

WSR 19-07-014
EMERGENCY RULES
DEPARTMENT OF
LABOR AND INDUSTRIES

[Filed March 8, 2019, 3:52 p.m., effective March 11, 2019]

Effective Date of Rule: March 11, 2019.

Purpose: This emergency rule making will amend chapter 296-127 WAC, Prevailing wage, to provide a new scope of work specific to landscape maintenance that is separate and unique from landscape construction. Under the emergency rule, the landscape maintenance worker scope of work description is work involved in the tending to and maintenance of a previously beautified plot of land. A description of specific activities that may be within the scope and activities that are not included in the scope are listed in the rule.

Citation of Rules Affected by this Order: New WAC 296-127-01345.

Statutory Authority for Adoption: Chapter 39.12 RCW.

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

Reasons for this Finding: SSB 5493 (2018), effective June 7, 2018, revised RCW 39.12.015. Under the new law, the department is directed to "establish the prevailing rate of wage ... established in collective bargaining agreements for those trades and occupations that have collective bargaining agreements." Where no collective bargaining agreement (CBA) exists, the department is to conduct wage and hour surveys. Other methods may be used where a survey is not sufficient.

The department implemented SSB 5493 in the prevailing rates published on August 1, 2018. As a result of the new law, the rates for landscape construction (landscape laborer) significantly increased. On February 25, 2019, the department received a petition from the Association of Washington Cities (AWC) to create a separate landscape maintenance scope of work. Due to the increase in costs, cities are deferring or eliminating necessary maintenance to keep public areas safe, including: Preparing parks, athletic fields, trails and other recreational facilities for the spring and summer season; maintenance of critical vegetation on stormwater facilities like retention ponds; and storm related cleanup to remove dangerous debris from public spaces. Lack of adequate maintenance will result in unsafe facilities creating risks to the public and liability concerns for cities. The department has also heard from companies who contract with cities to do landscape maintenance work with concerns that contracts are not being renewed and workers will be laid off as [a] result.

Under WAC 296-127-013, scope of work descriptions may be issued by the director or designee to determine the applicable prevailing wage and are created using authoritative sources including: Apprenticeship standards; CBAs; dictionaries of occupational titles; experts from organized labor, licensed contractors, and contractors' associations; and recognized labor and management industry practice. Under WAC 296-127-01346, the introductory paragraph of the landscape construction scope of work description is work involved in

the beautification of a plot of land by changing its natural features through the addition or modification of lawns, trees, bushes, etc. Upon review of the scope of the work, the department determined that the separate scope for landscape maintenance worker is appropriate. Based on information from AWC and contractors, the rules meet the criteria for emergency rules as needed for the preservation of public health, safety, or general welfare.

The department is also filing a preproposal statement of inquiry (CR-101) to initiate permanent rule making.

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

Number of Sections Adopted at 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 0, Repealed 0.

Date Adopted: March 8, 2019.

Joel Sacks
Director

NEW SECTION

WAC 296-127-01345 Landscape maintenance workers. For the purpose of the Washington state public works law, chapter 39.12 RCW, landscape maintenance involves the tending to and maintenance of a previously beautified plot of land.

- (1) Landscape maintenance includes:
 - (a) Mowing, weeding, and maintaining of lawns, yards, gardens, athletic fields, golf courses, parks, trails or other previously landscaped surfaces;
 - (b) Pruning, trimming, mulching and composting;
 - (c) Maintaining decorative rock including adding material to existing areas;
 - (d) Incidental hauling or placing of top soil, plants or other landscaping materials in trucks with only one rear axle;
 - (e) Reseeding, resodding, replanting, top dressing, aerification, and applying chemicals, fertilizers and soil amendments;
 - (f) Use of power tools with up to twenty horsepower such as line trimmers, edgers, mowers, leaf and snow blowers;
 - (g) Rehydroseeding using equipment up to one hundred gallon capacity;
 - (h) Use of riding mowers up to fifty horsepower;
 - (i) Irrigation system repair and maintenance on existing systems;
 - (j) Storm drain and catch pond maintenance, including minor debris removal, and clearing of drain grates.

