Fund)~~) Supporting Effective Instruction;

(~~(8) Title II, Part D: Enhancing Education Through Technology~~;

~~Title III—Language Instruction for Limited English Proficient and Immigrant Students~~

(9)) (6) Title III, Part A: English Language Acquisition, Language Enhancement, and Academic Achievement Act;

(~~(10) Title IV—21st Century Schools~~;

(11)) (7) Title IV, Part A(~~(, Subpart 1: Safe and Drug Free Schools and Communities)~~): Student Support and Academic Enrichment Grants;

(~~(12)~~) (8) Title IV, Part B: 21st Century Community Learning Centers;

(~~(Title V—Promoting Informed Parental Choice and Innovative Programs~~

(13)) (9) Title IV, Part C: Expanding Opportunity Through Quality Charter Schools;

(10) Title V, Part A: (~~(Innovative Programs)~~) Funding Transferability for State and Local Education Agencies;

(~~(Title VI—Flexibility and Accountability~~

(14) Title VI, Part A, Subpart 1: Improving Academic Achievement, Accountability, Grants for State Assessments and Enhanced Assessments;

(15)) (11) Title (~~(VI)~~) V, Part B, Subpart 1: Small, Rural School Achievement Program;

(~~(16)~~) (12) Title (~~(VI)~~) V, Part B, Subpart 2: Rural and Low-Income Schools;

(~~(17)~~) (13) Title (~~(IX)~~) VIII—General Provisions(~~(;~~

(18) Title IX, Part E (~~(Section 9532): Unsafe School Choice Option~~)).

AMENDATORY SECTION (Amending WSR 05-19-033, filed 9/12/05, effective 10/13/05)

**WAC 392-168-132 Informing citizens about complaint procedures.** The superintendent of public instruction shall inform parents and other interested individuals about the citizen complaint procedures in this chapter. Specific actions to be taken by the superintendent of public instruction include:

(1) Disseminating copies of the state's procedures to parents, advocacy agencies, professional organizations, and other appropriate entities;

(2) Conducting (~~(inservice)~~) training sessions on the complaint process (~~(through educational service districts; and~~

(3) Including information about the system in statewide conferences) for local school districts, educational service districts, or other subgrantees, which may include webinars and screencasts.

AMENDATORY SECTION (Amending WSR 05-19-033, filed 9/12/05, effective 10/13/05)

**WAC 392-168-145 Procedure for filing a complaint.** The procedure for filing a complaint shall be as follows:

(1) A complaint alleging a violation by a local school district, an educational service district, or other subgrantee shall be filed directly with the superintendent of public instruction.

(2) The superintendent of public instruction, upon receipt of a signed, written complaint against a local school district or other public agency, an educational service district, or other subgrantee, shall refer the complaint to the educational entity for action pursuant to this chapter. A complaint against the state shall be investigated pursuant to WAC 392-168-180.

(3) Receipt of a complaint by the superintendent of public instruction activates a time limit not to exceed sixty calendar days, unless an extension of the time limit is approved by

the superintendent of public instruction on the basis of exceptional circumstances with respect to a particular complaint.

(4) Receipt of complaints concerning violations of 20 U.S.C. Sec. 7881, Participation by private school children and teachers, shall activate a time limit not to exceed forty-five calendar days.

AMENDATORY SECTION (Amending WSR 05-19-033, filed 9/12/05, effective 10/13/05)

**WAC 392-168-155 Investigation of and response to complaints against a school district or other public agency, educational service district, or other subgrantee.** Investigation of and response to a complaint shall be as follows:

(1) Upon receipt of a properly filed complaint, the superintendent of public instruction shall send a copy of the complaint to the educational entity, for investigation of the alleged violations.

(2) The educational entity shall investigate the complaint. The responsible official of the educational entity shall respond in writing to the superintendent of public instruction, and include documentation of the investigation, no later than twenty calendar days after the date of receipt by the entity of such complaint.

(3) The response to the superintendent of public instruction shall clearly state either:

(a) That the educational entity denies the allegations contained in the complaint and the basis for such denial; or

(b) Propose reasonable corrective action(s) deemed necessary to correct the violation.

(4) The superintendent of public instruction shall provide the complainant a copy of the entity's response to the complaint.

(5) The superintendent of public instruction will provide the complainant the opportunity to submit additional information, either orally or in writing, about the allegations in the complaint.

(6) Upon review of all relevant information including, if necessary, information obtained through an independent on-site investigation by the superintendent of public instruction, the superintendent of public instruction will make an independent determination as to whether the public agency is in violation of any federal program requirement as authorized under the Elementary and Secondary Education Act as amended by ~~((No Child Left Behind))~~ the Every Student Succeeds Act or this chapter.

(7) The superintendent of public instruction shall issue a written decision to the complainant and public agency that addresses each allegation in the complaint including findings of fact, conclusions, and the reasonable corrective measures deemed necessary to correct any violation. ~~((OSPI))~~ The superintendent may provide technical assistance activities or negotiations; and corrective measures necessary to resolve a complaint. All actions shall be instituted, as soon as possible but in no event later than thirty calendar days following the date of the decision, unless otherwise agreed to, or for good cause.

