

WSR 17-02-002
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 16-324—Filed December 21, 2016, 4:03 p.m., effective December 21, 2016, 5:00 p.m.]

Effective Date of Rule: December 21, 2016, 5:00 p.m.

Purpose: Amend Puget Sound commercial crab fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-52-04000X and 220-52-04600W; and amending WAC 220-52-040 and 220-52-046.

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

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

Reasons for this Finding: The provisions of this rule will keep the commercial crab harvest open in Region 1, Region 2 East and Region 3-1. There is sufficient allocation available in these regions to accommodate the continued fishery. The regulation will close the commercial crab fishery in Region 2 West, followed shortly thereafter by Region 3-2. The commercial fishery will reach its current allocation in these regions on the dates specified above. These provisions are in conformity with agreed management plans with applicable tribes. These management plans are entered into as required by court order. The Puget Sound commercial season is structured to meet harvest allocation objectives negotiated with applicable treaty tribes and outlined in the management plans. There is insufficient time to adopt permanent rules.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 2, Amended 0, Repealed 2.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.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: December 21, 2016.

J. W. Unsworth
 Director

NEW SECTION

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

(1) Effective immediately, until further notice, it is unlawful for any person to fish for crabs for commercial purposes with more than 50 pots per license per buoy tag number in Crab Management Regions 1, Region 2 East, Region 3-1 or Region 3-3. These regions include Marine Fish-Shellfish Catch Reporting Areas 20A, 20B, 21A, 21B, 22A, 22B, 24A, 24B, 24C, 24D, 26A East, 23A, 23B, 23C and 29.

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

(3) Effective 5:00 p.m. December 21, 2016, until further notice, Crab Management Region 2 West is CLOSED. This region includes Marine Fish-Shellfish Catch Reporting Areas 25B, 25D and 26A West.

(4) Effective 5:00 p.m. December 21, 2016, until further notice, Crab Management Region 3-2 is CLOSED. This region includes Marine Fish-Shellfish Catch Reporting Areas 23B, 25A, and 25E.

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

NEW SECTION

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

(1) Effective immediately, until further notice, it is permissible to fish for Dungeness crab for commercial purposes in the following areas:

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

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

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

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

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

REPEALER

The following sections of the Washington Administrative code are repealed effective 5:00 p.m. December 21, 2016:

- WAC 220-52-04000X Commercial crab fishery—Lawful and unlawful gear, methods, and other unlawful acts. (16-311)
WAC 220-52-04600W Puget Sound crab fishery—Seasons and areas (16-311)

WSR 17-02-016
EMERGENCY RULES
DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Aging and Long-Term Support Administration)

[Filed December 27, 2016, 11:46 a.m., effective December 27, 2016, 11:46 a.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: The daily medicaid payment rates are changing per collective bargaining and the fiscal year 2017 state budget. The department is amending WAC 388-105-0005 The daily medicaid payment rates for clients assessed using the comprehensive assessment reporting evaluation (CARE) tool and that reside in adult family homes (AFH) and assisted living facilities contracted to provide assisted living (AL), adult residential care (ARC), and enhanced adult residential care (EARC) services, to update the rate table included in WAC 388-105-0005.

Citation of Existing Rules Affected by this Order: Amending WAC 388-105-0005.

Statutory Authority for Adoption: RCW 74.39A.030 (3)(a).

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 WAC includes a rate table that was updated per legislative budget decisions. The permanent rule change is in process. The rules hearing was held December 6, 2016, and the department plans to file the permanent order in December 2016.

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

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

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

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

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

Date Adopted: December 20, 2016.

Katherine I. Vasquez
Rules Coordinator

AMENDATORY SECTION (Amending WSR 16-05-028, filed 2/9/16, effective 3/11/16)

WAC 388-105-0005 The daily medicaid payment rates for clients who have been assessed using the ((comprehensive assessment reporting evaluation (CARE))) CARE tool and ((that)) reside ((in adult family homes (AFH) and)) at an AFH or assisted living ((facilities)) facility contracted to provide ((assisted living (AL), adult residential care (ARC), and enhanced adult residential care (EARC))) AL, ARC, or EARC services. For contracted ((AFH)) adult family homes (AFH) and assisted living facilities contracted to provide ((AL, ARC, and EARC)) assisted living (AL), adult residential care (ARC), or enhanced adult residential care (EARC) services, the department pays the following daily rates for ((care of a)) medicaid residents who have been assessed using the comprehensive assessment reporting evaluation (CARE) tool:

Table with 7 columns: CARE CLASSIFICATION, AL Without Capital Add-on, AL With Capital Add-on, ARC, EARC, AFH. Rows include A Low, A Med, A High, and B Low with corresponding rates and AFH values in parentheses.

COMMUNITY RESIDENTIAL DAILY RATES FOR CLIENTS ASSESSED USING CARE					
KING COUNTY					
CARE CLASSIFICATION	AL Without Capital Add-on	AL With Capital Add-on	ARC	EARC	AFH
B Med	\$74.96	\$80.39	\$60.39	\$60.39	(\$63.41) <u>\$66.58</u>
B Med-High	\$84.83	\$90.25	\$64.19	\$64.19	(\$67.85) <u>\$71.24</u>
B High	\$89.28	\$94.70	\$73.31	\$73.31	(\$77.40) <u>\$81.27</u>
C Low	\$72.74	\$78.16	\$54.03	\$54.03	(\$56.53) <u>\$59.36</u>
C Med	\$81.57	\$86.99	\$67.70	\$67.70	(\$71.84) <u>\$75.43</u>
C Med-High	\$101.43	\$106.85	\$90.09	\$90.09	(\$93.72) <u>\$98.41</u>
C High	\$102.44	\$107.86	\$90.95	\$90.95	(\$95.01) <u>\$99.76</u>
D Low	\$74.96	\$80.38	\$72.87	\$72.87	(\$73.21) <u>\$76.87</u>
D Med	\$83.23	\$88.65	\$84.35	\$84.35	(\$89.32) <u>\$93.79</u>
D Med-High	\$107.49	\$112.91	\$107.13	\$107.13	(\$107.23) <u>\$112.59</u>
D High	\$115.79	\$121.21	\$115.79	\$115.79	(\$121.91) <u>\$128.01</u>
E Med	\$139.84	\$145.26	\$139.84	\$139.84	(\$147.04) <u>\$154.39</u>
E High	\$163.89	\$169.31	\$163.89	\$163.89	(\$172.19) <u>\$180.80</u>

COMMUNITY RESIDENTIAL DAILY RATES FOR CLIENTS ASSESSED USING CARE					
METROPOLITAN COUNTIES*					
CARE CLASSIFICATION	AL Without Capital Add-on	AL With Capital Add-on	ARC	EARC	AFH
A Low	\$61.69	\$66.61	\$47.67	\$47.67	(\$49.97) <u>\$52.47</u>
A Med	\$65.02	\$69.94	\$51.91	\$51.91	(\$54.34) <u>\$57.06</u>
A High	\$79.37	\$84.29	\$56.56	\$56.56	(\$59.81) <u>\$62.80</u>
B Low	\$61.69	\$66.61	\$47.67	\$47.67	(\$50.21) <u>\$52.72</u>
B Med	\$70.52	\$75.44	\$57.22	\$57.22	(\$60.10) <u>\$63.11</u>

COMMUNITY RESIDENTIAL DAILY RATES FOR CLIENTS ASSESSED USING CARE METROPOLITAN COUNTIES*					
CARE CLASSIFICATION	AL Without Capital	AL With Capital	ARC	EARC	AFH
	Add-on	Add-on			
B Med-High	\$79.83	\$84.75	\$60.81	\$60.81	(\$64.37) <u>\$67.59</u>
B High	\$87.07	\$91.99	\$71.25	\$71.25	(\$75.24) <u>\$79.00</u>
C Low	\$65.02	\$69.94	\$52.12	\$52.12	(\$54.74) <u>\$57.48</u>
C Med	\$79.37	\$84.29	\$66.84	\$66.84	(\$70.12) <u>\$73.63</u>
C Med-High	\$98.10	\$103.02	\$83.73	\$83.73	(\$87.17) <u>\$91.53</u>
C High	\$99.09	\$104.01	\$89.04	\$89.04	(\$92.41) <u>\$97.03</u>
D Low	\$70.52	\$75.44	\$71.87	\$71.87	(\$71.62) <u>\$75.20</u>
D Med	\$80.98	\$85.90	\$82.67	\$82.67	(\$86.95) <u>\$91.30</u>
D Med-High	\$103.98	\$108.90	\$104.50	\$104.50	(\$103.99) <u>\$109.19</u>
D High	\$112.63	\$117.55	\$112.63	\$112.63	(\$117.98) <u>123.88</u>
E Med	\$135.52	\$140.44	\$135.52	\$135.52	(\$141.91) <u>\$149.01</u>
E High	\$158.40	\$163.32	\$158.40	\$158.40	(\$165.84) <u>\$174.13</u>

*Benton, Clark, Franklin, Island, Kitsap, Pierce, Snohomish, Spokane, Thurston, Whatcom, and Yakima counties.