(2) Landscape maintenance does not include:

- (a) Any landscape or nonlandscape construction activity or work, other than incidental maintenance and repairs mentioned in subsection (1) of this section;
- (b) Power line clearance tree trimming or clearing;
- (c) Construction of irrigation systems other than incidental repairs mentioned in subsection (1) of this section;
- (d) Tree falling or bucking;
- (e) The use of power tools over twenty horsepower except riding mowers;
- (f) The use of riding mowers over fifty horsepower;
- (g) The use of any other riding equipment, other than riding mowers up to fifty horsepower;
- (h) Rehydroseeding using equipment with more than one hundred gallon capacity;
- (i) Inspection, service, maintenance or repair of a back-flow protection device connected to a potable water system.

WSR 19-07-019
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 19-40—Filed March 11, 2019, 4:24 p.m., effective March 11, 2019, 4:24 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: Amends recreational harvest rules for razor clams.

Citation of Rules Affected by this Order: Repealing WAC 220-330-16000A; and amending WAC 220-330-160.

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

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

Reasons for this Finding: This emergency rule is needed to open the recreational razor clam season. Survey results show that adequate clams are available for harvest in Razor Clam Areas 3, 4, and 5 for recreational harvest. Washington department of health has certified clams from this beach to be safe for human consumption. Razor clam beaches are closed by permanent rules unless opened by an emergency rule. 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: March 11, 2019.

Joe Stohr
for Kelly Susewind
Director

NEW SECTION

WAC 220-330-16000A Razor clams—Areas and seasons. Notwithstanding the provisions of WAC 220-330-160, it is unlawful to take, dig for or possess razor clams taken for personal use from any beaches in any razor clam area except as provided for in this section:

(1) Effective 12:01 p.m. March 16, 2019 through 11:59 p.m. March 17, 2019, razor clam digging is permissible in Razor Clam Area 3. Digging is permissible from 12:01 p.m. to 11:59 p.m. each day only.

(2) Effective 12:01 p.m. March 16, 2019 through 11:59 p.m. March 16, 2019 razor clam digging is permissible in Razor Clam Area 4. Digging is permissible from 12:01 p.m. to 11:59 p.m. only.

(3) Effective 12:01 p.m. March 17, 2019 through 11:59 p.m. March 17, 2019 razor clam digging is permissible in Razor Clam Area 5. Digging is permissible from 12:01 p.m. to 11:59 p.m. each day only.

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

REPEALER

The following section of the Washington Administrative Code is repealed effective 12:01 a.m. March 18, 2019:

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

WSR 19-07-020
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 19-41—Filed March 11, 2019, 4:39 p.m., effective March 11, 2019, 4:39 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 220-359-02000E; 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 2018-2027 *United States v. Oregon* Management Agreement (February 26, 2018) (Doc. No. 2607-1). *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 rule is needed because a sufficient number of fish are available on the harvest guideline for the commercial gillnet fishery in the Bonneville Pool. This rule is consistent with actions of the Columbia River compacts on January 29, February 12, February 19, February 28, and March 11, 2019. 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 2018-2027 *United States v. Oregon* Management Agreement (February 26, 2018) (Doc. No. 2607-1). Some salmon and steelhead stocks in the Columbia River are listed as threatened or endangered under the federal ESA. On February 23, 2018, the National Marine Fisheries Service issued a biological opinion under 16 U.S.C. § 1536 that allows for some incidental take of these species in the fisheries as described in the 2018-2027 *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: March 11, 2019.

