

WSR 16-20-001
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 16-256—Filed September 21, 2016, 1:19 p.m., effective September 21, 2016, 1:19 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: Amends freshwater recreational fishing in the Columbia River.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-310-20000B and 220-310-20000D; and amending WAC 220-310-200.

Statutory Authority for Adoption: RCW 77.04.012, 77.04.020, 77.04.055, 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 clarify the boundary of the Snake River Confluence Protection Area (SRCPA) in the lower Snake River. The SRCPA is further defined to include waters of the Snake River upstream to the railroad bridge between Burbank and Pasco approximately 0.75 miles from the navigation light on the point at Sacajawea State Park. This clarification will help anglers and also enforcement. There is insufficient time to adopt permanent rules.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 1, Amended 0, Repealed 2.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: September 21, 2016.

J. W. Unsworth
 Director

NEW SECTION

WAC 220-310-20000D Freshwater exceptions to statewide rules—Columbia River. Notwithstanding the provisions of WAC 220-310-200:

(1) From McNary Dam to Hwy. 395 Bridge at Pasco (CRC 533), including the Snake River Confluence Protection Area, effective immediately through December 31, 2016, the steelhead daily limit is reduced to one hatchery steelhead.

(a) The Snake River Confluence Protection Area includes waters of the Snake River upstream to the railroad bridge between Burbank and Pasco 0.75 miles from the navigation light on the point at Sacajawea State Park.

(2) From Hwy. 395 Bridge to the Old Hanford townsite wooden powerline towers effective November 1 through December 31, 2016, only steelhead with both adipose fin clipped and ventral fin clipped may be retained.

REPEALER

This following section of the Washington Administrative Code is repealed:

WAC 220-310-20000B Freshwater exceptions to statewide rules—Columbia River (16-245)

The following section of the Washington Administrative code is repealed effective January 1, 2017:

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

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 16-20-002
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 16-255—Filed September 21, 2016, 1:46 p.m., effective October 1, 2016]

Effective Date of Rule: October 1, 2016.

Purpose: Amend recreational fishing rules for the south fork Nooksack River.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-310-19000L.

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 reopen an area of the south fork Nooksack River which was closed by filing WSR 16-17-085. Wild Chinook, and Chinook from the recovery program at Skookum Hatchery in the south fork Nooksack River will have completed spawning by October 1, 2016. Reopening the area for game fish will provide for additional angling opportunity.

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

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

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

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

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

Date Adopted: September 21, 2016.

Joe Stohr
for J. W. Unsworth
Director

REPEALER

The following section of the Washington Administrative Code is repealed effective October 1, 2016:

WAC 220-310-19000L Freshwater exceptions to statewide rules—Puget Sound. (16-212)

WSR 16-20-005

EMERGENCY RULES

DEPARTMENT OF REVENUE

[Filed September 22, 2016, 9:39 a.m., effective September 22, 2016, 9:39 a.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: WAC 458-20-183 (Rule 183) explains the tax reporting instructions for persons who provide amusement, recreation, and physical fitness services. RCW 82.04.050 is the statute that explains the taxability of these same activities and services. The statute was significantly amended in 2015 due to legislation (HB 1550) which changed the taxability of many of these activities and services. The department will begin the standard rule-making process in 2016 to reflect these changes, but until the final rule is adopted the department wants the public to be aware that many of the tax reporting instructions in Rule 183 are only valid through December 31, 2015.

There are no changes from the previous emergency rule filed May 25, 2016, under WSR 16-12-040.

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

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

Other Authority: RCW 34.05.350.

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

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

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

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

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

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

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

Date Adopted: September 22, 2016.

Kevin Dixon
Rules Coordinator

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

long as the totality of the goods or services offered are made available to members in general.

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

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

(j) "League fees" means those amounts paid solely for the privilege of allowing a person or a person's team to join an association of sports teams or clubs that compete chiefly amongst themselves. The term does not include any amounts charged for the underlying activity.

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

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

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

(n) "Significant amount" relates to the quantity or degree of goods or services rendered and made available to members

by the organization. "Significant" is defined as having great value or the state of being important.

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

(3) Business and occupation tax.

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

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

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

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

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

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

only those initiation fees and dues which are paid solely and exclusively for the express privilege of belonging as a member of a club, organization, or society, which are deductible.

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

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

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

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

(i) Actual records of facilities usage.

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

(B) The actual records of facilities usage method must reflect the nature of the goods or services and the frequency

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

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

(ii) Cost of production method.

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

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

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

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

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

services" as defined herein, constitute taxable, nondeductible amounts.

(5) Retail sales tax.

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

(b) When the charge for merchandise is included within a charge for admission which is not a "sale at retail" as defined herein, the retail sales tax applies to the charge made for both merchandise and admission, unless a proper segregation of such charge is made in the billing to the customer and upon the books of account of the seller.

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

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

**WSR 16-20-007
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE**

[Order 16-254—Filed September 22, 2016, 1:07 p.m., effective September 24, 2016]

Effective Date of Rule: September 24, 2016.

Purpose: Amend commercial sea cucumber fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-52-07100U.

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

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

Reasons for this Finding: This emergency rule is necessary to close the commercial sea cucumber fishery because nontribal harvester totals are at or near quota limits in all available harvest districts. There is insufficient time to adopt permanent rules.

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

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

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

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

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

Date Adopted: September 22, 2016.

Joe Stohr
for J. W. Unsworth
Director

REPEALER

The following section of the Washington Administrative Code is repealed effective September 24, 2016:

WAC 220-52-07100U Sea cucumbers. (16-242)

WSR 16-20-008
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 16-257—Filed September 22, 2016, 4:01 p.m., effective September 23, 2016]

Effective Date of Rule: September 23, 2016.

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

relationship with treaty Indian tribes, federal law governing Washington's relationship with Oregon, and Washington fish and wildlife commission policy guidance for Columbia River fisheries.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-310-20000E; and amending WAC 220-310-200.

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

Other Authority: *United States v. Oregon*, Civil No. 68-513-KI (D. Or.), Order Adopting 2008-2017 *United States v. Oregon* Management Agreement (Aug. 12, 2008) (Doc. No. 2546); *Northwest Gillnetters Ass'n v. Sandison*, 95 Wn.2d 638, 628 P.2d 800 (1981); Washington fish and wildlife commission policies concerning Columbia River fisheries; 40 Stat. 515 (Columbia River Compact).

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

Reasons for this Finding: Chinook catch in the recreational fishery is less than anticipated. Extending the retention season through September will provide additional opportunity. The seasons are consistent with the *U.S. v. Oregon* 2008-2017 Interim Management Agreement and the fall Chinook allocation agreement developed through the North of Falcon process. The rule is consistent with compact action of September 22, 2016. There is insufficient time to adopt permanent rules.

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

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

Columbia River nontreaty fisheries are monitored very closely to ensure compliance with federal court orders, the ESA, and commission guidelines. Because conditions change rapidly, the fisheries are managed almost exclusively by emergency rule. Representatives from the Washington (WDFW) and Oregon (ODFW) departments of fish and wild-

life 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 Request of a Nongovernmental Entity: New 1, Amended 0, Repealed 1.

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

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

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

Date Adopted: September 22, 2016.

J. W. Unsworth
Director

NEW SECTION

WAC 220-310-20000E Freshwater exceptions to statewide rules—Columbia River. Notwithstanding the provisions of WAC 220-310-200, effective September 23 through September 30, 2016, it is unlawful to violate the following provisions, provided that unless otherwise amended, all permanent rules remain in effect:

(1) Columbia River: From a true north/south line through Buoy 10 to a projected line from Rocky Point on the Washington bank through Red Buoy 44 to the navigation light at Tongue Point on the Oregon bank:

(a) Hatchery Chinook retention allowed.

(b) Adipose or left-ventral fin clipped Chinook may be retained.

(c) Daily limit is two fish, but only one maybe a hatchery Chinook.

(d) Chinook minimum size is 24 inches.

(2) Columbia River: From a line projected from Rocky Point on the Washington bank through Red Buoy 44 to the navigation light at Tongue Point on the Oregon bank upstream to the Warrior Rock deadline:

(a) Hatchery Chinook retention allowed.

(b) Adipose fin or left-ventral clipped Chinook may be retained.

(c) Daily limit is two fish, but only one maybe a hatchery Chinook.

(d) Minimum size is 12 inches.

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 October 1, 2016:

WAC 220-310-20000E Freshwater exceptions to statewide rules—Columbia River. (16-247)

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 16-20-012 EMERGENCY RULES DEPARTMENT OF FISH AND WILDLIFE

[Order 16-258—Filed September 23, 2016, 10:42 a.m., effective September 23, 2016, 6:01 p.m.]

Effective Date of Rule: September 23, 2016, 6:01 p.m.

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

Citation of Existing Rules Affected by this Order: Repealing WAC 220-32-05100C; and amending WAC 220-32-051.

