

WSR 16-04-017**RECISSION OF EMERGENCY RULES
SUPERINTENDENT OF
PUBLIC INSTRUCTION**

[Filed January 21, 2016, 3:36 p.m.]

On Wednesday, January 20, 2016, at 11:52 a.m., the state superintendent of public instruction filed an emergency rule, WSR 16-03-092, amending WAC 392-121-124.

I am writing to request that this emergency rule be immediately rescinded due to a filing error. We inadvertently filed proposed language (order typing service copy) that was not based on the most current version of WAC 392-121-124.

An emergency rule will be refiled to include the most current language for WAC 392-121-124.

Randy Dorn
State Superintendent
of Public Instruction

WSR 16-04-018**EMERGENCY RULES
SUPERINTENDENT OF
PUBLIC INSTRUCTION**

[Filed January 21, 2016, 3:36 p.m., effective January 21, 2016, 3:36 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: Immediate rule adoption is required to allow work based learning provided by a state-approved skill center program to be claimed for enhanced skill center vocational funding.

Citation of Existing Rules Affected by this Order: Amending WAC 392-121-124.

Statutory Authority for Adoption: RCW 28A.150.305.

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: For the 2015-16 school year, skill center programs will be offering work based learning opportunities for their students. With this rule adoption, skill centers will be able to report the student's enrollment for enhanced skill center vocational funding and will not be required to have interdistrict agreements in place to report nonresident students. Nonresident students will be covered by the skill center cooperative agreements with their local districts. The agency has filed notice of its intent to adopt the rule as a permanent rule, and is actively undertaking the appropriate procedures to adopt the rule as a permanent rule.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 1, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.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 0, Repealed 0.

Date Adopted: July 7, 2015.

Randy Dorn
State Superintendent
of Public Instruction

AMENDATORY SECTION (Amending WSR 15-18-078, filed 8/28/15, effective 9/28/15)

WAC 392-121-124 Full-time equivalent enrollment for work based learning. For work based learning provided pursuant to WAC 392-410-315 or by charter schools, a student's full-time equivalent shall be determined as follows:

(1) For cooperative work based learning experience, in accordance with WAC 392-410-315 (1)(g), divide the student's hours of work experience for the month by two hundred; for example: Forty hours of cooperative work experience equals two tenths of a full-time equivalent ($40 \div 200 = 0.20$). For instructional work based learning experience, in accordance with WAC 392-410-315 (1)(f) and 296-125-043(4), divide the student's enrolled hours of work experience for the month by one hundred; for example: Twenty hours of instructional work experience equals two tenths of a full-time equivalent ($20 \div 100 = 0.20$). Enrollment exclusions in WAC 392-121-108 apply to instructional work based learning enrolled hours.

(2) Estimated or scheduled hours of cooperative work based learning experience may be used in determining a student's full-time equivalent on an enrollment count date: Provided, That the combined monthly hours reported for the school year shall not exceed the student's actual hours of cooperative work based learning experience documented on the student's work records and maintained by the school district or charter school for audit purposes.

(3) Work based learning provided as part of a state-approved vocational education program qualifies for enhanced vocational funding and may be included in determining a student's vocational full-time equivalent enrollment.

(4) Work based learning provided as part of a state-approved skill center program qualifies for enhanced skill center vocational funding and may be included in determining a student's skill center vocational full-time equivalent enrollment.

(5) No more than three hundred sixty hours of cooperative work based learning may be claimed for funding for each credit a student pursues as reported on the student's transcript. No more than one hundred eighty hours of instructional work based learning may be claimed for funding for each credit a student pursues as reported on the student's transcript.

~~((5))~~ (6) Funding may be claimed only for work based learning hours that occur after the work based learning plan,

work based agreement, program orientation and new employee orientation, as defined in WAC 392-410-315, are completed.

WSR 16-04-023

EMERGENCY RULES

DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Developmental Disabilities Administration)

[Filed January 22, 2016, 3:04 p.m., effective January 22, 2016, 3:04 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: This filing allows DSHS to continue the individual and family services (IFS) waiver and the community first choice (CFC) program. Both were implemented by emergency rules and need to remain active by emergency while the department continues working with the Centers for Medicare and Medicaid Services (CMS), stakeholders, advocacy groups, and other DSHS administrations to refine the semantics and structure of the text for the CR-102 filing, public comment period, and public hearing. In addition these rules clarify where the DDA assessment and reassessment are administered and define overnight planned respite services.

Citation of Existing Rules Affected by this Order: Amending WAC 388-823-0010 Definitions, 388-825-020 Definitions, 388-825-057 Am I eligible to receive paid services from DDD?, 388-825-0571 What services am I eligible to receive from DDD if I am under the age of eighteen, have been determined to meet DDD eligibility requirements, and I am in a dependency guardianship or foster care with children's administration?, 388-825-059 How will I know which paid services I will receive?, 388-825-068 What medicaid state plan services may DDD authorize?, 388-825-083 Is there a comprehensive list of waiver and state-only DDD services?, 388-825-305 What service providers are governed by the qualifications in these rules?, 388-825-310 What are the qualifications for providers?, 388-825-325 What are required skills and abilities for individuals and agencies contracted to provide respite care, personal care services through the medicaid personal care program or the DDD HCBS Basic, Basic Plus, CIIBS, or Core waivers, or attendant care services?, 388-825-330 What is required for agencies to provide care in the home of a person with developmental disabilities?, 388-825-355 Are there any educational requirements for individuals providing respite care, attendant care, or personal care services?, 388-828-1020 What definitions apply to this chapter?, 388-828-1060 What is the purpose of the DDD assessment?, 388-828-1500 When does DDD conduct a reassessment?, 388-828-1520 Where is the DDD assessment and reassessment administered?, 388-828-1540 Who participates in your DDD assessment?, 388-828-8000 What is the purpose of the individual support plan (ISP) module?, 388-831-0065 What if I refuse to participate in the risk assessment?, 388-831-0160 What services may I receive if I refuse placement in the community protection program?, 388-845-0001 Definitions, 388-845-0015 What HCBS waivers are provided by the developmental disabilities administration (DDA)?, 388-845-0020 When were the HCBS waivers effective?,

388-845-0030 Do I meet criteria for HCBS waiver-funded services?, 388-845-0041 What is DDA's responsibility to provide my services under the DDA HCBS waivers administered by DDA?, 388-845-0045 When there is capacity to add people to a waiver, how does DDA determine who will be enrolled?, 388-845-0052 What is the process if I am already on a DDA HCBS waiver and request enrollment onto a different waiver DDA HCBS?, 388-845-0055 How do I remain eligible for the waiver?, 388-845-0060 Can my waiver enrollment be terminated?, 388-845-0100 What determines which waiver I am assigned to?, 388-845-0105 What criteria determine assignment to the community protection waiver?, 388-845-0110 Are there limitations to the waiver services I can receive?, 388-845-0111 Are there limitations regarding who can provide services?, 388-845-0115 Does my waiver eligibility limit my access to DDA nonwaiver services?, 388-845-0200 What waiver services are available to me?, 388-845-0210 Basic Plus waiver services, 388-845-0215 Core waiver services, 388-845-0220 Community protection waiver services, 388-845-0225 Children's intensive in-home behavioral support (CIIBS) waiver services, 388-845-0415 What is assistive technology?, 388-845-0420 Who is a qualified provider of assistive technology?, 388-845-0425 Are there limits to the assistive technology I can receive?, 388-845-0505 Who is a qualified provider of behavior support and consultation?, 388-845-0510 Are there limits to the behavior support and consultation I can receive?, 388-845-0820 Are there limits to my use of emergency assistance?, 388-845-0900 What are environmental accessibility adaptations?, 388-845-0905 Who is a qualified provider for building these environmental accessibility adaptations?, 388-845-0910 What limitations apply to environmental accessibility adaptations?, 388-845-1015 Are there limits to the extended state plan services I can receive?, 388-845-1040 Are there limits to the individualized technical assistance services I can receive?, 388-845-1110 What are the limits of behavioral health crisis diversion bed services?, 388-845-1150 What are behavioral health stabilization services?, 388-845-1160 Are there limitations to the behavioral health stabilization services that I can receive?, 388-845-1170 What is nurse delegation?, 388-845-1180 Are there limitations to the nurse delegation services that I receive?, 388-845-1300 What are personal care services?, 388-845-1310 Are there limits to the personal care services I can receive?, 388-845-1410 Are there limits to the prevocational services I can receive?, 388-845-1600 What is respite care?, 388-845-1605 Who is eligible to receive respite care?, 388-845-1607 Can someone who lives with me be my respite provider?, 388-845-1620 Are there limits to the respite care I can receive?, 388-845-1660 Are there limitations to the sexual deviancy evaluations I can receive?, 388-845-1700 What is skilled nursing?, 388-845-1710 Are there limitations to the skilled nursing services I can receive?, 388-845-1800 What are specialized medical equipment and supplies?, 388-845-1810 Are there limitations to my receipt of specialized medical equipment and supplies?, 388-845-1840 What is specialized nutrition and specialized clothing?, 388-845-1845 Who are qualified providers of specialized nutrition and specialized clothing?, 388-845-1850 Are there limitations to my receipt of specialized nutrition and specialized clothing?, 388-845-1910 Are there limitations to the specialized psychi-

atric services I can receive?, 388-845-2000 What is staff/family consultation and training?, 388-845-2005 Who is a qualified provider of staff/family consultation and training?, 388-845-2010 Are there limitations to the staff/family consultation and training I can receive?, 388-845-2160 What is therapeutic equipment and supplies?, 388-845-2170 Are there limitations on my receipt of therapeutic equipment and supplies?, 388-845-2210 Are there limitations to the transportation services I can receive?, 388-845-2260 What are vehicle modifications?, 388-845-2270 Are there limitations to my receipt of vehicle modification services?, 388-845-3000 What is the process for determining the services I need?, 388-845-3055 What is a waiver individual support plan (ISP)?, 388-845-3056 What if I need assistance to understand my individual support plan?, 388-845-3060 When is my individual support plan effective?, 388-845-3061 Can a change in my individual support plan be effective before I sign it?, 388-845-3062 Who is required to sign or give verbal consent to the individual support plan?, 388-845-3063 Can my individual support plan be effective before the end of the month?, 388-845-3065 How long is my plan effective?, 388-845-3070 What happens if I do not sign or verbally consent to my individual support plan (ISP)?, 388-845-3075 What if my needs change? and 388-845-3085 What if my needs exceed what can be provided under the IFS, CIIBS, Core or Community Protection waiver?; and new sections WAC 388-845-0230 What is the scope of services for the individual and family services waiver?, 388-845-0650 What are community engagement services?, 388-845-0655 Who is a qualified provider of community engagement service?, 388-845-0660 Are there limitations to the community engagement services I can receive?, 388-845-1190 What is peer mentoring?, 388-845-1191 Who are qualified providers of peer mentoring?, 388-845-1192 What limitations are there for peer mentoring?, 388-845-1195 What is person-centered planning facilitation?, 388-845-1196 Who are qualified providers of person-centered planning facilitation?, 388-845-1197 What limitations are there for person-centered planning facilitation?, 388-845-1855 What is specialized clothing?, 388-845-1860 Who are qualified providers of specialized clothing?, 388-845-1865 Are there limitations to my receipt of specialized clothing?, 388-845-2130 What are supported parenting services?, 388-845-2135 Who are qualified providers of supported parenting services?, and 388-845-2140 Are there any limitations on my receipt of supported parenting services?

Statutory Authority for Adoption: SSB 6387 of the 63rd legislature, 2014 regular session for the IFS waiver, ESHB 2746 of the 63rd legislature [legislature], 2014 regular session for the CFC waiver and ESSB 6052.S.L of the 64th legislature [legislature], 2015 3rd sp. sess. for the definition of overnight planned respite services.