Joe Stohr
for Kelly Susewind
Director

NEW SECTION

WAC 220-359-02000F 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, it is unlawful for a person to take or possess salmon, steelhead, sturgeon, shad, carp, catfish, walleye, bass, or yellow perch taken for commercial purposes in Columbia River Salmon Management and Catch Reporting Areas 1F, 1G, and 1H. However, those individuals possessing treaty fishing rights under the Yakima, Warm Springs, Umatilla, and Nez Perce treaties may fish for salmon, steelhead, sturgeon, shad, carp, catfish, walleye, bass, or yellow perch under the following provisions:

- (1) Open Areas: SMCRA 1F (Bonneville pool only)
 - (a) Season: Immediately to 6 PM Wednesday, March 20, 2019
 - (b) Gear: Gillnets with no minimum mesh size restriction.
 - (c) Allowable sale: Salmon (any species), steelhead, shad, yellow perch, bass, walleye, catfish, and carp may be sold or retained for subsistence. Sturgeon from 38 to 54 inches fork length in the Bonneville Pool may be sold or kept for subsistence purposes. Fish landed during the open periods are allowed to be sold after the period concludes.
 - (d) Standard river mouth and dam sanctuary closures remain in place for this gear.
- (2) Open Areas: SMCRA 1F, 1G, 1H (Zone 6)
 - (a) Season: Immediately to 6 PM Thursday, March 21, 2019.
 - (b) Gear: Hoop nets/bag nets, dip nets, and rod and reel with hook and line.
 - (c) Allowable sale: Salmon (any species), steelhead, shad, yellow perch, bass, walleye, catfish, and carp may be sold or retained for subsistence. 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. Further, sturgeon within the legal size limit and caught in the platform and hook and line fishery may only be sold if caught during the open period and open pool of an open gillnet fishery. Fish landed during the open periods are allowed to be sold after the period concludes.
 - (d) Standard river mouth and dam sanctuary closures remain in place for this gear.
- (3) 24-hour quick reporting is required for Washington wholesale dealers for all areas as provided in WAC 220-352-315, except that all landings from treaty fisheries described

above must be reported within 24-hours of completing the fish ticket (not 24-hours after the period concludes).

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

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

REPEALER

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

WAC 220-359-02000E Columbia River salmon seasons above Bonneville Dam. (19-38)

WSR 19-07-047
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 19-42—Filed March 14, 2019, 3:46 p.m., effective March 14, 2019, 3:46 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: Amend recreational salmon fishing rules for Puget Sound.

Citation of Rules Affected by this Order: Repealing WAC 220-313-06000X and 220-313-06000Y; and WAC 220-313-060.

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

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

Reasons for this Finding: This emergency rule is needed to increase the salmon daily limit in Catch Record Area 6. Based on current catch estimates there is sufficient salmon available in the preseason guideline to maintain a fishery through the planned season with an increased daily limit. 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: March 14, 2019.

Joe Stohr
for Kelly Susewind
Director

NEW SECTION

WAC 220-313-06000Y Puget Sound salmon—Saltwater seasons and daily limits. Notwithstanding the provisions of WAC 220-313-060, the following rules apply effective immediately:

1. Catch Record Card Area 5, effective immediately through April 30, 2019:
 - a. Daily limit two salmon.
 - b. Release wild coho and wild Chinook.
2. Catch Record Card Area 6, effective March 15 through April 15, 2019:
 - a. Daily limit two salmon.
 - b. Release wild coho and wild Chinook.
3. Catch Record Card Area 8-1, effective February 2 through April 30, 2019:
 - a. Daily limit one salmon.
 - b. Release coho and wild Chinook.
4. Catch Record Card Area 8-2, effective February 2 through April 30, 2019:
 - a. Daily limit one salmon.
 - b. Release coho and wild Chinook.
5. Catch Record Card Area 10 except Seacrest Pier, Waterman Pier, Bremerton Boardwalk, and Illahee State Park Pier, effective immediately through March 31, 2019: Closed to fishing for or retaining salmon.

REPEALER

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

WAC 220-313-06000X Puget Sound salmon—Saltwater seasons and daily limits. (19-19)

The following section of the Washington Administrative Code is repealed effective May 1, 2019:

WAC 220-313-06000Y Puget Sound salmon—Saltwater seasons and daily limits.