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

Other Authority: *United States v. Oregon*, Civil No. 68-513-KI (D. Or.), Order Adopting 2008-2017 *United States v. Oregon* Management Agreement (Aug. 12, 2008) (Doc. No. 2546); *Northwest Gillnetters Ass'n v. Sandison*, 95 Wn.2d 638, 628 P.2d 800 (1981); Washington fish and wild-life 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: Allows sales of fish during the treaty commercial gillnet fisheries in SMCRA 1F, 1G, 1H commonly known as Zone 6. The regulation continues to allow the sale of fish caught in Zone 6 Columbia River tribal net, platform and hook and line gear, in the Yakama Nation tributary fisheries when open under Yakama Nation regulations and in the area downstream of Bonneville Dam (SMCRA 1E1) when open under tribal regulations. The inseason update for fall Chinook is eight hundred sixty thousand two hundred fish. Fisheries are consistent with the 2008-2017 Management Agreement and the associated biological opinion. Rule is consistent with action of the Columbia River Compact on July 27 and September 22, 2016. Conforms state rules with tribal rules. There is insufficient time to promulgate permanent regulations.

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

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

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

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

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

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

Date Adopted: September 23, 2016.

J. W. Unsworth
Director

NEW SECTION

WAC 220-32-05100D Columbia River salmon seasons above Bonneville Dam. Notwithstanding the provisions of WAC 220-32-050, WAC 220-32-051, WAC 220-32-052 and WAC 220-32-058, effective immediately until further notice, it is unlawful for a person to take or possess salmon, steelhead, sturgeon, shad, carp, catfish, walleye, bass, or yellow perch taken for commercial purposes in Columbia River Salmon Management and Catch Reporting Areas 1E1, 1F, 1G, and 1H, and in the Wind River, Klickitat

River, Drano Lake, Yakima River and Icicle Creek. However, those individuals possessing treaty fishing rights under the Yakama, Warm Springs, Umatilla, and Nez Perce treaties may fish for salmon, steelhead, sturgeon, shad, carp, catfish, walleye, bass, or yellow perch under the following provisions.

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

(a) Season: 2016 fall season: 6:00 AM September 26 to 6:00 PM September 30, 2016

(b) Gear: Gill nets. 8-inch minimum mesh restriction.

(c) Allowable sale: Salmon, steelhead, shad, yellow perch, bass, walleye, catfish, or carp. Sturgeon may not be sold. Sturgeon may be kept for subsistence if from 38 to 54 inches fork length in the Bonneville Pool and between 43-54 inches in fork length in The Dalles and John Day pools. Live release of all oversize and under-size sturgeon is required.

(d) All sanctuaries for this gear type are in effect, including the standard Spring Creek Hatchery sanctuary.

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

(a) Season: immediately until further notice.

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

(c) Allowable sale: Salmon, steelhead, shad, yellow perch, bass, walleye, catfish, or carp. Sturgeon may not be sold. Sturgeon may be kept for subsistence if from 38 to 54 inches fork length in the Bonneville Pool and between 43-54 inches in fork length in The Dalles and John Day pools. Live release of all oversize and under-size sturgeon is required.

(d) All sanctuaries for these gear types are in effect, including the Spring Creek Hatchery sanctuary.

(3) Columbia River Tributaries upstream of Bonneville Dam:

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

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

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

(d) Allowable Sale: Salmon, steelhead, shad, yellow perch, bass, walleye, catfish, or carp. Sturgeon may not be sold. Sturgeon may be kept for subsistence if from 38 to 54 inches fork length. Live release of all oversize and under-size sturgeon is required.

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

(a) Participants:

(i) Tribal members may participate under the conditions described in the 2007 Memorandum of Agreement (MOA) with the Yakama Nation (YN), in the 2010 Memorandum of Understanding (MOU) with the Confederated Tribes of the Umatilla Indian Reservation (CTUIR), in the 2010 MOU with the Confederated Tribes of the Warm Spring Reserva-

tion (CTWS), and in the 2013 MOU with the Nez Perce Tribe.

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

(b) Season: immediately until 11:59 PM October 31, 2016. Open only during those days and hours when allowed under lawfully enacted tribal subsistence fishery regulations for enrolled tribal members.

(c) Allowable gear: Hook and line and/or platform gear identified in tribal rules.

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

(5) 24-hour quick reporting is required as provided in WAC 220-69-240, for Washington wholesale dealers for all areas, except that all landings from treaty fisheries described above must be reported within 24-hours of completing the fish ticket.

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

Reviser's note: The typographical 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 6:01 p.m. September 23, 2016:

WAC 220-32-05100C Columbia River salmon seasons above Bonneville Dam. (16-240)

WSR 16-20-013
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 16-259—Filed September 23, 2016, 10:44 a.m., effective September 26, 2016, 7:00 a.m.]

Effective Date of Rule: September 26, 2016, 7:00 a.m.

Purpose: Columbia River seine fishery emerging commercial fishery.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-88-07000H and 220-88-08000E.

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: Modifies the allowable sales to include unclipped Chinook on certain days with certain gear. The change in retention rules is part of an investigation to determine if fishers can accurately identify Chinook stock (bright or tule) based on visual characteristics. Fishers may

keep all bright unclipped Chinook and are asked to release any unclipped Chinook deemed tule stock. This rule establishes an emerging commercial fishery with limited participants using beach or purse seine gear in the Columbia River. This limited entry fishery is established consistent with RCW 77.70.160 and is implemented based on Policy C-3620 which includes guiding principles and a progressive series of actions to improve the management of salmon in the Columbia River Basin. The fisheries outlined here are part of a series of actions meant to be progressively implemented in 2013-2016 during the transitional period of the policy. This is the third year that a fishery allowing seine gear in the Columbia River has occurred, and is meant to inform fishery managers in how best to implement such fisheries. The seasons are consistent with the *U.S. v. Oregon* 2008-2017 Interim Management Agreement, commission guidance and the fall Chinook allocation agreement developed through the North of Falcon process. The regulation is consistent with compact action of August 16 and September 30. There is insufficient time to adopt permanent rules.

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

Some Columbia River Basin salmon and steelhead stocks are listed as threatened or endangered under the federal Endangered Species Act (ESA). On May 5, 2008, the National Marine Fisheries Service issued a biological opinion under 16 U.S.C. § 1536 that allows for some incidental take of these species in treaty and nontreaty Columbia River fisheries governed by the 2008-2017 *U.S. v. Oregon* Management Agreement. The Washington and Oregon fish and wildlife commissions have developed policies to guide the implementation of such biological opinions in the states' regulation of nontreaty fisheries.

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

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

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

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

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

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

Date Adopted: September 23, 2016.

J. W. Unsworth
Director

NEW SECTION

WAC 220-88-07000I Columbia River seine emerging commercial fishery—Season, area, and gear requirements. Notwithstanding the provisions of Chapter 220-88 WAC, 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, with beach or purse seine gear except during the times and conditions listed below:

Season:

(a) Open hours are: 7:00 a.m. to 5:00 p.m.

(b) Open days are: Monday September 26 through Friday September 30, 2016

(1) **Open area: SMCRA 1A-1C.** Beach seining restricted to 1B and 1C. Purse seining restricted to Zones 1A and 1C. The deadline at the upper end of Zone 3 is defined as a straight line projected from the Warrior Rock Lighthouse on the Oregon shore easterly through the green navigation Buoy #1 and continuing to the Washington shore.

(2) **Sanctuaries:** Elokomin-B, Cowlitz, Kalama-B and Select Area commercial fishing sites.

(3) **Gear type:** Beach seines or purse seines only. Only one seine net per primary vessel.

(a) Mesh size restricted to a 3.5-inch maximum (inside of knot to outside of knot using hand tension stretched measure).

(b) Net material to consist of 3-strand nylon; twine size \geq #12.

(c) Seines may include a bunt of 1.0-2.0 inch knotless mesh.

(d) Net length not to exceed 200 fathoms (NOT including associated lead nets). Net depth not to exceed 200 meshes (approximately 50 feet)

(e) Seine and lead lines may not be connected. Lead nets must be retrieved daily.

(f) No restrictions on corkline, leadline or use of stringers and slackers.

(g) A chafing strip panel consisting of non-monofilament webbing (such as nylon seine web or polyethylene trawl web) is allowed on bottom of net; maximum panel depth is 5-feet. Chafing mesh not to exceed 3.5-inch stretched measure for beach and 5-inch stretched measure for purse. There are no restrictions associated with hangings used to connect the net to the chafing panel or the net or chafing panel to the leadline or corkline.

(h) Red corks are required at 25-fathom intervals and red corks must be in contrast to the corks used in the remainder of the net.

(i) Lead net (optional for both gear types). Only one lead net is allowed per fishing operation. Lead nets may not exceed 100 fathoms in length. Lead nets may be constructed of 3-strand nylon webbing, twine size \geq #12, \leq 3.5-inch mesh size (inside of knot to outside of knot using hand tension stretched measure) OR nylon or cotton webbing with mesh size \geq 14-inches. Lead nets may not be vertically slackened. Seine net and lead net may not be connected. Lead nets must be retrieved daily.

NEW SECTION

WAC 220-88-08000F Columbia River seine emerging commercial fishery—Allowable possession and sales—Catch handling requirements. Notwithstanding the provisions of Chapter 220-88 WAC:

(1) **Allowable possession and sales:** Subject to IFQs as defined on individual permits. Allowable sales limited to adipose or left ventral fin-clipped Chinook, adipose-clipped Coho, pink, and sockeye salmon and shad. Retained Chinook and Coho must have a healed scar at the location of the clipped fin. All legal salmon caught must be kept and sold.

