

WSR 19-11-003
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 19-94—Filed May 1, 2019, 4:22 p.m., effective May 15, 2019]

Effective Date of Rule: May 15, 2019.

Purpose: Amends recreational fishing rules for the Icicle River.

Citation of Rules Affected by this Order: Repealing WAC 220-312-05000F; 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: The number of spring Chinook returning to the Icicle River is not expected to meet broodstock needs (one thousand spawners) at the Leavenworth National Fish Hatchery. To avoid a potential broodstock shortage and/or reduced hatchery release in 2020 it is necessary to close the fishery at this time. The Washington department of fish and wildlife will monitor spring Chinook salmon returns to the Icicle River and if numbers improve and broodstock collection goals are met, a season will be opened. 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Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at the Request of a Non-governmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 1, Amended 0, Repealed 1.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.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: May 1, 2019.

Kelly Susewind
 Director

NEW SECTION

WAC 220-312-05000F Freshwater exceptions to statewide rules—Eastside. Notwithstanding the provisions of WAC 220-312-050, effective May 15 through July 31, 2019, it is unlawful to fish for or possess salmon in the following waters:

(1) Icicle River - from the closure signs located 800 feet upstream of the mouth to 500 feet downstream of the Leavenworth National Fish Hatchery Barrier Dam.

(2) Icicle River - from the shoreline markers where Cyo Road intersects the Icicle River at the Sleeping Lady Resort to the Icicle Peshastin Irrigation Footbridge (approximately 750 feet upstream of the Snow Lakes trailhead parking area).

REPEALER

The following section of the Washington Administrative Code is repealed effective August 1, 2019:

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

WSR 19-11-004
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 19-92—Filed May 1, 2019, 4:32 p.m., effective May 3, 2019]

Effective Date of Rule: May 3, 2019.

Purpose: Amends freshwater recreational rules for the Kalama River.

Citation of Rules Affected by this Order: Repealing WAC 220-312-03000M; 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 rule is needed to open steelhead retention in the lower Kalama River. Steelhead retention was closed on the lower Kalama River in early April due to limited numbers of fish returning to hatchery facilities that are needed to meet egg production goals. During this time, hatchery facilities on the Kalama River were able to collect additional broodstock and are projected to meet egg collection goals for hatchery winter steelhead programs. 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: May 1, 2019.

Kelly Susewind
Director

NEW SECTION

WAC 220-312-03000Q Freshwater exceptions to statewide rules—Southwest. Notwithstanding the provisions of WAC 220-312-030, effective May 3, 2019 until further notice:

- 1) **Cispus River (Lewis Co.):** Salmon: closed.
- 2) **Cowlitz Falls Reservoir (Lake Scanewa) (Lewis Co.):** Salmon: closed.
- 3) **Cowlitz River (Cowlitz Co.):** Salmon: closed.
- 4) **Kalama River (Cowlitz Co.):**
 - (a) From the mouth upstream to 1000 feet below the fishway at the upper salmon hatchery:
 - (i) Salmon and steelhead: The use of barbed hooks is permissible.
 - (ii) Salmon; effective immediately: Daily limit 6; no more than 1 adult may be retained. Release all salmon other than hatchery Chinook and hatchery coho.
 - (b) From 1000 feet above fishway at upper salmon hatchery to Summers Creek: Selective Gear Rules, except the use of barbed hooks is permissible.
 - (c) From Summers Creek to the intersection 6000 and 6420 Roads: fly fishing only, except the use of barbed hooks is permissible.
 - (d) From the intersection 6000 and 6420 Roads to 6600 Road Bridge immediately downstream of Jacks Creek: Selective Gear Rules, except the use of barbed hooks is permissible.
- 5) **Klickitat River (Klickitat Co.):**
 - (a) From the mouth (Burlington Northern Railroad bridge) to Fisher Hill Bridge, effective:
 - (i) Salmon and steelhead; effective immediately through May 24, 2019:
 - (A) Open Mondays, Wednesdays, and Saturdays only.
 - (B) Daily limit 2; no more than 1 may be an adult salmon: Release wild Chinook and wild steelhead.
 - (ii) Salmon; effective May 25, 2019 until further notice: Daily limit 6; no more than 1 adult may be retained: Release wild Chinook.
 - (b) From 400 feet upstream of #5 fishway to boundary markers below Klickitat Salmon Hatchery, effective May 25, 2019 until further notice: Salmon: Daily limit 6; no more than 1 adult may be retained: Release wild Chinook.
- 6) **Lewis River (Clark/Cowlitz Co.):** Salmon: closed.
- 7) **Wind River (Skamania Co.):**
 - (a) From the mouth to 400 feet downstream of Shipherd Falls fish ladder, effective immediately until further notice: Salmon and steelhead: Daily limit 6; no more than 2 hatchery steelhead, or 1 hatchery steelhead and 1 adult salmon may be retained: Release wild Chinook, wild coho, and wild steelhead.
 - (b) From 100 feet upstream of Shipherd Falls to 800 yards downstream of Carson National Fish Hatchery, effective immediately until further notice: Daily limit 6; no more than 2 hatchery steelhead, or 1 hatchery steelhead and 1 adult salmon may be retained.