COMMUNITY RESIDENTIAL DAILY RATES FOR CLIENTS ASSESSED USING CARE NONMETROPOLITAN COUNTIES**					
CARE CLASSIFICATION	AL Without Capital	AL With Capital	ARC	EARC	AFH
	Add-on	Add-on			
A Low	\$60.61	\$65.85	\$47.67	\$47.67	(\$49.97) <u>\$52.47</u>
A Med	\$65.02	\$70.26	\$50.86	\$50.86	(\$53.26) <u>\$55.92</u>
A High	\$79.37	\$84.61	\$55.66	\$55.66	(\$58.73) <u>\$61.67</u>
B Low	\$60.61	\$65.85	\$47.67	\$47.67	(\$50.21) <u>\$52.72</u>
B Med	\$70.52	\$75.76	\$56.16	\$56.16	(\$59.01) <u>\$61.96</u>

COMMUNITY RESIDENTIAL DAILY RATES FOR CLIENTS ASSESSED USING CARE NONMETROPOLITAN COUNTIES**					
CARE CLASSIFICATION	AL Without Capital	AL With Capital	ARC	EARC	AFH
	Add-on	Add-on			
B Med-High	\$79.83	\$85.07	\$59.68	\$59.68	((63.13)) <u>\$66.29</u>
B High	\$87.07	\$92.31	\$67.41	\$67.41	((71.23)) <u>\$74.79</u>
C Low	\$65.02	\$70.26	\$50.86	\$50.86	((53.26)) <u>\$55.92</u>
C Med	\$79.37	\$84.61	\$63.20	\$63.20	((67.48)) <u>\$70.85</u>
C Med-High	\$98.10	\$103.34	\$80.54	\$80.54	((83.90)) <u>\$88.10</u>
C High	\$99.09	\$104.33	\$84.18	\$84.18	((87.47)) <u>\$91.84</u>
D Low	\$70.52	\$75.76	\$67.96	\$67.96	((67.80)) <u>\$71.19</u>
D Med	\$80.98	\$86.22	\$78.17	\$78.17	((82.29)) <u>\$86.40</u>
D Med-High	\$103.98	\$109.22	\$98.79	\$98.79	((98.41)) <u>\$103.33</u>
D High	\$106.48	\$111.72	\$106.48	\$106.48	((111.62)) <u>\$117.20</u>
E Med	\$128.11	\$133.35	\$128.11	\$128.11	((134.23)) <u>\$140.94</u>
E High	\$149.75	\$154.99	\$149.75	\$149.75	((156.86)) <u>\$164.70</u>

** Nonmetropolitan counties: Adams, Asotin, Chelan, Clallam, Columbia, Cowlitz, Douglas, Ferry, Garfield, Grant, Grays Harbor, Jefferson, Kittitas, Klickitat, Lewis, Lincoln, Mason, Okanogan, Pacific, Pend Orielle, San Juan, Skagit, Skamania, Stevens, Wahkiakum, Walla Walla and Whitman.

**WSR 17-02-020
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE**

[Order 16-325—Filed December 27, 2016, 3:54 p.m., effective January 1, 2017]

Effective Date of Rule: January 1, 2017.

Purpose: Amend recreational fishing rules for the Nooksack River.

Citation of Existing Rules Affected by this Order: Amending WAC 220-310-190.

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

Under RCW 34.05.350 the agency for good cause finds that immediate adoption, amendment, or repeal of a rule is

necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.

Reasons for this Finding: This emergency rule is needed to close portions of the Nooksack River and its tributaries. This is due to the absence of smolt releases in 2014 or 2015 from the Kendall Creek Hatchery, therefore there is no expectation for any return of hatchery winter steelhead this year. 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: December 27, 2016.

J. W. Unsworth
Director

NEW SECTION

WAC 220-310-19000C Freshwater exceptions to statewide rules—Puget Sound. Notwithstanding the provisions of WAC 220-310-190, effective January 1, 2017, until further notice the following waters are closed to fishing:

(1) The Middle Fork Nooksack from the mouth to city of Bellingham diversion dam.

(2) The North Fork Nooksack from the mouth to Nooksack Falls.

(3) The Nooksack River from the mouth to the confluence of the North and South Forks.

(4) The South Fork Nooksack from the mouth to Skookum Creek.

**WSR 17-02-031
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE**

[Order 16-330—Filed December 28, 2016, 11:40 a.m., effective December 30, 2016]

Effective Date of Rule: December 30, 2016.

Purpose: Amend recreational razor clam rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-56-36000W; 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 4 and 5. 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: December 28, 2016.

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

NEW SECTION

WAC 220-56-36000W Razor clams—Areas and seasons. Notwithstanding the provisions of WAC 220-56-360, it is unlawful to take, dig for or possess razor clams taken for personal use from any beaches in any razor clam area except as provided for in this section:

(1) Effective 12:01 p.m. December 30, 2016 through 11:59 p.m. December 31, 2016, razor clam digging is permissible in Razor Clam Area 4. Digging is permissible from 12:01 p.m. to 11:59 p.m. each day only.

(2) Effective 12:01 p.m. December 30, 2016 through 11:59 p.m. December 31, 2016, razor clam digging is permissible in Razor Clam Area 5. Digging is permissible from 12:01 p.m. to 11:59 p.m. each day only.

(3) It is unlawful to dig for razor clams at any time in the Twin Harbors Clam sanctuaries defined in WAC 220-56-372.

REPEALER

The following section of the Washington Administrative Code is repealed effective 12:01 a.m. January 1, 2017:

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

**WSR 17-02-038
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE**

[Order 16-331—Filed December 28, 2016, 3:10 p.m., effective December 29, 2016, 8:00 a.m.]

Effective Date of Rule: December 29, 2016, 8:00 a.m.

Purpose: Amend coastal commercial crab fishing rules.

Citation of Existing Rules Affected by this Order: Amending WAC 220-52-040, 220-52-045, 220-52-049, and 220-52-038.

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: Mandatory pick rate allowance for coastal crab will be achieved by the opening dates contained herein. The stepped opening periods/areas will also provide for fair start provisions. Pot limits will reduce the crowding effect in this restricted area and language improves enforcement of pot limits. A longer gear set period will allow for safer fishing conditions. A delay due to elevated marine toxins aligns with the Tri-State Crab Agreement and similar rules in Oregon and California. 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 4, 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: December 28, 2016.

J. W. Unsworth
Director

NEW SECTION

WAC 220-52-04000Z Commercial crab fishery—Unlawful acts. Notwithstanding the provisions of WAC 220-52-040, effective immediately until further notice:

(1) It is unlawful for any fisher or wholesale dealer or buyer to land or purchase Dungeness crab taken from Grays Harbor, Willapa Bay, Columbia River, or Washington coastal or adjacent waters of the Pacific Ocean from any vessel, unless:

(a) The vessel inspection certificate numbers are recorded on all shellfish tickets completed for coastal Dungeness crab landings until February 11, 2017 and;

(b) A valid Washington crab vessel inspection certificate has been issued to the delivering vessel. Vessel-hold inspection certificates dated from December 31, 2016 to January 5, 2017, are only valid for the area south of 46°28.00 N. Lat.

(3) It is unlawful for persons participating in the Columbia River, Coastal, or Willapa Bay commercial Dungeness crab fishery until 8:00 a.m. January 4, 2017 to:

(a) Deploy or operate more than 400 shellfish pots if the permanent number of shellfish pots assigned to the Coastal commercial crab fishery license held by that person is 500.

(b) Deploy or operate more than 250 shellfish pots if the permanent number of shellfish pots assigned to the Coastal Dungeness crab fishery license held by that person is 300.

(c) Fail to maintain onboard any participating vessel the excess crab pot buoy tags assigned to the Coastal Dungeness crab fishery license being fished.

(4) It is unlawful to possess or deliver Dungeness crab unless the following conditions are met:

(a) Vessels that participated in the coastal Dungeness crab fishery from Klipsan Beach (46°28.00 North Latitude) to Point Arena, CA, including Willapa Bay and the Columbia River, may possess crab for delivery into Washington ports south of 47°00.00 N. Lat., provided the crab were taken south of Klipsan (46°28.00 N. Lat.).

(b) The vessel does not enter the area north of 47°00.00 N. Lat. unless the operator of the vessel has contacted the Washington Department of Fish and Wildlife prior to entering this area. Prior to entering the area north of 47°00.00 N. Lat., the vessel operator must call 360-485-8149, and report the vessel name, operator name, estimated amount of crab to be delivered in pounds, and the estimated date, time, and location of delivery 24 hours prior to entering the area.

(5) It is unlawful for a vessel not designated on a Dungeness crab coastal fishery license to deploy crab pot gear except under the following conditions:

(a) The vessel deploys pot gear only during the 73-hour period immediately preceding the season opening date and during the 48-hour period immediately following the season opening date;

(b) The undesignated vessel carries no more than 250 crab pots at any one time; and;

(c) The primary or alternate operator of the crab pot gear named on the license associated with the gear is on board the undesignated vessel while the gear is being deployed.

(6) Violation of subsection (5) of this section is a gross misdemeanor or class C felony punishable under RCW 77.15.500 Commercial fishing without a license—Penalty, depending on the circumstances of the violation.

(7) 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.

NEW SECTION

WAC 220-52-04500T Commercial crab fishery—Seasons and areas—Coastal. 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 in this section.

(1) Open area: The area from Klipsan Beach (46°28.00) to the WA/OR border (46°15.00) and Willapa Bay.

(a) For the purposes of this section, the waters of Willapa Bay 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.

(b) It is permissible to set crab gear beginning at 8:00 a.m., December 29, 2016.

(c) It is permissible to pull crab gear beginning at 9:00 a.m., January 1, 2017.