(2) **Handling of catch:** Hand sorting or use of a knotless dip net for sorting is required. All fish must be sorted and/or released prior to removing entire seine from water. Dry sorting not permitted.

(3) **Sort time not to exceed 75 minutes.**

(i) Beach seine - defined as the elapsed time from when the outer towed end of the net first contacts the shore or block until the net is emptied of fish.

(ii) Purse Seine - defined as the elapsed time from when all rings are pursed and out of the water until the net is emptied of fish.

(4) **Observer Program** - Agency observers must be present during all fishing operations

(5) **24-hour quick-report required pursuant to WAC 220-69-240.**

REPEALER

The following sections of the Washington Administrative Code are repealed effective 7:00 a.m. September 26, 2016:

WAC 220-88-07000H Columbia River seine emerging commercial fishery—Season, area, and gear requirements. (16-222)

WAC 220-88-08000E Columbia River seine emerging commercial fishery—Allowable possession and sales—Catch handling requirements. (16-222)

WSR 16-20-014
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 16-260—Filed September 23, 2016, 4:45 p.m., effective September 24, 2016]

Effective Date of Rule: September 24, 2016.

Purpose: Amend recreational fishing rules for the Skykomish River.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-310-19000R; and amending WAC 220-310-190.

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

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

Reasons for this Finding: Washington department of fish and wildlife and tribal managers have agreed that opening a fishery for hatchery steelhead and gamefish in a portion of the Skykomish River will not significantly impact conservation objectives for coho escapement. Opening this portion of the river will provide for additional angling opportunity. There is insufficient time to adopt permanent rules.

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

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

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

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

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

Date Adopted: September 23, 2016.

J. W. Unsworth
 Director

NEW SECTION

WAC 220-310-19000R Freshwater exceptions to statewide rules—Puget Sound. Notwithstanding the provisions of WAC 220-310-190, effective September 24 through October 31, 2016, it is permissible to fish in waters of the Skykomish River (Snohomish Co.) (844) from Gold Bar/Big Eddy Access (Hwy. 2 Bridge) to confluence of North and South forks.

- (1) Night closure all species
- (2) Anti-snagging rules apply.

(3) Fishing from any floating device prohibited from 1,000' downstream of Reiter Ponds outlet to 1500' upstream.

(4) Dolly Varden/Bull trout, Minimum size 20 inches, may be retained as part of the trout daily limit.

(5) Other trout, Minimum size 14 inches, daily limit 2.

(6) Other game fish, statewide minimum size/daily limit.

(7) Release all salmon.

REPEALER

The following section of the Washington Administrative Code is repealed effective November 1, 2016:

WAC 220-310-19000R Freshwater exceptions to statewide rules—Puget Sound. (16-260)

WSR 16-20-015
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 16-261—Filed September 23, 2016, 4:46 p.m., effective September 24, 2016]

Effective Date of Rule: September 24, 2016.

Purpose: Amend freshwater recreational fishing rules for the Green River.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-310-19000P and 220-310-19000S; and amending WAC 220-310-190.

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: These areas had been closed under a comanager agreement to protect coho salmon. Early season test fisheries have indicated that the coho return is strong enough to support limited sport and tribal fisheries in the lower Green River. This emergency rule is needed to open areas in addition to the area that was opened under WSR 16-19-053 and will provide additional angling opportunity. There is insufficient time to adopt permanent rules.

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

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

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

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

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

Date Adopted: September 23, 2016.

J. W. Unsworth
Director

NEW SECTION

WAC 220-310-19000S Freshwater exceptions to statewide rules—Puget Sound Notwithstanding the provisions of WAC 220-310-190, it is permissible to fish in waters of the Green River (King Co.). The following rules apply:

(1) Open from the 1st Ave. South Bridge upstream to I-405 September 24 through October 31.

(a) Salmon: Daily limit six salmon, of which only three may be adults, minimum size 12 inches and release Chinook. Release all steelhead.

(b) Trout: Daily limit two, minimum size 14 inches.

(c) Other game fish: Statewide minimum size/daily limit.

(d) Night closure and anti-snagging rule is in effect for all species.

(2) Open from I-405 upstream to South 277th Bridge October 1 through October 31.

(a) Salmon: Daily limit six salmon, of which only three may be adults, minimum size 12 inches and release Chinook. Release all steelhead.

(b) Trout: Daily limit two, minimum size 14 inches.

(c) Other game fish: Statewide minimum size/daily limit.

(d) Night closure and anti-snagging rule is in effect for all species.

(3) Open from South 277th Bridge upstream to Auburn-Black Diamond Road Bridge October 16 through October 31.

(a) Salmon: Daily limit six salmon, of which only three may be adults, minimum size 12 inches and release Chinook. Release all steelhead.

(b) Trout: Daily limit two, minimum size 14 inches.

(c) Other game fish: Statewide minimum size/daily limit.

(d) Night closure and anti-snagging rule is in effect for all species.

REPEALER

The following section of the Washington Administrative Code is repealed effective September 24, 2016:

WAC 220-310-19000P Freshwater exceptions to statewide rules—Puget Sound. (16-251)

The following section of the Washington Administrative Code is repealed effective November 1, 2016:

WAC 220-310-19000S Freshwater exceptions to statewide rules—Puget Sound.

WSR 16-20-027
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 16-264—Filed September 27, 2016, 4:18 p.m., effective September 28, 2016]

Effective Date of Rule: September 28, 2016.

Purpose: Amend recreational fishing rules for the Chehalis and Satop [Satsop] rivers.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-310-18000A; and amending WAC 220-310-180.

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 allow the retention of Chinook and coho jack salmon in the Chehalis River. It also allows for the retention of coho jack salmon in the Satsop River. The projected return of Chinook and coho salmon are sufficient and will provide for additional angling opportunity. There is insufficient time to adopt permanent rules.

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

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

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

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

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

Date Adopted: September 27, 2016.

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

NEW SECTION

WAC 220-310-18000A Freshwater exceptions to statewide rules—Coastal. Notwithstanding the provisions of WAC 220-310-180, effective September 28 through December 31, 2016, the following rules apply:

(1) **Chehalis River** - from the mouth (Hwy 101 Bridge) to the Hwy 6 Bridge near the town of Adna, Grays Harbor/Thurston/Lewis counties.

(a) It is permissible to retain Chinook jack and wild coho jack salmon.

(b) Daily limit of six, minimum size 12 inches. Release wild adult Chinook and wild adult coho salmon.

(2) **Satsop River** - from the mouth to the Bridge at Schaffer State Park and the ADA designated fishing area from 400 feet below Bingham Creek Hatchery dam to dam, Grays Harbor/Mason counties.

(a) It is permissible to retain wild coho jack salmon.

(b) Daily limit of six, minimum size 12 inches. Only one adult may be retained. Release wild adult Chinook and wild adult coho salmon.

REPEALER

The following section of the Washington Administrative code is repealed effective January 1, 2017:

WAC 220-310-18000A Freshwater exceptions to statewide rules—Coastal.

WSR 16-20-028
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 16-263—Filed September 27, 2016, 4:29 p.m., effective September 27, 2016, 4:29 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 Existing Rules Affected by this Order: Repealing WAC 220-33-01000U; and amending WAC 220-33-010.

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

Other Authority: *United States v. Oregon*, Civil No. 68-513-KI (D. Or.), Order Adopting 2008-2017 *United States v. Oregon* Management Agreement (Aug. 12, 2008) (Doc. No. 2546); *Northwest Gillnetters Ass'n v. Sandison*, 95 Wn.2d 638, 628 P.2d 800 (1981); Washington fish and wildlife commission policies concerning Columbia River fisheries; 40 Stat. 515 (Columbia River Compact).

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

Reasons for this Finding: Rescinds the mainstem commercial fishing period scheduled for September 28-29 to minimize the risk of exceeding ESA limits allowed for non-Indian fisheries. 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 July 27 and August 27, 2016. There is insufficient time to adopt permanent rules.

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

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

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

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

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

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

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

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

Date Adopted: September 27, 2016.

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

NEW SECTION

WAC 220-33-01000V Columbia River seasons below Bonneville. Notwithstanding the provisions of WAC 220-33-

010, WAC 220-33-020, and WAC 220-33-030, it is unlawful for a person to take or possess salmon, sturgeon, and shad for commercial purposes from Columbia River Salmon Management and Catch Reporting Areas 1A, 1B, 1C, 1D, 1E and Select Areas, except during the times and conditions listed below:

1) Deep River Select Area.

(a) **Season:** Monday, Tuesday, Wednesday, and Thursday nights immediately through October 19, 2016. Open hours are 6 PM to 9 AM.

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

(c) **Gear:** Gillnets. Maximum mesh size restriction is 9 3/4-inch through September 10, and 6-inch thereafter. Maximum net length is 100 fathoms. No weight restriction on leadline. Use of additional weights or anchors attached directly to the leadline is allowed. No nets can be tied off to stationary structures. Nets may not fully cross the navigation channel. It is unlawful to operate in any river, stream or channel any gillnet gear longer than three-fourths the width of the river, stream, or channel. "River, stream, or channel width" is defined as bank-to-bank, where the water meets the banks, regardless of the time of tide or the water level. This emergency provision shall supersede the permanent regulation and all other regulations that conflict with it. All other provisions of the permanent regulation remain in effect (WAC 220-20-015(1)).