(8) The written decision by the superintendent of public instruction is the final decision in the matter. A complaint is

considered resolved when the superintendent has issued a written decision and corrective measures, if warranted, have been completed.

(9) If compliance by a local district or other public agency, educational service district, or other subgrantee is not achieved pursuant to subsection (7) of this section, the superintendent of public instruction may initiate fund withholding, fund recovery, or any other sanction(s) deemed appropriate.

~~((10) For complaints arising under 20 U.S.C. § 7883 (participation by private school children), a complainant may appeal the superintendent's resolution to the Secretary of Education (U.S. Department of Education) within thirty days of receiving the written decision from the superintendent of public instruction.))~~

AMENDATORY SECTION (Amending WSR 89-23-001, filed 11/2/89, effective 12/3/89)

**WAC 392-168-175 Complaints against the superintendent of public instruction—Designation of responsible employee(s).** (1) A complaint alleging a violation by the superintendent of public instruction shall be filed directly with the superintendent of public instruction in the form specified in WAC 392-168-140.

(2) The superintendent of public instruction shall designate at least one office of the agency to monitor and coordinate the agency's compliance with this chapter, which shall include ensuring that investigation of any complaint is conducted expeditiously and thoroughly. Complaints concerning violations of 20 U.S.C. Sec. 7881, Participation by private school children and teachers, shall be coordinated by the staff assigned to fulfill the duties of the ombudsman for equitable services as provided in 20 U.S.C. Secs. 6320 and 7881.

AMENDATORY SECTION (Amending WSR 05-19-033, filed 9/12/05, effective 10/13/05)

**WAC 392-168-180 Complaints against the superintendent of public instruction—Investigation of and response to complaints.** (1) The staff responsible for investigating the alleged violation shall commence investigation within ten days of receipt of the complaint by the superintendent of public instruction.

(2) Investigation by the superintendent of public instruction may include on-site investigations as appropriate.

(3) Upon completion of the investigation, investigating staff shall provide the superintendent of public instruction with a written report on the results of the investigation, no later than sixty calendar days after the receipt of such complaint. For complaints concerning violations of 20 U.S.C. Sec. 7881, Participation by private school children and teachers, investigating staff shall provide the written report to the superintendent no later than thirty-five calendar days after receipt of the complaint.

(4) The superintendent of public instruction shall respond in writing to the complainant as expeditiously as possible but in no event later than ten calendar days after the date of receipt of the written report described in subsection (3) of this section.

(5) The response shall clearly state either:

(a) That the complaint is without merit, the allegations are denied, and the basis for such denial; or

(b) The reasonable corrective measures deemed necessary to correct any violation: Provided, That any such corrective measures deemed necessary shall be instituted as expeditiously as possible but in no event later than thirty calendar days following the date of the response to the complainant.

**AMENDATORY SECTION** (Amending WSR 89-23-001, filed 11/2/89, effective 12/3/89)

**WAC 392-168-190 Appeal to the secretary of education in complaints against the superintendent of public instruction.** (1) In the event that a complainant remains aggrieved with the response of the superintendent of public instruction, the complainant may file an appeal directly with the secretary, department of education.

(2)(a) For complaints concerning violations of 20 U.S.C. Sec. 7881, Participation by private school children and teachers, the superintendent's response may be appealed to the secretary not later than thirty days after the superintendent responds to the complaint.

(b) If the superintendent fails to resolve a complaint concerning violations of 20 U.S.C. Sec. 7881, Participation by private school children and teachers, within the forty-five-day limit, the complainant may appeal directly to the secretary no later than thirty days after the expiration of the forty-five-day limit.

**WSR 17-19-023**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**

[Order 17-242—Filed September 8, 2017, 3:10 p.m., effective September 8, 2017, 3:10 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: Amend commercial sea cucumber rules for Puget Sound.

Citation of Rules Affected by this Order: Repealing WAC 220-340-73000D; and amending WAC 220-340-730.

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 lower the weekly trip limit to five hundred pounds to avoid overharvest in the commercial sea cucumber fishery. There is insufficient time to adopt permanent rules.

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

Number of Sections Adopted at the Request of a Non-governmental Entity: New 0, Amended 0, Repealed 0.

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

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

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

Date Adopted: September 8, 2017.

David Giglio  
for J. W. Unsworth  
Director

**NEW SECTION**

**WAC 220-340-73000E Sea cucumbers.** Notwithstanding the provisions of WAC 220-340-730, effective immediately under further notice, it is unlawful to take or possess sea cucumbers taken for commercial purposes except as provided for in this section:

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

(2) The maximum cumulative landing of sea cucumbers for each weekly fishery opening period is 500 pounds per valid designated sea cucumber harvest license.

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

**REPEALER**

The following section of the Washington Administrative Code is repealed:

WAC 220-340-73000D Sea Cucumbers. (17-204)

**WSR 17-19-024**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**

[Order 17-244—Filed September 8, 2017, 3:59 p.m., effective September 8, 2017, 3:59 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: Amends rules for the coastal commercial crab fishery.