Other Authority: RCW 71A.12.030, 71A.12.120.

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

Reasons for this Finding: The purpose for this filing is to allow DSHS to continue the IFS waiver and CFC program. Both of these were implemented by emergency rules and

need to remain active by emergency rules while we continue working with CMS, stakeholders, advocacy groups, and other DSHS administrations to refine the semantics and structure of the text for the supplemental CR-102 filing, the comment period, and public hearing.

Related to the IFS waiver: Once SSB 6387 of the 63rd legislature 2014 regular session was passed, DDA worked on the new required IFS waiver while we concurrently identified and programmed the enhancements needed to our statewide assessment tool "CARE" that would incorporate the waiver into our daily work process. Our intent was to be ready to file the emergency rules and implement the system changes to CARE upon the waiver approval date given to us by CMS. Our advanced preparation paid off and once CMS approved our IFS waiver we were able to file the CR-103E to make those changes to rule effective by emergency on June 1, 2015, which turned out to be a short period of time from when CMS approved the waiver and when the waiver would be effective. Although we had also filed the CR-102 and held a public comment hearing for those proposed rules we find ourselves not able to make those rules effective through the regular process prior to needing the additional changes to some sections in chapter 388-845 WAC by the CMS implementation date for the new CFC program.

Related to CFC program: ESHB 2746 requires DSHS to refinance personal care services and establish a 1915(k) CFC program per §1915(k) of the Social Security Act. To that end, DSHS has been working to develop a state plan amendment for implementation after CMS approval. This new program also needed modifications to our statewide assessment tool "CARE" and updates to rules of which some sections needing updates are the same sections within chapter 388-845 WAC that have been adopted by emergency but not yet completed the regular process to be adopted permanently.

Related to where the DDA assessment and reassessment is administered: These changes are to more closely align our rules with 42 C.F.R. 441.540 (a)(3) that allows the individual to select a time and location of their convenience for assessments.

Related to the definition of overnight planned respite services: Rule changes to implement overnight planned respite services, as approved in ESSB 6052.S.L of the 64th legislature [legislature], 2015 3rd sp. sess. are being implemented by a different emergency rule filing. However, since the definitions section is already open in this filing we are adding the definition in this filing.

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 16, Amended 90, 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 16, Amended 90, Repealed 0.

Date Adopted: January 22, 2016.

Katherine I. Vasquez
Rules Coordinator

Reviser's note: The material contained in this filing exceeded the page-count limitations of WAC 1-21-040 for appearance in this issue of the Register. It will appear in the 16-06 issue of the Register.

WSR 16-04-029
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 16-08—Filed January 25, 2016, 2:05 p.m., effective January 26, 2016]

Effective Date of Rule: January 26, 2016.

Purpose: Amend commercial fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-52-06900H; and amending WAC 220-52-069.

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: A harvestable surplus of pink and spiny scallops exists in the area specified to allow for commercial harvest. Up to 20,000 pounds (whole weight including shell) is targeted for exploratory harvest to meet comanagement objectives. 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: January 25, 2016.

J. W. Unsworth
Director

NEW SECTION

WAC 220-52-06900H Commercial scallop fishery—Puget Sound Notwithstanding the provisions of WAC 220-52-069, effective January 26 through March 31, 2016, it is unlawful to take or possess pink or spiny scallops taken for commercial purposes except as provided for in this section:

(1) Pink or spiny scallop harvest using shellfish diver gear is allowed in Scallop Area 1 only, which is defined as the waters of marine fish - shellfish catch reporting areas 20A and 20B within the following boundaries: Point Doughty east along the shoreline of Orcas Island to Lawrence Point, then true north to 48°42'28" N latitude, 122°44'29" W longitude, then northwest to 48°47'18" N latitude, 122°48'8" W longitude, then northwest to 48°50'4" N latitude, 122°50'24" W longitude, then southwest to 48°49'46" N latitude, 122°51'59" W longitude, then southwest to 48°46'4" N latitude, 122°57'3" W longitude, then true south back to Point Doughty, except within 100 feet of any shoreline, or shallower than 30 feet below mean lower low water, whichever is further from shore, and within 2500 feet from the shoreline of Orcas Island between Point Doughty and Point Thompson, and those waters of Echo Bay, Sucia Island west of a line projected from Johnson Point to the southeast tip of Ewing Island.

(2) It is unlawful for more than two divers from a harvest vessel to be in the water at any one time during pink or spiny scallop harvest operations or when commercial quantities of pink or spiny scallops are on board the vessel.

(3) It is unlawful to possess any other species of commercial shellfish during pink or spiny scallop harvest operations, or possess any other species of commercial shellfish on a vessel that has pink or spiny scallops on board.

REPEALER

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

WAC 220-52-06900H Commercial scallop fishery—Puget Sound.

WSR 16-04-039
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 16-09—Filed January 26, 2016, 1:15 p.m., effective January 26, 2016, 1:15 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: Amend coastal commercial crab fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-52-04000I and 220-52-04500L; and amending WAC 220-52-040 and 220-52-045.

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: Provisions in state/tribal management agreements will be achieved by the opening dates listed in the emergency rule. The special management areas are listed in accordance with state/tribal management agreements. The temporary prohibition from fishing in areas previously delayed by vessels and licenses that started fishing outside the delayed area implements fair start provisions according to interstate cooperation in the coastwide season opening as set forth in the Tri-State Memorandum of Understanding Regarding the Management of the Pacific Coast Dungeness Crab Agreement. There is insufficient time to adopt permanent rules.

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

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

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

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

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

Date Adopted: January 26, 2016.

J. W. Unsworth
Director

NEW SECTION

WAC 220-52-04000L Commercial crab fishery. Lawful and Unlawful gear, methods and other unlawful acts. (1) Notwithstanding the provisions of WAC 220-52-040, effective immediately until further notice, it is unlawful for any fisher or wholesale dealer or buyer to land or purchase Dungeness crab taken from Grays Harbor, Willapa Bay, the Columbia River, or Washington coastal or adjacent waters of the Pacific Ocean from any vessel unless:

(a) A valid Washington crab vessel inspection certificate has been issued to the delivering vessel; and

(b) The vessel inspection certificate numbers are recorded on all shellfish tickets completed for coastal Dungeness crab landings through February 10, 2016.

NEW SECTION

WAC 220-52-04500M Coastal crab seasons. Notwithstanding the provisions of WAC 220-52-045 effective immediately until further notice, it is unlawful to fish for Dungeness crab in Washington coastal waters, the Pacific Ocean, Grays Harbor, Willapa Bay, or the Columbia River, except as provided for in this section.

(1) The area from Destruction Island (47°40.50) to the WA/OR border (46°15.00) including, Gray Harbor and Willapa Bay is open.

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

(3) Licenses and vessels designated to those licenses that participate (as defined by WAC 220-52-036) in the coastal commercial Dungeness crab fishery in the waters of the Pacific Ocean between Point Arena, California and the U.S. Canada border, are prohibited from fishing in any area where the season opening is delayed for the first 30 days following the opening of the delayed area if the vessel was employed in the coastal crab fishery during the previous 45 days.

(4) It is permissible to set crab gear in the area between Destruction Island (47°40.50) and the U.S./Canada border, beginning at 8:00 a.m. January 29, 2016.

(5) It is permissible to pull crab gear in the area between Destruction Island (47°40.50) and the U.S./Canada border, beginning at 9:00 a.m. February 1, 2016.

(6) The Quinault primary special management area (PSMA) is closed to fishing for Dungeness crab until further notice. The PSMA includes the area shoreward of a line approximating the 27-fathom depth curve between Raft River (47°28.00) and Copalis River (47°08.00) according to the following coordinates:

- (a) Northeast Corner (Raft River): 47°28.00 N. Lat. 124°20.70 W. Lon.
- (b) Northwest Corner: 47°28.00 N. Lat. 124°34.00 W. Lon.
- (c) Southwest Corner: 47°08.00 N. Lat. 124°25.50 W. Lon.
- (d) Southeast Corner (Copalis River): 47°08.00 N. Lat. 124°11.20 W. Lon.

(7) The Quileute special management area (SMA) is closed to fishing for Dungeness crab until further notice. The SMA includes the area shoreward of a line approximating the 30-fathom depth curve between Destruction Island and Cape Johnson according to the following points:

- (a) Northeast Corner (Cape Johnson): 47°58.00' N. Lat. 124°40.40' W. Lon.
- (b) Northwest Corner: 47°58.00' N. Lat. 124°49.00' W. Lon.
- (c) Southwest Corner: 47°40.50' N. Lat. 124°40.00' W. Lon.
- (d) Southeast Corner (Destruction Island): 47°40.50' N. Lat. 124°24.43' W. Lon.

(8) The Makah special management area (SMA) is closed to fishing until further notice. The SMA includes the waters between 48°02.15 N. Lat. and 48°19.50 N. Lat. east of a line connecting those points and approximating the 25-fathom line according to the following coordinates:

- (a) Northeast Corner (Tatoosh Island)
- (b) Northwest Corner: 48°19.50 N. Lat. 124°50.45 W. Lon.
- (c) Southwest Corner: 48°02.15 N. Lat. 124°50.45 W. Lon.
- (d) Southeast Corner: 48°02.15 N. Lat. 124°41.00 W. Lon.

(9) All other provisions of the permanent rule remain in effect.

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 sections of the Washington Administrative Code are repealed:

- WAC 220-52-04000I Commercial crab fishery. Lawful and unlawful gear, methods and other unlawful acts. (15-449)
 WAC 220-52-04500L Coastal crab seasons (15-449)

WSR 16-04-040

EMERGENCY RULES DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Behavioral Health and Service Integration Administration)
 [Filed January 26, 2016, 5:21 p.m., effective January 26, 2016, 5:21 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: The department is extending the current emergency rule filing WSR 15-20-121, effective October 7, 2015, to ensure continued implementation of the court decision in *Trueblood v. DSHS* until the permanent is effective. The court decision orders DSHS, by January 2, 2016, to admit persons ordered to receive competency evaluation or restoration services into a state hospital within seven days of the signing of a court order. In addition, the emergency rule extension ensures continued compliance with 2E2SSB 5177 (chapter 7, Laws of 2015 1st sp. sess.) which requires the department to begin providing competency restoration treatment services in the community on a phased-in basis. The emergency rule relieves pressure on the state hospitals to admit persons within seven days of the signing of a court order by ensuring a residential treatment facility, a general hospital, a private psychiatric hospital, or an inpatient evaluation and treatment facility can contract with DSHS to provide these services using one set of standards, and ensures that affected individuals receive needed services instead of waiting for these services while in jail.

Statutory Authority for Adoption: Chapter 10.77 RCW; 2E2SSB 5177 (section 11, chapter 7, Laws of 2015 1st sp. sess.).

Other Authority: 2E2SSB 5177 (chapter 7, Laws of 2015 1st sp. sess.); *Trueblood et. al. v. DSHS et. al.*, Case No. C14-1178 MJP, U.S. District Court, Western District of Washington at Seattle.

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

Reasons for this Finding: In order to implement 2E2SSB 5177 and *Trueblood v. DSHS*, the department has created a rule that provides notice of the required minimum standards to gain and maintain certification to provide competency

evaluation and restoration services, and requires a residential treatment facility, a general hospital, a private psychiatric hospital, or an inpatient evaluation and treatment facility to use the same set of standards. The emergency rule relieves pressure on state hospitals to admit pretrial detainees within seven days of the signing of a court order for competency evaluation or restoration services, and ensures that these individuals are not awaiting these services in jail. The public hearing for the permanent rule is scheduled for January 26, 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 8, Amended 0, Repealed 0.