(d) Licenses and vessels designated to those licenses that participate in the coastal commercial Dungeness crab fishery in the waters from Point Arena, California, to Klipsan Beach, Washington (46°28.00), including Willapa Bay, before the area north of Klipsan Beach (46°28.00) opens, are prohibited from fishing in the following areas for the durations specified:

(e) The waters between Klipsan Beach (46°28.00) and Oysterville (46°33.00) until 8:00 a.m. January 17, 2017; and

(f) The waters between Oysterville (46°33.00) and the U.S. Canadian border until 8:00 a.m. February 11, 2017.

(2) Open area: The area from Klipsan Beach (46°28.00) to the Queets River (47°31.70), Washington and Grays Harbor.

(a) It is permissible to set crab gear beginning at 8:00 a.m., January 4, 2017.

(b) It is permissible to pull crab gear beginning at 9:00 a.m., January 7, 2017.

(3) For waters of the Pacific Ocean north of Point Arena, California, it is unlawful for a person to use a vessel to fish in any area where the season opening is delayed due to marine toxins for the first 30 days following the opening of the area if the vessel was employed in the coastal crab fishery during the previous 45 days.

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

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

NEW SECTION

WAC 220-52-04900A Commercial crab fishery—Gear limits—Coastal. Notwithstanding the provisions of WAC 220-52-049 effective immediately until further notice:

(1) It is unlawful for a person to take or fish for Dungeness crab for commercial purposes in Grays Harbor, Willapa Bay, the Columbia River, or waters of the Pacific Ocean adjacent to the state of Washington unless the person's Dungeness crab coastal fishery license issued by the Department is assigned a crab pot limit. A violation of this subsection is punishable under RCW 77.15.520, Commercial fishing—Unlawful gear or methods—Penalty.

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

NEW SECTION

WAC 220-52-03800A Commercial crab licenses. Notwithstanding the provisions of WAC 220-52-038 effective immediately until further notice:

(1) It is unlawful to take, fish for, land, or deliver crab for commercial purposes in Washington or offshore waters unless the person has the license required by statute or department rule, or if the person is a properly designated alternative operator to a valid license.

(a) For Puget Sound, a person must have a "Dungeness crab - Puget Sound" fishery license provided by RCW 77.65.130.

(b) For coastal waters, such person must have a "Dungeness crab - Coastal" fishery license provided by RCW 77.65.130.

(c) To use ring nets instead of or in addition to pots, a licensee must also have the "Crab ring net - Puget Sound" or "Crab ring net - non-Puget Sound" license as provided in RCW 77.65.130.

(d) Qualifications for the limited entry licenses, requirements for designating vessels, and use of alternate operators are provided in and controlled by chapters 77.65 and 77.70 RCW.

(2) It is unlawful to fish for or possess Dungeness crab or to deploy crab gear in offshore waters of the Pacific Ocean adjacent to the states of Oregon or California unless:

(a) The vessel operator possesses the licenses or permits required to commercially fish for Dungeness crab within the state waters of Oregon or California. Washington coastal Dungeness crab permits are valid only in Washington state waters, the Columbia River, Willapa Bay, Grays Harbor, and the Pacific Ocean in federal waters north of the Washington/Oregon border (46°15'00"N. Lat.), extending 200 nautical miles westward;

(b) the vessel operator complies with all shellfish pot gear restrictions in effect for vessels registered under the laws of California or Oregon while fishing offshore of California or Oregon.

(3) Violation of this section is a gross misdemeanor or a class C felony under RCW 77.15.500 Commercial fishing without a license—Penalty, depending on the circumstances of the violation.

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

WSR 17-02-039 EMERGENCY RULES LIQUOR AND CANNABIS BOARD

[Filed December 28, 2016, 3:19 p.m., effective December 28, 2016, 3:19 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: New rules are needed to create action levels for pesticide residue for marijuana and marijuana products.

Statutory Authority for Adoption: RCW 69.50.342 and 69.50.345.

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: Marijuana and marijuana products sold in Washington state liquor and cannabis board (WSLCB) licensed retail stores are a consumable product and

it is important that they are safe for human consumption. Action levels for disallowed pesticides are needed to establish a point at which a marijuana sample fails quality assurance testing and may be subject to destruction or a recall. Pesticide action levels are standard in the food industry and other products meant for human consumption.

Currently, in permanent rules, there is a default zero tolerance action level for pesticides not allowed for use in marijuana production. This level is not workable or supported by science as many of the chemicals in pesticides are found in the natural environment and laboratories cannot test down to zero levels. Without action levels, there are risks to marijuana licensees solubility should pesticides be identified even at extremely low levels, which would make those products potentially subject to destruction or recall.

Action levels for disallowed pesticides does not negate prohibitions against the use of such pesticides. Action levels do, however, account for the instance in which a producer has not used the disallowed pesticide, such as cross-contamination or residual pesticides from former farms on the land. Conversely, even if the producer does not use a disallowed pesticide on marijuana that later tests to have higher levels than the action levels established in this emergency rule, consumer safety will be protected in ensuring that product will not enter the marketplace. Additionally, with medical marijuana being folded into the regulated retail market, action levels are necessary since pesticide testing will be required for medical marijuana. WSLCB is considering mandatory testing of pesticides on recreational marijuana as well, however action levels are still necessary for random testing of marijuana and investigations into whether disallowed pesticides were used in marijuana production or marijuana should be recalled to avoid risks to consumers.

In the event that product is tested at levels higher than the action levels for disallowed pesticides, the lot from which the sample was derived from will fail quality assurance testing or be subject to a recall. WSLCB has previously adopted procedures for a recall of marijuana where the product will be identified and removed from the marketplace.

This emergency rule is needed to ensure the public health, and safety of the citizens of Washington and the protection of licensees. WSLCB researched other jurisdictions' regulations and consulted with the Washington state department of agriculture, department of ecology, and department of health as well as laboratories and marijuana licensees in developing this emergency rule. The action levels established in this emergency rule are based on the action levels adopted by Oregon and supported by a technical paper from the Oregon Health Authority. Permanent rule making is underway and WSLCB will continue to work on this issue to consider whether changes will be needed in permanent rule making.

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

Number of Sections Adopted at 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: December 28, 2016.

Jane Rushford
Chair

NEW SECTION

WAC 314-55-108 Pesticide action levels. (1) Only pesticides allowed under WAC 314-55-084 may be used in the production of marijuana, and they must be registered by the Washington state department of agriculture (WSDA) under chapter 15.58 RCW.

(2) Pursuant to WAC 314-55-102, if the WSLCB, WSDA, other designee of the WSLCB, or certified lab identifies a pesticide that is not allowed under subsection (1) of this section and is above the action levels provided in subsection (3) of this section, that lot or batch from which the sample was deducted has failed quality assurance testing and may be subject to a recall as provided in WAC 314-55-225.

(3) The action levels for pesticides are provided in the table below. The action level for all other pesticides that are not allowed under subsection (1) of this section or listed in the table below is 0.1 ppm.

Analyte	Chemical Abstract Services (CAS) Registry Number	Action Level ppm
Abamectin	71751-41-2	0.5
Acephate	30560-19-1	0.4
Acequinocyl	57960-19-7	2
Acetamiprid	135410-20-7	0.2
Aldicarb	116-06-3	0.4
Azoxystrobin	131860-33-8	0.2
Bifenazate	149877-41-8	0.2
Bifenthrin	82657-04-3	0.2
Boscalid	188425-85-6	0.4
Carbaryl	63-25-2	0.2
Carbofuran	1563-66-2	0.2
Chlorantraniliprole	500008-45-7	0.2
Chlorfenapyr	122453-73-0	1
Chlorpyrifos	2921-88-2	0.2
Clofentezine	74115-24-5	0.2
Cyfluthrin	68359-37-5	1
Cypermethrin	52315-07-8	1
Daminozide	1596-84-5	1

Analyte	Chemical Abstract Services (CAS) Registry Number	Action Level ppm
DDVP (Dichlorvos)	62-73-7	0.1
Diazinon	333-41-5	0.2
Dimethoate	60-51-5	0.2
Ethoprophos	13194-48-4	0.2
Etofenprox	80844-07-1	0.4
Etoazole	153233-91-1	0.2
Fenoxycarb	72490-01-8	0.2
Fenpyroximate	134098-61-6	0.4
Fipronil	120068-37-3	0.4
Flonicamid	158062-67-0	1
Fludioxonil	131341-86-1	0.4
Hexythiazox	78587-05-0	1
Imazalil	35554-44-0	0.2
Imidacloprid	138261-41-3	0.4
Kresoxim-methyl	143390-89-0	0.4
Malathion	121-75-5	0.2
Metalaxyl	57837-19-1	0.2
Methiocarb	2032-65-7	0.2
Methomyl	16752-77-5	0.4
Methyl parathion	298-00-0	0.2
MGK-264	113-48-4	0.2
Myclobutanil	88671-89-0	0.2
Naled	300-76-5	0.5
Oxamyl	23135-22-0	1
Paclobutrazol	76738-62-0	0.4
Permethrins*	52645-53-1	0.2
Phosmet	732-11-6	0.2
Piperonyl butoxide	51-03-6	2
Prallethrin	23031-36-9	0.2
Propiconazole	60207-90-1	0.4
Propoxur	114-26-1	0.2
Pyrethrins**	8003-34-7	1
Pyridaben	96489-71-3	0.2
Spinosad	168316-95-8	0.2
Spiromesifen	283594-90-1	0.2
Spirotetramat	203313-25-1	0.2
Spiroxamine	118134-30-8	0.4
Tebuconazole	80443-41-0	0.4
Thiacloprid	111988-49-9	0.2
Thiamethoxam	153719-23-4	0.2

Analyte	Chemical Abstract Services (CAS) Registry Number	Action Level ppm
Trifloxystrobin	141517-21-7	0.2

*Permethrins should be measured as cumulative residue of cis- and trans-permethrin isomers (CAS numbers 54774-45-7 and 51877-74-8 respectively).