Citation of Rules Affected by this Order: Repealing WAC 220-340-45000B and 220-340-49000A; and amending WAC 220-340-450 and 220-340-490.

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

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

Number of Sections Adopted at the Request of a Non-governmental Entity: New 0, Amended 0, Repealed 0.

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

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

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

Date Adopted: September 8, 2017.

David Giglio  
for J. W. Unsworth  
Director

#### NEW SECTION

**WAC 220-340-45000B Commercial crab fishery—Seasons and areas—Coastal.** Notwithstanding the provisions of WAC 220-340-450, effective immediately through 11:59 p.m. September 15, 2017, it is unlawful to fish for Dungeness crab in Washington coastal waters, the Pacific Ocean, Grays Harbor, Willapa Bay, or the Columbia River, except as provided for in this section.

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

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

(3) The area of Quinault Secondary Special Management Area (SSMA) is closed until further notice, from the area shoreward of a line approximating the 27-fathom depth curve between the mouth of the Raft River (47°28.00) and 47°02.70. This SSMA is described by the following coordinates:

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

Northwest Corner: 47°28.00' N. Lat. 124°34.00' W. Lon.  
Southwest Corner: 47°02.70' N. Lat. 124°24.00' W. Lon.  
Southeast Corner: 47°02.70' N. Lat. 124°10.00' W. Lon.  
(4) All other provisions of the permanent rule remain in effect.

#### NEW SECTION

**WAC 220-340-49000A Coastal crab fishery—Coastal crab gear recovery permit.** Notwithstanding the provisions of WAC 220-340-490:

(1) Effective 8:01 am September 21, 2017 until 11:59 p.m. October 31, 2017, a coastal crab gear recovery permit may be granted by the director or his or her designee for licensed coastal Dungeness crab fishers to recover crab pots belonging to state licensed fishers that remain in the ocean in the coastal waters between the Washington/Oregon border (46°15.00) and the US/Canada border, including the Columbia River, Willapa Bay and Grays Harbor.

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

#### REPEALER

The following section of the Washington Administrative Code is repealed effective 11:59 p.m. September 15, 2017:

WAC 220-340-45000B Commercial crab fishery—Seasons and areas—Coastal.

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

WAC 220-340-49000A Coastal crab fishery—Coastal crab gear recovery permit.

#### **WSR 17-19-035**

#### **EMERGENCY RULES DEPARTMENT OF FISH AND WILDLIFE**

[Order 17-246—Filed September 11, 2017, 3:25 p.m., effective September 16, 2017]

Effective Date of Rule: September 16, 2017.

Purpose: Amend recreational shrimping rules in Marine Areas 4 and 5.

Citation of Rules Affected by this Order: Repealing WAC 220-330-07000F and 220-330-07000G; and amending WAC 220-330-070.

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 regulation is needed to ensure an orderly fishery, manage the fishery within court-

ordered sharing requirements, and ensure conservation. The spot shrimp fishery in Marine Areas 4 and 5 will be closed for the season on September 15, 2017, to protect female spot shrimp during the onset of the egg-bearing period. 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 the Request of a Non-governmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 1, Amended 0, Repealed 2.

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

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

Date Adopted: September 11, 2017.

Joe Stohr  
for J. W. Unsworth  
Director

#### NEW SECTION

##### **WAC 220-330-07000G Shrimp—Areas and seasons.**

Notwithstanding the provisions of WAC 220-330-070, effective immediately, until further notice, it is unlawful to fish for or possess shrimp taken for personal use in all waters of Marine Areas 4 (east of the east of the Bonilla-Tatoosh line), 5, 6, 7, 8-1, 8-2, 9, 10, 11, 12, 13 and the Discovery Bay Shrimp District, except as provided for in this section:

(1) Marine Areas 4 (east of the Bonilla-Tatoosh line) and 5 are open to the harvest of all shrimp species except spot shrimp. All spot shrimp caught must be immediately returned to the water unharmed.

(2) All waters equal to or less than 200 feet in depth in Marine Areas 6 (excluding the Discovery Bay Shrimp District) and 7 East are open to the harvest of all shrimp species except spot shrimp. All spot shrimp caught must be immediately returned to the water unharmed. It is unlawful to set or pull shrimp gear in waters greater than 200 feet deep.

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

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

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

#### REPEALER

The following section of the Washington Administrative Code is repealed effective 11:59 p.m. September 15, 2017:

WAC 220-330-07000F Shrimp—Areas and seasons. (17-183)

The following section of the Washington Administrative Code is repealed effective October 16, 2017:

WAC 220-330-07000G Shrimp—Areas and seasons.

#### **WSR 17-19-036 EMERGENCY RULES DEPARTMENT OF FISH AND WILDLIFE**

[Order 17-240—Filed September 11, 2017, 3:27 p.m., effective September 13, 2017]

Effective Date of Rule: September 13, 2017.

Purpose: Amends recreational harvest rules for hardshell clams and oysters.