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

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

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 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 8, Amended 0, Repealed 0.

Date Adopted: January 26, 2016.

Katherine I. Vasquez
 Rules Coordinator

NEW SECTION

WAC 388-865-0900 Competency evaluation and restoration treatment services—General. (1) WAC 388-865-0900 through 388-865-0970 contains rules for agencies to gain and maintain certification to provide competency evaluation and restoration treatment services. When used in these rules, "agency" means:

- (a) A residential treatment facility (RTF);
- (b) A general hospital;
- (c) A private psychiatric hospital; or
- (d) An inpatient evaluation and treatment facility.

(2) Competency evaluation and restoration treatment services may be provided to an individual by an agency when the agency meets:

- (a) The certification and fee requirements in WAC 388-865-0910;
- (b) The administrative policy and procedure requirements in WAC 388-865-0920;
- (c) The agency staff requirements in WAC 388-865-0930;
- (d) The individual participant rights requirements in WAC 388-865-0940;
- (e) The admission and initial assessment requirements in WAC 388-865-0950;
- (f) The individual service plan requirements in WAC 388-865-0960;
- (g) The seclusion and restraint requirements in WAC 388-865-0970; and

(h) All applicable federal, state, tribal, and local codes and ordinances.

(3) WAC 388-865-0900 through 388-865-0970 does not apply to state psychiatric hospitals as defined in chapter 72.23 RCW, to facilities owned or operated by the department of veterans affairs, or to other agencies of the United States government.

NEW SECTION

WAC 388-865-0910 Competency evaluation and restoration treatment services—Certification and fee requirements. (1) An agency described in WAC 388-865-0900(1) may provide competency evaluation and restoration treatment services to individuals under chapter 10.77 RCW when the department's division of behavioral health and recovery (DBHR) certifies the services. To obtain certification for these services, the agency must:

(a) Be licensed by the department of health as:

(i) A residential treatment facility consistent with chapter 246-337 WAC;

(ii) A general hospital consistent with chapter 246-320 WAC;

(iii) A private psychiatric hospital consistent with chapter 246-322 WAC; or

(iv) An inpatient evaluation and treatment facility as provided in WAC 388-865-0511(1) and consistent with chapter 246-337 WAC.

(b) Demonstrate to DBHR at the minimum requirements in WAC 388-865-0900 through 388-865-0970 have been met;

(c) Successfully complete a provisional and annual on-site review conducted by DBHR staff that determines the agency is in compliance with the minimum standards of WAC 388-865-0900 through 388-865-0970 and chapter 10.77 RCW; and

(d) Pay the required certification fees:

(i) Ninety dollars, per bed, due at the time of initial application; and

(ii) Ninety dollars, per bed, due twelve months after the date of the initial application approval and annually thereafter.

(2) The agency must include the fees specified in subsection (1)(d) of this section with the initial application or a twelve month renewal application, as applicable.

(a) Payment of fees must be made by check, bank draft, electronic transfer, or money order, payable to the department of social and health services, and mailed to the department at the address listed on the applicable application packet or form.

(b) The department may refund one-half of the initial application fee or renewal application fee if an application is withdrawn before certification.

(c) The department will not refund fees when certification is denied, revoked, or suspended.

(3) For behavioral health agency licensure fees, program-specific certification fees, and other fees charged by the department, see WAC 388-877-0365.

NEW SECTION

WAC 388-865-0920 Competency evaluation and restoration treatment services—Administrative policies and procedures. (1) In order to provide competency evaluation and restoration treatment services, an agency described in WAC 388-865-0900(1) must develop, implement, and maintain administrative policies and procedures that:

(a) Are in accordance with chapter 10.77 RCW;

(b) Meet any applicable court orders; and

(c) Meet the minimum requirements of WAC 388-865-0900 through 388-865-0970.

(2) The administrative policies and procedures must include at least the following:

(a) A description of the competency evaluation and restoration treatment services to be provided, ages of individuals to be served, and length of stay criteria.

(b) An organizational structure that includes clear lines of authority for management and clinical supervision.

(c) Designation of a psychiatrist as the professional person in charge of clinical services at the agency.

(d) A quality management plan to monitor, collect data, and develop improvements to meet the requirements of WAC 388-865-0900 through 388-865-0970.

(e) A policy management structure that establishes:

(i) Procedures for maintaining and protecting an individual's clinical record consistent with chapter 70.02 RCW, "Medical Records Health Care Information Access and Disclosure Act" and the Health Insurance Portability and Accountability Act (HIPAA);

(ii) Procedures for maintaining adequate fiscal accounting records consistent with generally accepted accounting principles (GAAP);

(iii) Procedures for management of human resources to ensure that an individual receives individualized treatment or care by adequate numbers of staff members who are qualified and competent to carry out their assigned responsibilities;

(iv) Procedures for admitting an individual needing competency evaluation and restoration treatment services twenty-four hours a day, seven days a week;

(v) Procedures to assure access to necessary medical treatment, emergency life-sustaining treatment, and medication;

(vi) Procedures to assure the protection of individual participant rights as described in WAC 388-865-0940;

(vii) Procedures to inventory and safeguard the personal property of the individual;

(viii) Procedures to assure that a mental health professional and licensed physician are available for consultation and communication with both the individual and the direct patient care staff twenty-four hours a day, seven days a week;

(ix) Procedures to provide warning to an identified person and law enforcement when an adult has made a threat against an identified victim;

(x) Procedures to provide notification to the appropriate prosecutor and law enforcement in the event of unauthorized leave; and

(xi) Procedures to assure the rights of each individual to make mental health advance directives, and agency protocols for responding to individual and agent requests consistent with RCW 71.32.150.

NEW SECTION**WAC 388-865-0930 Competency evaluation and restoration treatment services—Agency staff requirements.**

(1) In order to provide competency evaluation and restoration treatment services, an agency described in WAC 388-865-0900(1) must ensure the clinical supervisor and other staff members employed by the agency are qualified for the position they hold and have the education, experience, and skills to perform the job requirements. Each staff member providing services must:

- (a) Have a current job description.
- (b) Have a current credential issued by the department of health for their scope of practice.
- (c) Pass a Washington state patrol background check consistent with RCW 43.43.830 if the position requires contact with individuals receiving competency evaluation and restoration treatment services;
- (d) Have an annual performance evaluation;
- (e) Have an individualized annual training plan that includes at a minimum:
 - (i) The skills needed for the job description and the population served;
 - (ii) Methods of resident care;
 - (iii) Management of assaultive and self-destructive behaviors, including proper and safe use of seclusion and/or restraint procedures; and
 - (iv) Meeting the protocols developed by the department in WAC 388-865-0900 through 388-865-0970 and other applicable requirements in state and federal law.

(2) If the agency contracts a staff member(s) to provide direct competency evaluation and restoration treatment services to individuals, the agency and the contracted staff member must meet all the conditions in subsection (1) of this section.

NEW SECTION**WAC 388-865-0940 Competency evaluation and restoration treatment services—Individual participant rights.**

(1) An agency described in WAC 388-865-0900(1) that meets the department's requirements to provide competency evaluation and restoration treatment services must develop a statement of individual participant rights to ensure an individual's rights are protected. The statement must incorporate at a minimum the following. You have the right to:

- (a) Receive services without regard to race, creed, national origin, religion, gender, sexual orientation, age or disability;
- (b) Practice the religion of choice as long as the practice does not infringe on the rights and treatment of others or the treatment services and, as an individual participant, the right to refuse participation in any religious practice;
- (c) Be reasonably accommodated in case of sensory or physical disability, limited ability to communicate, limited English proficiency, and/or cultural differences;
- (d) Be treated with respect, dignity and privacy, except that agency staff members may conduct reasonable searches to detect and prevent possession or use of contraband on the premises.

- (e) Be free of any sexual harassment;
- (f) Be free of exploitation, including physical and financial exploitation;
- (g) Have all clinical and personal information treated in accord with state and federal confidentiality rules and laws;
- (h) Review your clinical record in the presence of the administrator or the administrator's designee and be given an opportunity to request amendments or corrections;
- (i) Receive a copy of the agency complaint and grievance procedures upon request and to lodge a complaint or grievance with the agency if you believe your rights have been violated; and
- (j) File a complaint with the department when you feel the agency has violated a Washington Administrative Code (WAC) requirement that regulates facilities.

(2) Each agency must ensure the applicable individual participant rights described in subsection (1) of this section are:

- (a) Provided in writing to each individual on or before admission;
- (b) Posted in public areas;
- (c) Available in alternative formats for an individual who is blind;
- (d) Translated to a primary or preferred language identified by an individual who does not speak English as the primary language, and who has a limited ability to read, speak, write, or understand English; and
- (e) Available to any individual upon request.

(3) Each agency must ensure all research concerning an individual whose cost of care is publicly funded is done in accordance with chapter 388-04 WAC, protection of human research subjects, and other applicable state and federal rules and laws.

(4) In addition to the requirements in this section, each agency enrolled as a medicare and/or medicaid provider must ensure an individual seeking or participating in competency evaluation and/or restoration treatment services, or the person legally responsible for the individual is informed of the medicaid rights listed in WAC 388-877A-0460 at time of admission and in a manner that is understandable to the individual or legally responsible person.

NEW SECTION**WAC 388-865-0950 Competency evaluation and restoration treatment services—Admission and initial assessment.**

(1) In order to provide competency evaluation and restoration treatment services, an agency described in WAC 388-865-0900(1) must ensure that for each individual admitted for treatment, the agency obtains and includes in the individual's clinical record:

- (a) A copy of the court order and the charging documents. If the order is for competency restoration treatment and the competency evaluation was provided by a qualified expert or professional person who was not designated by the secretary, a copy of all previous court orders related to the competency or criminal insanity and a copy of any evaluation reports must be included.
- (b) A copy of the discovery packet, including a statement of the individual's criminal history.

(c) A copy of the individual's medical clearance information.

(2) The agency is responsible for the individual's initial assessment. The initial assessment must be:

(a) Conducted in person; and

(b) Completed by a professional appropriately credentialed or qualified to provide mental health services as determined by state law.

(3) The initial assessment must include and document:

(a) The individual's:

(i) Identifying information;

(ii) Presenting issues;

(iii) Medical provider's name or medical providers' names;

(iv) Medical concerns;

(v) Medications currently taken;

(vi) Brief mental health history; and

(vii) Brief substance use history, including tobacco use.

(b) The identification of any risk of harm to self and others, including suicide and/or homicide.

(c) Treatment recommendations or recommendations for additional program-specific assessment.

(4) To determine the nature of the disorder and the treatment necessary, the agency must ensure that the individual receives the following assessments in a timely manner and document in the client's record the date each was provided:

(a) A health assessment of the individual's physical condition to determine if the individual needs to be transferred to an appropriate hospital for treatment;

(b) An examination and medical evaluation within twenty-four hours by a physician, advanced registered nurse practitioner, or physician assistant;

(c) A psychosocial evaluation by a mental health professional; and

(d) A competency to stand trial evaluation conducted by a licensed psychologist, or a copy of a competency to stand trial evaluation if an evaluation has already been conducted.

(5) The agency must also ensure the development of an individual service plan as described in WAC 388-865-0960.

NEW SECTION

WAC 388-865-0960 Competency evaluation and restoration treatment services—Individual service plan. An agency described in WAC 388-865-0900(1) that meets the department's requirements to provide competency evaluation and restoration treatment services must ensure each individual admitted to the agency for restoration treatment services has an individual service plan. The individual's clinical record must contain copies of or documentation of the following:

(1) All diagnostic and therapeutic services prescribed by the attending clinical staff members;

(2) The individualized plan for treatment.