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 May 3, 2019:

WAC 220-312-03000N Southwest—Freshwater exceptions to statewide rules. (19-55)

**WSR 19-11-016
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE**

[Order 19-89—Filed May 3, 2019, 12:23 p.m., effective May 25, 2019]

Effective Date of Rule: May 25, 2019.

Purpose: Amend recreational fishing rules for the Skykomish River.

Citation of Rules Affected by this Order: Repealing WAC 220-312-04000M; 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: 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: May 3, 2019.

Joe Stohr
for Kelly Susewind
Director

NEW SECTION

WAC 220-312-04000M Freshwater exceptions to statewide rules—Puget Sound. Notwithstanding the provisions of WAC 220-312-040, effective May 25 through July 31, 2019, it is permissible to fish for salmon in those waters of the Skykomish River from the mouth to the mouth of the Wallace River. Daily limit of four hatchery Chinook salmon only two of which may be adults. Minimum size 12 inches.

REPEALER

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

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

WSR 19-11-018
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 19-93—Filed May 6, 2019, 10:08 a.m., effective May 6, 2019, 10:08 a.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: Amends recreational coastal saltwater salmon rules.

Citation of Rules Affected by this Order: 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: May 6, 2019.

Kelly Susewind
Director

NEW SECTION

WAC 220-313-07000M 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) Immediately through June 21: Closed.

(b) Open June 22, 2019 until further notice:

(i) Daily limit of 2 salmon; no more than one may be a Chinook.

(ii) Release wild coho.

(c) Closed in the Columbia River Mouth Control Zone 1 during all open periods. See WAC 220-313-020.

(2) Catch Record Card Area 2:

(a) Immediately through June 21: Closed.

(b) Open June 22, 2019 until further notice:

(i) Daily limit of 2 salmon; no more than one may be a Chinook.

(ii) Release wild coho.

(iii) Beginning August 12, the Grays Harbor Control Zone is closed. Grays Harbor Control Zone - The area defined by a line drawn from the Westport Lighthouse (46°53.18'N latitude, 124°07.01'W longitude) to Buoy #2 (46°52.42'N latitude, 124°12.42'W longitude) to Buoy #3 (46°55.00'N latitude, 124°14.48'W longitude) to the Grays Harbor north jetty (46°55.36'N latitude, 124°10.51'W longitude).

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

(a) Immediately through June 21: Closed.

(b) June 22 through July 31: Open concurrent with Area 2 when Area 2 is open for salmon angling. Area 2 rules apply.

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

(a) Immediately through July 31: Closed.

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

(a) Immediately through June 21: Closed.

(b) June 22 through August 11: Open concurrent with Area 2 when Area 2 is open for salmon angling. Area 2 rules apply.

(c) August 12 until further notice: Closed.

(6) Catch Record Card Area 3:

(a) Immediately through June 21: Closed

(b) Open June 22, 2019 until further notice:

(i) Daily limit of 2 salmon.

(ii) Release wild coho.

(7) Catch Record Card Area 4:

(a) Immediately through June 21: Closed.

(b) Open June 22, 2019 until further notice:

(i) Daily limit of 2 salmon.

(ii) Release wild coho.

- (iii) Waters east of a true north-south line through Sail Rock are closed through July 31
- (iv) No chinook retention in waters east of the Bonilla-Tatoosh line beginning August 1.
- (v) Release chum salmon beginning August 1.

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

WSR 19-11-019
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 19-96—Filed May 6, 2019, 4:37 p.m., effective May 11, 2019]

Effective Date of Rule: May 11, 2018 [2019].

Purpose: Amends recreational fishing rules for the Snake River.

Citation of Rules Affected by this Order: 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 rule is necessary to open a recreational salmon fishery on the Snake River. The 2019 Columbia River forecasted return of upriver spring Chinook salmon is sufficiently abundant enough to allow for angling opportunity on the Snake River based on Washington Department of Fish and Wildlife Commission Policy C-3620. The *U.S. v. Oregon* (2018-2027) Management Agreement provides Endangered Species Act coverage for this 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 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: May 6, 2019.

Kelly Susewind
 Director

NEW SECTION

WAC 220-312-05000G Freshwater exceptions to statewide rules—Snake River. Notwithstanding the provisions of WAC 220-312-050 and WAC 220-313-010:

(1) Snake River from Texas Rapids boat launch (south side of the river upstream of the mouth of Tucannon River) to the fishing restriction boundary below Little Goose Dam. This zone includes the rock and concrete area between the juvenile bypass return pipe and Little Goose Dam along the south shoreline of the facility (includes the walkway area locally known as "the Wall" in front of the juvenile collection facility); effective May 11, 2019 until further notice:

(a) Hooks must be barbless when fishing for all species during times and in locations open for salmon.

(b) Salmon:

(i) Open Saturdays and Sundays each week.

(ii) Daily limit 4 of which up to 1 may be an adult; minimum length 12 inches.

(iii) Release all salmon other than hatchery Chinook.

(iv) Anglers may not continue to fish for salmon or steelhead once the adult salmon daily limit has been retained.

(v) Night closure.

(2) Snake River, from the downstream edge of the large power lines crossing the Snake River (just upstream from the West Evans Road on the south shore) upstream about 3.5 miles to the Washington state line (from the east levee of the Greenbelt boat launch in Clarkston northwest across the Snake River to the WA/ID boundary waters marker on the Whitman County shore); effective May 11, 2019 until further notice:

(a) Hooks must be barbless when fishing for all species during times and in locations open for salmon.

