

**WSR 18-07-002**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**

[Order 18-33—Filed March 7, 2018, 4:47 p.m., effective March 7, 2018, 4:47 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: Amends commercial sea urchin rules in Puget Sound.

Citation of Rules Affected by this Order: Repealing WAC 220-340-75000D.

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

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

Reasons for this Finding: This emergency rule is necessary because the quota has been reached for red sea urchins in District 4, and there are no active harvesters in District 2. There is no interest [in] continuing the commercial sea urchin season. There is insufficient time to adopt permanent rules.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at the Request of a Non-governmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 0, Repealed 1.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: March 7, 2018.

Amy H. Windrope  
 for Joe Stohr  
 Director

**REPEALER**

The following section of the Washington Administrative Code is repealed:

WAC 220-340-75000D Commercial sea urchin fisheries.  
 (18-23)

**WSR 18-07-013**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**

[Order 18-37—Filed March 9, 2018, 11:12 a.m., effective March 9, 2018, 11:12 a.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: Amends recreational harvest rules for razor clams.

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

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

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

Reasons for this Finding: This emergency rule is needed to open the recreational razor clam season. Survey results show that adequate clams are available for harvest in Razor Clam Areas 1, 3, 4 and 5 for recreational harvest. Washington department of health has certified clams from this beach to be safe for human consumption. Razor clam beaches are closed by permanent rules unless opened by an emergency rule. There is insufficient time to adopt permanent rules.

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

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

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

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

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

Date Adopted: March 9, 2018.

Amy H. Windrope  
 for Joe Stohr  
 Acting Director

**NEW SECTION**

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

(1) Effective 12:01 p.m. March 17, 2018 through 11:59 p.m. March 17, 2018, razor clam digging is permissible in Razor Clam Area 1. Digging is permissible from 12:01 p.m. to 11:59 p.m. each day only.

(2) Effective 12:01 p.m. March 17, 2018 through 11:59 p.m. March 17, 2018, razor clam digging is permissible in Razor Clam Area 3. Digging is permissible from 12:01 p.m. to 11:59 p.m. each day only.

(3) Effective 12:01 p.m. March 16, 2018 through 11:59 p.m. March 17, 2018, 2017, 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.

(4) Effective 12:01 p.m. March 16, 2018 through 11:59 p.m. March 17, 2018, 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.

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

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

#### REPEALER

The following section of the Washington Administrative Code is repealed effective March 18, 2018:

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

**WSR 18-07-026  
EMERGENCY RULES  
DEPARTMENT OF  
FISH AND WILDLIFE**

[Order 18-35—Filed March 9, 2018, 3:07 p.m., effective March 31, 2018]

Effective Date of Rule: March 31, 2018.

Purpose: Amends recreational fishing rules for Bowers Lake (Vance Creek Pond #1).

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

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

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

Reasons for this Finding: This emergency rule is needed to allow an early fishing opportunity for juveniles, seniors, and anglers with a disability who possess a department of fish and wildlife designated harvester card. There is insufficient time to adopt permanent rules.

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

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

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

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

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

Date Adopted: March 9, 2018.

Amy H. Windrope  
for Joe Stohr  
Acting Director

#### NEW SECTION

**WAC 220-312-02000V Exceptions to statewide rules—Bowers Lake (Vance Creek Pond #1) Grays Harbor Co.** Notwithstanding the provisions of WAC 220-312-020, effective March 31 through April 8, 2018, juveniles, holders of a senior license, and anglers with Washington Department of Fish and Wildlife disability status and who have a designated harvester card may fish in those waters of Bowers Lake (Vance Creek Pond #1).

#### REPEALER

The following section of the Washington Administrative Code is repealed effective April 9, 2018:

WAC 220-312-02000V Exceptions to statewide rules—Bowers Lake (Vance Creek Pond #1) Grays Harbor Co.

**WSR 18-07-029  
EMERGENCY RULES  
DEPARTMENT OF  
FISH AND WILDLIFE**

[Order 18-38—Filed March 12, 2018, 9:57 a.m., effective March 17, 2018]

Effective Date of Rule: March 17, 2018.

Purpose: Amends recreational fishing rules for the Cowlitz River.

Citation of Rules Affected by this Order: Amending WAC 220-312-030.

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

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

Reasons for this Finding: The 2018 Cowlitz River spring Chinook run forecast is five thousand fish, about seventy percent below the five-year average return. Projections indicate that reducing the daily adult limit to one adult Chinook should allow for a full season spring Chinook fishery while providing the needed number of hatchery fish for broodstock, to ensure future hatchery returns to the Cowlitz. This should

also allow for fish to be transported above Cowlitz Falls Dam for upriver fishery and reintroduction purposes. There is insufficient time to adopt permanent rules.

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

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

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

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

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

Date Adopted: March 12, 2018.

Amy H. Windrope  
for Joe Stohr  
Acting Director

#### NEW SECTION

**WAC 220-312-03000N Southwest—Freshwater exceptions to statewide rules.** Notwithstanding the provisions of WAC 220-312-030, effective March 17, 2018, until further notice, daily limit of 6 hatchery Chinook of which only 1 may be an adult in waters of the Cowlitz River, Cispus River and Lake Scanewa. Unless otherwise amended, all permanent rules remain in effect.