(3) Participation of a multidisciplinary team that includes at a minimum:

(i) A physician;

(ii) A nurse; and

(iii) A social worker.

(4) Participation of other multidisciplinary team members, which may include a psychologist and chemical dependency professional.

NEW SECTION

WAC 388-865-0970 Competency evaluation and restoration treatment services—Seclusion and restraint. (1)

An individual receiving competency evaluation and/or restoration treatment services from an agency described in WAC 388-865-0900(1) has the right to be free from seclusion and restraint, including chemical restraint. The agency must:

(a) Develop, implement, and maintain policies and procedures to ensure that seclusion and restraint procedures are used only to the extent necessary to ensure the safety of an individual, and in accordance with WAC 246-322-180 and 246-337-110.

(b) Ensure that the use of seclusion or restraint occurs only when there is imminent danger to self or others and less restrictive measures have been determined to be ineffective to protect the individual or other from harm and the reasons for the determination are clearly documented in the individual's clinical record.

(c) Ensure staff members notify and receive authorization by a physician within one hour of initiating an individual's seclusion or restraint.

(d) Ensure the individual is informed of the reasons for use of seclusion or restraint and the specific behaviors which must be exhibited in order to gain release from a seclusion or restraint procedure.

(e) Ensure that an appropriate clinical staff member(s) observes the individual at least every fifteen minutes and the observation is recorded in the individual's clinical record.

(f) If the use of seclusion or restraint exceeds twenty-four hours, ensure that a physician has assessed the individual and has written a new order if the intervention will be continued. This procedure must be repeated for each twenty-four hour period that seclusion or restraint is used.

(2) The agency must ensure all assessments and justification for the use of seclusion and/or restraint are documented in the individual's clinical record.

WSR 16-04-060

EMERGENCY RULES

DEPARTMENT OF

FISH AND WILDLIFE

[Order 16-11—Filed January 28, 2016, 3:03 p.m., effective February 1, 2016]

Effective Date of Rule: February 1, 2016.

Purpose: Amend commercial smelt rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-33-04000P; and amending WAC 220-33-040.

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: Sets a limited Columbia River commercial fishery for eulachon smelt. The regulation is consistent with a reduced level one fishery as described in the "Washington and Oregon Eulachon Management Plan" for the Columbia River. Returns of eulachon to the Columbia River have improved since 2010, with a moderately large return expected in 2016. The fishery serves as an important test fishery to monitor run strength and timing and to collect biological data. NOAA fisheries concur that the limited fishery is consistent with recovery of eulachon smelt. Rule is consistent with Columbia River Compact action of January 27, 2016. There is insufficient time to adopt permanent regulations.

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: January 28, 2016.

J. W. Unsworth
Director

NEW SECTION

WAC 220-33-04000P Smelt—Areas and seasons.

Notwithstanding the provisions of WAC 220-33-040, the Columbia River and Washington tributaries are closed to fishing for eulachon smelt except as provided below:

Open Dates: February 1 through February 25, 2016, open Mondays and Thursdays only, 7:00 a.m. to 2:00 p.m. (7-hour periods).

Open Area: Columbia River - SMCRA 1A, 1B, 1C.

Gear: It is unlawful to use anything other than gillnets. Gillnets must meet the following specifications per WAC 220-33-040: mesh size not to exceed 2 inches stretch measure; not to exceed 1,500 feet in length along the cork line. Use of monofilament nets is permissible.

Allowable sales: Smelt.

Other: 24-hour quick-reporting is required for Washington wholesale dealers, as provided in WAC 220-69-240.

REPEALER

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

WAC 220-33-04000P Smelt—Areas and seasons.

WSR 16-04-061 EMERGENCY RULES DEPARTMENT OF FISH AND WILDLIFE

[Order 16-12—Filed January 28, 2016, 3:56 p.m., effective February 6, 2016]

Effective Date of Rule: February 6, 2016.

Purpose: Amend recreational smelt fishing rules.

Citation of Existing Rules Affected by this Order:
Repealing WAC 220-56-27000M; and amending WAC 220-56-270.

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: Sets a limited sport fishery for eulachon smelt. The regulations are consistent with a reduced level one fishery as described in the "Washington and Oregon Eulachon Management Plan" for the Columbia River. Returns of eulachon to the Columbia River have improved since 2010, with a moderately large return expected in 2016. The fishery serves as an important test fishery to monitor run strength and timing and to collect biological data. NOAA fisheries concur that the limited fishery is consistent with recovery of eulachon smelt. 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: January 28, 2016.

J. W. Unsworth
Director

NEW SECTION

WAC 220-56-27000M Smelt—Areas and seasons.

Notwithstanding the provisions of WAC 220-56-270, WAC 220-56-240, WAC 220-56-265, and WAC 220-56-275,

effective February 6, 2016, it is unlawful to fish for or possess eulachon smelt in those waters of the Columbia River and Washington tributaries except as provided below:

Open Dates: Saturday February 6, 2016.

Hours: 7:00 a.m. to 1:00 p.m. (6-hour period).

Open Area: Cowlitz River (bank only).

Daily limit: 10 pounds. Possession limit equal to one daily limit.

Gear: Dip net.

REPEALER

The following section of the Washington Administrative Code is repealed effective 1:01 p.m. February 6, 2016:

WAC 220-56-27000M Smelt—Areas and seasons.

WSR 16-04-062
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 16-13—Filed January 28, 2016, 4:10 p.m., effective February 8, 2016]

Effective Date of Rule: February 8, 2016.

Purpose: Amend recreational fishing rules.

Citation of Existing Rules Affected by this Order:
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: This emergency rule establishes the end date to the winter period white sturgeon retention season in Bonneville Reservoir. Fishery managers determined that closing the fishery to sturgeon retention effective Monday, February 8, 2016, will reserve enough fish for a summer retention season. This emergency rule is consistent with the joint Washington-Oregon action of January 27, 2016, and conforms Washington state rules with Oregon state rules. 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: January 28, 2016.

J. W. Unsworth
Director

NEW SECTION

WAC 220-310-20000C Exceptions to statewide rules—Columbia River sturgeon. Notwithstanding the provisions of WAC 220-310-200, effective February 8, 2016 until further notice, it is unlawful to retain sturgeon caught in those waters of the Columbia River and tributaries from Bonneville Dam upstream to The Dalles Dam. Catch and release is permissible except from May 1, 2016, until further notice in the sturgeon spawning sanctuary located from The Dalles Dam downstream 1.8 miles under permanent regulations.

WSR 16-04-063
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 16-14—Filed January 28, 2016, 4:11 p.m., effective March 1, 2016]

Effective Date of Rule: March 1, 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 220-310-20000D; 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: Sets the 2016 spring recreational salmon season in the Columbia River in the area from Buoy 10 upstream to the Oregon/Washington border. The regulation adjusts the hatchery adult bag limit in Deep River to be consistent with the adjacent Columbia River when both areas are open. The regulation allows for the retention of shad

and hatchery steelhead during days and in areas that are open for hatchery Chinook. ESA impacts for wild fish are available to recreational fisheries in order to access hatchery fish. The fishery is consistent with the *U.S. v. Oregon* Management Agreement and the associated biological opinion. Conforms Washington state rules with Oregon state rules. Regulation is consistent with compact action of January 27, 2016. There is insufficient time to promulgate permanent rules.

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

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

Columbia River nontreaty fisheries are monitored very closely to ensure compliance with federal court orders, 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 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: January 28, 2016.

J. W. Unsworth
Director

NEW SECTION

WAC 220-310-20000D Exceptions to statewide rules—Columbia River. Notwithstanding the provisions of WAC 220-310-200, it is unlawful to violate the following provisions, provided that unless otherwise amended, all permanent rules remain in effect:

(1) Effective March 1 through April 9, 2016

(a) Open for fishing for salmonids and shad. From a true north-south line through Buoy 10 upstream to 600 feet downstream of the fish ladder at the new Bonneville Dam powerhouse #2, except closed March 29 and April 5.

(b) HOWEVER, closed to fishing from boats upstream of Beacon Rock (defined as a deadline marker on the Oregon bank, located approximately four miles downstream from Bonneville Dam Powerhouse #1, projecting a straight line through the western tip of Pierce Island to a deadline marker on the Washington bank at Beacon Rock).

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

(d) Release all wild Chinook and wild steelhead.

(e) Salmon minimum size is 12 inches.

(2) Effective March 16 through May 6, 2016:

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

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

(c) Release all wild Chinook and wild steelhead.

(d) Salmon minimum size is 12 inches.

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 May 7, 2016:

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

WSR 16-04-064
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 16-15—Filed January 28, 2016, 4:17 p.m., effective February 5, 2016]

Effective Date of Rule: February 5, 2016.

Purpose: Amend recreational fishing rules for Puget Sound salmon.

Citation of Existing Rules Affected by this Order: Repealing WAC 232-28-62100W; and 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: Preliminary estimates indicate that encounters of Chinook in Area 6 will exceed the pre-season expectations without modification to the fishery. The Chinook fishery is being modified to control impacts on stocks of concern and ensure compliance with conservation objectives and agreed-to 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 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: January 28, 2016.

J. W. Unsworth
Director

NEW SECTION

WAC 232-28-62100W Puget Sound salmon—Saltwater seasons and daily limits. Notwithstanding the provisions of WAC 232-28-621, effective February 5 through April 10, 2016, it is unlawful to violate the provisions below. Unless otherwise amended, all permanent rules remain in effect:

Catch Record Card Area 6: Daily limit of 2 salmon, no more than 1 Chinook. Release wild Chinook.

REPEALER

The following section of the Washington Administrative Code is repealed effective April 11, 2016:

WAC 232-28-62100W Puget Sound salmon—Saltwater seasons and daily limits.

WSR 16-04-073

EMERGENCY RULES

DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Developmental Disabilities Administration)

[Filed January 29, 2016, 11:30 a.m., effective February 1, 2016]

Effective Date of Rule: February 1, 2016.

Purpose: The department is creating new rules that support the 2015-2017 biennium budgets for overnight planned respite services as found on pages 63 and 64 of ESSB 6052.S.L.

Statutory Authority for Adoption: RCW 74.08.090.

Other Authority: ESSB 6052.S.L.

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 2015-2017 biennium budgets provided funding to develop eight community respite beds for adults with developmental disabilities for the provision of short-term community-based planned respite services and eight enhanced respite beds across the state for children. The purpose for these respite beds is to provide family and caregivers relief from the intensity of personal caregiving and an opportunity for behavioral stabilization for children. Without these services some families may be unable to continue to care for their children in their own home and out of home placement could be necessary.

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 44, Amended 0, Repealed 0.

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

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

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 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 44, Amended 0, Repealed 0.

Date Adopted: January 28, 2016.

Katherine I. Vasquez
Rules Coordinator

Reviser's note: The material contained in this filing exceeded the page-count limitations of WAC 1-21-040 for appearance in this issue of the Register. It will appear in the 16-05 issue of the Register.

WSR 16-04-074
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 16-17—Filed January 29, 2016, 11:37 a.m., effective January 29, 2016, 11:37 a.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: Amend commercial fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-52-06900H and 220-52-06900I; and amending WAC 220-52-069.

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

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

Reasons for this Finding: The Puget Sound commercial scallop season is extended one month, through April, due to a delayed fishery opening and anticipated low harvest effort. As previously filed in WSR 16-04-039 the season would have closed March 31, 2016. 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: January 29, 2016.

J. W. Unsworth
 Director

NEW SECTION

WAC 220-52-06900I Commercial scallop fishery—Puget Sound. Notwithstanding the provisions of WAC 220-52-069, effective immediately through April 30, 2016, it is unlawful to take or possess pink or spiny scallops taken for commercial purposes except as provided for in this section:

(1) It is unlawful to fish for, take, or possess pink or spiny scallops with shellfish dive gear without a commercial scallop dive fishery license holder on board the designated harvest vessel.