Citation of Rules Affected by this Order: Repealing WAC 220-330-11000B and 220-330-14000B; and amending WAC 220-330-110 and 220-330-140.

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: Recent clam survey data, sport harvest projections, and negotiations affecting intertidal treaty and non-treaty fisheries, along with public health considerations and administrative tasks, call for recreational clam and oyster seasons to be extended or shortened on some public beaches. The department of fish and wildlife is in the process of adopting permanent rules. These rules are interim until permanent rules take effect.

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

Number of Sections Adopted at the Request of a Non-governmental Entity: New 0, Amended 0, Repealed 0.

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

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

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

Date Adopted: September 11, 2017.

Joe Stohr  
for J. W. Unsworth  
Director

#### NEW SECTION

**WAC 220-330-11000C Clams other than razor clams—Areas and seasons.** Notwithstanding the provisions of WAC 220-330-110, effective immediately until further notice, it is unlawful to take, dig for and possess clams, cockles, and mussels taken for personal use from the following public tidelands except during the open periods specified herein:

- (1) Duckabush: Closed September 13 through October 31, 2017
- (2) Fort Flagler State Park: Open until further notice
- (3) Indian Island County Park/Lagoon Beach: Open through September 30, 2017
- (4) Port Gamble Heritage Park Tidelands: Open until further notice.

#### NEW SECTION

**WAC 220-330-14000C Oysters—Areas and seasons.** Notwithstanding the provisions of WAC 220-330-140, effective immediately until further notice, it is unlawful to take and possess oysters taken for personal use from the following public tidelands except during the open periods specified herein:

- (1) Duckabush: Closed September 13 through October 31, 2017
- (2) Fort Flagler State Park: Open until further notice
- (3) Indian Island County Park/Lagoon Beach: Open through September 30, 2017
- (4) Port Gamble Heritage Park Tidelands: Open until further notice.

#### REPEALER

The following sections of the Washington Administrative Code are repealed effective September 13, 2017:

- WAC 220-330-11000B Hardshell clams other than razor clams—Areas and seasons. (17-224)
- WAC 220-330-14000B Oysters—Areas and seasons. (17-224)

**WSR 17-19-038**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**

[Order 17-248—Filed September 11, 2017, 4:40 p.m., effective September 11, 2017, 4:40 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: Amend commercial sea cucumber rules in Puget Sound.

Citation of Rules Affected by this Order: Repealing WAC 220-340-73000E.

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 close commercial sea cucumber harvest in Sea Cucumber District 1, San Juan Island, to avoid overharvest. 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 the Request of a Non-governmental Entity: New 0, Amended 0, Repealed 0.

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

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

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

Date Adopted: September 11, 2017.

Nate Pamplin  
for J. W. Unsworth  
Director

#### REPEALER

The following section of the Washington Administrative Code is repealed effective immediately:

WAC 220-340-73000E Commercial sea cucumber fishery

**WSR 17-19-059**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**

[Order 17-249—Filed September 13, 2017, 1:33 p.m., effective September 15, 2017]

Effective Date of Rule: September 15, 2017.

Purpose: Amend recreational salmon fishing rules for the Nooksack River.

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

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 necessary to protect returning pink runs to the Nooksack River Watershed (permanent regulations are already in place requiring release of wild Chinook salmon). Inseason run-size assessments conducted by state and tribal comanagers indicate that pink run sizes are below preseason forecasts in the Nooksack. 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 the Request of a Non-governmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 1, Amended 0, Repealed 2.

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

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

Date Adopted: September 13, 2017.

Joe Stohr  
for J. W. Unsworth  
Director

#### NEW SECTION

**WAC 220-312-04000V Exceptions to statewide rules—Puget Sound—Nooksack River; Nooksack River, North Fork; Nooksack River, South Fork.** Notwithstanding the provisions of WAC 220-312-040, effective September 15, through December 31, 2017, it is unlawful to violate the provisions below. Unless otherwise amended, all permanent rules remain in effect:

**(1) Nooksack River and all forks (Whatcom):**

- (i) Salmon: Release all pinks

#### REPEALER

The following section of the Washington Administrative Code is repealed effective immediately:

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

The following section of the Washington Administrative Code is repealed effective 11:59 p.m. December 31, 2017:

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

**Reviser's note:** The spelling 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 17-19-060  
EMERGENCY RULES  
DEPARTMENT OF  
FISH AND WILDLIFE**

[Order 17-245—Filed September 13, 2017, 1:36 p.m., effective September 16, 2017]

Effective Date of Rule: September 16, 2017.

Purpose: Closes the Wallace River to all angling.

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

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 close a section of the Wallace River to all angling because the river is experiencing very low flows and salmon are not moving upstream into the hatchery. There is insufficient time to adopt permanent rules.

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

Number of Sections Adopted at the Request of a Non-governmental Entity: New 0, Amended 0, Repealed 0.

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

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

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

Date Adopted: September 13, 2017.