WSR 19-07-049
EMERGENCY RULES
HEALTH CARE AUTHORITY

[Filed March 15, 2019, 10:09 a.m., effective March 15, 2019, 10:09 a.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: The agency is creating rules for coverage of a new model of care called collaborative care, which is part of the integration of mental health and physical health.

Citation of Rules Affected by this Order: New WAC 182-531-0425.

Statutory Authority for Adoption: SSB 5779, SSB 5883, RCW 41.05.021, 41.05.160.

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: As directed by SSB 5779 and funding authorized in SSB 5883, the agency is creating rules for the coverage of collaborative care, which is part of the integration of mental health and physical health. Emergency rules are necessary to implement this requirement while the permanent rule-making process is completed. This emergency filing continues the previous filing under WSR 18-23-069 which expires on March 16, 2019. Since the last emergency filing, the agency filed a CR-102 Proposed rule making and scheduled a public hearing for April 9, 2019.

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 1, 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 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 1, Amended 0, Repealed 0.

Date Adopted: March 15, 2019.

Wendy Barcus
Rules Coordinator

NEW SECTION

WAC 182-531-0425 Collaborative care. (1) Under the authority of RCW 74.09.497, and subject to available funds, the medicaid agency covers collaborative care provided in clinical care settings.

(2) For the purposes of this section:

(a) **Collaborative care** means a specific type of integrated care where medical providers and behavioral health providers work together to address behavioral health conditions, including mental health conditions and substance use disorders.

(b) **Collaborative care model** is a model of behavior health integration that enhances usual primary care by adding two key services:

(i) Care management support for clients receiving behavioral health treatment; and

(ii) Regular psychiatric consultation with the primary care team, particularly for clients whose conditions are not improving.

(c) **Collaborative care team** means a team of licensed behavioral health professionals operating within their scope of practice who participate on the primary care team along with the primary billing provider to provide collaborative care to eligible clients. These professionals include, but are not limited to:

- (i) Advanced registered nurses;
- (ii) Chemical dependency professionals;
- (iii) Chemical dependency professional trainees under the supervision of a certified chemical dependency professional;
- (iv) Marriage and family therapists;
- (v) Marriage and family therapist associates under the supervision of a licensed marriage and family therapist or equally qualified mental health practitioner;
- (vi) Mental health counselors;
- (vii) Mental health counselor associates under the supervision of a licensed mental health counselor, psychiatrist, or physician;
- (viii) Physicians;
- (ix) Physician assistants under the supervision of a licensed physician;
- (x) Psychiatrists;
- (xi) Psychiatric advanced registered nurses;
- (xii) Psychologists;
- (xiii) Registered nurses;
- (xiv) Social workers;
- (xv) Social worker associate-independent clinical, under the supervision of a licensed independent clinical social worker or equally qualified mental health practitioner; and
- (xvi) Social worker associate-advanced, under the supervision of a licensed independent clinical social worker, advanced social worker, or equally qualified mental health practitioner.

(3) The primary billing provider must meet all of the following:

(a) Be enrolled with the agency as one of the following:

(i) A physician licensed under Titles 18 RCW and 246 WAC;

(ii) An advanced registered nurse practitioner licensed under Titles 18 RCW and 246 WAC;

(iii) A clinic that is not a federally qualified health center (FQHC) or rural health clinic (RHC) that meets the requirements of Titles 70 RCW and 247 WAC;

(iv) An FQHC; or

(v) An RHC.

(b) Complete, sign, and return the Attestation for Collaborative Care Model, form HCA 13-0017, to the agency; and

(c) Agree to follow the agency's guidelines for practicing a collaborative care model.

(4) Providers of collaborative care must:

(a) Use a registry to track the client's clinical outcomes;

(b) Use a validated clinical rating scale;

(c) Ensure the registry is used in conjunction with the practice's electronic health records (EHR);

(d) Include a plan of care; and

(e) Identify outcome goals of the treatments.