(2) Pink or spiny scallop harvest using shellfish diver gear is allowed in Scallop Area 1 only, which is defined as the waters of marine fish - shellfish catch reporting areas 20A

and 20B within the following boundaries: Point Doughty east along the shoreline of Orcas Island to Lawrence Point, then true north to 48°42'28" N latitude, 122°44'29" W longitude, then northwest to 48°47'18" N latitude, 122°48'8" W longitude, then northwest to 48°50'4" N latitude, 122°50'24" W longitude, then southwest to 48°49'46" N latitude, 122°51'59" W longitude, then southwest to 48°46'4" N latitude, 122°57'3" W longitude, then true south back to Point Doughty, except within 100 feet of any shoreline, or shallower than 30 feet below mean lower low water, whichever is further from shore, and within 2500 feet from the shoreline of Orcas Island between Point Doughty and Point Thompson, and those waters of Echo Bay, Sucia Island west of a line projected from Johnson Point to the southeast tip of Ewing Island.

(3) It is unlawful for more than two divers from a harvest vessel to be in the water at any one time during pink or spiny scallop harvest operations or when commercial quantities of pink or spiny scallops are on board the vessel.

(4) It is unlawful to possess any other species of commercial shellfish during pink or spiny scallop harvest operations, or possess any other species of commercial shellfish on a vessel that has pink or spiny scallops on board.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 220-52-06900H Commercial scallop fishery—Puget Sound. (16-08)

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

WAC 220-52-06900I Commercial scallop fishery—Puget Sound.

WSR 16-04-076
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 16-10—Filed January 29, 2016, 11:53 a.m., effective February 1, 2016]

Effective Date of Rule: February 1, 2016.

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 220-32-05100N and 220-32-05100P; 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: Opens the treaty winter fishery for commercial sales to Washington wholesale buyers and the public. The Columbia River treaty tribes have delayed the use of gillnets in SMCRA 1F, however sales of fish caught with platform/hook and line gear in that area is allowed (as described in section 2c). The Dalles and John Day Pool are expected to continue through February 20 based on past catch rates and current catch guidelines. Harvestable sturgeon are available under the current harvest guidelines for each pool. The season is consistent with the 2008-2017 Management Agreement and the associated biological opinion. Rule is consistent with action of the Columbia River Compact on January 27, 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 allows 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 2; Federal Rules or Standards: New 1, Amended 0, Repealed 2; 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: January 29, 2016.

J. W. Unsworth
Director

NEW SECTION

WAC 220-32-05100P 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 1F, 1G, and 1H. However, those individuals possessing treaty fishing rights under the Yakima, Warm Springs, Umatilla, and Nez Perce treaties may fish for salmon, steelhead, sturgeon, shad, carp, catfish, walleye, bass, or yellow perch under the following provisions:

(1) Open Areas: SMCRA 1G and 1H (The Dalles Pool and John Day Pool):

(a) Season: 6:00 a.m. February 1 through 6:00 p.m. February 13, 2016.

(b) Gear: Gill nets, hoop nets, dip bag nets, and rod and reel with hook and line. No mesh restriction on gillnets.

(c) Allowable sale: Salmon, steelhead, shad, carp, catfish, walleye, bass, or yellow perch. Sturgeon between 43-54 inches in fork length may be sold or kept for subsistence. Live release of all oversize and under-size sturgeon is required.

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

(d) Season: 6:00 a.m. February 1 through 6:00 p.m. March 21, 2016.

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

(f) Allowable sale: Salmon, steelhead, shad, carp, catfish, walleye, bass, or yellow perch. Sturgeon from 43-54 inches caught in the John Day and Dalles pools may be sold only if caught during open commercial gillnet periods for that pool. Sturgeon between 38-54 inches in fork length in SMCRA 1F may only be kept for subsistence. Live release of all oversize and under-size sturgeon is required.

(3) 24-hour quick reporting is required for Washington wholesale dealers for all areas as provided in WAC 220-69-240, except that all landings from treaty fisheries described above must be reported within 24-hours of completing the fish ticket (not 24-hours after the period concludes).

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

Reviser's note: The 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 6:00 a.m. February 1, 2016:

WAC 220-32-05100N Columbia River salmon seasons above Bonneville Dam. (15-420)

The following section of the Washington Administrative Code is repealed effective 6:01 p.m. March 21, 2016:

WAC 220-32-05100P Columbia River salmon seasons above Bonneville Dam.

WSR 16-04-077
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 16-16—Filed January 29, 2016, 11:54 a.m., effective February 8, 2016, 7:00 p.m.]

Effective Date of Rule: February 8, 2016, 7:00 p.m.

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

Citation of Existing Rules Affected by this Order: Repealing WAC 220-33-01000D; 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: Sets the 2016 winter and spring select area commercial seasons. Impacts to nonlocal stocks are expected to be minimal and local Chinook stocks reared for the select area sites are available for harvest. The fishery is consistent with the *U.S. v. Oregon* Management Agreement and the associated biological opinion. Conforms Washington state rules with Oregon state rules. Regulation is con-

sistent with compact action of January 27, 2016. There is insufficient time to promulgate permanent rules.

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

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

Columbia River nontreaty fisheries are monitored very closely to ensure compliance with federal court orders, 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: January 29, 2016.

J. W. Unsworth
Director

NEW SECTION

WAC 220-33-01000E 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) **Dates:** Winter Season: Open hours are 7 PM to 7 AM Monday, Wednesday, and Thursday nights from February 8 through March 11, 2016 and Monday and Thursday nights from March 14 through March 29. Spring Season: Open hours are 7 PM to 7 AM Tuesday and Thursday nights from April 19 through April 29, 2016, and Monday and Thursday nights from May 2, 2016 until further notice.

b) **Area:** From USCG navigation marker #16 southwest to a marker on the Washington shore, upstream to the Highway 4 Bridge.

c) **Gear:** Gillnets. Winter season: 7-inch minimum mesh. Spring season: 9 3/4-inch maximum mesh. Nets are restricted to 100 fathoms in length with no weight restriction on leadline. Use of additional weights and/or anchors attached directly to the leadline is allowed. Nets cannot be tied off to stationary structures. Nets may not fully cross navigation channel. It is unlawful to operate in any river, stream or channel any gillnet longer than three-fourths the width of the stream (WAC 220-20-015)(1). It shall be unlawful in any area to use, operate, or carry aboard a commercial fishing vessel a licensed net or combination of such nets, whether fished singly or separately, in excess of the maximum lawful size or length prescribed for a single net in that area, except as otherwise provided for in the rules and regulations of the department (WAC 220-20-010)(17).

d) **Miscellaneous:** Transportation or possession of fish outside the fishing area (except to the sampling station) is unlawful until WDFW staff has biologically sampled individual catch. After sampling, fishers will be issued a transportation permit by WDFW staff. **During the winter season, fishers are required to call 360-795-0319** to confirm the place and time of sampling. In the spring season, a sampling station will be established at WDFW's Oneida Road boat ramp, about 0.5 miles upstream of the lower Deep River area boundary (USCG navigation marker #16).

(2) Tongue Point/South Channel

a) **Dates:** Winter Season: Open hours are 7 PM to 7 AM. Monday and Thursday nights from February 8 through March 11, 2016.

Spring Season: Open Thursday night April 21 from 7 PM to 11 PM. Open 7 PM to 7 AM on: Tuesday night April 26 and Thursday night April 28, then Monday and Thursday nights from May 2, 2016 until further notice.

b) **Area:** Tongue Point fishing area includes all waters bounded by a line extended from the upstream (southern most) pier (#1) at the Tongue Point Job Corps facility, through navigation marker #6 to Mott Island; a line from a marker at the southeast end of Mott Island, northeasterly to a marker on the northwest tip of Lois Island; and a line from a marker on the southwest end of Lois Island, westerly to a marker on the Oregon shore.

The South Channel area includes all waters bounded by a line from a marker on John Day Point to a marker on the southwest end of Lois Island, upstream to an upper boundary line from a marker on Settler Point, northwesterly to the

flashing red USCG marker #10, and northwesterly to a marker on Burnside Island defining the upstream terminus of South Channel.

c) **Gear:** Gillnets. Winter season: 7-inch minimum mesh. Spring season: 9 3/4-inch maximum mesh. In the Tongue Point fishing area, gear restricted to a maximum net length of 250 fathoms, and weight not to exceed two pounds on any one fathom. In the South Channel fishing area, gear restricted to a maximum net length of 250 fathoms, no weight restriction on leadline, and use of additional weights or anchors attached directly to the leadline is allowed.

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

(3) Blind Slough/Knappa Slough Select Area

e) **Dates:** Winter Season: Open hours are 7 PM to 7 AM. Open Monday and Thursday nights from February 8 through March 11, 2016 and Monday and Thursday nights from March 14 through March 29, 2016.

Spring Season: Open hours are 7 PM to 7 AM. Open Tuesday and Thursday nights from April 21 through April 29, 2016 and Monday and Thursday nights from May 2, 2016 until further notice.

f) **Area:** Winter season: Blind Slough and Knappa Slough are both open through March 18 and only Blind Slough is open March 21 through March 29, 2016. Spring season: Blind Slough and Knappa Slough areas are both open. From May 2, 2016 until further notice, the lower boundary of the Knappa Slough fishing area is extended downstream to boundary lines defined by markers on the west end of Minaker Island to markers on Karlson Island and the Oregon Shore (fall season boundary).

g) **Gear:** Gillnets. Winter season: 7-inch minimum mesh. Spring Season: 9 3/4-inch maximum mesh. Nets are restricted to 100 fathoms in length with no weight restriction on leadline. Use of additional weights and/or anchors attached directly to the leadline is allowed.

h) **Miscellaneous:** Permanent transportation rules in effect.

(4) Allowable Possession: Salmon and shad

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

(6) Multi-Net Rule: Nets not specifically authorized for use in these areas may be onboard a vessel if properly stored (WAC 220-33-001(2)).

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

Reviser's note: The 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.

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 7:00 p.m. February 8, 2016:

WAC 220-33-01000D Columbia River seasons below Bonneville. (16-383)

WSR 16-04-086
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 16-19—Filed January 29, 2016, 3:03 p.m., effective February 4, 2016]

Effective Date of Rule: February 4, 2016.

Purpose: Amend recreational fishing rules for razor clams.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-56-36000I; and amending WAC 220-56-360.

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: Survey results show that adequate clams are available for harvest in Razor Clam Area 1. Washington department of health has certified clams from this beach to be safe for human consumption. There is insufficient time to adopt permanent rules.

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

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

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

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

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

Date Adopted: January 29, 2016.

J. W. Unsworth
Director

NEW SECTION

WAC 220-56-36000I Razor clams—Areas and seasons. Notwithstanding the provisions of WAC 220-56-360, it is unlawful to dig for or possess razor clams taken for per-

sonal use from any beach in Razor Clam Areas 1, 2, 3, 4, 5, 6 or 7 except as provided for in this section:

(1) Effective 12:01 p.m. February 4 through 11:59 p.m. March 10, 2016, razor clam digging is permissible in Razor Clam Area 1. Digging is permissible from 12:01 p.m. to 11:59 p.m. each day only.

(2) It is unlawful to dig for razor clams at any time in the Long Beach sanctuary defined in WAC 220-56-372.

REPEALER

The following section of the Washington Administrative Code is repealed effective 12:01 a.m. March 11, 2016:

WAC 220-56-36000I Razor clams—Areas and seasons.