Joe Stohr  
for J. W. Unsworth  
Director

#### NEW SECTION

**WAC 220-312-04000U Freshwater exceptions to statewide rules—Puget Sound.** Notwithstanding the provisions of WAC 220-312-040, effective September 16 through November 30, 2017, it is unlawful to fish in those waters of the Wallace River from the mouth to Wallace Falls.



REPEALER

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

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

**WSR 17-19-063**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**

[Order 17-235—Filed September 13, 2017, 1:56 p.m., effective September 13, 2017, 1:56 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: Amend recreational salmon fishing rules in Marine Area 2-2.

Citation of Rules Affected by this Order: Repealing WAC 220-313-07000C; and amending WAC 220-313-070.

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

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

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

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

Number of Sections Adopted at the Request of a Non-governmental Entity: New 0, Amended 0, Repealed 0.

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

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

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

Date Adopted: September 13, 2017.

Joe Stohr  
for J. W. Unsworth  
Director

NEW SECTION

**WAC 220-313-07000D Coastal salmon—Saltwater seasons and daily limits.** Notwithstanding the provisions of

WAC 220-313-070, effective immediately until further notice, it is unlawful to violate the provisions below unless otherwise amended, all permanent rules remain in effect.

(1) **Catch Record Card Area 1:**

(a) Closed to salmon fishing

(2) **Catch Record Card Area 2:**

(a) Closed to salmon fishing.

(3) **Willapa Bay (Catch Record Card Area 2-1):**

(a) immediately until further notice:

(i) Daily limit of 6 salmon; no more than 3 may be adult salmon.

(ii) Release wild Chinook.

(iii) Anglers in possession of a valid two-pole endorsement may use up to two lines while fishing.

(iv) Waters north of a line from Toke Point channel marker 3 easterly through Willapa Harbor channel marker 13 (green) then, northeasterly to the power transmission pole located at 46°43.19'N, 123°50.83'W are closed until September 30.

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

(a) Waters north of a line running from the south end of the eastern jetty at Ocean Shores Marina to the fishing boundary marker on Sand Island (46°57.52'N, 124°03.36'W) to the Tripod Station on Brackenridge Bluff (46°59.12'N, 124°00.72'W)) immediately until further notice:

(i) Daily limit 2 salmon (combined).

(ii) Release wild Coho.

(iii) September 16th until further notice: closed.

(b) Waters east of a projected line from the mouth of Johns River (Hwy. 105) to the Tripod Station on Brackenridge Bluff (46°59.12'N, 124°00.72'W) through channel marker 27 (green) open to salmon fishing beginning September 16th until further notice.

(i) Minimum size 12 inches.

(ii) Daily limit 2 salmon (combined), of which one may be a wild Coho.

(iii) Release Chinook.

(c) The Westport Boat Basin and Ocean Shores Boat Basin are open immediately until further notice.

(i) Daily limit of 6 salmon; no more than 4 may be adult salmon.

(ii) Release Chinook.

(iii) Night closure and anti-snagging rule in effect.

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

(b) Closed to salmon fishing.

(6) **Catch Record Card Area 3:**

(a) Closed to salmon fishing.

(7) **Catch Record Card Area 4:**

(a) Closed to salmon fishing.

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

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 220-313-07000C Coastal salmon—Saltwater seasons and daily limits. (17-203)

**WSR 17-19-064**

**EMERGENCY RULES**

**DEPARTMENT OF REVENUE**

[Filed September 13, 2017, 2:01 p.m., effective September 13, 2017, 2:01 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: WAC 458-20-183 (Rule 183) explains the tax reporting instructions for persons who provide amusement, recreation, and physical fitness services. RCW 82.04.050 is the statute that explains the taxability of these same activities and services. The statute was significantly amended in 2015 due to legislation (HB 1550) which changed the taxability of many of these activities and services. The department will begin the standard rule-making process in 2017 to reflect these changes, but until the final rule is adopted the department wants the public to be aware that many of the tax reporting instructions in Rule 183 are only valid through December 31, 2015. There are no changes from the previous emergency rule filed May 16, 2017, under WSR 17-11-062.

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

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

Other Authority: RCW 34.05.350.

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

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

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

Number of Sections Adopted at the Request of a Non-governmental Entity: New 0, Amended 0, Repealed 0.

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

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

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

Date Adopted: September 13, 2017.

Kevin Dixon  
Rules Coordinator

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

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

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

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

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

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

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

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

instructional lessons to learn a particular activity such as tennis lessons, swimming lessons, or archery lessons.

(c) "Any additional charge" means a price or payment other than bona fide initiation fees or dues, paid by persons for particular goods and services received. The additional charge must be reasonable and any business and/or sales taxes must be paid upon such charges in order to qualify other income denominated as "bona fide dues" or "fees" to be deductible. The reasonableness of any additional charge will be based on one of the following two criteria:

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

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

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

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

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

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

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

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

(j) "League fees" means those amounts paid solely for the privilege of allowing a person or a person's team to join an association of sports teams or clubs that compete chiefly

amongst themselves. The term does not include any amounts charged for the underlying activity.