**Pyrethrins should be measured as the cumulative residues of pyrethrin 1, cinerin 1, and jasmolin 1 (CAS numbers 121-21-1, 25402-06-6, and 4466-1-2 respectively).

(4) Except as otherwise provided in this section, licensed marijuana producer or processor that provided a sample that fails quality assurance testing must dispose of the entire lot or batch from which the sample was taken as provided by marijuana waste disposal requirements in WAC 314-55-097 and document the disposal of the sample pursuant to traceability requirements in WAC 314-55-083(4) and recordkeeping requirements in WAC 314-55-087.

(5) Except as otherwise provided in this section, a licensed marijuana producer or processor which provided a sample that fails quality assurance testing must dispose of the entire lot or batch from which the sample was taken as provided by marijuana waste disposal requirements in WAC 314-55-097 and document the disposal of the sample pursuant to traceability requirements in WAC 314-55-083(4) and recordkeeping requirements in WAC 314-55-087.

(6) Pursuant to WAC 314-55-102, at the request of the producer or processor, the WSLCB may authorize a retest to validate a failed test result on a case-by-case basis. All costs of the retest will be borne by the producer or the processor requesting the retest.

(7) Producers and processors may remediate failed harvests, lots, or batches so long as the remediation method does not impart any toxic or deleterious substance to the usable marijuana, marijuana concentrates, or marijuana-infused product. Remediation solvents or methods used on the marijuana product must be disclosed to a licensed retailer or consumer upon request. The entire harvest, lot, or batch the failed sample(s) were deducted from must be remediated using the same remediation technique. No remediated harvest, lots or batches may be sold or transported until the completion and successful passage of quality assurance testing as required in this section and WAC 314-55-102.

(8) Pursuant to WAC 314-55-102, upon request a marijuana licensee must disclose and make available all quality assurance tests and retest results for the lot or batch of usable marijuana, marijuana concentrates, or marijuana-infused products to the marijuana licensee or retail customer who is considering purchasing the usable marijuana, marijuana concentrates, or marijuana-infused products.

WSR 17-02-040
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 16-332—Filed December 28, 2016, 3:24 p.m., effective December 31, 2016]

Effective Date of Rule: December 31, 2016.

Purpose: Close commercial sea cucumber fishing.

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

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

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

Reasons for this Finding: We'll reach the end of the District 1 sea cucumber quota this week. There is insufficient time to adopt permanent rules.

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

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

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

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

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

Date Adopted: December 28, 2016.

J. W. Unsworth
 Director

REPEALER

The following section of the Washington Administrative Code is repealed effective December 31, 2016:

WAC 220-52-07100U Sea cucumbers. (16-254)

WSR 17-02-041
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 16-333—Filed December 28, 2016, 3:38 p.m., effective December 31, 2016, 5:00 p.m.]

Effective Date of Rule: December 31, 2016, 5:00 p.m.

Purpose: Amend Puget Sound commercial crab fishing rules.

Citation of Existing Rules Affected by this Order:
 Repealing WAC 220-52-04000Y and 220-52-04600X; and amending WAC 220-52-040 and 220-52-046.

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

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

Reasons for this Finding: The provisions of this rule will keep the commercial crab harvest open in Region 1, Region 2 East, Region 3-1 and Region 3-3. There is sufficient allocation available in these regions to accommodate the continued fishery. The rule will increase the pot limits from fifty to seventy-five pots per license in Region 3-3 at 8 a.m. on January 1, 2017. The new provisions will close the Everett Flats portion of Region 2 East starting December 31, 2016, at 5 p.m. This is a seasonal closure due to soft shell concerns in this localized section of Region 2 East. The regulation will maintain the closure of the commercial crab fishery in Region 2 West and Region 3-2. The commercial fishery has reached its current allocation in these regions. These provisions are in conformity with agreed management plans with applicable tribes. These management plans are entered into as required by court order. The Puget Sound commercial season is structured to meet harvest allocation objectives negotiated with applicable treaty tribes and outlined in the management plans. There is insufficient time to adopt permanent rules.

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

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

Number of Sections Adopted on the Agency's Own Initiative: New 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: December 28, 2016.

J. W. Unsworth
 Director

NEW SECTION

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

(1) Effective immediately, until further notice, it is unlawful for any person to fish for crabs for commercial purposes with more than 50 pots per license per buoy tag number in Crab Management Regions 1, Region 2 East, or Region 3-1. These regions include Marine Fish-Shellfish Catch Report-

ing Areas 20A, 20B, 21A, 21B, 22A, 22B, 24A, 24B, 24C, 24D, 26A East, 23A, and 23B.

(2) Effective at 8 am, Sunday, January 1, 2017, it is unlawful for any person to fish for crabs for commercial purposes with more than 75 pots per license per buoy tag number in Crab Management Region 3-3. This region includes Marine Fish-Shellfish Catch Reporting Areas 23C and 29.

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

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

(5) Effective immediately, until further notice, Crab Management Region 3-2 is CLOSED. This region includes Marine Fish-Shellfish Catch Reporting Areas 23B, 25A, and 25E.

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

NEW SECTION

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

(1) Effective immediately, until further notice, it is permissible to fish for Dungeness crab for commercial purposes in the following areas:

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

(2) Effective 5:00 p.m., Saturday, December 31, 2016, until further notice, the Everett Flats portion of Region 2 East will be closed. This area is defined as follows:

(a) That portion of catch area 26A east of a line from Howarth Park due north to the south end of Gedney Island, and that portion of 24B east of a line from the north end of Gedney Island to Camano Head and south of a line drawn from Camano Head to Hermosa Point.

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

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

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

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

REPEALER

The following sections of the Washington Administrative Code are repealed effective 5:00 p.m. December 31, 2016:

WAC 220-52-04000Y Commercial crab fishery—Lawful and unlawful gear, methods, and other unlawful acts. (16-324)

WAC 220-52-04600X Puget Sound crab fishery—Seasons and areas (16-324)

WSR 17-02-048 EMERGENCY RULES DEPARTMENT OF FISH AND WILDLIFE

[Order 16-334—Filed December 29, 2016, 1:49 p.m., effective December 30, 2016, 11:59 a.m.]

Effective Date of Rule: December 30, 2016, 11:59 a.m.

Purpose: Amend recreational fishing rules for the Skykomish (near Reiter Ponds) and Wallace rivers.

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

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

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

Reasons for this Finding: The returns of hatchery winter steelhead to Wallace and Reiter hatcheries for broodstock purposes are well below required numbers. The closures are necessary to protect adult hatchery fish holding near these Washington department of fish and wildlife hatchery facilities until they can be trapped to meet broodstock needs.

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: December 28, 2016.

J. W. Unsworth
Director

NEW SECTION

WAC 220-310-19000D Freshwater exceptions to statewide rules—Puget Sound. Notwithstanding the provisions of WAC 220-310-190, effective 11:59 pm December 30, 2016 through February 15, 2017, the following waters are closed to fishing. Unless otherwise amended all permanent rules remain in effect.

(1) **Skykomish River:** from 1,500 feet upstream to 1,000 feet downstream of Reiter Ponds outlet.

(2) **Wallace River:** From the railroad trestle (downstream of Hwy 2 bridge) to 200 feet upstream of water intake at Wallace hatchery.

REPEALER

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

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

WSR 17-02-051**EMERGENCY RULES****EASTERN WASHINGTON UNIVERSITY**

[Filed December 29, 2016, 3:47 p.m., effective December 29, 2016, 3:47 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: These revisions are necessary to comply with recent state appellate court authority indicating that we must offer a full adjudicative hearing if a sanction could lead to suspension, expulsion or if charges were filed for felony level sexual misconduct. Pieces of documentation were added to the administration and records section. Under the conduct review proceedings section, the piece stating that advisors cannot speak or directly participate in the proceeding was removed. Some other procedural changes were made to comply with the requirements of a full adjudicative hearing.

Citation of Existing Rules Affected by this Order: Amending WAC 172-121-075, 172-121-080, 172-121-100, 172-121-105, 172-121-110, 172-121-120, 172-121-130, and 172-121-140.

Statutory Authority for Adoption: RCW 28B.35.120 (12).

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: Per the court of appeals decision in *Arishi v. Washington State University* any student conduct code that is not a full adjudicative proceeding, when there is a potential sanction of suspension, expulsion or there are felony level sexual misconduct charges filed, is a violation. The decision invalidated portions of our current conduct code, this emergency rule is to bring our student conduct code into compliance.

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 8, 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: December 22, 2016.

Chelsea Lamberson
Title IX Coordinator
University Compliance
and Policy Administrator

AMENDATORY SECTION (Amending WSR 13-24-123, filed 12/4/13, effective 1/4/14)

WAC 172-121-075 Conflicts of interest. (1) Individuals who play a role in receiving, investigating, and otherwise processing complaints shall not have any conflict of interest in the process. In the event such a conflict arises in the process, the person shall disclose such interest to the parties. Parties to the complaint who believe a university official involved in the process has a conflict of interest may report such concerns to the director of SRR or the dean of students. The director or dean shall determine whether a conflict of interest exists and take appropriate action.

(2) Anyone who serves as an investigator or advocate, or someone who is subject to the authority, direction, or discretion of such a person, may not serve as the conduct review officer for a full adjudicative hearing.