(b) Salmon:

(i) Open Saturdays and Sundays each week.

(ii) Daily limit 4; minimum length 12 inches.

(iii) Release all salmon other than hatchery Chinook.

(iv) Anglers may not continue to fish for salmon or steelhead once the adult salmon daily limit has been retained.

(v) Night closure.

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

WSR 19-11-037
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 19-98—Filed May 9, 2019, 1:47 p.m., effective May 11, 2019]

Effective Date of Rule: May 11, 2019.

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

and wildlife commission policy guidance for Columbia River fisheries.

Citation of Rules Affected by this Order: Repealing WAC 220-312-06000L; and amending WAC 220-312-060.

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

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

Reasons for this Finding: Extends the 2019 spring recreational salmon season in the Columbia River above Bonneville Dam including shad and hatchery steelhead. ESA impacts for wild fish are available to recreational fisheries in order to access remaining catch balance of hatchery fish. The fishery is consistent with the *U.S. v. Oregon* Management Agreement and the associated biological opinion. Conforms Washington state rules with Oregon state rules. Regulation is consistent with compact action of May 8, 2019.

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 2008-2017 Management Agreement (MA) and biological opinion (BO) have been extended through February 2018 while the MA and BO covering 2018-2027 are finalized. 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. There is insufficient time to promulgate permanent rules.

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

Recently Enacted State Statutes: New 1, Amended 0, Repealed 1.

Number of Sections Adopted at 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: May 9, 2019.

Kelly Susewind
Director

NEW SECTION

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

(1) **From a true north-south line through Buoy 10, upstream to a line from the Warrior Rock lighthouse on the Oregon shore to red USCG buoy #4, then to the piling dolphin on the lower end of Bachelor Island (Warrior Rock line):** Salmon and steelhead: Effective immediately until further notice: Closed.

(2) **From the Tower Island power lines in Bonneville Pool (located approximately 6 miles below the Dalles Dam) upstream to the Oregon and Washington border, plus the Washington bank between Bonneville Dam and the Tower Island power lines (except for those water closed under permanent rule):** Effective Saturday, May 11 through Sunday, May 12, 2019:

(a) Open to fishing for salmon and steelhead.

(b) Daily limit is 6 adipose fin clipped salmonids, no more than 2 adults of which no more than 1 may be an adult Chinook.

(c) Release all wild Chinook, wild coho and wild steelhead.

(d) Salmon minimum size is 12 inches.

(3) **From Beacon Rock to Bonneville Dam deadline:**

(a) Effective immediately through May 15, 2019: Closed.

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

REPEALER

The following section of the Washington Administrative Code is repealed effective May 11, 2019:

WAC 220-312-06000L Freshwater exceptions to statewide rules—Columbia River. (19-85)

WSR 19-11-038
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 19-100—Filed May 9, 2019, 1:50 p.m., effective May 9, 2019, 1:50 p.m.]

Effective Date of Rule: Immediately upon filing.

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 220-358-03000A; 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 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: Extends Tongue Point and South Channel Select Area commercial season to align opportunity with other select areas. 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 actions of January 29, March 28, April 16, and May 8, 2019. 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 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.

Some Columbia River Basin salmon and steelhead stocks are listed as threatened or endangered under the federal ESA. 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: May 9, 2019.

Kelly Susewind
Director

NEW SECTION

WAC 220-358-03000B Columbia River seasons below Bonneville. Notwithstanding the provisions of WAC 220-358-030, WAC 220-358-040, and WAC 220-335-050, 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) Tongue Point/South Channel

(a) Dates:

Wednesday and Thursday nights (7 PM to 7 AM) from May 15 through June 13

South Channel only:

Spring/Summer Season:

Monday and Thursday nights (7 PM to 7 AM) from May 9 through May 29

(b) Area:

The Tongue Point Winter-Spring Subarea is defined as waters of the Columbia River bounded by a line from the end of the southern-most pier (#1) at the Tongue Point Job Corps facility projecting in a straight line through flashing red USCG light "6" to the shore of Mott Island, a line from a regulatory marker at the southeast end of Mott Island northeast-

erly to a regulatory marker on the northwest shore of Lois Island, and a line from a regulatory marker located on the Oregon shore approximately 300 yards northwest of the railroad bridge crossing the John Day River projecting easterly to a regulatory marker on the southwest shore of Lois Island. If the marker on the Oregon shore is not in place, the upper boundary is defined by a line projecting easterly from a point (46°10'57.7"N latitude 123°44'35.3"W longitude) on the Oregon shore approximately 300 yards northwest of the railroad bridge crossing the John Day River to a regulatory marker on the southwest shore of Lois Island.

The South Channel Select Area is defined as waters of the Columbia River bounded by a line from a regulatory marker on the Oregon shore at John Day Point projecting northeasterly to a regulatory marker on the southwest shore of Lois Island, and a line from a regulatory marker on Settler Point projecting northwesterly to the flashing red USCG light "10" then projecting westerly to the eastern tip of Burnside Island.

(c) **Gear:** Gillnets.