WSR 16-04-106
EMERGENCY RULES
SUPERINTENDENT OF
PUBLIC INSTRUCTION

[Filed February 2, 2016, 10:57 a.m., effective February 2, 2016, 10:57 a.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: Several sections of chapter 392-169 WAC require immediate updating to align with the changes to running start made by the passage of ESSHB [E2SHB] 1546.

Citation of Existing Rules Affected by this Order: Amending WAC 392-169-005, 392-169-015, 392-169-020, 392-169-025, 392-169-030, 392-169-055, and 392-169-100.

Statutory Authority for Adoption: RCW 28A.600.390.

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: Several sections of chapter 392-169 WAC require updating to address the following:

- Add to the definition of running start program the language from ESSHB [E2SHB] 1546.
- Remove language that addresses running start in the high school model.
- Add language regarding students who are disenrolled from a nonresident district after a rescindment of their choice transfer and plan to only take running start classes to allow a college to report their running start enrollment to the nonresident district.

WAC 392-169-005 requires joint agreement with the office of superintendent of public instruction, state board of community and technical colleges, and washington student achievement council. Both agencies have reviewed and approved the proposed changes.

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 7, 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 0, Repealed 0.

Date Adopted: January 22, 2016.

Randy Dorn
State Superintendent

AMENDATORY SECTION (Amending WSR 95-09-042, filed 4/14/95, effective 5/15/95)

WAC 392-169-005 Authority. The authority for this chapter is RCW 28A.600.390, which authorizes the superintendent of public instruction, the state board for community and technical colleges, and the ~~((higher education coordinating board))~~ Washington student achievement council to jointly develop and adopt rules governing RCW 28A.600.300 through 28A.600.380, and 28A.150.260 and 28A.150.290 which authorize the superintendent of public instruction to adopt rules governing basic education allocation moneys. The rules set forth in this chapter have been jointly developed and agreed upon by the three agencies, and adopted and codified in separate chapters of the Washington Administrative Code by each of the three agencies. The rules may be modified only by agreement of all three agencies.

AMENDATORY SECTION (Amending WSR 95-09-042, filed 4/14/95, effective 5/15/95)

WAC 392-169-015 Running start program—Definition. As used in this chapter, the terms "running start" and "running start program" mean the part-time to full-time equivalent enrollment under this chapter of eligible eleventh and twelfth grade high school students in an institution of higher education for the purpose of earning at least high school credit to be awarded by a school district, and such additional college level or university level credit as may be awarded by the institution of higher education. A running start program's course must be open for registration to matriculated students at the participating institution of higher education and may not be a course consisting solely of high school students offered at a high school campus.

AMENDATORY SECTION (Amending WSR 95-09-042, filed 4/14/95, effective 5/15/95)

WAC 392-169-020 Eligible student—Definition. As used in this chapter, the term "eligible student" means any person, including a person who is otherwise attending a private school or receiving home-based instruction, who meets each of the following conditions:

- (1) The person is under the age of twenty-one years of age as of September 1 of the school year.
- (2) The person is eligible by reason of his or her residence or other criterion established by law to enroll in the

school district through which the person seeks to obtain the award of running start program high school credit. See RCW 28A.225.160 (residents of a school district), RCW 28A.225.-170 (residents of the United States and Indian Reservations), RCW 28A.225.210 (residents of "nonhigh" school districts), and RCW 28A.225.220 ("choice" students). Note: A running start student who changes his or her school district of residence, including after a rescindment of a choice transfer agreement following enrollment in running start, solely for the purpose of attending an institution of higher education under this chapter shall be deemed to have retained his or her residence in the school district of initial running start enrollment for high school graduation, funding and other purposes under this chapter.

(3) The person is eligible under the grade placement policies of the school district through which the person seeks to obtain running start program high school credit to be in the eleventh or the twelfth grade.

(4) The person has not as of the beginning of the school year earned the credits required for the award of a high school diploma by the school district through which the person seeks to obtain the award of running start program high school credit.

(5) The person has not as of the beginning of the school year received a high school diploma or its equivalent. Note: A general education development certificate is not considered to be the equivalent of a high school diploma for purposes of this subsection.

(6) The person's running start program enrollment to date is below the applicable eleventh or twelfth grade running start enrollment limitations established under WAC 392-169-055.

AMENDATORY SECTION (Amending WSR 14-22-079, filed 11/3/14, effective 12/4/14)

WAC 392-169-025 Full-time equivalent (FTE) running start enrollment—Definition. For the purposes of this chapter and chapter 392-121 WAC, "full-time equivalent (FTE) running start enrollment" (i.e., college or university enrollment) means the FTE of running start students on an enrollment count date when each student's FTE is determined subject to the limitations of WAC 392-169-022, 392-169-055 and 392-169-115 as follows:

(1) FTE for running start enrollment is the result of ~~((multiplying the quotient of))~~ dividing a student's enrolled college credits ~~((divided))~~ by fifteen ~~((and the quotient of three divided by the number of months the running start class is provided))~~. For Washington State University classes offered at the college campus only, the FTE for running start enrollment is the result of dividing a student's enrolled college semester credits by fifteen.

(2) The sum of the results of running start enrollment under subsection (1) of this section at all colleges shall not exceed 1.00 FTE per student on any count day except for the month of January or 1.00 annual average FTE in any school year.

AMENDATORY SECTION (Amending WSR 14-22-079, filed 11/3/14, effective 12/4/14)

WAC 392-169-030 Annual average full-time equivalent (AAFTE) running start enrollment—Definition. For purposes of this chapter and chapter 392-121 WAC, "annual average full-time equivalent (AAFTE) running start enrollment" means(=

(1) ~~For running start classes offered at the college campus;~~) the sum of the AAFTE of all running start students for a school year when each running start student's AAFTE equals the sum of the student's running start FTE enrollment on the nine running start count dates divided by nine.

~~((2) For running start classes offered in the high school setting, the sum of the AAFTE of all running start students for a school year when each running start student's AAFTE equals the sum of the student's running start FTE enrollment on the ten running start count dates divided by ten.))~~

AMENDATORY SECTION (Amending WSR 14-22-079, filed 11/3/14, effective 12/4/14)

WAC 392-169-055 Enrollment—Extent and duration of running start enrollment. Running start program enrollment under this chapter is limited as follows (and as may be further limited for academic reasons under WAC 392-169-057):

(1) An eligible student who enrolls in grade eleven may enroll in an institution of higher education while in the eleventh grade for no more than the course work equivalent to one academic year of enrollment as an annual average full-time equivalent running start student (i.e., three college or university quarters as a full-time equivalent college or university student, or nine months as a full-time equivalent technical college student~~((, or ten months as a full-time equivalent student taking running start classes in the high school setting))~~)).

(2) An eligible student who enrolls in grade twelve may enroll in an institution of higher education while in the twelfth grade for no more than the course work equivalent to one academic year of enrollment as an annual average full-time equivalent running start student (i.e., three college or university quarters as a full-time equivalent community college or university student, or nine months as a full-time technical college student~~((, or ten months as a full-time equivalent student taking running start classes in the high school setting))~~)).

(3) Enrollment in an institution of higher education is limited to the fall, winter and spring college quarters, and the fall and spring college semesters~~((, and the district standard school year (September through June))~~)).

(4) As a general rule a student's eligibility for running start program enrollment terminates at the end of the student's twelfth grade regular academic year, notwithstanding the student's failure to have enrolled in an institution of higher education to the full extent permitted by subsections (1) and (2) of this section: Provided, That a student who has failed to meet high school graduation requirements as of the end of the student's twelfth grade regular academic year (September

through June) due to the student's absence, the student's failure of one or more courses, or another similar reason may continue running start program enrollment for the sole and exclusive purpose of completing the particular course or courses required to meet high school graduation requirements, subject to the enrollment limitation established by subsection (2) of this section.

AMENDATORY SECTION (Amending WSR 14-22-079, filed 11/3/14, effective 12/4/14)

WAC 392-169-100 Running start enrollment count dates. Enrollment count dates for the running start program shall be as follows:

(1) For community and technical colleges and for Central Washington University and Eastern Washington University ~~((classes offered at the college campus))~~, the first college or university day of each of the months of October through June; and

(2) For Washington State University ~~((classes offered at the college campus))~~, the first university day of each of the months of September through May.

~~((3) For running start classes offered at the high school setting, the first instructional day of each of the months September through June.))~~

WSR 16-04-111

EMERGENCY RULES

DEPARTMENT OF HEALTH

[Filed February 2, 2016, 11:15 a.m., effective February 2, 2016, 11:15 a.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: Chapter 246-70 WAC; creating a new chapter to establish rules required by RCW 69.51A.375 regarding marijuana products beneficial for medical use by qualifying patients, quality assurance testing (pesticides mycotoxins, heavy metals, terpenes), product labeling, and safe handling standards.

Statutory Authority for Adoption: RCW 69.50.375.

Other Authority: RCW 82.08.9998.

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

Reasons for this Finding: The department of health must enact emergency rules in order to ensure that a safe, reliable supply of products is available by July 1, 2016, in licensed retail stores with a medical marijuana endorsement. The deadline of July 1, 2016, is established in statute. July 1, 2016, is also the date in statute by which all existing collective gardens must obtain a state license or cease operations. In October 2015, the liquor and cannabis board began accepting applications for new retail stores and medical marijuana endorsements from currently licensed retail stores. On October 5, 2015, the department of health filed emergency rules on marijuana products [products] beneficial for medical use, so those businesses submitting applications for medical mar-

ijuana endorsements would be aware of what they were agreeing to sell, as well as providing notice to producers and processors who would be providing product for the medically endorsed retail outlets. Simultaneously, the department filed a notice to begin the permanent rule-making process. The department has conducted stakeholder meetings and collected public comments on the product rules, and the process for permanent adoption is well underway. The continuation of the emergency product rules, with some changes due to the information gathered to date, is necessary to provide continued guidance to the producers, processors, and medically endorsed retail outlets. The department has not completed the permanent rule-making process while it continues to review the public comment to prepare the CR-102. To avoid a gap in the rules and to meet the deadlines mandated in statute, the department is enacting second emergency rules on product compliance. Soon after the filing of this second emergency rule, the department will be filing a CR-102 to continue with the permanent rule adoption process.

The mandated deadlines and the need for the second emergency rules are:

- Applicants for medical marijuana endorsements must stipulate to selling the medical marijuana products identified in this rule, which they cannot do if they do not know what products are medical marijuana products.
- Licensed producers must know what to plant for medical grade products, as well as the requirements for allowable trace levels of heavy metals and pesticides, so they properly use fertilizers and pesticides in a manner that protects the safety and health of the qualifying patients.
- Licensed producers must have adequate time to grow the specific strains necessary to meet patient needs and licensed processors must have adequate time to convert the harvested plants into products meeting the specifications in the rule.
- The certified third-party testing labs must have enough notice of the requirements in these rules to have adequate equipment and training in place sufficiently in advance to have an adequate supply of tested medical grade product on the shelves for qualifying patients on July 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 8, Amended 0, Repealed 0.

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

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

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 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 8, Amended 0, Repealed 0.

Date Adopted: February 2, 2016.

John Wiesman, DrPH, MPH
Secretary

Chapter 246-70 WAC

MARIJUANA PRODUCT COMPLIANCE

NEW SECTION

WAC 246-70-010 Findings. Anecdotal and limited scientific evidence indicates that the use of marijuana may be beneficial to alleviate the symptoms of certain physical and mental conditions. However, due to the current federal classification of marijuana as a schedule 1 controlled substance, scientific research has not been performed that would allow for standardized indications of particular strains, which can vary radically in cannabinoid composition; standard, reproducible formula or dosage; or accepted standards for drug purity, potency and quality for the various conditions for which the medical use of marijuana may be authorized. At this time, the decision of what marijuana products may be beneficial is best made by patients in consultation with their health care practitioners. For this reason, the department will not limit the types of products available to qualifying patients. Instead, the department intends to create standards for products that any consumer can rely upon to be reasonably safe and meet quality assurance measures.