2) Tongue Point/South Channel

(a) **Season:** Monday, Tuesday, Wednesday, and Thursday nights immediately through October 28, 2016. Open hours are 4 PM to 10 AM.

(b) **Area:** Tongue Point fishing area includes all waters bounded by a line from a marker midway between the red USCG navigation light #2 at the tip of Tongue Point and the downstream (northern most) pier (#8) at the Tongue Point Job Corps facility, to the flashing green USCG navigation light #3 on the rock jetty at the west end of Mott Island, a line from a marker at the southeast end of Mott Island northeasterly to a marker on the northwest tip of Lois Island, and a line from a marker on the southwest end of Lois Island westerly to a marker on the Oregon shore. The South Channel area includes all waters bounded by a line from a marker on John Day Point through the green USCG buoy #7 to a marker on the southwest end of Lois Island upstream to an upper boundary line from a marker on Settler Point northwesterly to the flashing red USCG marker #10, northwesterly to a marker on Burnside Island defining the upstream terminus of South Channel.

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

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

3) Blind Slough/Knappa Slough Select Area

(a) **Dates:** Monday, Tuesday, Wednesday, and Thursday nights immediately through October 28, 2016. Open hours are 6 PM to 10 AM

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

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

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

4) Additional requirements for all Select Area commercial fisheries:

(a) Nets not specifically authorized for use may be onboard the vessel if properly stored, consistent with WAC 220-33-001.

(b) ALLOWABLE POSSESSION: Chinook, Coho, Pink and Sockeye salmon and shad.

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

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

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 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 220-33-01000U Columbia River seasons below Bonneville. (16-249)

WSR 16-20-034
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 16-266—Filed September 27, 2016, 5:01 p.m., effective September 28, 2016]

Effective Date of Rule: September 28, 2016.

Purpose: Amend freshwater recreational fishing rules for [no further information supplied by agency].

Citation of Existing Rules Affected by this Order: Repealing WAC 220-310-19000T; and amending WAC 220-310-190.

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

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

Reasons for this Finding: This emergency rule is needed to open the Skagit, Cascade and Sauk rivers which were originally closed to all fishing under a state and tribal comanager agreement to protect coho salmon. An inseason tribal test fishery indicated that the coho return is stronger than expected, allowing the comanagers to open fisheries for coho and gamefish which will provide additional angling opportunity. There is insufficient time to adopt permanent rules.

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

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

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

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

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

Date Adopted: September 27, 2016.

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

NEW SECTION

WAC 220-310-19000T Freshwater exceptions to statewide rules—Puget Sound. Notwithstanding the provisions of WAC 220-310-190, immediately through November 30, 2016, it is permissible to fish in the following waters:

(1) **Skagit River:** Open for salmon from the mouth to the Cascade River Road (Marblemount).

(a) Daily limit of 4 coho, of which no more than 2 may be wild.

(b) Bait prohibited. Anti-snagging rule, and night closure in effect.

(2) **Skagit River:** Open for gamefish from the mouth to the Highway 530 Bridge at Rockport.

(a) Trout: Minimum size 14 inches, daily limit 2. Dolly Varden/Bulltrout minimum size 20 inches.

(b) Other game fish - statewide rules apply.

(3) **Skagit River:** Open for gamefish from the Hwy 530 Bridge at Rockport to Gorge Powerhouse.

(a) Catch-and-release except daily limit of 2 hatchery steelhead.

(4) **Cascade River:** Open for salmon from the mouth to Rockport Cascade Road Bridge.

(a) Daily limit of 4 coho.

(b) Anti-snagging rule, and night closure in effect.

(5) **Cascade River:** Open for gamefish the mouth to Rockport Cascade Road Bridge.

(a) Trout: Minimum size 14 inches, daily limit 2. Dolly Varden/Bulltrout minimum size 20 inches.

(b) Other game fish - statewide rules apply.

(6) **Sauk River:** Open for gamefish from the mouth to White Chuck River.

(a) Catch-and-release except daily limit of 2 hatchery steelhead.

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 December 1, 2016:

WAC 220-310-19000T Freshwater exceptions to statewide rules—Puget Sound.

WSR 16-20-035
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 16-265—Filed September 27, 2016, 5:12 p.m., effective October 1, 2016]

Effective Date of Rule: October 1, 2016.

Purpose: Amend Puget Sound commercial crab fishing rules.

Citation of Existing Rules Affected by this Order: Amending WAC 220-52-040, 220-52-046, and 220-69-240.

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

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

Reasons for this Finding: The provisions of this rule will reopen the commercial harvest areas in Puget Sound. There is sufficient allocation available in all of the commercial

regions to accommodate this 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 Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

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

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

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

Date Adopted: September 27, 2016.

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

NEW SECTION

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

(1) It is permissible to deploy Dungeness crab pots for commercial purposes starting at 8:00 a.m. October 1, 2016 until 7:00 p.m. October 2, 2016, in Region 1, Region 3-1 and Region 3-3 from a vessel not designated on a person's Puget Sound crab license, provided that the primary or alternate operator designated on the license is on board the non-designated vessel ("barge" vessel), and prior notice has been given as provided below. Crab pots may only be deployed during daylight hours.

(2) Barging is not be allowed in Region 2 East, Region 2 West and Region 3-2. This includes Marine Fish-Shellfish Catch Reporting Areas 24A, 24B, 24C, 24D, 26A-E, 25B, 25D, 26A-W, 23D, 25A and 25E.

(3) The licensed owner must leave a telephone message at the Mill Creek annex office, (425) 775-1311 ext 126, or send an email to crabreport@dfw.wa.gov, detailing the following information:

(a) Name and license number of licensed owner.

(b) Name of designated primary operator if different from licensed owner.

(c) Name of alternate operator if used to deploy pots from a non-designated vessel.

(d) Buoy brand number and number of pots to be deployed from a non-designated vessel.

(e) Name and identification numbers (WN and/or Coast Guard) of the non-designated vessel.

(4) Additional area gear limits. The following Marine Fish-Shellfish Management and Catch Reporting Areas are restricted in the number of pots fished, operated, or used by a person or vessel, and it is unlawful for any person to use, maintain, operate, or control pots in excess of the following limits: No commercial gear is allowed in 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.

(5) Effective 8:00 a.m. October 1, 2016, until further notice, it is unlawful for any person to fish for crabs for commercial purposes with more than 50 pots per license per buoy tag number in Crab Management Regions 1, Region 3-1 or Region 3-3. These regions include Marine Fish-Shellfish Catch Reporting Areas 20A, 20B, 21A, 21B, 22A, 22B, 23A, 23B, 23C and 29.

(6) Effective 8:00 a.m. October 1, 2016, until further notice, it is unlawful for any person to fish for crabs for commercial purposes with more than 40 pots per license per buoy tag number in Crab Management Regions 2 East, Region 2 West or Region 3-2. These regions include Marine Fish-Shellfish Catch Reporting Areas 24A, 24B, 24C, 24D, 26A-E, 25B, 25D and 26A-W.

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

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.

NEW SECTION

WAC 220-52-04600T Puget Sound crab fishery— Seasons and areas. Notwithstanding the provisions of WAC 220-52-046:

(1) Effective 8:00 a.m. October 1, 2016, until further notice, it is permissible to fish for Dungeness crab for commercial purposes in the following areas:

(a) Those waters of Marine Fish-Shellfish Management and Catch Reporting Area 20A between a line from the boat ramp at the western boundary of Birch Bay State Park to the western point of the entrance of the Birch Bay Marina and a line from the same boat ramp to Birch Point.

(b) Those waters of Marine Fish-Shellfish Management and Catch Reporting Area 22B in Fidalgo Bay south of a line projected from the red number 4 entrance buoy at Cape Sante Marina to the northern end of the eastern most oil dock.

(c) Those waters of Marine Fish-Shellfish Management and Catch Reporting Area 22A in Deer Harbor north of a line projected from Steep Point to Pole Pass.

(2) Effective 8:00 a.m. October 1, 2016, until further notice, it is permissible to fish for Dungeness crab for commercial purposes in the following areas:

Those waters of Marine Fish-Shellfish Management and Catch Reporting Area 26A-W in Useless Bay north and east of a line from the south end of the Double Bluff State Park seawall (47°58.782'N, 122°30.840'W) projected 110 degrees true to the boulder on shore (47°57.690'N, 122°26.742'W).

(3) Effective 8:00 a.m. October 1, 2016, until further notice, it is permissible to fish for Dungeness crab for commercial purposes in the following areas:

(a) Port Gardner: That portion of Marine Fish-Shellfish Catch Reporting Area 26A east of a line projected from the outermost tip of the ferry dock at Mukilteo, projected to the green #3 buoy at the mouth of the Snohomish River, and west of a line projected from that #3 buoy southward to the oil boom pier on the shoreline.

(b) Possession Point to Glendale: That portion of Marine Fish-Shellfish Management and Catch Reporting Area 26A east of a line that extends true north from the green #1 buoy at Possession Point to Possession Point, and west of a line from the green #1 buoy at Possession Point extending northward along the 200-foot depth contour to the Glendale dock.

(c) Langley: That portion of Marine Fish-Shellfish Management and Catch Reporting Area 24C shoreward of the 400-foot depth contour within an area described by two lines projected northeasterly from Sandy Point and the entrance to the marina at Langley.