(3) Challenges to council membership. Members of the student disciplinary council shall not participate in any case in which they are the accused, the complainant, a victim, or a witness; in which they have a personal interest or bias; or in which they have acted previously in an investigatory, advisory, or adjudicatory capacity.

(a) If a member has such a conflict, the person shall recuse themselves from further involvement in the case. In the event such a conflict arises after the council has been selected or during a proceeding, the member shall disclose the conflict to the parties.

(b) A member's eligibility to participate in a case may be challenged by parties to the case or by other council members at any time. When such a challenge is made, the session council shall make a decision on the challenge.

(c) If a member is disqualified or disqualifies themselves from a case, the director of SRR will appoint a replacement.

AMENDATORY SECTION (Amending WSR 13-24-123, filed 12/4/13, effective 1/4/14)

WAC 172-121-080 Administration and records. (1) Student conduct code.

(a) Interpretation: Any questions regarding the interpretation or application of this student conduct code are referred to the vice president for student affairs for final determination.

(b) Review: This student conduct code shall be reviewed every three years under the direction of the vice president for student affairs.

(2) Records of conduct review proceedings.

(a) Records of conduct review proceedings under this chapter shall be prepared by the conduct review official(s) involved and maintained by the director of SRR. As much as possible, records should include:

(i) A summary of the proceedings during a preliminary conference;

(ii) An audio recording of conduct review hearings;

(iii) All letters, statements, memoranda, decisions, orders, notices, and other documents related to conduct review proceedings; ~~(and)~~

(iv) Any images, articles, recordings, or other materials presented as evidence in a conduct review proceeding;

(v) A statement of matters officially noticed or considered by the council;

(vi) Proffers of proof, any objections and rulings, any cross-examination questions submitted to the council and rulings on such questions;

(vii) Proposed findings, requested orders, and exceptions;

(viii) Recording of the hearing and subsequent transcript, if any;

(ix) Any staff memorandum to the extent required by RCW 34.05.476; and

(x) Matters placed on the record after any ex parte communication.

(b) The director of SRR shall keep records of conduct review proceedings for seven years.

(c) Records of conduct review proceedings are the property of the university and are confidential to the extent provided in applicable law.

(d) Prior to the final disposition of a case, the accused may review the records relative to their case. The accused shall request to review the case records by contacting the conduct review officer. The conduct review officer shall make every reasonable effort to support the accused's request.

(3) Student disciplinary records.

(a) Student disciplinary records are confidential and shall be treated consistently with the requirements of the Family Educational Rights and Privacy Act (FERPA) and applicable law. Disciplinary records shall be maintained in accordance with the university's records retention schedule.

(b) Release of student disciplinary records. The university shall not communicate a student's disciplinary record to any person or agency outside the university without the prior written consent of the student, except as required or permitted by law. Exceptions include, but are not limited to:

(i) The student's parents or legal guardians may review these records as permitted by FERPA (20 U.S.C. Sec. 1232g; 34 C.F.R. Part 99).

(ii) Release to another educational institution, upon request, where the student seeks or intends to enroll, as

allowed by FERPA (20 U.S.C. Sec. 1232g; 34 C.F.R. Part 99).

(iii) In response to a judicial order or a lawfully issued subpoena.

(iv) The university shall release information related to disciplinary records to complainants, victims, or other persons as required by Title IX of the Education Amendments of 1972, the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act, and other state and federal laws.

(v) Disciplinary records will be made available to hearing councils and university personnel as needed for legitimate educational purposes.

(vi) A student may authorize release of their own disciplinary record to a third party in compliance with FERPA (20 U.S.C. Sec. 1232g; 34 C.F.R. Part 99) by providing a written consent to student rights and responsibilities.

(vii) Any student may review his/her own disciplinary records by contacting student rights and responsibilities.

(viii) A student may obtain a copy of their disciplinary record by making a written request to student rights and responsibilities. Student rights and responsibilities may charge the student a reasonable amount to cover copying expenses.

(ix) The university may disclose to a student's parents a violation of any federal, state, or local law, or of any university policy or rules regarding use or possession of alcohol or a controlled substance so long as the student is under the age of twenty-one at the time of the disclosure to the parent.

(c) When disciplinary records are released, personally identifiable information may be redacted to protect the privacy of others as permitted by law.

(4) Holds:

(a) Types of holds. Holds placed on a student's academic records may prevent admission, registration, graduation, or other academic activities. Holds may also restrict access to transcripts, grades, or other academic records.

(b) Discretionary holds: The conduct review officer may place a hold on a student's academic records in either of the following situations:

(i) Pending the student's satisfactory completion of any sanctions imposed by a conduct review hearing; or

(ii) If the student fails to respond to any properly delivered notice from the conduct review officer.

(c) Required holds: The conduct review officer shall place a hold on a student's academic record if the student is accused of violating the conduct code and has withdrawn from the university, or if the student withdraws from the university after a complaint is filed against the student. This hold shall remain in place until the allegation or complaint is resolved.

AMENDATORY SECTION (Amending WSR 15-24-050, filed 11/23/15, effective 12/24/15)

WAC 172-121-100 Complaints. (1) Filing of complaints.

(a) Any person may file a complaint against a student or student organization for violation of the student conduct code.

(b) A person wishing to file a complaint under the student conduct code must submit the complaint, in writing, to one of the following:

- (i) Student rights and responsibilities; or
- (ii) The office of the dean of students.

(c) Filing a complaint under the student conduct code does not prohibit or limit a person's right to file complaints or charges with other civil and/or criminal authorities for violations of local, county, state, or federal law.

(d) All student conduct code complaints will be forwarded to the director of SRR for further review and action.

(e) In cases where the university is acting as the complainant, the director of SRR shall initiate the complaint.

(2) Complaint review. Upon receipt of a complaint, the director of SRR shall review the complaint to determine whether it includes allegations of harassment, sexual misconduct, and/or criminal conduct that will require special processing under subsection (3) of this section and whether appropriate law enforcement or other authorities should be notified. The director of SRR shall also review the complaint to determine whether the allegations may lead to a possible sanction of suspension, expulsion, or if charges have been filed for felony level sexual misconduct; all such cases are referred to a council hearing under WAC 172-121-120.

(3) Special rules for complaints of harassment and/or sexual misconduct. Except where specifically stated, this section applies to all allegations the university receives of harassment and/or sexual misconduct. This section shall apply regardless of where the alleged acts occurred.

(a) Report to Title IX coordinator. The director of SRR shall report all complaints which may constitute any form of harassment and/or sexual misconduct to the university Title IX coordinator within two business days.

(b) Prompt resolution. The university shall investigate any complaint alleging harassment and/or sexual misconduct when it is legally required to do so to determine if the university will pursue the incident under this student conduct code and/or refer the incident to other departments or agencies for further criminal, civil, or disciplinary action. All allegations of harassment and/or sexual misconduct shall be promptly investigated and resolved. In the absence of extenuating circumstances, the university will seek to have the allegations resolved within sixty days from the date it is notified of the allegation.

(c) Confidentiality. To facilitate the investigative process and protect the privacy of those involved, all information will be maintained in a confidential manner to the fullest extent permissible by law. During an investigation, complaint information will be disseminated on a need-to-know basis. If the complainant or victim wishes to remain anonymous, the university will take all reasonable steps to investigate the allegation without disclosing the name of the complainant to the extent allowed by state and federal law. If the complainant or victim wishes to remain anonymous, the university shall inform them that its ability to investigate and respond to the allegation will be limited. The university cannot ensure confidentiality, as its legal obligations under federal or state law may require investigation of the allegation and possible disclosure of the complainant's name. Reports of crimes to the campus community shall not include the names

of the complainants or victims. Files subject to public disclosure will be released to the extent required by law.

(d) Right to file a criminal report. Once the university is notified of an allegation of sexual harassment, gender-based harassment, stalking, or any form of sexual misconduct, it will notify the potential victim of their right to file a criminal complaint with campus or local law enforcement. If the victim in such circumstances wishes to report the conduct to local law enforcement, the university will assist them in doing so. The university will also notify the victim that he or she is not required to file a report with local law enforcement. The university will report allegations of harassment or sexual misconduct to law enforcement or other authorities consistent with federal, state, and local law.

(4) Interim measures. During the complaint review, the director of SRR will evaluate the circumstances and recommend to the dean of students if any interim restriction action against the accused is warranted or if any interim measures to assist or protect the complainant and/or victim during the conduct code process are needed. In cases of alleged harassment and/or sexual misconduct, the director of SRR shall, in conjunction with the dean of students and other appropriate university officials, take immediate steps to protect the complainant and/or victim from further harassment prior to completion of the investigation/resolution of the complaint. Appropriate steps may include separating the accused harasser and the complainant/victim, providing counseling for the complainant/victim and/or harasser, and/or taking disciplinary action against the accused.

(5) Inform complainant. As part of the complaint review process, the director of SRR will follow up with the complainant as described below.

(a) For cases other than harassment and/or sexual misconduct, the director of SRR will contact the complainant and provide them with the following information:

- (i) The complainant's rights under the student conduct code;
- (ii) The allegations which the complainant has against the accused;
- (iii) The potential conduct code violations related to the allegations; and
- (iv) How to report any subsequent problems or retaliation, including intimidation, threats, coercion, or discrimination.

(b) In all cases alleging harassment or sexual misconduct, the director of SRR will provide the complainant with written information that will include, at a minimum:

- (i) The student's rights and options, including options to avoid contact with the respondent; a list of available university and community resources for counseling, health, mental health, victim advocacy, legal assistance, student financial aid, and other academic and housing services; and options for, available assistance in, and how to request changes to academic, living, transportation, and working situations or protective measures.