(5) If a provider no longer meets the agreed upon requirements in the agency's Attestation for Collaborative Care Model, form HCA 13-0017, the provider must immediately notify the agency. The agency does not pay for collaborative care if a provider does not meet the agreed upon requirements.

(6) Providers are subject to post pay review by the agency. The agency may recoup payment if the provider is found to have not met the requirements for providing collabor-

orative care as agreed to in the agency's Attestation for Collaborative Care Model, form HCA 13-0017.

Date Adopted: March 15, 2019.

Kelly Susewind
Director

WSR 19-07-052
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 19-44—Filed March 15, 2019, 2:13 p.m., effective March 17, 2019, 6:00 p.m.]

Effective Date of Rule: March 17, 2019, 6:00 p.m.

Purpose: Amends Puget Sound commercial crab rules.

Citation of Rules Affected by this Order: Repealing WAC 220-340-45500T and 220-352-2300A; and amending WAC 220-340-455 and 220-352-230.

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 rule will close the Puget Sound commercial crab fishery in Region 1. It will maintain the current closures of Region 2 East and Region 2 West. It will continue the Puget Sound commercial crab harvest in Region[s] 3-1, 3-2, 3-3 East and 3-3 West. Pot limits in Region[s] 3-2, 3-3 East and 3-3 West will remain at sixty pots per license. In Region 3-1, fishers are still allowed to use their maximum of one hundred pots per license. The additional reporting requirement has been maintained in Region 1 to increase the accuracy and timeliness of crab landings not immediately recorded on a fish receiving ticket. There is sufficient allocation available in the commercial regions to accommodate the continued opening. These provisions are in conformity with agreed management plans with applicable tribes. These management plans are entered into as required by court order. The Puget Sound commercial season is structured to meet harvest allocation objectives negotiated with applicable treaty tribes and outlined in the management plans. There is insufficient time to adopt permanent rules.

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

Number of Sections Adopted at 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.

NEW SECTION

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

(1) Effective 6:00 p.m. March 17, 2019, until further notice, Crab Management Region 1 is closed. Region 1 includes Marine Fish-Shellfish Catch Reporting Areas 20A, 20B, 21A, 21B, 22A, and 22B.

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

(3) Effective immediately until further notice, Crab Management Region 2 East is closed. Region 2 East includes Marine Fish-Shellfish Catch Reporting Areas 24A, 24B, 24C, 24D and 26A East.

(4) Effective immediately, until further notice, it is unlawful for any license holder or alternate operator to fish for crabs for commercial purposes with more than 60 pots per license in Crab Management Region 3-2, Region 3-3 East or Region 3-3 West. These regions include Marine Fish-Shellfish Catch Reporting Areas 25A, 25E, 23D, 23C and 29.

(5) Effective immediately, until further notice, it is unlawful for any license holder or alternate operator to fish for crabs for commercial purposes with more than 100 pots per license in Crab Management Region 3-1. This region includes Marine Fish-Shellfish Catch Reporting Area 23A and 23B.

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

(7) Effective immediately, until further notice, the following areas are closed to commercial crab fishing:

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

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

NEW SECTION

WAC 220-352-23000B Commercial fish and shellfish transportation ticket Notwithstanding the provisions of WAC 220-352-230, effective immediately, until further notice, license holders or alternate operators fishing for crab in Region 1 (MFSF Catch Areas 20A, 20B, 21A, 21B, 22A and 22B) who do not deliver their crab to an original receiver within 24 hours of harvest, must immediately complete and submit a copy of a transportation ticket (or equivalent) to the department. This information must be submitted via fax (425-338-1066) or email (crabreport@dfw.wa.gov). A reliable contact phone number for the harvester must also be provided. Once the fisher delivers the crab to an original receiver, any copies of transportation tickets must be attached

to the shellfish receiving ticket or the transportation ticket number(s) must be written on the shellfish receiving ticket.