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

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

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

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

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

### (3) Business and occupation tax.

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

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

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

(a) **General principles.** For the purposes of the business and occupation tax, all amounts derived from initiation fees and dues must be reported as gross income which then must be apportioned between taxable and deductible income. The following general principles apply to providing amusement, recreation, and physical fitness services when income is received in the form of dues and/or initiation fees:

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

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

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

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

(b) **Allocation of income.** Persons who derive income from initiation fees and dues may find that they have incurred business and occupation tax liability under both the retailing and service and other activities classifications. For example, an organization may furnish exercise equipment as well as provide lessons in martial arts to its members in return for payment of dues. The former is a retailing taxable activity while the latter is taxable under the service business tax. These taxes are at different rates. Once the income has been allocated between taxable and deductible amounts, the parts of taxable income attributable to either retailing activities or service activities must be reported on the combined excise tax return under the appropriate classification and under the prevailing tax rates. In addition, state and local retail sales taxes measured by the retailing portions must be separately collected from dues paying members, reported, and remitted with the same excise tax return.

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

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

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

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

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

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

(A) The cost of production allocation method is based upon the cost of production of goods or services rendered. Persons using this method are advised to seek the department's review of the cost accounting methods applied, in order to avoid possible tax deficiency assessment if records are audited. In such cases, the cost of production shall include all items of expense attributable to the particular facility (goods or services) made available to members, including direct and indirect overhead costs.

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

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

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

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

**(5) Retail sales tax.**

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

(b) When the charge for merchandise is included within a charge for admission which is not a "sale at retail" as defined herein, the retail sales tax applies to the charge made for both merchandise and admission, unless a proper segrega-

tion of such charge is made in the billing to the customer and upon the books of account of the seller.

(c) The retail sales tax applies upon the purchase or rental of all equipment and supplies by persons providing amusement, recreation, and physical fitness services, other than merchandise that is actually resold by them. For example, the retail sales tax applies to purchases of such things as soap or shampoo provided at no additional charge to members of a health club.

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

**WSR 17-19-067****EMERGENCY RULES  
DEPARTMENT OF  
FISH AND WILDLIFE**

[Order 17-250—Filed September 14, 2017, 3:48 p.m., effective September 16, 2017]

Effective Date of Rule: September 16, 2017.

Purpose: Amend recreational fishing rules for the Wind River.

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

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 necessary because a minimum escapement of five hundred wild summer steelhead is needed to allow the opening of the catch-and-release fishery above Shipherd Falls on September 16. Based on recent survey results and average run timing, the wild escapement is projected to be well below the escapement objective. Summer steelhead returns have been low

throughout the Columbia River Basin this year. There is insufficient time 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 the Request of a Non-governmental Entity: New 0, Amended 0, Repealed 0.

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

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

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

Date Adopted: September 14, 2017.

Joe Stohr  
for J. W. Unsworth  
Director

#### NEW SECTION

**WAC 220-312-03000H Southwest—Freshwater exceptions to statewide rules** Notwithstanding the provisions of WAC 220-312-030, effective September 16 through November 30, 2017 it is unlawful to fish in waters of the Wind River from 100 feet above Shepherd Falls to Moore Bridge.

#### REPEALER

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

WAC 220-312-03000H Freshwater exceptions to statewide rules—Southwest.

**WSR 17-19-074  
EMERGENCY RULES  
DEPARTMENT OF  
FISH AND WILDLIFE**

[Order 17-251—Filed September 15, 2017, 1:20 p.m., effective September 15, 2017, 1:20 p.m.]

Effective Date of Rule: Immediately upon filing.

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

Citation of Rules Affected by this Order: Repealing WAC 220-359-02000G; and amending WAC 220-359-020.

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 order continues the fall treaty commercial gillnet fishery and allows the sale of fish caught in Zone 6. The platform and hook and line fisheries were set at a previous compact hearing. The expectation for treaty fisheries to be within the pre-season ESA guidelines continues to be unchanged. The sale of fish caught in Yakama Nation tributary fisheries is also allowed when open under Yakama Nation regulations. The area downstream of Bonneville Dam (SMCRA 1E1) is open to sales of fish when open under tribal regulations. The forecast for upriver fall Chinook is four hundred eighty-four thousand one hundred fish. Fisheries are consistent with the 2008-2017 Management Agreement and the associated biological opinion. This rule is consistent with actions of the Columbia River Compact on September 6, August 16, and July 27, 2017. This action conforms state rules with tribal rules. There is insufficient time to promulgate permanent regulations.