(ii) The importance of preserving evidence of the alleged incident and procedures to follow to preserve evidence of the alleged incident;

- (iii) Who will receive a report of the allegation;

(iv) Their right to file or not file a criminal complaint as detailed above and the ability to be assisted by campus authorities in notifying law enforcement authorities if the complainant wishes to do so;

(v) A list of resources for obtaining protective, no contact, restraining, or similar orders, if applicable;

(vi) The procedures the university will follow when determining if discipline is appropriate;

(vii) Steps the university will take to ensure confidentiality of complainants and other necessary parties and the limits this may place on the university's ability to investigate and respond, as set forth above; and

(viii) Information regarding the university's policy against retaliation, steps the university will take to prevent and respond to any retaliation, and how the student should report retaliation or new incidents.

(6) Following the complaint review, the director of SRR will either dismiss the matter or arrange a preliminary conference.

(a) Dismiss the matter. If the director of SRR (~~believes that there is insufficient justification or insufficient evidence to pursue conduct review proceedings against the accused~~) determines the allegations, even if true, would not rise to the level of a conduct violation, he/she may dismiss the matter. In such cases, the director of SRR will prepare a written record of the dismissal. The director of SRR will also notify the complainant of their decision, if such notification is appropriate and feasible. The dismissal letter, along with the original complaint and any other related documents, will be maintained as described in WAC 172-121-080. In cases of harassment and/or sexual misconduct, the complainant/victim may request a review of the dismissal by the dean of students.

(b) Preliminary conference. If the director of ~~(SRR)~~ SRR does not dismiss the matter he/she will arrange a preliminary conference as described in WAC 172-121-110.

AMENDATORY SECTION (Amending WSR 13-24-123, filed 12/4/13, effective 1/4/14)

WAC 172-121-105 Conduct review proceedings. (1)

General provisions:

(a) ~~((A))~~ Conduct review proceedings in which the potential sanction is less than suspension, expulsion, or do not involve allegations of felony level sexual misconduct are summary hearings and considered brief adjudicative proceedings in accordance with WAC 172-108-010(3) and shall be conducted in an informal manner. Conduct review proceedings in which the potential sanction is suspension, expulsion, or that involve allegations of felony level sexual misconduct are council hearings under this code and are considered full adjudicative proceedings under the Administrative Procedure Act.

(b) Nonjudicial proceedings: Formal rules of process, procedure, and/or technical rules, such as are applied in criminal or civil courts, do not apply in student conduct code proceedings.

(2) Notification for student organizations: When a charge is directed towards a student organization, the conduct review officer will communicate all matters relative to con-

duct review proceedings with the president of the organization or their designee.

(3) Advisors: The complainant, victim, and the accused may be assisted by one advisor of their choice, subject to the following provisions:

(a) Any fees or expenses associated with the services of an advisor are the responsibility of the complainant, victim, or the accused that employed the advisor;

(b) The advisor may be an attorney or any other person of the student's choosing; and

~~(c) ((The complainant and the accused are responsible for presenting their own case and, therefore, advisors may not speak or participate directly in any conduct review proceeding. The complainant and/or the accused may, however, speak quietly with their advisor during such proceedings; and~~

~~(d))~~ If an attorney is used as an advisor, the person using the attorney shall inform the conduct review officer or the council of their intent to do so at least two business days prior to any conduct review proceeding.

(4) Evidence:

(a) In summary hearings, the accused, and, in cases of harassment and/or sexual misconduct, the complainant/victim may request to view material related to their case prior to a scheduled hearing by contacting the conduct review officer. To facilitate this process, the party should contact the conduct review officer as early as possible prior to the scheduled hearing. The conduct review officer shall make a reasonable effort to support the request to the extent allowable by state and federal law.

(b) In council hearings, the parties may request to view material related to the case prior to the scheduled hearing by contacting the conduct review officer. To facilitate this process, the party should contact the conduct review officer as early as possible prior to the scheduled hearing. The conduct review officer shall make a reasonable effort to support the request to the extent allowable by state and federal law.

AMENDATORY SECTION (Amending WSR 13-24-123, filed 12/4/13, effective 1/4/14)

WAC 172-121-110 Preliminary conference. (1)

Scheduling. If, after reviewing a complaint, the director of SRR decides to initiate conduct review proceedings, the director shall, within ten business days of receiving the initial complaint, appoint a conduct review officer (CRO) to the case and notify the accused. In cases alleging harassment and/or sexual misconduct, the CRO assigned must have completed training on issues relating to harassment and sexual misconduct, including Title IX requirements. Notification of the charges to the accused must:

(a) Be made in writing;

(b) Include a written list of charges against the accused; and

(c) Include the name of the conduct review officer assigned to the case and the deadline for the accused to contact the CRO in order to schedule a preliminary conference. Whenever possible, the deadline for the accused to contact the CRO will be within five business days of the date the director of SRR sent notification to the accused.

(2) Failure to respond: If the accused fails to comply with the notification requirements, the director of SRR shall schedule the preliminary conference and notify the accused. The notification shall be in writing and shall include a date, time, and location of the preliminary conference.

(3) Follow up with complainant/victim. In all cases alleging harassment and/or sexual misconduct or if there will be a council hearing, the CRO shall notify the complainant(s) of the date, time, and location of the preliminary conference and of their right to attend the conference. The CRO shall also follow up with the complainant(s)/victim(s) to ~~((determine whether))~~ inform them of the process of reporting any retaliation or new incidents of harassment ~~((have occurred))~~. If the complainant/victim has experienced any type of retaliatory behavior, the university shall take immediate steps to protect the complainant/victim from further harassment or retaliation.

(4) Appearance. ~~((Except for cases alleging harassment and/or sexual misconduct,))~~

(a) For summary hearings only the accused and the accused's advisor may appear at the preliminary conference, unless the case involves alleged harassment and/or sexual misconduct. In cases alleging harassment and/or sexual misconduct, the accused and the complainant/victim, along with their advisors, if they choose to have an advisor, may appear at the preliminary conference.

(b) For council hearings, both parties and their advisors may appear at the preliminary conference.

(5) Failure to appear. In cases where proper notice has been given but the accused fails to attend the preliminary conference, the CRO may:

(a) Proceed with a hearing and decide the case based on the information available; or

(b) Place a hold on the accused's academic records as described in WAC 172-121-080.

(6) ~~((Proceedings.))~~ Preliminary conference. The purpose of the preliminary conference is to advise the parties regarding the student conduct process. If both of the parties are not present, the CRO will refrain from discussing any nonprocedural matters. During the preliminary conference, the conduct review officer will:

(a) Review the written list of charges with the accused;

(b) Inform the accused who is bringing the complaint against them;

(c) Provide the accused with a copy of the student conduct code and any other relevant university policies;

(d) Explain the accused's rights under the student code;

(e) Explain the conduct review procedures;

(f) Explain the accused's and complainant's rights and responsibilities in the conduct review process; and

(g) Explain possible penalties under the student conduct code.

(7) After the preliminary conference, the conduct review officer will take one of the following actions:

(a) Conduct or schedule a summary hearing with the accused as described in WAC 172-121-120 ~~((;))~~ for cases where the possible sanction is less than a suspension or the allegations do not involve felony level sexual misconduct; or

(b) ~~((Schedule a summary hearing with the accused as described in WAC 172-121-120; or~~

~~((;)))~~ Refer the case to the student disciplinary council for a council hearing under WAC 172-121-120 for any cases where the possible sanction is a suspension, expulsion, or involves an allegation of felony level sexual misconduct.

AMENDATORY SECTION (Amending WSR 15-24-050, filed 11/23/15, effective 12/24/15)

WAC 172-121-120 Hearings. The provisions of subsections (1) through (8) of this section apply to both summary hearings and to council hearings.

(1) General provisions.

(a) Hearing authority: The hearing authority exercises control over hearing proceedings. All procedural questions are subject to the final decision of the hearing authority.

(b) Closed hearings: All conduct review hearings will be closed. Admission of any person to a conduct review hearing shall be at the discretion of the hearing authority.

(c) Consolidation of hearings: In the event that one or more students are charged with the same misconduct arising from the same occurrence, the hearing authority may conduct separate hearings for each student or consolidate the hearings as practical, as long as consolidation does not impinge on the rights of any student.

(2) Appearance.

(a) Failure to appear: In cases where proper notice has been given but the accused fails to attend a conduct review hearing, the hearing authority shall decide the case based on the information available, without the accused's input.

(b) Complainant's appearance: The complainant will be provided options for reasonable alternative arrangements if they do not wish to be present in the same room as the accused student during the hearing. The complainant may appear at the conduct review hearing in person, through telephone conference, or through any other practical means of communication, so long as the complainant's identity can be reasonably established.

(c) Advisors: The complainant and the accused may be assisted by an advisor during conduct review hearings as described in WAC 172-121-090.

(d) Disruption of proceedings: Any person, including the accused, who disrupts a hearing, may be excluded from the proceedings.

(e) Telephonic appearance. In the interest of fairness and expedience, the hearing authority may permit any person to appear by telephone, audio tape, written statement, or other means, as appropriate.

(3) Evidence.

(a) Evidence: Pertinent records, exhibits and written statements may be accepted as information for consideration by the hearing authority ~~((However, hearing authorities are not bound by the rules of evidence observed by courts))~~ in accordance with RCW 34.05.452. The hearing authority may exclude incompetent, irrelevant, immaterial or unduly repetitious material.