REPEALER

The following sections of the Washington Administrative code are repealed effective 6:00 p.m. March 17, 2019:

- WAC 220-340-45500T Commercial crab fishery—Seasons and areas—Puget Sound. (19-34)
- WAC 220-352-2300A Commercial fish and shellfish transportation ticket. (19-34)

WSR 19-07-053
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 19-43—Filed March 15, 2019, 2:47 p.m., effective April 20, 2019, 8:00 a.m.]

Effective Date of Rule: April 20, 2019, 8:00 a.m.

Purpose: Opens Failor Lake in Grays Harbor County for a one day kids-only fishing derby.

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

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: An emergency rule is needed to open Failor Lake which will allow boys and girls fourteen and younger to participate in a fishing derby hosted by the Grays Harbor Poggie Club. 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: March 15, 2019.

Kelly Susewind
Director

NEW SECTION

WAC 220-312-02000L Exceptions to statewide rules—Failor Lake (Grays Harbor Co.) Notwithstanding the provisions of WAC 220-312-020, Failor Lake is open to fishing on April 20, 2019, from 8:00 a.m. through 11:00 a.m. for anglers age fourteen years old and younger who are participating in the youth fishing event. Adults may assist children participating in the event, but no child may fish with more than one fishing rod. All other provisions of the permanent rule remain in effect.

REPEALER

The following section of the Washington Administrative Code is repealed, effective 11:01 a.m. April 20, 2019:

- WAC 220-312-02000L Exceptions to statewide rules—Failor Lake (Grays Harbor Co.)

WSR 19-07-073
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 19-45—Filed March 19, 2019, 3:06 p.m., effective March 19, 2019, 3:06 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: Amends recreational harvest rules for razor clams.

Citation of Rules Affected by this Order: Repealing WAC 220-330-16000B; and amending WAC 220-330-160.

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

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

Reasons for this Finding: This emergency rule is needed to open the recreational razor clam season. Survey results show that adequate clams are available for harvest in Razor Clam Areas 3, 4, 5 and 6 for recreational harvest. Washington department of health has certified clams from this beach to be safe for human consumption. Razor clam beaches are closed by permanent rules unless opened by an emergency rule. 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: March 19, 2019.

Kelly Susewind
Director

NEW SECTION

WAC 220-330-16000B Razor clams—Areas and seasons. Notwithstanding the provisions of WAC 220-330-160, it is unlawful to take, dig for or possess razor clams taken for personal use from any beaches in any razor clam area except as provided for in this section:

(1) Effective 12:01 a.m. March 22, 2019 through 11:59 a.m. March 24, 2019, razor clam digging is permissible in Razor Clam Area 3. Digging is permissible from 12:01 a.m. to 11:59 a.m. each day only.

(2) Effective 12:01 a.m. March 23, 2019 through 11:59 a.m. March 23, 2019 razor clam digging is permissible in Razor Clam Area 4. Digging is permissible from 12:01 a.m. to 11:59 a.m. only.

(3) Effective 12:01 p.m. March 21, 2019 through 11:59 p.m. March 21, 2019, digging is permissible in Razor Clam Area 5. Digging is permissible from 12:01 p.m. to 11:59 p.m. only.

(4) Effective 12:01 a.m. March 22, 2019 through 11:59 a.m. March 22, 2019 and 12:01 a.m. March 24, 2019 through 11:59 a.m. March 24, 2019 razor clam digging is permissible in Razor Clam Area 5. Digging is permissible from 12:01 a.m. to 11:59 a.m. each day only.

(5) Effective 12:01 a.m. March 22, 2019 through 11:59 a.m. March 24, 2019 razor clam digging is permissible in Razor Clam Area 6. Digging is permissible from 12:01 a.m. to 11:59 a.m. only.

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

REPEALER

The following section of the Washington Administrative Code is repealed effective 12:01 p.m. March 25, 2019:

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