(4) Effective 8:00 a.m. October 1, 2016, 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.

(c) Those waters of Marine Fish-Shellfish Management and Catch Reporting Area 24A east of a line projected true north from the most westerly tip of Skagit Island and extending south to the most westerly tip of Hope Island, thence southeast to Seal Rocks, thence southeast to the green can buoy at the mouth of Swinomish Channel, thence easterly to the west side of Goat Island.

NEW SECTION

WAC 220-69-24000S Duties of commercial purchasers and receivers. Notwithstanding the provisions of WAC 220-69-240, effective 8:00 am, October 1, 2016, until further notice, it is unlawful for any wholesale dealer acting in the capacity of an original receiver of Dungeness crab taken by non-treaty fishers from Puget Sound to fail to report to the department the previous day's purchases by 10:00 a.m. the following business day. Reports must be made by fax to (425) 338-1066 or by e-mail at crabreport@dfw.wa.gov, and must specify the dealer name, dealer phone number, date of delivery of crab to the original receiver, and the total number of pounds of crab caught by non-treaty fishers, by Crab Management Region or by Marine Fish-Shellfish Management and Catch Reporting Area.

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

WSR 16-20-036
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 16-262—Filed September 28, 2016, 9:22 a.m., effective October 1, 2016]

Effective Date of Rule: October 1, 2016.

Purpose: Amend Columbia River recreational fishing rules for sturgeon.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-310-20000F; and amending WAC 220-310-200.

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: Harvestable surplus of hatchery-origin white sturgeon still remain in both reservoirs. Removal of these hatchery-origin fish is consistent with ongoing actions to rebuild depressed populations of wild-origin white sturgeon in Wanapum and Priest Rapids reservoirs. Extending the season and increasing the sturgeon daily limit will provide additional angling opportunity. There is insufficient time to adopt permanent rules.

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

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

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

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

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

Date Adopted: September 28, 2016.

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

NEW SECTION

WAC 220-310-20000F Freshwater exceptions to statewide rules—Columbia River. Notwithstanding the provisions of WAC 220-310-200, effective October 1 through November 30, 2016, it is permissible to fish for sturgeon in waters of Priest Rapids Reservoir (from Priest Rapids Dam to Wanapum Dam) and Wanapum Reservoir (from Wanapum Dam to Rock Island Dam).

(1) Daily limit of three (3) sturgeon between 38 and 72 inches fork length may be harvested from Wanapum and Priest Rapids reservoirs only.

(2) No annual harvest limit of sturgeon between 38 and 72 inches fork length from Wanapum and Priest Rapids reservoirs only.

(3) Anglers are not required to record sturgeon harvested from Wanapum and Priest Rapids reservoirs on a Catch Record Card. Catch-and-release fishing is allowed in Wanapum and Priest Rapids reservoirs after the daily limit is harvested.

(4) Any sturgeon not to be harvested must be released immediately. Oversized sturgeon cannot be removed totally or in part from the water.

(5) Night fishing for sturgeon is prohibited. Only one single-point barbless hook and bait is allowed while fishing for sturgeon.

REPEALER

The following section of the Washington Administrative Code is repealed effective December 1, 2016:

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

WSR 16-20-038
EMERGENCY RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
(Economic Services Administration)

[Filed September 28, 2016, 10:22 a.m., effective October 1, 2016]

Effective Date of Rule: October 1, 2016.

Purpose: The department is amending WAC 388-493-0010 Working family support, to extend the effective dates for the working family support program.

Citation of Existing Rules Affected by this Order: Amending WAC 388-493-0010.

Statutory Authority for Adoption: RCW 74.04.050, 74.040.055 [74.04.055], 74.04.057, 74.08.090.

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: Current language in WAC 388-493-0010 Working family support, supports the program through September 30, 2016. This date has been extended to June 30, 2017. Language needs to be updated to reflect the extension in order to continue providing additional food assistance to qualifying low-income families.

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

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

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

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

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

Date Adopted: September 23, 2016.

Katherine I. Vasquez
Rules Coordinator

AMENDATORY SECTION (Amending WSR 16-08-034, filed 3/30/16, effective 5/1/16)

WAC 388-493-0010 Working family support. (1) What is the working family support (WFS) program?

The working family support program is administered by the department of social and health services (Department) and provides an additional monthly food benefit from May 2016 through ((September 2016)) June 30, 2017 to low income families who meet specific criteria. Continuation of the program beyond ((September 30, 2016)) June 30, 2017 is contingent on specific legislative funding for the working family support program.

(2) The following definitions apply to this program:

(a) "Co-parent" means another adult in your home that is related to your qualifying child through birth or adoption.

(b) "Qualifying child" means a child under the age of eighteen who is:

(i) Your child through birth or adoption; or

(ii) Your step child.

(c) "Work" means subsidized or unsubsidized employment or self-employment. To determine self-employment hours, we divide your net self-employment income by the federal minimum wage.

(3) Who is eligible for the working family support program?

You are eligible for working family support food assistance if you meet all of the following:

(a) You receive food assistance through basic food, food assistance program for legal immigrants (FAP), or transitional food assistance (TFA);

(b) Receipt of working family support food assistance would not cause your countable food assistance income to exceed the two hundred percent federal poverty level (FPL);

(c) No one in your food assistance unit receives temporary assistance for needy families (TANF) or state family assistance (SFA);

(d) A qualifying child lives in your home;

(e) You, your spouse, or co-parent, work a minimum of thirty five hours a week, and if you live with your spouse or co-parent, you must be in the same assistance unit;

(f) You provide proof of the number of hours worked; and

(g) You reside in Washington state per WAC 388-468-0005.

(4) How can I apply for working family support?

(a) The department will review your eligibility for the working family support program:

- (i) When you apply for food assistance, or
- (ii) At the time of your food assistance eligibility review.

(b) You may request the working family support benefit in person, in writing, or by phone at any time.

(5) How long can I receive working family support?

(a) You may recertify up to an additional six months for working family support if you meet the criteria listed above and provide current proof that you, your spouse, or co-parent works a minimum of thirty five hours a week.

(b) Working family support certification ends when:

(i) You complete either a certification or mid-certification review for food assistance under WAC 388-434-0010 or WAC 388-418-0011, and you do not provide proof of the number of hours that you, your spouse, or your co-parent work;

(ii) You no longer receive basic food, FAP, or TFA;

(iii) You receive TANF or SFA;

(iv) You do not have a qualifying child in your home;

(v) You, your spouse, or co-parent, no longer work a minimum of thirty five hours a week; or

(vi) You are no longer a resident of Washington state.

(6) What benefits will I receive if I am eligible for the working family support program?

(a) The assistance unit will receive a separate ten dollars monthly food assistance benefit each month.

(b) Working family support benefits are not prorated.

WSR 16-20-044

EMERGENCY RULES

DEPARTMENT OF

FISH AND WILDLIFE

[Order 16-267—Filed September 28, 2016, 4:38 p.m., effective September 29, 2016]

Effective Date of Rule: September 29, 2016.

Purpose: Amend recreational freshwater fishing rules for the Snohomish River.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-310-19000U; and amending WAC 220-310-190.

Statutory Authority for Adoption: RCW 77.12.047 and 77.04.020.

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 Snohomish River because it was originally closed to all fishing under a state and tribal comanager agreement to protect coho salmon. The comanagers agree that the coho return is strong enough to support limited sport and tribal fisheries. Opening the river for recreational anglers will provide fishing opportunity. The comanagers will continue to

monitor this fishery and may make adjustments in the coming weeks. There is insufficient time to adopt permanent rules.

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

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

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

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

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

Date Adopted: September 28, 2016.

J. W. Unsworth
Director

NEW SECTION

WAC 220-310-19000U Freshwater exceptions to statewide rules—Puget Sound. Notwithstanding the provisions of WAC 220-310-190, effective September 29 through October 2, 2016 and October 6 through October 9, 2016, it is permissible to fish for salmon in the waters of the Snohomish River from the mouth (Burlington-Northern Railroad bridges) (including all channels, sloughs, and interconnected waterways, but excluding all tributaries) upstream to confluence of the Skykomish and Snoqualmie rivers (all channels). The following rules apply:

(1) Salmon: Daily limit 2 coho, minimum size 12 inches.

All species other than coho must be released.

(2) Night closure and anti-snagging rules are in effect.

REPEALER

The following section of the Washington Administrative Code is repealed effective October 10, 2016:

WAC 220-310-19000U Freshwater exceptions to statewide rules—Puget Sound.

WSR 16-20-051

EMERGENCY RULES

DEPARTMENT OF

FISH AND WILDLIFE

[Order 16-268—Filed September 29, 2016, 3:13 p.m., effective October 3, 2016]

Effective Date of Rule: October 3, 2016.

Purpose: This emergency rule will allow nontreaty commercial fishing opportunities in the Columbia River while protecting fish listed as threatened or endangered under the Endangered Species Act (ESA). This rule implements federal

court orders governing Washington's relationship with treaty Indian tribes, federal law governing Washington's relationship with Oregon, and Washington fish and wildlife commission policy guidance for Columbia River fisheries.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-33-01000V; and amending WAC 220-33-010.