(b) The accused, and, in cases of sexual harassment or sexual misconduct, the complainant and/or victim, have the right to view all material presented during the course of the hearing.

(c) All testimony of parties and witnesses shall be made under oath or affirmation.

(4) Standard of proof. The hearing authority shall determine whether the accused violated the student conduct code, as charged, based on a preponderance of the evidence. A preponderance means, based on the evidence admitted, whether it is more probable than not that the accused violated the student conduct code.

(5) Sanctions. In determining what sanctions shall be imposed, the hearing authority may consider the evidence presented at the hearing as well as any information contained in the student's disciplinary and academic records. If a student fails to appear for a hearing, then the hearing authority shall review the evidence provided and may consider information available from the student's disciplinary and academic records in determining what sanction should be imposed.

(6) Discovery. Discovery is not permitted under the code, except for requests for documentary information from the university. Either party may request the university to produce relevant documents as long as such request is submitted at least five days prior to the hearing, absent extenuating circumstances. If the CRO determines the request is not relevant to the present allegation, the CRO may deny the request. The university will provide the requested information prior to the hearing to the extent permitted by state and federal law.

(7) Witnesses.

(a) The complainant, victim, accused and hearing authority may present witnesses at council review hearings.

(b) The party who wishes to call a witness is responsible for ensuring that the witness is available and present at the time of the hearing. For purposes of a council hearing, an attorney may subpoena a witness to appear at the hearing. Nonattorneys may request the CRO to subpoena witnesses in accordance with WAC 10-08-120. The CRO has the discretion to deny a request to issue a subpoena or to quash a subpoena issued by an attorney if the subpoena is unreasonable and oppressive.

(c) The hearing authority may exclude witnesses from the hearing room when they are not testifying. The hearing authority is not required to take the testimony of all witnesses called by the parties if such testimony may be inappropriate, irrelevant, immaterial, or unduly repetitious.

(d) All parties have the right to hear all testimony provided by witnesses during the hearing.

~~((7))~~ (e) The parties should inform the CRO of any possible need for an interpreter or any accommodation requests at least five days prior to the hearing. The CRO will comply with WAC 10-08-150.

(8) Questioning:

(a) The complainant ~~((and)),~~ the accused, and their advisors may submit questions to be asked of each other or of any witnesses. Questions shall be submitted, in writing, to the ~~((hearing authority))~~ CRO. The ~~((hearing authority))~~ CRO may ask such questions, but is not required to do so. The ~~((hearing authority))~~ CRO may reject any question which it considers inappropriate, irrelevant, immaterial or unduly repetitious. ~~((The hearing authority has complete discretion in determining what questions will be asked during the hearing.))~~ The CRO will explain to the parties the reason for

rejecting any questions and will maintain a record of the questions submitted and rulings made.

(b) During a conduct review hearing, only the hearing authority may pose questions to persons appearing before them.

(c) The hearing authority may ask their own questions of any witness called before them.

~~((8))~~ (9) The hearing authority may accommodate concerns for personal safety, well-being, or fears of confrontation of any person appearing at the hearing by providing separate facilities, or by permitting participation by telephone, audio tape, written statement, or other means, as determined appropriate.

~~((9))~~ (10) Summary hearing procedures.

(a) The conduct review officer may hold a summary hearing with the accused ~~((only if all of the following conditions are met:~~

~~(i) The accused waives his/her right to prior notice about a conduct review hearing;~~

~~(ii) The accused requests that the case be heard in a summary hearing with the conduct review officer; and~~

~~(iii) The conduct review officer agrees to conduct the summary hearing. The conduct review officer is not obligated to conduct a summary hearing, but may instead refer the case to the student disciplinary council for a council hearing.~~

~~(b) Sexual misconduct cases. Allegations of sexual misconduct may not be resolved through a summary hearing but must be referred for a council hearing, unless the case has been otherwise resolved.~~

~~(e))~~ if the proposed sanction is less than a suspension and the allegations do not involve felony level sexual misconduct.

(b) Scheduling. A summary hearing may take place immediately following the preliminary conference or it may be scheduled for a later date or time, except that, in cases of harassment or sexual misconduct, a summary hearing cannot take place without first notifying the complainant/victim of the hearing. If the summary hearing will be held at a later date or time, the conduct review officer shall schedule the hearing and notify the accused and, in the case of harassment or sexual misconduct, the complainant/victim of the date, time, and place of the hearing. The conduct review officer may coordinate with the parties to facilitate scheduling, but is not required to do so.

~~((4))~~ (c) If the accused fails to appear at the summary hearing, the conduct review officer may conduct the summary hearing without the accused present or refer the case to the student disciplinary council for a council hearing under WAC 172-121-110. The conduct review officer may also place a hold on the accused's academic records under WAC 172-121-080.

~~((e))~~ (d) Deliberation. After the hearing, the conduct review officer shall decide whether the accused violated the student conduct code based on a preponderance of the evidence.

(i) If the conduct review officer determines that there is not sufficient information to establish a violation by a preponderance of evidence, the conduct review officer shall dismiss the complaint.

(ii) If the conduct review officer determines that the accused violated the student conduct code, the conduct review officer shall impose any number of sanctions as described in WAC 172-121-210.

~~((4))~~ (e) Notification. The conduct review officer shall serve the accused with a brief written statement setting forth the outcome of the summary hearing and notice of the right to appeal. In the case of sexual harassment, gender-based harassment, or stalking, the victim shall be provided with written notice of: (i) The university's determination as to whether such harassment occurred; (ii) the victim's right to appeal; (iii) any change to the results that occurs prior to the time that such results become final; and when such results become final (20 U.S.C. 1092(f)). Information regarding the discipline of the accused will not be released unless:

(A) The information contained in the record directly relates to the complainant, such as an order requiring the student harasser to not contact the complainant; or

(B) The misconduct involves a crime of violence or a sexual assault, including rape, relationship violence, domestic violence or stalking as defined in 42 U.S.C. Sec. 13925(a).

~~((4))~~ (11) Council hearing procedures.

(a) Scheduling and notification. If the conduct review officer has decided to refer the case to the student disciplinary council for a council hearing, the director of SRR shall schedule the hearing and notify the accused with the date, time and location of the hearing. The director of SRR shall also inform the council and notify the complainant/victim of the date, time, and location of the hearing in writing as well as any other details required by RCW 34.05.434. The notice of hearing must be served on the accused and complainant at least seven business days prior to the hearing. The council must receive at least seventy-two hours' notice as to the time and place of the hearing. The conduct review officer may coordinate with the parties to facilitate scheduling, but is not required to do so.

(b) Deliberations and sanctions. Following the hearing, the council shall meet in closed session and, within seven days, determine by majority vote whether, by a preponderance of the evidence, the accused violated the student conduct code. If the council determines the accused violated the student conduct code, the council shall then decide what sanctions shall be imposed. Sanctions shall be decided by majority vote and in closed session. The council shall issue a decision including its findings, conclusions, and rationale. The decision shall address credibility issues if credibility was a substantial factor in the council's decision.

(c) Notification. The council chair shall forward the council decision to the director of SRR. The director of SRR shall serve the accused with a brief written statement setting forth the council's decision and notice of the right to appeal. In the case of sexual harassment, gender-based harassment, stalking, or any act of sexual misconduct, the victim shall be provided with written notice of: (i) The university's determination as to whether such harassment/sexual misconduct occurred; (ii) the victim's right to appeal; (iii) any change to the results that occurs prior to the time that such results become final; and when such results become final (20 U.S.C. 1092(f)). Information regarding the discipline of the accused will not be released unless:

(A) The information contained in the record directly relates to the complainant, such as an order requiring the student harasser to not contact the complainant; or

(B) The misconduct involves a crime of violence or a sexual assault, including rape, relationship violence, domestic violence or stalking as defined in 42 U.S.C. Sec. 13925(a).

AMENDATORY SECTION (Amending WSR 15-24-050, filed 11/23/15, effective 12/24/15)

WAC 172-121-130 Appeals. (1) Basis: Appeals may be filed by the accused or the complainant. In cases of harassment and/or sexual misconduct, the victim may also file an appeal. Appeals may be filed for one or more of the following reasons:

(a) To determine whether the hearing was conducted according to established procedures. A hearing may have deviated from established procedures if:

(i) The hearing was not conducted fairly in light of the charges and information presented;

(ii) The complainant was not given a reasonable opportunity to prepare and to present information as provided by the student conduct code;

(iii) The accused was not given a reasonable opportunity to prepare and to present a response as provided by the student conduct code.

(b) The hearing authority misinterpreted the student conduct code.

(c) To determine whether the decision reached by the hearing authority was based on the information presented and that that information was sufficient to reasonably establish that a violation of the conduct code did or did not occur based on a preponderance of the evidence.

(d) To determine whether the sanction(s) imposed were reasonable and appropriate for the associated conduct code violation(s).

(e) To consider newly discovered, material information which was not known to the appellant and could not reasonably have been discovered and presented by the appellant at the original hearing. It is the party's obligation to present all evidence at the time of the original hearing. The university is not obligated to grant an appeal and conduct a new hearing when parties do not take reasonable efforts to prepare their cases for the original hearing.

(2) Filing: Appeals may be filed following a conduct review hearing, subject to the following provisions:

(a) The appeal must be submitted to the director of student rights and responsibilities within twenty-one calendar days for summary hearings, from service of the council's decision, and ten calendar days from service of a decision order;

(b) The appeal shall be in writing and shall include:

(i) The appellant's name;

(ii) The nature of the decision and sanctions reached by the hearing official;

(iii) The basis, as described in subsection (1) of this section, for the appeal; and

(iv) What remedy the appellant is seeking.