The Yakama, Warm Springs, Umatilla, and Nez Perce Indian tribes have treaty fishing rights in the Columbia River and inherent sovereign authority to regulate their fisheries. Washington and Oregon also have some authority to regulate fishing by treaty Indians in the Columbia River, authority that the states exercise jointly under the congressionally ratified Columbia River Compact. *Sohappy v. Smith*, 302 F. Supp. 899 (D. Or. 1969). The tribes and the states adopt parallel regulations for treaty Indian fisheries under the supervision of the federal courts. A court order sets the current parameters. *United States v. Oregon*, Civil No. 68-513-KI (D. Or.), Order Adopting 2008-2017 *United States v. Oregon* Management Agreement (Aug. 12, 2008) (Doc. No. 2546). Some salmon and steelhead stocks in the Columbia River are listed as threatened or endangered under the federal ESA. On May 5, 2008, the National Marine Fisheries Service issued a biological opinion under 16 U.S.C. § 1536 that allow[s] for some incidental take of these species in the fisheries as described in the 2008-2017 *U.S. v. Oregon* Management Agreement. Columbia River fisheries are monitored very closely to ensure consistency with court orders and ESA guidelines. Because conditions change rapidly, the fisheries are managed almost exclusively by emergency rule. As required by court order, the Washington (WDFW) and Oregon (ODFW) departments of fish and wildlife convene public hearings and invite tribal participation when considering proposals for new emergency rules affecting treaty fishing rights. *Sohappy*, 302

F. Supp. at 912. WDFW and ODFW then adopt regulations reflecting agreements reached.

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

Number of Sections Adopted at the Request of a Non-governmental Entity: New 0, Amended 0, Repealed 0.

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

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

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

Date Adopted: September 15, 2017.

J. W. Unsworth  
Director

#### NEW SECTION

**WAC 220-359-02000H Columbia River salmon seasons above Bonneville Dam.** Notwithstanding the provisions of WAC 220-359-010, WAC 220-359-020, WAC 220-359-030 and WAC 220-359-090, effective immediately until further notice, it is unlawful for a person to take or possess salmon, steelhead, sturgeon, shad, carp, catfish, walleye, bass, or yellow perch taken for commercial purposes in Columbia River Salmon Management and Catch Reporting Areas 1E1, 1F, 1G, and 1H, and in the Wind River, Klickitat River, Drano Lake, Yakima River and Icicle Creek. However, those individuals possessing treaty fishing rights under the Yakama, Warm Springs, Umatilla, and Nez Perce treaties may fish for salmon, steelhead, sturgeon, shad, carp, catfish, walleye, bass, or yellow perch under the following provisions.

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

(a) Season: Immediately to 6:00 PM September 15, 2017

(b) 6:00 AM September 18 to 6:00 PM September 22, 2017

(c) Gear: Set nets and drift gillnets. 8-inch minimum mesh restriction.

(d) Allowable sale: Salmon (any species), steelhead, shad, yellow perch, bass, walleye, catfish, and carp may be sold or retained for subsistence. Fish landed during the open periods are allowed to be sold after the period concludes. Sturgeon may not be sold, but sturgeon from 38 to 54 inches fork length in the Bonneville Pool and sturgeon from 43 to 54 inches fork length in The Dalles and John Day pools may be kept for subsistence purposes.

(e) Standard river mouth and dam sanctuaries are in place, including the Spring Creek Hatchery sanctuary.

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

(a) Season: Immediately through October 31, 2017

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

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

(d) All sanctuaries for these gear types are in effect.

(3) Columbia River Tributaries upstream of Bonneville Dam:

(a) Season: Immediately until further notice, and only during those days and hours when the tributaries listed below are open under lawfully enacted Yakama Nation tribal subsistence fishery regulations for enrolled Yakama Nation members.

(b) Area: Drano Lake, and Klickitat River.

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

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

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

(a) Participants:

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

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

(b) Season: Immediately through October 31, 2017. Open only during those days and hours when allowed under lawfully enacted tribal subsistence fishery regulations for enrolled tribal members.

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

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

(5) 24-hour quick reporting is required as provided in WAC 220-352-180, for Washington wholesale dealers for all areas, except that all landings from treaty fisheries described above must be reported within 24-hours of completing the fish ticket.

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

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

### REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 220-359-02000G Columbia River salmon seasons above Bonneville Dam. (17-237)

**WSR 17-19-075**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**

[17-252—Filed September 15, 2017, 1:22 p.m., effective September 17, 2017, 8:00 p.m.]

Effective Date of Rule: September 17, 2017, 8:00 p.m.

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

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

**Statutory Authority for Adoption:** RCW 77.04.012, 77.04.020, 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 action continues the 2017 fall season for nontreaty mainstem Columbia River commercial fisheries. The select area fisheries were set at a previous compact hearing. The preseason forecast for the Columbia River return of fall Chinook is six hundred thirteen thousand eight hundred fish and harvest estimates are behind preseason expectations to date. Harvest estimates for the seasons are well within ESA limits and sharing guidelines. The fishery is consistent with the *U.S. v. Oregon* Management Agreement and the associated biological opinion. Conforms Washington state rules with Oregon state rules. Regulation is consistent with compact action of August 16, and July 27, 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 1, Amended 0, Repealed 1.