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

Other Authority: *United States v. Oregon*, Civil No. 68-513-KI (D. Or.), Order Adopting 2008-2017 *United States v. Oregon* Management Agreement (Aug. 12, 2008) (Doc. No. 2546); *Northwest Gillnetters Ass'n v. Sandison*, 95 Wn.2d 638, 628 P.2d 800 (1981); Washington fish and wildlife commission policies concerning Columbia River fisheries; 40 Stat. 515 (Columbia River Compact).

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

Reasons for this Finding: Rescinds the scheduled Knappa Slough select area commercial fishery from October 3 through October 28, 2016, to maximize egg collections at Big Creek Hatchery. 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 July 27 and September 29, 2016. There is insufficient time to adopt permanent rules.

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

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

Columbia River nontreaty fisheries are monitored very closely to ensure compliance with federal court orders, the ESA, and commission guidelines. Because conditions change rapidly, the fisheries are managed almost exclusively by emergency rule. Representatives from the Washington (WDFW) and Oregon (ODFW) departments of fish and wild-

life convene public hearings and take public testimony when considering proposals for new emergency rules. WDFW and ODFW then adopt regulations reflecting agreements reached.

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

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

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

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

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

Date Adopted: September 29, 2016.

J. W. Unsworth
Director

NEW SECTION

WAC 220-33-01000W Columbia River seasons below Bonneville. Notwithstanding the provisions of WAC 220-33-010, WAC 220-33-020, and WAC 220-33-030, it is unlawful for a person to take or possess salmon, sturgeon, and shad for commercial purposes from Columbia River Salmon Management and Catch Reporting Areas 1A, 1B, 1C, 1D, 1E and Select Areas, except during the times and conditions listed below:

1) Deep River Select Area.

(a) **Season:** Monday, Tuesday, Wednesday, and Thursday nights immediately through October 19, 2016. Open hours are 6 PM to 9 AM.

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

(c) **Gear:** Gillnets. Maximum mesh size restriction is 9 3/4-inch through September 10, and 6-inch thereafter. Maximum net length is 100 fathoms. No weight restriction on leadline. Use of additional weights or anchors attached directly to the leadline is allowed. No nets can be tied off to stationary structures. Nets may not fully cross the navigation channel. It is unlawful to operate in any river, stream or channel any gillnet gear longer than three-fourths the width of the river, stream, or channel. "River, stream, or channel width" is defined as bank-to-bank, where the water meets the banks, regardless of the time of tide or the water level. This emergency provision shall supersede the permanent regulation and all other regulations that conflict with it. All other provisions of the permanent regulation remain in effect (WAC 220-20-015(1)).

2) Tongue Point/South Channel

(a) **Season:** Monday, Tuesday, Wednesday, and Thursday nights immediately through October 28, 2016. Open hours are 4 PM to 10 AM.

(b) **Area:** Tongue Point fishing area includes all waters bounded by a line from a marker midway between the red USCG navigation light #2 at the tip of Tongue Point and the downstream (northern most) pier (#8) at the Tongue Point Job Corps facility, to the flashing green USCG navigation light #3 on the rock jetty at the west end of Mott Island, a line from a marker at the southeast end of Mott Island northeasterly to a marker on the northwest tip of Lois Island, and a line from a marker on the southwest end of Lois Island westerly to a marker on the Oregon shore. The South Channel area includes all waters bounded by a line from a marker on John Day Point through the green USCG buoy #7 to a marker on the southwest end of Lois Island upstream to an upper boundary line from a marker on Settler Point northwesterly to the flashing red USCG marker #10, northwesterly to a marker on Burnside Island defining the upstream terminus of South Channel.

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

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

3) Blind Slough

(a) **Dates:** Monday, Tuesday, Wednesday, and Thursday nights immediately through October 28, 2016. Open hours are 6 PM to 10 AM

(b) **Area:** The Blind Slough fishing area includes all waters from markers at the mouth of Gnat Creek located approximately 1/2-mile upstream of the county road bridge, downstream to markers at the mouth of Blind Slough.

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

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

4) Additional requirements for all Select Area commercial fisheries:

(a) Nets not specifically authorized for use may be onboard the vessel if properly stored, consistent with WAC 220-33-001.

(b) **ALLOWABLE POSSESSION:** Chinook, Coho, Pink and Sockeye salmon and shad.

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

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

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 unnecessary underscoring in the above section occurred in the copy filed by the agency and appears in the Register pursuant to the requirements of RCW 34.08.040.

REPEALER

The following section of the Washington Administrative Code is repealed effective October 3, 2016:

WAC 220-33-01000V Columbia River seasons below Bonneville. (16-263)

WSR 16-20-052
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 16-269—Filed September 29, 2016, 3:18 p.m., effective September 29, 2016, 3:18 p.m.]

Effective Date of Rule: Immediately upon filing.

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

Citation of Existing Rules Affected by this Order: Repealing WAC 220-32-05100D; and amending WAC 220-32-051.

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

Other Authority: *United States v. Oregon*, Civil No. 68-513-KI (D. Or.), Order Adopting 2008-2017 *United States v. Oregon* Management Agreement (Aug. 12, 2008) (Doc. No. 2546); *Northwest Gillnetters Ass'n v. Sandison*, 95 Wn.2d 638, 628 P.2d 800 (1981); Washington fish and wildlife commission policies concerning Columbia River fisheries; 40 Stat. 515 (Columbia River Compact).

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

Reasons for this Finding: Allows sales of fish during the treaty commercial gillnet fisheries in SMCRA 1F,1G, 1H commonly known as Zone 6. The regulation continues to allow the sale of fish caught in Zone 6 Columbia River tribal net, platform and hook and line gear, in the Yakama Nation tributary fisheries when open under Yakama Nation regulations and in the area downstream of Bonneville Dam (SMCRA 1E1) when open under tribal regulations. The inseason update for fall Chinook is eight hundred sixty thou-

sand two hundred fish. Fisheries are consistent with the 2008-2017 Management Agreement and the associated biological opinion. Rule is consistent with action of the Columbia River Compact on July 27 and September 28, 2016. Conforms state rules with tribal rules. There is insufficient time to promulgate permanent regulations.

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

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

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

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

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

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

Date Adopted: September 29, 2016.

J. W. Unsworth
Director

NEW SECTION

WAC 220-32-05100E Columbia River salmon seasons above Bonneville Dam. Notwithstanding the provisions of WAC 220-32-050, WAC 220-32-051, WAC 220-32-

052 and WAC 220-32-058, effective immediately until further notice, it is unlawful for a person to take or possess salmon, steelhead, sturgeon, shad, carp, catfish, walleye, bass, or yellow perch taken for commercial purposes in Columbia River Salmon Management and Catch Reporting Areas 1E1, 1F, 1G, and 1H, and in the Wind River, Klickitat River, Drano Lake, Yakima River and Icicle Creek. However, those individuals possessing treaty fishing rights under the Yakama, Warm Springs, Umatilla, and Nez Perce treaties may fish for salmon, steelhead, sturgeon, shad, carp, catfish, walleye, bass, or yellow perch under the following provisions.

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

(a) Season: 6:00 AM October 3 to 6:00 PM October 7, 2016

(b) Gear: Gill nets. 8-inch minimum mesh restriction.

(c) Allowable sale: Salmon, steelhead, shad, yellow perch, bass, walleye, catfish, or carp. Sturgeon may not be sold. Sturgeon may be kept for subsistence if from 38 to 54 inches fork length in the Bonneville Pool and between 43-54 inches in fork length in The Dalles and John Day pools. Live release of all oversize and under-size sturgeon is required.

(d) All sanctuaries for this gear type are in effect, except the Spring Creek Hatchery sanctuary will be reduced to a 150 foot radius around the hatchery ladder.

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

(a) Season: immediately until further notice.

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

(c) Allowable sale: Salmon, steelhead, shad, yellow perch, bass, walleye, catfish, or carp. Sturgeon may not be sold. Sturgeon may be kept for subsistence if from 38 to 54 inches fork length in the Bonneville Pool and between 43-54 inches in fork length in The Dalles and John Day pools. Live release of all oversize and under-size sturgeon is required.

(d) All sanctuaries for these gear types are in effect, including the Spring Creek Hatchery sanctuary.

(3) Columbia River Tributaries upstream of Bonneville Dam:

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

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

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

(d) Allowable Sale: Salmon, steelhead, shad, yellow perch, bass, walleye, catfish, or carp. Sturgeon may not be sold. Sturgeon may be kept for subsistence if from 38 to 54 inches fork length. Live release of all oversize and under-size sturgeon is required.

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

(a) Participants:

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

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

(b) Season: immediately until 11:59 PM October 31, 2016. Open only during those days and hours when allowed under lawfully enacted tribal subsistence fishery regulations for enrolled tribal members.

(c) Allowable gear: Hook and line and/or platform gear identified in tribal rules.

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

(5) 24-hour quick reporting is required as provided in WAC 220-69-240, for Washington wholesale dealers for all areas, except that all landings from treaty fisheries described above must be reported within 24-hours of completing the fish ticket.

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

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

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 220-32-05100D Columbia River salmon seasons above Bonneville Dam. (16-240)

WSR 16-20-053
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 16-270—Filed September 29, 2016, 4:45 p.m., effective October 1, 2016]

Effective Date of Rule: October 1, 2016.

Purpose: Amend Puget Sound saltwater recreational fishing rules.