NEW SECTION

WAC 246-70-020 Applicability of WSLCB rules. The requirements in this chapter are in addition to all WSLCB requirements in chapter 314-55 WAC. They are intended to build upon all other requirements for licensed marijuana producers, processors and retailers, and certified third-party labs.

NEW SECTION

WAC 246-70-030 Definitions. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Allowed pesticide" means a pesticide registered by the Washington state department of agriculture under chapter 15.58 RCW as allowed for use in the production, processing, and handling of marijuana.

(2) "Batch" means a quantity of marijuana-infused product containing material from one or more lots of marijuana.

(3) "CBD concentration" means the percent of cannabidiol content per dry weight of any part of the plant *Cannabis*, or per volume or weight of marijuana product.

(4) "Certified third-party testing lab" means a laboratory certified by the WSLCB or its vendor under WAC 314-55-102.

(5) "Data base" means the medical marijuana authorization data base created pursuant to RCW 69.51A.230.

(6) "Department" means the Washington state department of health.

(7) "Designated provider" has the same meaning as RCW 69.51A.010(4).

(8) "Harvest" means the marijuana plant material derived from plants of the same strain that were brought into cultivation at the same time, grown in the same manner and physical space, and gathered at the same time.

(9) "Imported cannabinoid" means any cannabinoid derived of the plant *Cannabis* with a THC concentration 0.3 percent or less that is not produced by a licensed marijuana producer.

(10) "Lot" means either of the following:

(a) The flowers from one or more marijuana plant(s) of the same strain. A single lot of flowers cannot weigh more than five pounds; or

(b) The trim, leaves, or other plant matter from one or more marijuana plant(s). A single lot of trim, leaves, or other plant matter cannot weigh more than fifteen pounds.

(11) "Marijuana" means all parts of the plant *Cannabis*, whether growing or not, with a THC concentration greater than 0.3 percent on a dry weight basis; the seeds thereof; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds or resin. The term does not include the mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture, or preparation of the mature stalks (except the resin extracted therefrom), fiber, oil, or cake, or the sterilized seed of the plant which is incapable of germination.

(12) "Marijuana concentrates" means products consisting wholly or in part of the resin extracted from any part of the plant *Cannabis* and having a THC concentration greater than ten percent.

(13) "Marijuana-infused products" means products that contain marijuana or marijuana extracts, are intended for human use, are derived from marijuana as defined in subsection (11) of this section, and have a THC concentration no greater than ten percent. The term "marijuana-infused products" does not include either usable marijuana or marijuana concentrates.

(14) "Marijuana processor" means a person licensed by the WSLCB under RCW 69.50.325 to process marijuana into marijuana concentrates, usable marijuana and marijuana-infused products, package and label marijuana concentrates, usable marijuana and marijuana-infused products for sale in retail outlets, and sell marijuana concentrates, usable marijuana and marijuana-infused products at wholesale to marijuana retailers.

(15) "Marijuana producer" means a person licensed by the WSLCB under RCW 69.50.325 to produce and sell marijuana at wholesale to marijuana processors and other marijuana producers.

(16) "Marijuana product" means marijuana, marijuana concentrates, usable marijuana, and marijuana-infused products as defined in this section.

(17) "Medical use of marijuana" has the same meaning as RCW 69.51A.010(3).

(18) "Plant" means a marijuana plant.

(19) "Production" includes the manufacturing, planting, cultivating, growing, or harvesting of marijuana.

(20) "Qualifying patient" or "patient" has the same meaning as RCW 69.51A.010(19).

(21) "Pesticide" means, but is not limited to: (a) Any substance or mixture of substances intended to prevent, destroy, control, repel, or mitigate any insect, rodent, snail, slug, fungus, weed, and any other form of plant or animal life or virus, except virus on or in a living person or other animal which is normally considered to be a pest; (b) any substance or mixture of substances intended to be used as a plant regulator, defoliant, or desiccant; and (c) any spray adjuvant. Pesticides include substances commonly referred to as herbicides, fungicides, insecticides, and cloning agents.

(22) "Recognition card" means a card issued to qualifying patients and designated providers by a marijuana retailer with a medical marijuana endorsement that has entered them into the medical marijuana data base.

(23) "Retail outlet" means a location licensed by the WSLCB under RCW 69.50.325 for the retail sale of usable marijuana and marijuana-infused products.

(24) "Retail outlet with a medical marijuana endorsement" means a location licensed by the WSLCB under RCW 69.50.325 for the retail sale of marijuana products to the public and, under RCW 69.50.375, to qualifying patients and designated providers for medical use.

(25) "Secretary" means the secretary of the department of health or the secretary's designee.

(26) "THC concentration" means the percent of Delta 9 tetrahydrocannabinol content per dry weight of any part of the plant *Cannabis*, or per volume or weight of marijuana product, or the combined percent of Delta 9 tetrahydrocannabinol and tetrahydrocannabinolic acid in any part of the plant *Cannabis* regardless of moisture content.

(27) "Tincture" means a solution containing marijuana extract. A single unit of tincture cannot exceed two fluid ounces.

(28) "Topical product" means a product intended for use only as an application to human body surfaces, does not cross the blood-brain barrier, and is not meant to be ingested by humans or animals.

(29) "Unit" means an individually packaged marijuana product containing up to ten servings or applications.

(30) "Usable marijuana" means dried marijuana flowers. The term "usable marijuana" does not include either marijuana-infused products or marijuana concentrates.

(31) "WSLCB" means the Washington state liquor and cannabis board.

NEW SECTION

WAC 246-70-040 Marijuana products compliant with this chapter. To be classified as a compliant marijuana product, the product must meet all requirements of this chapter. Compliant marijuana products must fall into one of the following classifications:

(1) General use.

(a) "General use compliant product" means any marijuana product approved by the WSLCB, including edibles, and meeting the requirements of this chapter.

(b) General use marijuana-infused compliant products may be packaged in servings or applications containing up to ten milligrams of active THC. A unit must not contain more

than ten servings or applications and must not exceed one hundred total milligrams of active THC.

(c) General use compliant products must be labeled "Chapter 246-70 WAC, Compliant—General Use" and must use the logo developed and approved by the department to indicate compliance with this chapter.

(d) General use compliant products may be purchased by any adult age twenty-one or older, and qualifying patients between the ages of eighteen and twenty who are entered into the data base and hold a valid recognition card.

(e) General use compliant products may be sold at retail outlets and retail outlets with a medical marijuana endorsement.

(2) High THC.

(a) "High THC compliant product" means a marijuana product containing more than ten but no more than fifty milligrams of THC per serving or application and meeting the requirements of this chapter.

(b) The following is an exclusive list of marijuana products that may qualify for classification as a high THC compliant product:

- (i) Capsules;
- (ii) Tinctures;
- (iii) Transdermal patches; and
- (iv) Suppositories.

(c) No other marijuana products can be classified as a high THC compliant product or contain more than ten milligrams of active THC per serving or application.

(d) High THC compliant products may be packaged in servings or applications containing up to fifty milligrams of active THC. A unit must not contain more than ten servings or applications and must not exceed five hundred total milligrams of active THC.

(e) High THC compliant products must be labeled "Chapter 246-70 WAC Compliant - High THC" and must use the logo developed and approved by the department to indicate compliance with this chapter.

(f) High THC compliant products may be purchased only by qualifying patients age eighteen and older and designated providers who are entered into the data base and hold a valid recognition card.

(g) High THC compliant products may be sold only at retail outlets with a medical marijuana endorsement.

(3) High CBD.

(a) "High CBD compliant product" means any marijuana product, except usable marijuana or other plant material intended for smoking, approved by the WSLCB, including edibles, meeting the requirements of this chapter and containing the following ratios:

(i) Marijuana extracts containing not more than two percent THC concentration and at least twenty-five times more CBD concentration by weight.

(ii) Marijuana-infused edible products containing not more than two milligrams of active THC and at least five times more CBD per serving by weight for solids or volume for liquids.

(iii) Marijuana-infused topical products containing at least five times more CBD concentration than THC concentration.

(b) High CBD compliant products must be labeled "Chapter 246-70 WAC Compliant - High CBD" and must use the logo developed and approved by the department to indicate compliance with this chapter.

(c) High CBD compliant products may be purchased by any adult age twenty-one or older, and qualifying patients between the ages of eighteen and twenty who are entered into the data base and hold a valid recognition card.

(d) High CBD compliant products may be sold at retail outlets and retail outlets with a medical marijuana endorsement.

NEW SECTION

WAC 246-70-050 Quality assurance testing. (1) Testing. In addition to the tests required under WAC 314-55-102, the following tests shall be performed at the intervals indicated by a third-party testing lab certified by the WSLCB:

(a) Pesticide screening and heavy metal screening are required at the time of harvest for all marijuana flowers, trim, leaves, or other plant matter.

(i) Minimum sample size is three grams for every three pounds of harvested product.

(ii) Harvest amounts will be rounded up to the next three-pound interval. For example, a harvest of less than three pounds requires at least three grams for testing; a harvest of three or more pounds but less than six pounds requires at least six grams for testing.

(b) Mycotoxin screening is required whenever microbial testing for any marijuana product is required by the WSLCB.

(c) In addition to the pesticide screening required in subsection (1)(a) of this section, additional pesticide screening is required for:

- (i) Each batch of finished concentrates and extracts; and
- (ii) Any imported cannabinoid intended for use in a marijuana product.

The minimum sample size for each batch of finished concentrates and extracts is two grams. The sample size for imported cannabinoids is one percent of the product as packaged by the manufacturer of the imported cannabinoid but in no case shall the sample be less than two grams.

(d) In addition to the heavy metal screening required in (a) of this subsection, additional heavy metal screening is required for any imported cannabinoid intended for use in a marijuana product. The sample size for imported cannabinoids is one percent of the product as packaged by the manufacturer of the imported cannabinoid but in no case shall the sample be less than two grams.

(e) Licensed marijuana producers, licensed marijuana processors, and certified third-party labs must follow the sampling protocols in chapter 314-55 WAC.

(2) Pesticide screening.

(a) Only allowed pesticides shall be used in the production, processing, and handling of marijuana. Pesticide use must be consistent with the manufacturer's label requirements.

(b) Certified third-party labs must screen for any pesticides that are not allowed and are designated as having the potential for misuse on a list created, maintained, and periodically updated by the department in consultation with the

Washington state department of agriculture and the WSLCB. Certified third-party labs must also screen for pyrethrins and piperonyl butoxide (PBO) in samples of finished concentrates and extracts.

(c) For purposes of the pesticide screening:

(i) A sample of any marijuana product shall be deemed to have failed if a pesticide that is not allowed is detected in any measurable and positively verified amount.

(ii) A sample of finished concentrate or extract shall be deemed to have failed if more than 1.0 ppm of allowed pyrethrins or 2.0 ppm of piperonyl butoxide (PBO) is detected.

(d) A harvest or batch deemed to have failed pesticide screening must be destroyed. Marijuana flowers, trim, leaves, or other plant matter deemed to have failed pesticide screening must not be used to create extracts or concentrates. Imported cannabinoids deemed to have failed pesticide screening must not be added to any marijuana product.

(e) Pesticides containing allowed pyrethrins or piperonyl butoxide (PBO) may not be applied less than seven days prior to harvest.

(f) All individuals applying pesticides shall adhere to the agricultural use requirements on the label. Pesticide applications that do not follow the pesticide product label may pose risks to public health and safety and are a violation of chapter 15.58 RCW.