Winter season: 7-inch minimum mesh size restriction

Spring and Summer seasons: 9 3/4-inch maximum mesh size restriction

The maximum net length is 1,500 feet (250 fathoms).

In the Tongue Point winter-spring subarea the lead line weight may not exceed two pounds per any one fathom;

In the South Channel Select Area, there is no lead line weight limit and attachment of additional weight and anchors directly to the lead line is permitted.

Nets not specifically authorized for use may be onboard a vessel if properly stored, however, unstored gillnets legal for use in South Channel may be onboard. A properly stored net is defined as a net on a drum that is fully covered by a tarp (canvas or plastic) and bound with a minimum of ten revolutions of rope with a diameter of 3/8 (0.375) inches or greater.

(d) Allowable sales: Salmon (except Chum) and shad. Retention and sale of sturgeon is prohibited

(e) **Miscellaneous:**

Permanent regulations including rules related to transportation and lighted buoys remain in effect.

24-hour quick reporting required for Washington buyers, pursuant to WAC 220-352-315.

Oregon buyers are required to submit fish receiving tickets electronically pursuant to OAR 635-006-0210.

(2) Blind Slough/Knappa Slough Select Area

(a) **Dates:**

Spring Season:

Monday, Wednesday, and Thursday nights (7 PM to 7 AM) from May 9 through June 14.

Knappa Slough only

Blind Slough only

Summer Season:

Monday and Thursday nights (7 PM to 7 AM) from June 17 through June 28.

(b) **Area:**

The Blind Slough Select Area is defined as waters of Blind Slough and Gnat Creek from a north-south line represented by regulatory markers at the mouth of Blind Slough upstream to a regulatory marker in Gnat Creek located

approximately 0.5 miles southeasterly (upstream) of the Barndse Road Bridge.

The Knappa Slough Select Area is defined as waters of Knappa Slough, Calendar Slough, and Big Creek Slough bounded to the north (upstream) by a line projecting from a regulatory marker on the eastern shore of Karlson Island to the northernmost regulatory marker at the mouth of Blind Slough and bounded to the west (downstream) by a line projecting southerly from a regulatory marker on the southwestern tip of Karlson Island through regulatory markers on the western tips of Minaker Island to a marker on the Oregon shore. The waters of Knappa Slough within a 100-foot radius of the railroad bridge crossing Big Creek are closed.

Prior to May 6, the downstream (western) boundary in Knappa Slough is a north-south line projecting through the easternmost tip of Minaker Island and regulatory markers on Karlson Island and the Oregon shore.

(c) **Gear:** Gillnets.

Winter season: 7-inch minimum mesh size restriction.

Spring and Summer seasons: 9 3/4-inch maximum mesh size restriction.

The maximum net length is 600 feet (100 fathoms).

There is no lead line weight limit and attachment of additional weight or anchors directly to the lead line is permitted.

(d) **Miscellaneous:** Permanent transportation rules in effect. In accordance with WACs 220-352-040 and 220-301-010 commercial fishers are expected, and fish dealers are required, to report landings for winter-summer fisheries in Knappa Slough and Blind Slough separately using appropriate zone codes. Fish dealers are requested to keep landings from these two sites separate to aid in sampling.

(3) **Allowable Possession:** Salmon (except chum), white sturgeon, and shad. A maximum of four white sturgeon with a fork length of 44-50 inches fork length may be possessed or sold by each participating vessel during each calendar week (Sunday through Saturday). The four white sturgeon possession and sales limit includes all Select Area fisheries.

(4) **24-hour quick reporting** is in effect for Washington buyers (WAC 220-352-315). Permanent transportation rules in effect. Oregon buyers are required to submit fish receiving tickets electronically pursuant to OAR 635-006-0210. Unique catch reporting codes have been established for Blind Slough and Knappa Slough to facilitate separation of landings and sampling for winter/spring fisheries.

(5) **Multi-Net Rule:** Nets not specifically authorized for use in these areas may be onboard a vessel if properly stored (WAC 220-358-030(2)).

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

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

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

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 220-358-03000A Columbia River seasons below
Bonneville (19-78)

WSR 19-11-043**EMERGENCY RULES****DEPARTMENT OF****SOCIAL AND HEALTH SERVICES**

(Developmental Disabilities Administration)

[Filed May 10, 2019, 11:07 a.m., effective May 10, 2019, 11:07 a.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: The department is amending WAC 388-845-1410 Are there limits to the prevocational services you may receive?, to eliminate prevocational services by March 1, 2019.

Citation of Rules Affected by this Order: Amending WAC 388-845-1410.

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

Other Authority: 42 C.F.R. Section 441.301 (c)(4).

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: Prevocational services do not meet federal integration requirements under 42 C.F.R. Section 441.301 (c)(4) for home and community based services (HCBS) settings. In response, the department's HCBS state-wide transition plan, as approved by the Centers for Medicare and Medicaid Services (CMS), ended enrollment in prevocational services by September 1, 2015. Additionally, the approved plan aimed to transition all remaining prevocational clients to other services within four years. The developmental disabilities administration (DDA) must enact this mass change on an emergency basis to comply with the CMS-approved waiver amendments that eliminate prevocational services on the basic plus and core waivers by March 1, 2019. If this amendment is not enacted on an emergency basis, the department risks losing federal funding. Enacting this amendment on an emergency basis also enables DDA to send timely due-process notices with an appropriate WAC citation. This is the second emergency filing on this section and it is necessary to keep the amendments enacted until the permanent rule-making process is complete. DDA held the public hearing on April 23, 2019, and is in the process of filing the permanent rule-making order.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 1, 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 1, Repealed 0.