Citation of Existing Rules Affected by this Order: Amending WAC 232-28-621.

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

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

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

Reasons for this Finding: There are sufficient hatchery coho returning to Squaxin Island tribal net pens to allow the retention of hatchery coho while not increasing impacts on Chinook and coho as Marine Area 13 is scheduled to open October 1, 2016. This emergency rule is needed to provide for additional angling opportunity of the harvestable surplus of hatchery coho. There is insufficient time to adopt permanent rules.

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

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

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

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

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

Date Adopted: September 29, 2016.

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

NEW SECTION

WAC 232-28-62100K Puget Sound salmon—Saltwater seasons and daily limits. Notwithstanding the provisions of WAC 232-28-621, effective October 1, 2016, 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 13:** Waters west of a line from the southernmost point of Devil's Head (at the southern end of Key Peninsula) to the Eastern Boundary of Tolmie State Park.

a. Daily limit 2 salmon. Release wild Chinook and wild coho.

WSR 16-20-054
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 16-250—Filed September 30, 2016, 9:38 a.m., effective October 1, 2016]

Effective Date of Rule: October 1, 2016.

Purpose: Amend freshwater recreational fishing rules for Anderson Lake.

Citation of Existing Rules Affected by this Order: Amending WAC 220-310-180.

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 will rescind selective gear rules and catch and release only in Anderson Lake (Jefferson Co.) and will open the lake year round with freshwater statewide rules in effect. Lifting these restrictions and opening the lake year round under freshwater statewide rules will provide additional angling opportunity. The department of fish and wildlife will be filing a prepropositional statement to begin the permanent rule process.

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

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

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

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

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

Date Adopted: September 30, 2016.

Joe Stohr
for J. W. Unsworth
Director

NEW SECTION

WAC 220-310-1800Z Freshwater exceptions to statewide rules—Coastal. Notwithstanding the provisions of WAC 220-310-180, effective October 1, 2016, until further notice, it is permissible to fish in waters of Anderson Lake (Jefferson County). The following rules apply:

- (1) Statewide freshwater rules are in effect.
- (2) Selective gear rules are rescinded.
- (3) Trout: Catch and release is rescinded.

WSR 16-20-057
EMERGENCY RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
(Economic Services Administration)

[Filed September 30, 2016, 12:18 p.m., effective October 1, 2016]

Effective Date of Rule: October 1, 2016.

Purpose: The department is amending WAC 388-400-0047 Am I eligible for the heat and eat program?, the depart-

ment proposes adding the Washington combined application project (WASHCAP) population to the heat and eat program to be consistent with federal requirements for the low income energy assistance program under the WASHCAP project renewal.

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

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

Other Authority: RCW 74.08A.120.

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

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

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

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

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

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

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

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

Date Adopted: September 27, 2016.

Katherine I. Vasquez
Rules Coordinator

AMENDATORY SECTION (Amending WSR 14-22-076, filed 11/3/14, effective 1/1/15)

WAC 388-400-0047 (~~Am I eligible for~~) What is the heat and eat program and are you eligible? (1) What is the heat and eat program?

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

(b) An assistance unit (AU) in heat and eat program receives up to (~~(\$20.01)~~) twenty dollars and one cent in federal low income home energy assistance program (LIHEAP) benefits. This LIHEAP benefit makes the AU eligible for the

standard utility allowance under WAC 388-450-0195 for twelve months.

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

(3) Is ~~((my))~~ you assistance unit eligible for heat and eat?

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

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

(b) ~~((You do not receive WASHCAP; (e)))~~ You do not receive transitional food assistance (TFA);

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

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

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

~~((g))~~ (4) How do ~~((f))~~ you receive heat and eat?

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

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

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

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

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

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

Statutory Authority for Adoption: RCW 74.04.005, 74.04.050, 74.04.055, 74.04.057, 74.04.500, 74.04.510, 74.08.090, 74.08A.120.

Other Authority: United States Department of Agriculture (USDA), Food and Nutrition Service (FNS) Administrative Notice 16-38: SNAP - Fiscal Year (FY) 2017 Cost-of-Living Adjustments, SNAP 10-6-WA-SUA Approval Letter dated August 15, 2016, 7 C.F.R. 273.9.

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: The department is required to use federally prescribed income eligibility standards, which are revised effective October 1 of each year, as stated in 7 C.F.R. 273.9.

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 4, Repealed 0.

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

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

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

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 4, Repealed 0.

Date Adopted: September 27, 2016.

Katherine I. Vasquez
Rules Coordinator

WSR 16-20-058
EMERGENCY RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
(Economic Services Administration)

[Filed September 30, 2016, 12:21 p.m., effective October 1, 2016]

Effective Date of Rule: October 1, 2016.

Purpose: The department is amending WAC sections to implement annual adjustments to standards for the Washington basic food program, including WAC 388-450-0185 What income deductions does the department allow when determining if I am eligible for food benefits and the amount of my monthly benefits?, 388-450-0190 How does the department figure my shelter cost income deduction for basic food?, 388-450-0195 Does the department use my utility costs when calculating my basic food or WASHCAP benefits?, and 388-478-0060 What are the income limits and maximum benefit amounts for basic food?

Citation of Existing Rules Affected by this Order: Amending WAC 388-450-0185, 388-450-0190, 388-450-0195, and 388-478-0060.

AMENDATORY SECTION (Amending WSR 15-24-075, filed 11/25/15, effective 12/26/15)

WAC 388-450-0185 What income deductions does the department allow when determining if I am eligible for food benefits and the amount of my monthly benefits?

(1) We determine if your assistance unit (AU) is eligible for basic food and calculate your monthly benefits according to requirements of the Food and Nutrition Act of 2008 and federal regulations related to the supplemental nutrition assistance program (SNAP).

(2) Under these federal laws ~~((allow us to))~~, we subtract ~~((only))~~ the following amounts from your AU's total monthly income to determine your countable monthly income under WAC 388-450-0162:

~~((+))~~ (a) A standard deduction based on the number of eligible people in your AU under WAC 388-408-0035:

Eligible AU members	Standard deduction
1	((155)) <u>\$157</u>
2	((155)) <u>\$157</u>
3	((155)) <u>\$157</u>

Eligible AU members	Standard deduction
4	\$ 168
5	\$ 197
6 or more	\$ 226

~~((2))~~ (b) Twenty percent of your AU's gross earned income (earned income deduction);

~~((3))~~ (c) Your AU's expected monthly dependent care expense needed for an AU member to:

~~((a))~~ (i) Keep work, look for work, or accept work;

~~((b))~~ (ii) Attend training or education to prepare for employment; or

~~((c))~~ (iii) Meet employment and training requirements under chapter 388-444 WAC~~(-)~~;

~~((4))~~ (d) Medical expenses over thirty-five dollars a month owed or anticipated by an elderly or disabled person in your AU as allowed under WAC 388-450-0200~~(-)~~; and

~~((5))~~ (e) A portion of your shelter costs as described in WAC 388-450-0190.

AMENDATORY SECTION (Amending WSR 15-24-075, filed 11/25/15, effective 12/26/15)

WAC 388-450-0190 How does the department figure my shelter cost income deduction for basic food? The department calculates your shelter cost income deduction for basic food as follows:

(1) First, we add up the amounts your assistance unit (AU) must pay each month for shelter. We do not count any overdue amounts, late fees, penalties, or mortgage payments you make ahead of time as ~~((a))~~ allowable ~~((cost))~~ shelter costs. We count the following expenses as an allowable shelter cost in the month the expense is due:

(a) Monthly rent, lease, and mortgage payments;

(b) Property taxes;

(c) Homeowner's association or condo fees;

(d) Homeowner's insurance for the building only;

(e) Utility allowance your AU is eligible for under WAC 388-450-0195;

(f) Out-of-pocket repairs for the home if it was substantially damaged or destroyed due to a natural disaster such as a fire or flood;

(g) Expense of a temporarily unoccupied home because of employment, training away from the home, illness, or abandonment caused by a natural disaster or casualty loss if your:

(i) AU intends to return to the home;

(ii) AU has current occupants who are not claiming the shelter costs for basic food purposes; and

(iii) AU's home is not being leased or rented during your AU's absence.

(2) Second, we subtract all deductions your AU is eligible for under WAC 388-450-0185 ~~((+))~~ ~~(2)(a)~~ through ~~((4))~~ ~~(2)(d)~~ from your AU's gross income. The result is your AU's countable income.

(3) Finally, we subtract one-half of your AU's countable income from your AU's total shelter costs. The result is your excess shelter costs. Your AU's shelter cost deduction is the excess shelter costs:

(a) Up to a maximum of five hundred ~~((four))~~ seventeen dollars if no one in your AU is elderly or disabled; or

(b) The entire amount if an eligible person in your AU is elderly or disabled, even if the amount is over five hundred ~~((four))~~ seventeen dollars.

AMENDATORY SECTION (Amending WSR 15-24-075, filed 11/25/15, effective 12/26/15)

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

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

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

(2) ~~((For basic food, "utilities" include the following:~~

~~(a) Heating or cooling fuel;~~

~~(b) Electricity or gas;~~

~~(c) Water;~~

~~(d) Sewer;~~

~~(e) Well installation/maintenance;~~

~~(f) Septic tank installation/maintenance;~~

~~(g) Garbage/trash collection; and~~

~~(h) Telephone service.~~

~~(3))~~ We use the amounts ~~((below))~~ in this subsection if you have utility costs separate from your rent or mortgage payment:

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

(b) If your AU does not qualify for the SUA and you have any two utility costs listed in subsection ~~((2))~~ ~~(3)~~ of this section, you get a limited utility allowance (LUA) of three hundred ~~((forty))~~ nineteen dollars.