**Number of Sections Adopted at the Request of a Non-governmental Entity:** New 0, Amended 0, Repealed 0.

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

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

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

**Date Adopted:** September 15, 2017.

J. W. Unsworth  
Director

### NEW SECTION

**WAC 220-358-03000I Columbia River seasons below Bonneville Dam.** 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) Mainstem Columbia River**

(a) **Season:** 8 PM Sunday September 17 to 6 AM Monday September 18

8 PM Tuesday September 19 to 6 AM Wednesday September 20

8 PM Thursday September 21 to 6 AM Friday September 22

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

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

(d) **Allowable Possession:** Chinook, Coho, Pink, and Sockeye salmon, white sturgeon, and shad. A maximum of five white sturgeon with a fork length of 44-50 inches may be possessed or sold by each participating vessel during each calendar week (Sunday through Saturday). This white sturgeon possession and sales limit applies to mainstem fisheries only.

(e) **Gear:** Drift gillnets only. 9-inch minimum mesh size restriction through September 20; 8-inch minimum mesh size restriction for September 21-22. Multiple net rule is in effect. Lighted buoys required.

(f) **Other:** As a condition of fishing or participating in this fishery, owners or operators of commercial fishing vessels must carry and accommodate a Department observer for the duration of the fishing trip, when requested. It is unlawful to deny access or fail to carry a Department observer upon request. When a Department observer is on board, it is expected that any steelhead caught will be brought on board for biological sampling prior to release. As used in this rule, a Department observer is an employee of either the Washington Department of Fish and Wildlife, the Oregon Department of Fish and Wildlife or the Pacific States Marine Fisheries Commission.

**(2) Deep River Select Area.**

(a) **Season:** Monday, Tuesday, Wednesday, Thursday and Friday nights through September 23, 2017.

Monday, Tuesday, Wednesday, and Thursday nights September 25-October 13, 2017

Open hours are 6 PM to 9 AM through September 23, and 7 PM to 7 AM thereafter.

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

(c) **Gear:** Gillnets. Maximum mesh size restriction is 6-inches. Maximum net length is 100 fathoms. No weight restriction on leadline. Use of additional weights or anchors attached directly to the leadline is allowed. No nets can be tied off to stationary structures. Nets may not fully cross the navigation channel (WAC 220-20-015(1)).

**(3) Tongue Point/South Channel**

(a) **Season:** Monday, Tuesday, Wednesday, and Thursday nights through October 27, 2017

Open Hours: 4 PM-10 AM

(b) **Area:** The Tongue Point fishing area includes all waters bounded by a line from a marker midway between the red USCG navigation light #2 at the tip of Tongue Point and the downstream (northern most) pier (#8) at the Tongue Point Job Corps facility, to the flashing green USCG navigation light #3 on the rock jetty at the west end of Mott Island, a line from a marker at the southeast end of Mott Island northeasterly to a marker on the northwest tip of Lois Island, and a line from a marker on the southwest end of Lois Island westerly to a marker on the Oregon shore.

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

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

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

**(4) Blind Slough/Knappa Slough Select Area**

(a) **Dates:** Monday, Tuesday, Wednesday, and Thursday nights through October 27, 2017

Open Hours: 6 PM-10 AM

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

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

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

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

(a) Nets not specifically authorized for use may be onboard the vessel if properly stored, consistent with WAC 220-358-010.

(b) **ALLOWABLE POSSESSION:** Chinook, coho, pink and sockeye salmon, white sturgeon and shad. A maximum of three white sturgeon with a fork length of 44-50 inches may be possessed or sold by each participating vessel during each calendar week (Sunday through Saturday). The three white

sturgeon possession and sales limit includes all Select Area fisheries.

(c) Nets fished any time between official sunset and official sunrise must have lighted buoys on both ends of the net. If the net is attached to the boat, then one lighted buoy on the end of the net opposite the boat is required.

**(6) 24-hour quick reporting** is in effect for Washington buyers (WAC 220-352-180).

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

#### REPEALER

The following section of the Washington Administrative Code is repealed effective 8:00 p.m. September 17, 2017:

WAC 220-358-03000H Columbia River seasons below Bonneville. (17-196)

**WSR 17-19-083**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**

[Order 17-257—Filed September 18, 2017, 3:32 p.m., effective September 18, 2017, 3:32 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: Amends Puget Sound commercial salmon reef net fishery.

Citation of Rules Affected by this Order: Repealing WAC 220-47-40100A; and amending WAC 220-47-401.

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: Under the Pacific Salmon Treaty the Fraser River Panel retained regulatory authority for Puget Sound Management and Catch Reporting Area 7 through September 23, 2017. Reef net fisheries cannot be authorized until September 24. There is a comanager agreement to open reef net fisheries following relinquishment of control by the Fraser River Panel. 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 the Request of a Non-governmental Entity: New 0, Amended 0, Repealed 0.

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

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

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

Date Adopted: September 18, 2017.

J. W. Unsworth  
Director

#### NEW SECTION

**WAC 220-47-40100A Puget Sound salmon—Reef net open periods.** Notwithstanding the provisions of WAC 220-47-401, effective immediately until 5:00 a.m. September 24, 2017, it is unlawful to fish for salmon in Puget Sound Salmon Management and Catch Reporting Area 7 with Reef net gear.

#### REPEALER

The following section of the Washington Administrative Code is repealed effective 5:00 a.m. September 24, 2017:

WAC 220-47-40100A Puget Sound salmon—Reef net open periods.