Date Adopted: May 9, 2019.

Katherine I. Vasquez
Rules Coordinator

AMENDATORY SECTION (Amending WSR 18-03-174, filed 1/23/18, effective 2/23/18)

WAC 388-845-1410 Are there limits to the prevocational services you may receive? The following limits apply to your receipt of prevocational services:

(1) Effective September 1, 2015, no new referrals are accepted for prevocational services.

(2) Effective March 1, 2019, prevocational services are no longer available.

(3) Clinical and support needs for prevocational services are limited to those identified in your developmental disabilities administration (DDA) assessment and documented in your person-centered service plan/individual support plan.

~~((3))~~ (4) You must be age twenty and graduating from high school before your July or August twenty-first birthday, age twenty-one and graduated from high school, or age twenty-two or older to receive prevocational services.

~~((4))~~ (5) Prevocational services are a time limited step on the pathway toward individual employment and are dependent on your demonstrating steady progress toward gainful employment over time. Your annual employment plan will include exploration of integrated settings within your next service year. Criteria that would trigger a review of your need for these services include, but are not limited to:

(a) Compensation at more than fifty percent of the prevailing wage;

(b) Significant progress made toward your defined goals; and

(c) Recommendation by your individual support plan team.

~~((5))~~ (6) You will not be authorized to receive prevocational services in addition to community access services or supported employment services.

~~((6))~~ (7) Your service hours are determined by the assistance you need to reach your employment outcomes as described in WAC 388-828-9325.

WSR 19-11-044
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 19-95—Filed May 10, 2019, 12:44 p.m., effective May 10, 2019,
12:44 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: Amends recreational razor clam rules.

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

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 open the recreational razor clam season. Survey results show that adequate clams are available for harvest in Razor Clam Area 5 for recreational harvest. Washington department of health has certified clams from this beach to be safe for human consumption. There is insufficient time to adopt permanent rules.

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

Number of Sections Adopted at 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: May 10, 2019.

Kelly Susewind
Director

NEW SECTION

WAC 220-330-16000E 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. May 18, 2019 through 11:59 a.m. May 20, 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.

REPEALER

The following section of the Washington Administrative Code is repealed effective 12:01 p.m. May 20, 2019:

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

WSR 19-11-045
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 19-102—Filed May 10, 2019, 12:47 p.m., effective May 13, 2019]

Effective Date of Rule: May 13, 2019.

Purpose: Amend recreational fishing rules for the Chehalis River; Chehalis River, South Fork; Newaukum River, North Fork; Newaukum River, South Fork; and Skookumchuck River.

Citation of Rules Affected by this Order: Repealing WAC 220-312-02000M and 220-312-02000Q; 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: This emergency rule is needed to close the Chehalis River and listed tributaries to fishing. Low predicted spring Chinook returns make them more vulnerable to fishing pressure. Spring Chinook stage in the Chehalis River, South Fork Chehalis River, North and South forks of the Newaukum River and the Skookumchuck River. Any incidental encounters of spring Chinook during game fishing could subject this fish to stress, injury, or death, which during a year of low predicted returns could harm future runs. 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: May 10, 2019.

Kelly Susewind
Director

NEW SECTION

WAC 220-312-02000Q Freshwater exceptions to statewide rules—Coast. Notwithstanding the provisions of WAC 220-312-020, effective May 13 through June 30, 2019, the following waters are closed to all fishing:

- 1) Chehalis River (Grays Harbor County)
- 2) Chehalis River, South Fork (Grays Harbor County)
- 3) Newaukum River, North Fork (Lewis County)
- 4) Newaukum River, South Fork (Lewis County)
- 5) Skookumchuck River (Lewis/Thurston County)

REPEALER

The following section of the Washington Administrative Code is repealed effective May 13, 2019:

WAC 220-312-02000M Freshwater exceptions to statewide rules—Coast. (19-71)

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

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

**WSR 19-11-052
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE**

[Order 19-97—Filed May 13, 2019, 10:06 a.m., effective June 7, 2019, 6:00 p.m.]

Effective Date of Rule: June 7, 2018 [2019], 6:00 p.m.

Purpose: Amends freshwater recreational rules for Lake Sylvia.

Citation of Rules Affected by this Order: Repealing WAC 220-312-02000R; 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: This rule change is necessary to ensure a safe and successful kids fish-in event. The fish will be planted the evening prior to the event to better acclimate them to the lake. There is insufficient time to adopt permanent rules.

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

Number of Sections Adopted at 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: May 13, 2018.

Kelly Susewind
Director

NEW SECTION

WAC 220-312-02000R Freshwater exceptions to statewide rules—Coastal. Notwithstanding the provisions of WAC 220-312-020, effective 6:00 p.m. June 7 through 6:00 a.m. June 8, 2019, it is unlawful to fish in waters of Lake Sylvia (Grays Harbor Co.).