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

(3) "Utility costs" include the following:

(a) Heating or cooling fuel;

(b) Electricity or gas;

(c) Water;

(d) Sewer;

(e) Well installation/maintenance;

(f) Septic tank installation/maintenance;

(g) Garbage/trash collection; and

(h) Telephone service.

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

AMENDATORY SECTION (Amending WSR 15-24-075, filed 11/25/15, effective 12/26/15)

WAC 388-478-0060 What are the income limits and maximum benefit amounts for basic food? (1) If your assistance unit (AU) meets all other eligibility requirements for basic food, your AU must have income at or below the limits in column B and C of this subsection to get basic food, unless you meet one of the exceptions listed below in subsection (2) of this section. The maximum monthly food assistance benefit your AU could receive is listed in column D of this subsection.

EFFECTIVE (~~(10/1/2015)~~) 10/1/2016

Column A Number of Eligible AU Members	Column B Maximum Gross Monthly Income	Column C Maximum Net Monthly Income	Column D Maximum Allotment	Column E 165% of Poverty Level
1	\$ ((1,276)) <u>1,287</u>	\$ ((984)) <u>990</u>	\$ 194	\$ ((1,619)) <u>1,634</u>
2	((1,726)) <u>1,736</u>	((1,328)) <u>1,335</u>	357	((2,194)) <u>2,203</u>
3	((2,177)) <u>2,184</u>	((1,675)) <u>1,680</u>	511	((2,763)) <u>2,772</u>
4	((2,628)) <u>2,633</u>	((2,024)) <u>2,025</u>	649	((3,335)) <u>3,342</u>
5	((3,078)) <u>3,081</u>	((2,368)) <u>2,370</u>	771	((3,907)) <u>3,911</u>
6	((3,529)) <u>3,530</u>	2,715	925	((4,479)) <u>4,480</u>
7	3,980	3,061	1,022	5,051
8	4,430	3,408	1,169	5,623
9	4,881	3,755	1,315	6,195
10	5,332	4,102	1,461	6,767
Each Additional Member	+451	+347	+146	+572

(2) Exceptions:

~~((1))~~ (a) If your AU is categorically eligible as under WAC 388-414-0001, your AU does not have to meet the gross or net income standards in columns B and C of subsection (1) of this section. We (~~((1))~~) budget your AU's income to decide the amount of basic food your AU will receive.

~~((2))~~ (b) If your AU includes a member who is sixty years of age or older or has a disability, your AU's income must be at or below the limit in column C (~~((only))~~) of subsection (1) of this section.

~~((3))~~ (c) If you are sixty years of age or older and cannot buy and cook your own meals because of a permanent disability, we will use column E of subsection (1) of this section to decide if you can be a separate AU.

~~((4))~~ (d) If your AU has zero income, your benefits are the maximum allotment in column D of subsection (1) of this section, based on the number of eligible members in your AU.

WSR 16-20-059
EMERGENCY RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
(Economic Services Administration)

[Filed September 30, 2016, 2:41 p.m., effective October 1, 2016]

Effective Date of Rule: October 1, 2016.

Purpose: The department is amending WAC 388-492-0040 Can I choose whether I get WASHCAP food benefits or basic food benefits? and 388-492-0070 How are my WASHCAP food benefits calculated?, to implement annual adjustments to standards for the Washington combined application project. These changes are necessary to ensure that the project complies with the requirements of 7 C.F.R. 282.1(a) to stay cost neutral with supplemental nutrition assistance program benefits provided under the Washington basic food program.

Citation of Existing Rules Affected by this Order: Amending WAC 388-492-0040 and 388-492-0070.

Statutory Authority for Adoption: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.500, 74.04.510, 74.08.090.

Other Authority: Food and Nutrition Act of 2008, 7 C.F.R. 273.1(a), 7 C.F.R. 273.9, 7 C.F.R. 282.1(a).

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

Reasons for this Finding: The department is required to use federally prescribed income eligibility standards, which are revised effective October 1 of each year, as stated in 7 C.F.R. 273.9.

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

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

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

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

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 2, Repealed 0.

Date Adopted: September 29, 2016.

Katherine I. Vasquez
Rules Coordinator

AMENDATORY SECTION (Amending WSR 07-12-025, filed 5/29/07, effective 6/29/07)

WAC 388-492-0040 ~~((Can))~~ **May I choose whether I get WASHCAP food benefits or basic food benefits?** You ~~((can))~~ may choose to have basic food benefits instead of ~~((WASHCAP))~~ Washington state combined application project (WASHCAP) food benefits when one or more of the following apply:

(1) Your allowable out-of-pocket medical expenses are more than thirty-five dollars a month;

(2) You chose to have basic food benefits instead of WASHCAP benefits prior to April 25, 2005 and have remained WASHCAP eligible continuously since April 25, 2005; ~~((or))~~

(3) Your food benefits under basic food would be at least forty dollars more ~~((due to excess shelter costs under WAC 388-450-0190 (1)(a) through (e) or legally obligated child support payments))~~ than what you receive from WASHCAP.

AMENDATORY SECTION (Amending WSR 14-04-050, filed 1/27/14, effective 2/27/14)

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

(1) We begin with your gross income.

(2) We subtract the current standard deduction for one person under WAC 388-450-0185 from your gross income to get your countable income.

(3) We figure your shelter cost based on information we receive from the Social Security Administration (SSA) ~~((;))~~ unless you report a change as described under WAC 388-492-0080. ~~((If you pay:))~~

(a) If you pay three hundred twenty dollars or more a month for shelter, we use four hundred dollars as your shelter cost ~~((;or))~~.

(b) If you pay less than three hundred twenty dollars a month for shelter, we use two hundred and ~~((ten))~~ thirty-five dollars as your shelter cost ~~((;and))~~.

(c) We add the current standard utility allowance under WAC 388-450-0195 to the shelter cost we use under either subsection (3)(a) or (b) of this section to determine your total shelter cost.

(4) We figure your shelter deduction by subtracting one half of your countable income from your total shelter cost under subsection (3)(c) of this section.

(5) We figure your net income by subtracting your shelter deduction from your countable income and rounding the resulting figure up from fifty cents and down from forty-nine cents to the nearest whole dollar.

(6) We figure your WASHCAP food benefits (allotment) by:

(a) Multiplying your net income by thirty percent and rounding up to the next whole dollar; and

(b) Subtracting the result from the maximum allotment under WAC 388-478-0060.

~~((or))~~ (7) If you are eligible for WASHCAP, you will get at least the minimum monthly benefit for basic food under WAC 388-412-0015.

WSR 16-20-064
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 16-272—Filed September 30, 2016, 4:54 p.m., effective October 1, 2016]

Effective Date of Rule: October 1, 2016.

Purpose: To repeal WAC 232-13-05000C, 232-13-07000E, and 232-13-15000D.

Citation of Existing Rules Affected by this Order: Repealing WAC 232-13-05000C, 232-13-07000E, and 232-13-15000D.

Statutory Authority for Adoption: RCW 77.04.012, 77.04.020, 77.04.055, 77.12.047, and 77.32.470.

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 recent changes in weather with forecasted precipitation, lower temperatures and higher humidity levels, have abated high fire hazard conditions for the foreseeable future.

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

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

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

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

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

Date Adopted: October 1 [September 30], 2016.

Joe Stohr
for Jim Unsworth
Director

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

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

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

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

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

Date Adopted: October 4, 2016.

J. W. Unsworth
Director

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 232-13-05000C Operating chainsaws, welding, or operating an acetylene or other torch with open flame.

WAC 232-13-07000E Fires, campfires and smoking.

WAC 232-13-15000D Operating a motor vehicle off developed roadways.

WSR 16-20-097

EMERGENCY RULES

DEPARTMENT OF

FISH AND WILDLIFE

[Order 16-273—Filed October 4, 2016, 4:25 p.m., effective October 7, 2016]

Effective Date of Rule: October 7, 2016.

Purpose: Amend Puget Sound recreational crab fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-56-33000A; and amending WAC 220-56-330.

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 reopen the recreational crab fishery in the specified marine areas and adjust the open days per week to allow for inclement winter weather. Available harvest shares allow the areas to be opened in this 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

NEW SECTION

WAC 220-56-33000A Crab—Areas and seasons.

Notwithstanding the provisions of WAC 220-56-330:

(1) Effective October 7 through December 31, 2016, it is permissible to fish for crab for personal use seven days a week in that portion of Marine Area 9 north of the Hood Canal Bridge to a line from Foulweather Bluff to Olele Point line and Marine Area 12.

(2) Effective October 15 through December 31, 2016, it is permissible to fish for crab for personal use seven days a week in Marine Areas 4 east of the Bonilla-Tatoosh line, 5, 6, 7, 8-1, 8-2, that portion of 9 north of the line from Foulweather Bluff to Olele Point, and 10.

REPEALER

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

WAC 220-56-33000A Crab—Areas and seasons.