(3) Appeal authorities:

(a) For summary hearings heard by the conduct review officer, appeals are determined by the student disciplinary council.

(b) For student disciplinary council hearings, appeals are determined by the dean of students.

(4) Forwarding of appeals: The director of SRR shall forward the appeal to the appropriate appeal authority. The submitted appeal will include, at a minimum, the appellant's written appeal and the written report of the case. The director of SRR may also forward any other written records related to the case.

(5) Review of appeals:

(a) Before rendering a decision, the appeal authority may request additional information or explanation from any of the parties to the proceedings.

(b) Except as required to explain the basis of new information, an appeal shall be limited to a review of the verbatim record of the conduct review hearing and supporting documents.

(c) In making its decision, the appeal authority will only consider the written record before it, the appellant's notice of appeal and other information and/or explanation it has requested from the parties to the proceedings.

(6) Decisions: After reviewing the appeal, the appeal authority may affirm, reverse, or remand the decision(s) of the hearing authority.

(7) Remanded cases: In cases where the appeal authority remands the decision or sanction(s) of the hearing authority, the case will be returned to the hearing authority for reconsideration or other action as specified by the appeal authority. Following such reconsideration, the hearing authority will return the case to the appeal authority for further review/action. The appeal authority will then complete the appeal process or remand the case again. No appeal may, however, be remanded more than two times. After a case has been remanded twice, the appeal authority must affirm or reverse the decision and affirm, reverse, or modify the sanctions.

(8) Sanctions: The appeal authority may affirm, reverse, remand, or modify the sanctions assigned to the accused. When determining sanctions, the appeal authority may consider the complete record of the accused's prior conduct and academic performance in addition to all other information associated with the case.

(9) Notification: Once the appeal authority has made a final decision to affirm or reverse and/or to modify the sanctions assigned, the appeal authority shall forward the decision to the director of SRR. The director of SRR shall serve the accused, and, in cases of harassment or sexual misconduct, notify the complainant and victim, with a brief written statement setting forth the outcome of the appeal.

(10) Further proceedings. The appeal authority's decision is final and no further appeals may be made under the student conduct code. Judicial review of the university's decision may be available under chapter 34.05 RCW.

(11) Appeals standards:

(a) Appeal authorities must weigh all pertinent information presented to them in determining whether sufficient evidence exists to support reversal or modification of decisions or sanctions.

(b) For appeals based on a deviation from established procedures, such deviations will not be a basis for sustaining an appeal unless the alleged deviation materially changed the outcome of the case or the sanctions imposed.

AMENDATORY SECTION (Amending WSR 15-24-050, filed 11/23/15, effective 12/24/15)

WAC 172-121-140 Interim restriction. In situations where there is cause to believe that a student or a student organization (~~(endangers))~~ possess an immediate danger to the health, safety, or welfare of themselves, the university community, or property of the university community, the dean of students may take immediate action(s) against the student or student organization without prior notice or hearing.

Simultaneous with such action(s), the dean of students will refer the charges to the conduct review officer, who will process such charges in accordance with the provisions of this student conduct code.

Interim restriction is subject to the following:

(1) Interim restriction actions may only be imposed in the following situations:

(a) When a student or student organization poses an immediate threat to:

(i) The health, safety or welfare of any part of the university community or public at large;

(ii) The student's own physical safety and well-being; or

(iii) Any property of the university community; or

(b) When it is believed that the student's or student organization's continued attendance or presence may cause disorder, substantially interfere with or impede the lawful activities of others, or imperil the physical or mental health and safety of members of the university community(~~(; or~~

~~(e) When a student is undergoing criminal proceedings for any felony charge)).~~

(2) During the interim restriction period, a student may be restricted by any or all of the following means:

(a) Denial of access(~~(;)~~) including, but not limited to: Assignment to alternate university housing or removal from university housing, limitation of access to university facilities, or restriction of communication with specific individuals or groups;

(b) Interim suspension, including temporary total removal from the university or restriction of access to campus;

(c) Mandatory medical/psychological assessment of the student's capability to remain in the university.

(3) The dean of students will determine what restriction(s) will be placed on a student.

(4) All interim restrictions that involve any type of restriction from any university premises will be accomplished by giving a notice against trespass. The notice against trespass may be given by any manner specified in WAC 172-122-200.

(5) The dean of students will prepare a brief memorandum for record containing the reasons for the interim restriction. The dean of students will serve the memorandum on the restricted student and notify all other persons or offices bound by it. At a minimum, the memorandum will state:

(a) The alleged act(s) or behavior(s) of the student or student organization which prompted the interim restriction;

(b) How those alleged act(s) or behavior(s) constitute a violation of the student conduct code; and

(c) How the circumstances of the case necessitated the interim restriction action(s); and

(d) The date, time, and location for an emergency hearing with the vice president for student affairs.

(6) In cases alleging sexual harassment, sexual misconduct, domestic violence, relationship violence, and/or stalking, the complainant will be provided with notice of any interim restrictions that relate directly to the complainant.

(7) Appeals.

~~(a) ((In all cases, the student or student organization may appeal the interim restriction to the vice president for student affairs.))~~ The vice president for student affairs, or designee, will conduct an emergency hearing with the student or student organization subject to the interim restriction. The student may appear at the hearing telephonically and may be represented by counsel.

(b) In cases alleging sexual harassment, sexual misconduct, domestic violence, relationship violence, and stalking, if an interim restriction is imposed, the student, the student organization, and the complainant may appeal the interim restriction using the process outlined in this subsection. Also, in such cases, if an appeal is filed, all parties shall be given notice of the appeal and shall be provided the opportunity to participate in the appeal proceeding.

(c) Appeals must be submitted, in writing, within ten business days after the interim restriction action is taken, unless the student requests an extension. Requests for extension will only be granted to review the following issues:

~~((i) The reliability of the information concerning the student's behavior; and~~

~~((ii) Whether the student's continued presence or prior or present behavior warrants interim restriction for the causes listed in subsection (1) of this section.~~

~~(d) As a result of the appeal, the vice president for student affairs will schedule a meeting with the accused.))~~ (i) The vice president for student affairs may have the dean of students or any other person deemed relevant attend the meeting. The accused and the complainant, if he/she has the right to be present under (b) of this subsection, may have an advisor present at the meeting ((so long as the name of that person is provided to the director of SRR at least two business days prior to the scheduled meeting)).

~~((e))~~ (ii) During the appeal meeting, the vice president for student affairs will review available materials and statements. After the meeting, the vice president for student affairs may uphold, modify, or terminate the interim restriction action.

~~((f))~~ (iii) The interim restriction does not replace the regular hearing process, which will proceed as quickly as feasible consistent with this chapter.

~~((g))~~ (8) Duration. An interim restriction will remain in effect until terminated, in writing, by the student disciplinary council or the vice president for student affairs.

WSR 17-02-059
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 16-335—Filed December 30, 2016, 4:49 p.m., effective December 30, 2016, 4:49 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 220-52-04200B; and amending WAC 220-52-042.

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

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

Reasons for this Finding: This rule provides a temporary allowance for Washington licensed vessels that also hold a license in another state to transport gear through Washington waters with the intention of setting that gear in the state for which it is marked, providing for a safe and orderly fishery during the preseason gear-setting period. There is insufficient time to adopt permanent rules.

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

Number of Sections Adopted at 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: December 30, 2016.

J. W. Unsworth
Director

NEW SECTION

WAC 220-52-04200B Commercial crab fishery—Buoy tag, pot tag, and buoy requirements. Notwithstanding the provisions of WAC 220-52-042:

(1) Effective immediately until 9:00 am Monday, January 9, 2017, it is lawful to transport on the water, any crab buoy or crab pot without an attached buoy tag and pot tag that meet the requirements of the permanent rule.

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

REPEALER

The following section of the Washington Administrative Code is repealed effective at 9:00 am Monday, January 09, 2017:

WAC 220-52-04200B Commercial crab fishery—Buoy tag, pot tag, and buoy requirements.

WSR 17-02-071
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 17-01—Filed January 3, 2017, 12:10 p.m., effective January 3, 2017, 12:10 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: Amend commercial sea cucumber fishing rules.

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

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

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

Reasons for this Finding: This emergency rule is needed to close the commercial sea cucumber fishery because the quota has been reach[ed] in Sea Cucumber District 1. There is insufficient time to adopt permanent rules.

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

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

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

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

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

Date Adopted: January 3, 2017.

J. W. Unsworth
Director

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 220-52-07100V Sea cucumbers. (16-275)

WSR 17-02-074
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 17-03—Filed January 3, 2017, 3:48 p.m., effective January 8, 2017]

Effective Date of Rule: January 8, 2017.

Purpose: Amend recreational razor clam rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-56-36000X; 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 6. 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 3, 2017.

J. W. Unsworth
Director

NEW SECTION

WAC 220-56-36000X Razor clams—Areas and seasons. Notwithstanding the provisions of WAC 220-56-360, it is unlawful to take, dig for or possess razor clams taken for personal use from any beaches in any razor clam area except as provided for in this section:

(1) Effective 12:01 p.m. January 8, 2017 through 11:59 p.m. January 9, 2017, razor clam digging is permissible in Razor Clam Area 6. Digging is permissible from 12:01 p.m. to 11:59 p.m. each day only.

REPEALER

The following section of the Washington Administrative Code is repealed effective 12:01 a.m. January 10, 2017:

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