REPEALER

The following section of the Washington Administrative Code is repealed effective 6:01 a.m. June 8, 2019:

WAC 220-312-02000R Freshwater exceptions to statewide rules—Coastal.

**WSR 19-11-058
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE**

[Order 19-99—Filed May 14, 2019, 9:39 a.m., effective May 25, 2019]

Effective Date of Rule: May 25, 2019.

Purpose: Amend recreational fishing rules for the Green (Duwamish) River.

Citation of Rules Affected by this Order: 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 rule is necessary to open hatchery steelhead retention on the Green (Duwamish) River. Preseason forecasts indicate harvestable numbers of hatchery steelhead are available. 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: May 13, 2019.

Kelly Susewind
Director

NEW SECTION

WAC 220-312-0400P Freshwater exceptions to statewide rules—Puget Sound. Notwithstanding the provisions of WAC 220-312-040:

Green (Duwamish) River (King Co.): From an east-west line extending through the southernmost tip of Harbor Island to the Tacoma Municipal Watershed Boundary Marker (1 mile downstream of Tacoma Headworks Dam); except for areas of permanently Closed Waters: Hatchery steelhead daily limit is 2 fish.

WSR 19-11-064
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 19-103—Filed May 15, 2019, 10:45 a.m., effective May 15, 2019, 10:45 a.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: Amend recreational fishing rules for the Snake River.

Citation of Rules Affected by this Order: Repealing WAC 220-312-05000G; 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 rule is needed to close salmon fishing in a portion of the Snake River. Spring Chinook salmon returns to the Clearwater River are lower than predicted in preseason estimates. In order to protect hatchery broodstock within the Clearwater it is necessary to close this section of the Snake River, as it is adjacent to the mouth of the Clearwater. 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: May 14, 2019.

Kelly Susewind
Director

NEW SECTION

WAC 220-312-05000H Freshwater exceptions to statewide rules—Eastside. Notwithstanding the provisions of WAC 220-312-050 and WAC 220-313-010:

(1) Snake River from Texas Rapids boat launch (south side of the river upstream of the mouth of Tucannon River) to the fishing restriction boundary below Little Goose Dam. This zone includes the rock and concrete area between the juvenile bypass return pipe and Little Goose Dam along the south shoreline of the facility (includes the walkway area locally known as "the Wall" in front of the juvenile collection facility); effective immediately until further notice:

(a) Hooks must be barbless when fishing for all species during times and in locations open for salmon.

(b) Salmon:

(i) Open Saturdays and Sundays each week.

(ii) Daily limit 4 of which up to 1 may be an adult; minimum length 12 inches.

(iii) Release all salmon other than hatchery Chinook.

(iv) Anglers may not continue to fish for salmon or steelhead once the adult salmon daily limit has been retained.

(v) Night closure.

REPEALER

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

WAC 220-312-05000G Freshwater exceptions to statewide rules—Eastside. (19-96)

WSR 19-11-072
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 19-104—Filed May 16, 2019, 1:42 p.m., effective May 29, 2019]

Effective Date of Rule: May 29, 2019.

Purpose: Closes Heart Lake for kids fishing event.

Citation of Rules Affected by this Order: Repealing WAC 220-312-04000Q; 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 ensure a successful kids fishing event. The closure is needed before the event as the fish will be planted in the lake two days prior to the event to better acclimate them. On the day of the event only children fourteen years of age or less will be allowed to fish in the lake. There is insufficient time to adopt permanent rules.

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

Number of Sections Adopted at 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: May 16, 2019.

Kelly Susewind
Director

NEW SECTION

WAC 220-312-04000Q Freshwater exceptions to statewide rules—Puget Sound. Notwithstanding the provisions of WAC 220-312-040, effective 12:01 a.m. May 29 through June 1, 2019, it is unlawful to fish in those waters of Heart Lake, except open to fishing 7:00 a.m. to 12:00 p.m. June 1, 2019, to anglers participating in the kids fishing event. Juvenile anglers can continue to fish on June 1, 2019, after the kids fishing event closes.

REPEALER

The following section of the Washington Administrative Code is repealed effective June 2, 2019:

WAC 220-312-04000Q Exceptions to statewide rules—Heart Lake (Skagit Co.)

WSR 19-11-093
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 19-106—Filed May 17, 2019, 3:54 p.m., effective May 20, 2019]

Effective Date of Rule: May 20, 2019.

Purpose: Amend recreational fishing rules for Wind River and Drano Lake.

Citation of Rules Affected by this Order: Repealing WAC 220-312-03000Q; 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 rule is needed to close recreational salmon and steelhead angling in the Wind River and Drano Lake. Returns of upriver spring Chinook to several hatchery facilities in the Columbia and Snake River basins are currently projected to fall below levels needed to meet broodstock collection goals. These facilities can utilize spring Chinook stocks collected at Little White Salmon and Carson National Fish Hatcheries for brood. Closing the Wind River and Drano Lake fisheries will provide additional fish for these hatchery facilities and help ensure future hatchery returns and fishing opportunities. 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: May 17, 2019.

Kelly Susewind
Director

NEW SECTION

WAC 220-312-03000S Freshwater exceptions to statewide rules—Southwest. Notwithstanding the provisions of WAC 220-312-030, effective May 20, 2019 until further notice:

1) **Cispus River (Lewis Co.):** Salmon: closed.