(3) Heavy metal screening.

(a) For the purposes of heavy metal screening, a sample shall be deemed to have passed if it meets the following standards:

Metal	Limit, µg/daily dose (5 grams)
Inorganic arsenic	10.0
Cadmium	4.1
Lead	6.0
Mercury	2.0

(b) A harvest deemed to have failed heavy metal screening must be destroyed. Marijuana flowers, trim, leaves, or other plant matter deemed to have failed heavy metal screening must not be used to create extracts or concentrates. Imported cannabinoids deemed to have failed heavy metal screening must not be added to any marijuana product.

(4) For purposes of mycotoxin screening, a sample shall be deemed to have passed if it meets the following standards:

Test	Specification
The total of aflatoxin B1, aflatoxin B2, aflatoxin G1 and aflatoxin G2	<20 µG/kg of substance
Ochratoxin A	<20 µG/kg of substance

(5) Terpenes.

(a) Terpene analysis is not required. If terpene content is listed on product packaging or label, a terpene analysis from a certified third-party lab must be available for review by the consumer upon request.

(b) The addition of any terpene to useable marijuana is prohibited. Only the following terpenes may be added to a marijuana product other than useable marijuana.

(i) Terpenes naturally occurring in marijuana; or

(ii) Terpenes permitted or generally recognized as safe by, and used in accordance with, 21 C.F.R., Chapter I, subchapter B.

NEW SECTION

WAC 246-70-060 Compliant product labeling. (1)

Products meeting the requirements of this chapter must be readily identifiable to the consumer by placement on the product's label of the logo developed and approved by the department.

(2) Labels for compliant products must not:

(a) Use any word(s), symbol, or image commonly used in or by medical or pharmaceutical professions including, but not limited to: Depiction of a caduceus, staff of Asclepius, bowl of Hygieia, or mortar and pestle; or use of the word "prescription" or letters "RX";

(b) State or imply any specific medical or therapeutic benefit; or

(c) Mimic a brand of over-the-counter or legend drug.

(3) The label must prominently display the following statement: "This product is not approved by the FDA to treat, cure, or prevent any disease."

(4) Marijuana products that use the logo developed and approved by the department but do not meet the requirements in this chapter will be reported to the WSLCB.

NEW SECTION

WAC 246-70-070 Compliant product safe handling. (1)

Marijuana processors shall ensure all processing facilities that create or handle marijuana-infused products are constructed, kept, and maintained in a clean and sanitary condition in accordance with rules as prescribed by the Washington state department of agriculture under chapters 16-165 and 16-167 WAC.

(2) Marijuana processors that do not create or handle marijuana-infused products and all marijuana producers shall adopt and enforce policies and procedures to ensure that operations involving the growing, receiving, inspecting, transporting, segregating, preparing, production, packaging, and storing of marijuana or marijuana products are conducted in accordance with adequate sanitation principles including:

(a) Any person who, by medical examination or supervisory observation, is shown to have, or appears to have, an illness, open lesion, including boils, sores or infected wounds, or any other abnormal source of microbial contamination for whom there is a reasonable possibility of contact with marijuana, marijuana plants, or marijuana products shall be excluded from any operations that may be expected to result in microbial contamination until the condition is corrected.

(b) Hand-washing facilities must be available and furnished with running water. Hand-washing facilities shall be located in the permitted premises and where good sanitary practices require employees to wash or sanitize their hands, and provide effective hand-cleaning and sanitizing preparations and sanitary towel service or suitable drying devices.

(c) All persons working in direct contact with marijuana, marijuana plants, or marijuana products must conform to hygienic practices while on duty including, but not limited to:

- (i) Maintaining personal cleanliness;
- (ii) Washing hands thoroughly in hand-washing areas before starting work and at any other time when the hands may have become soiled or contaminated;
- (iii) Refraining from having direct contact with marijuana, marijuana plants, or marijuana products if the person has or may have an illness, open lesion, including boils, sores or infected wounds, or any other abnormal source of microbial contamination, until the condition is corrected.
- (d) Litter and waste are properly removed and the operating systems for waste disposal are maintained in a manner so that they do not constitute a source of contamination in areas where marijuana, marijuana plants, or marijuana products may be exposed.
- (e) Floors, walls and ceilings are constructed in such a manner that they may be adequately cleaned and kept clean and in good repair.
- (f) There is adequate lighting in all areas where marijuana, marijuana plants, or marijuana products are stored and where equipment or utensils are cleaned.

(g) There is adequate screening or other protection against the entry of pests. Rubbish must be disposed of so as to minimize the development of odor and minimize the potential for the waste becoming an attractant, harborage, or breeding place for pests.

(h) Any buildings, fixtures, and other facilities are maintained in a sanitary condition.

(i) Toxic cleaning compounds, sanitizing agents, and solvents used in the production of marijuana concentrates must be identified, held and stored in a manner that protects against contamination of marijuana, marijuana plants, and marijuana products, and in a manner that is in accordance with any applicable local, state, or federal law, rule, regulation, or ordinance.

(j) All contact surfaces, including utensils and equipment used for the preparation of marijuana, marijuana plants, or marijuana products must be cleaned and sanitized regularly to protect against contamination. Equipment and utensils must be designed and be of such material and workmanship as to be adequately cleanable, and must be properly maintained. Sanitizing agents must be used in accordance with labeled instructions.

(k) The water supply must be sufficient for the operations and capable of providing a safe, potable, and adequate supply of water to meet the facility's needs. Each facility must provide its employees with adequate and readily accessible toilet facilities that are maintained in a sanitary condition and good repair.

NEW SECTION

WAC 246-70-080 Employee training. (1) Marijuana producers, processors and retailers that create, handle, or sell compliant marijuana products shall adopt and enforce policies and procedures to ensure employees and volunteers receive training about the requirements of this chapter.

(2) Marijuana retailers holding a medical marijuana endorsement shall also adopt and enforce policies and procedures to ensure employees and volunteers receive training about:

- (a) Procedures regarding the recognition of valid authorizations and the use of equipment to enter qualifying patients and designated providers into the medical marijuana authorization data base;
- (b) Identification of valid recognition cards;
- (c) Adherence to confidentiality requirements; and
- (d) Science-based information about cannabinoids, strains, varieties, THC concentration, CBD concentration, and THC to CBD ratios of marijuana concentrates, usable marijuana, and marijuana-infused products available for sale when assisting qualifying patients and designated providers at the retail outlet.

(3) Nothing in subsection (2) of this section allows any owner, employee, or volunteer to:

- (a) Perform the duties of a medical marijuana consultant or represent themselves as a medical marijuana consultant unless the person holds a valid certificate issued by the secretary under chapter 246-72 WAC;
- (b) Offer or undertake to diagnose or cure any human or animal disease, ailment, injury, infirmity, deformity, pain, or other condition, physical or mental, real or imaginary, by use of marijuana products or any other means or instrumentality; or
- (c) Recommend or suggest modification or elimination of any course of treatment that does not involve the medical use of marijuana or marijuana products.

**WSR 16-04-127
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE**

[Order 16-20—Filed February 3, 2016, 10:55 a.m., effective February 4, 2016]

Effective Date of Rule: February 4, 2016.

Purpose: Amend recreational fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-310-19500R, 220-310-19500S, 220-310-20000A and 220-310-20000B; and amending WAC 220-310-195 and 220-310-200.

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

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

Reasons for this Finding: Recent analysis of ongoing steelhead fisheries in the upper Columbia River shows that extending the fishery in the upper basin of the Wenatchee River should not exceed impact limits on natural-origin steelhead established by NOAA fisheries under section 10 of the federal Endangered Species Act. Expanding the fishery on the Wenatchee River will increase fishing opportunities for

hatchery steelhead, reduce the proportion of hatchery fish on the spawning grounds, and further reduce competition between natural origin and hatchery juvenile production. There is insufficient time to adopt permanent rules.

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

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

Number of Sections Adopted on the Agency's Own Initiative: New 2, Amended 0, Repealed 4.

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

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

Date Adopted: February 3, 2016.

J. W. Unsworth
Director

NEW SECTION

WAC 220-310-19500T Freshwater exceptions to statewide rules—Eastside. Notwithstanding the provisions of WAC 220-310-195, effective February 4, 2016, until further notice, it is unlawful to violate the following provisions, provided that unless otherwise amended, all permanent rules remain in effect:

(1) **Wenatchee River:** It is permissible to fish for steelhead from the mouth to 400 feet below Tumwater Dam, including the 400 foot section below Dryden Dam.

(2) **Icicle River:** It is permissible to fish for steelhead from the mouth to 500 feet downstream of the Leavenworth National Fish Hatchery Barrier Dam.

(3) **Entiat River:** It is permissible to fish for steelhead from the mouth to approximately one half mile upstream to a point perpendicular with the intersection of the Entiat River Road and Hedding Street.

(4) **Okanogan River:** It is permissible to fish for steelhead from the mouth to the Highway 97 Bridge in Oroville.

(5) **Similkameen River:** It is permissible to fish for steelhead from the mouth to 400 feet below Enloe Dam.

(6) It is unlawful to violate the following provisions during the open times in the waters listed in this section:

(a) Night closure and selective gear rules are in effect.

(b) Daily limit:

(i) Two hatchery steelhead; 20 inch minimum size.

(ii) Five hatchery rainbow trout; less than 20 inches in total length.

(c) Mandatory retention of adipose fin clipped steelhead, except release all steelhead with a floy (anchor) tag attached or one or more round 1/4 inch in diameter holes punched in the caudal (tail) fin. Adipose present steelhead must be released unharmed and cannot be removed from the water prior to release.

(d) Anglers must cease fishing for the day when the daily limit of two hatchery steelhead are obtained, regardless of the number of hatchery rainbow trout obtained.

(7) **Methow River:** It is unlawful to fish for or possess whitefish from the mouth to the confluence of the Chewuch River in Winthrop.

NEW SECTION

WAC 220-310-20000E Freshwater exceptions to statewide rules—Columbia River. Notwithstanding the provisions of WAC 220-310-200, effective February 4, 2016, until further notice, it is unlawful to violate the following provisions, provided that unless otherwise amended, all permanent rules remain in effect:

(1) It is permissible to fish for steelhead in the Columbia River from Rock Island Dam to the powerlines crossing the Columbia River at Doroga State Park.

(2) It is permissible to fish for steelhead in the Columbia River from the Hwy 173 bridge at Brewster to 400 feet below Chief Joseph Dam.

(3) It is unlawful to violate the following provisions during the open times in the waters listed in this section:

a. Night closure and selective gear rules are in effect, except bait is permissible.

b. Daily limit:

(i) Two hatchery steelhead, 20 inch minimum size.

(ii) Five hatchery rainbow trout, less than 20 inches in total length.

c. Mandatory retention of adipose fin clipped steelhead, except release all steelhead with a floy (anchor) tag attached and/or one or more round 1/4 inch in diameter holes punched in the caudal (tail) fin. Adipose present steelhead must be released unharmed and cannot be removed from the water prior to release.

d. Anglers must cease fishing for the day when the daily limit of two (2) hatchery steelhead are obtained, regardless of the number of hatchery rainbow trout obtained.

REPEALER

The following sections of the Washington Administrative Code are repealed effective February 4, 2016:

WAC 220-310-19500R Freshwater exceptions to statewide rules—Eastside. (15-427)

WAC 220-310-19500S Freshwater exceptions to statewide rules—Eastside. (15-428)

WAC 220-310-20000A Freshwater exceptions to statewide rules—Columbia River. (15-427)

WAC 220-310-20000B Freshwater exceptions to statewide rules—Columbia River. (15-428)