2) **Cowlitz Falls Reservoir (Lake Scanewa) (Lewis Co.):** Salmon: closed.

3) **Cowlitz River (Cowlitz Co.):** Salmon: closed.

4) **Drano Lake (Skamania Co.):** In the waters downstream of markers on point of land downstream and across from Little White Salmon National Fish Hatchery and upstream of Highway 14 bridge: Salmon and steelhead: closed.

5) **Kalama River (Cowlitz Co.):**

(a) From the mouth upstream to 1000 feet below the fishway at the upper salmon hatchery:

(i) Salmon and steelhead: The use of barbed hooks is permissible.

(ii) Salmon; effective immediately: Daily limit 6; no more than 1 adult may be retained. Release all salmon other than hatchery Chinook and hatchery coho.

(b) From 1000 feet above fishway at upper salmon hatchery to Summers Creek: Selective Gear Rules, except the use of barbed hooks is permissible.

(c) From Summers Creek to the intersection 6000 and 6420 Roads: fly fishing only, except the use of barbed hooks is permissible.

(d) From the intersection 6000 and 6420 Roads to 6600 Road Bridge immediately downstream of Jacks Creek: Selective Gear Rules, except the use of barbed hooks is permissible.

6) **Klickitat River (Klickitat Co.):**

(a) From the mouth (Burlington Northern Railroad bridge) to Fisher Hill Bridge:

(i) Salmon and steelhead; effective immediately through May 24, 2019:

(A) Open Mondays, Wednesdays, and Saturdays only.

(B) Daily limit 2; no more than 1 may be an adult salmon: Release wild Chinook and wild steelhead.

(ii) Salmon; effective May 25, 2019 until further notice: Daily limit 6; no more than 1 adult may be retained: Release wild Chinook.

(b) From 400 feet upstream of #5 fishway to boundary markers below Klickitat Salmon Hatchery, effective May 25, 2019 until further notice: Salmon: Daily limit 6; no more than 1 adult may be retained: Release wild Chinook.

7) **Lewis River (Clark/Cowlitz Co.):** Salmon: closed.

8) **Wind River (Skamania Co.):** From the mouth to 800 yards downstream of Carson National Fish Hatchery: Salmon and steelhead: closed.

REPEALER

The following section of the Washington Administrative Code is repealed effective May 20, 2019:

WAC 220-312-03000Q Southwest—Freshwater exceptions to statewide rules. (19-92)

WSR 19-11-102

EMERGENCY RULES

DEPARTMENT OF

FISH AND WILDLIFE

[Order 19-107—Filed May 20, 2019, 4:26 p.m., effective May 20, 2019, 4:26 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: Amend recreational halibut rules.

Citation of Rules Affected by this Order: Repealing WAC 220-314-03000R; and amending WAC 220-314-030.

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 rule is needed to add additional fishing days to the 2019 halibut season for some areas. This rule is in line with federal action taken by the Pacific Fisheries Management Council, International Pacific Halibut Commission and the interim final rule adopted by the National Marine Fisheries Service.

The 2019 sport halibut quota approved by the International Pacific Halibut Commission in January 2019 is approximately twenty-five percent higher than 2018. The higher quota, combined with lower catch in Marine Areas 5-10 during the early season, allows for more sport halibut fishing days than were anticipated when the season dates were set last fall. To maximize sport fishing opportunity in this area, six additional fishing days will be added. In addition, another fishing day on Thursday, June 6, will be opened for recreational halibut fishing in Marine Area 2.

The recreational halibut quota is sufficient to provide for these seasons. 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: May 20, 2019.

Kelly Susewind
Director

Emergency

NEW SECTION

WAC 220-314-03000S Halibut—Seasons—Daily and possession limits. Notwithstanding the provisions of WAC 220-314-030, 220-314-040, and 220-314-010, effective immediately until further notice, it is unlawful to fish for or possess halibut taken for personal use, except as provided in this section:

(1) Catch Record Card Area 1:

(a) Open Friday, May 24 and Sunday, May 26.

(b) It is unlawful during any vessel trip to bring into port or land bottomfish except sablefish, Pacific Cod, or flat fish species when halibut are on board.

(c) Lingcod can be retained when halibut are on board, during the halibut season north of the Washington-Oregon border.

(2) Catch Record Card Area 1 (Nearshore fishery);

Those waters shoreward from 46°38.17'N. lat., 124°15.88'W. long., to the WA/OR border at 46°16.00'N. lat., 124°15.88'W. long. (then connecting to the 40 fathom depth contour in Oregon):

(a) Open immediately until further notice, Mondays through Wednesdays.

(b) It is permissible to retain bottomfish while possessing halibut onboard boats in the nearshore area.

(3) Catch Record Card Area 2: Open Friday, May 24 and Thursday, June 6.

(a) Immediately through May 31, it is unlawful to fish for or possess lingcod, seaward of line approximating the 30-fathom depth contour as defined by the coordinates below. However, a person may fish for and retain lingcod on days open during the primary halibut season seaward of a line approximating the 30-fathom depth contour as defined by the coordinates below:

47°31.70'N. lat., 124°37.03'W. long.
 47°25.67'N. lat., 124°34.79'W. long.
 47°12.82'N. lat., 124°29.12'W. long.
 46°52.94'N. lat., 124°22.58'W. long.
 46°44.18'N. lat., 124°18.00'W. long.
 46°38.17'N. lat., 124°15.88'W. long.

(4) Card Areas 3 and 4:

(a) Open Friday, May 24; Sunday, May 26; Thursday, June 6; Saturday, June 8; Thursday, June 20; Saturday, June 22

(b) The following area southwest of Cape Flattery is closed to fishing for halibut at all times:

Beginning at 48°18'N., 125°18'W.; thence to
 48°18'N., 124°59'W.; thence to
 48°11'N., 124°59'W.; thence to
 48°11'N., 125°11'W.; thence to
 48°04'N., 125°11'W.; thence to
 48°04'N., 124°59'W.; thence to
 48°N., 124°59'W.; thence to
 48°N., 125°18'W.; thence to point of origin.

(c) In Marine Areas 3 and 4 (west of the Bonille-Tatoosh Line); effective June 1: it is unlawful to fish for or possess bottomfish seaward of a line approximating the 20-fathom depth contour except, on days open to the Pacific halibut fishery in these areas, it is permissible to retain lingcod, sablefish

and Pacific cod seaward of the 20 fathom depth contour as defined by the following coordinates:

48°23.9'N. lat., 124°44.2'W. long.
 48°23.6'N. lat., 124°44.9'W. long.
 48°18.6'N. lat., 124°43.6'W. long.
 48°18.6'N. lat., 124°48.2'W. long.
 48°10.0'N. lat., 124°48.8'W. long.
 48°02.4'N. lat., 124°49.3'W. long.
 47°37.6'N. lat., 124°34.3'W. long.
 47°31.7'N. lat., 124°32.4'W. long.

(d) In Marine Area 4 (east of the Bonilla-Tatoosh Line) it is unlawful to fish for or possess bottomfish seaward of a line approximating 120-feet (20 fathoms), except, on days open to the Pacific halibut fishery in this area, it is permissible to retain lingcod, and Pacific cod seaward of the 120 feet (20 fathoms) as defined by WAC 220-314-010.

(5) Catch Record Card Area 5 through 10:

(a) Open Friday, May 24; Sunday, May 26; Thursday, May 30; Saturday, June 1; Thursday, June 6; Saturday, June 8; Thursday, June 13; Saturday, June 15; Thursday, June 20; Thursday June 27; Saturday, June 22; and, Saturday, June 29.

(b) It is permissible for halibut anglers to retain lingcod and Pacific cod caught while fishing for halibut in waters deeper than 120 feet on days when halibut fishing is open in Area 5.

(6) Catch Record Card Areas 11, 12 and 13: Closed.

(7) Daily limit one halibut, no minimum size limit. The possession limit is two daily limits of halibut in any form, except the possession limit aboard the fishing vessel is one daily limit.

(8) It is unlawful to land halibut in a port within an area closed to halibut fishing.

(9) Annual halibut limit is four.

(10) All other permanent rules remain in effect.

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.

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 220-312-03000R Halibut—Seasons—Daily and possession limits. (19-68)

Reviser's note: The section above appears as filed by the agency pursuant to RCW 34.08.040; however, the reference to WAC 220-312-03000R is probably intended to be WAC 220-314-03000R.

WSR 19-11-107
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 19-88—Filed May 21, 2019, 12:07 p.m., effective May 25, 2019]

Effective Date of Rule: May 25, 2019.

Purpose: Amend recreational fishing rules for the Stillaguamish River.

Citation of Rules Affected by this Order: Repealing WAC 220-312-04000L; 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: 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: May 21, 2019.

Kelly Susewind
 Director

NEW SECTION

WAC 220-312-04000L Freshwater exceptions to statewide rules—Puget Sound. Notwithstanding the provisions of WAC 220-312-040, effective May 25 through September 15, 2019, the following waters are closed to fishing:

(1) **Boulder River** (Snohomish Co.) from mouth to Boulder Falls.

(2) **Canyon Creek** (Snohomish Co.) from mouth to forks.

(3) **Pilchuck Creek** (Skagit/Snohomish Co.) from the mouth to the highway 9 bridge.

(4) **Squire Creek** (Snohomish Co.)
 (5) **Stillaguamish River** (Snohomish Co.), from Marine Drive to Forks.

(6) **Stillaguamish River, North Fork** (Snohomish Co.) from mouth to North Fork Falls (approximately 1 mile above Cascade Creek).

(7) **Stillaguamish River, South Fork** (Snohomish Co.) from the mouth to 400 feet below the Granite Falls Fishway outlet.

REPEALER

The following section of the Washington Administrative Code is repealed effective September 16, 2019:

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

WSR 19-11-111
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 19-108—Filed May 21, 2019, 2:41 p.m., effective May 21, 2019, 2:41 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: Amend recreational fishing rules for the Snake River.

Citation of Rules Affected by this Order: Repealing WAC 220-312-05000H.

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 is needed to close salmon fishing in the Snake River. Based on angling effort and harvest rate of spring Chinook in the Snake River, continuing this fishery would likely exceed [exceed] allocation. 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: May 21, 2019.

Kelly Susewind
Director

REPEALER

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

WAC 220-312-05000H Freshwater exceptions to statewide rules—Eastside. (19-103)