**WSR 18-07-034**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**

[Order 18-41—Filed March 13, 2018, 8:50 a.m., effective March 13, 2018, 8:50 a.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: Amend commercial sea urchin harvest rules.

Citation of Rules Affected by this Order: Amending WAC 220-340-750.

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

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

Reasons for this Finding: This emergency rule is needed to allow for commercial harvest of red sea urchins in District 2 because harvestable surplus remain. There is insufficient time to adopt permanent rules.

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

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

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

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

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

Date Adopted: March 13, 2018.

Amy H. Windrope  
for Joe Stohr  
Acting Director

#### NEW SECTION

**WAC 220-340-75000E Commercial sea urchin fisheries.** Notwithstanding the provisions of WAC 220-340-750, effective immediately, it is unlawful to take or possess sea urchins taken for commercial purposes except as provided for in this section:

(1) The following areas are open for red sea urchin harvest seven days-per-week: Marine Fish-Shellfish Management and Catch Reporting Areas 23B, 25A, and 25B in Sea Urchin District 2. It is unlawful to fish for, take, or possess red sea urchins smaller than 3.25 inches or larger than 5.0 inches (size is largest test diameter exclusive of spines).

**WSR 18-07-035**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**

[Order 18-40—Filed March 13, 2018, 11:05 a.m., effective March 13, 2018, 11:05 a.m.]

Effective Date of Rule: Immediately upon filing.

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

Citation of Rules Affected by this Order: Repealing WAC 220-359-02000P; and amending WAC 220-359-020.

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

Other Authority: *United States v. Oregon*, Civil No. 68-513-KI (D. Or.), Order Adopting 2008-2017 *United States v. Oregon* Management Agreement (Aug. 12, 2008) (Doc. No. 2546); *Northwest Gillnetters Ass'n v. Sandison*, 95 Wn.2d

638, 628 P.2d 800 (1981); Washington fish and wildlife commission policies concerning Columbia River fisheries; 40 Stat. 515 (Columbia River Compact).

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

Reasons for this Finding: Opens the treaty winter fishery for commercial sales to Washington wholesale buyers and the public. Harvestable sturgeon are available under the current harvest guidelines for each pool. The season is consistent with the 2008-2017 Management Agreement and the associated biological opinion. Rule is consistent with action of the Columbia River Compact on March 12, 2018. Conforms state rules with tribal rules. There is insufficient time to promulgate permanent regulations.

The Yakama, Warm Springs, Umatilla, and Nez Perce Indian tribes have treaty fishing rights in the Columbia River and inherent sovereign authority to regulate their fisheries. Washington and Oregon also have some authority to regulate fishing by treaty Indians in the Columbia River, authority that the states exercise jointly under the congressionally ratified Columbia River Compact. *Sohappy v. Smith*, 302 F. Supp. 899 (D. Or. 1969). The tribes and the states adopt parallel regulations for treaty Indian fisheries under the supervision of the federal courts. A court order sets the current parameters. *United States v. Oregon*, Civil No. 68-513-KI (D. Or.), Order Adopting 2008-2017 *United States v. Oregon* Management Agreement (Aug. 12, 2008) (Doc. No. 2546). Some salmon and steelhead stocks in the Columbia River are listed as threatened or endangered under the federal ESA. On May 5, 2008, the National Marine Fisheries Service issued a biological opinion under 16 U.S.C. § 1536 that allows for some incidental take of these species in the fisheries as described in the 2008-2017 *U.S. v. Oregon* Management Agreement.

Columbia River fisheries are monitored very closely to ensure consistency with court orders and ESA guidelines. Because conditions change rapidly, the fisheries are managed almost exclusively by emergency rule. As required by court order, the Washington (WDFW) and Oregon (ODFW) departments of fish and wildlife convene public hearings and invite tribal participation when considering proposals for new emergency rules affecting treaty fishing rights. *Sohappy*, 302 F. Supp. at 912. WDFW and ODFW then adopt regulations reflecting agreements reached.

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

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

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

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

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

Date Adopted: March 13, 2018.

Joe Stohr  
Acting Director

#### NEW SECTION

**WAC 220-359-02000Q Columbia River salmon seasons above Bonneville Dam.** Notwithstanding the provisions of WAC 220-359-010, WAC 220-359-020, WAC 220-359-030, and WAC 220-359-090, effective immediately until further notice, it is unlawful for a person to take or possess salmon, steelhead, sturgeon, shad, carp, catfish, walleye, bass, or yellow perch taken for commercial purposes in Columbia River Salmon Management and Catch Reporting Areas 1F, 1G, and 1H. However, those individuals possessing treaty fishing rights under the Yakima, Warm Springs, Umatilla, and Nez Perce treaties may fish for salmon, steelhead, sturgeon, shad, carp, catfish, walleye, bass, or yellow perch under the following provisions:

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

(a) Season: 6:00 a.m. March 15 through 6:00 p.m. March 19, 2018 in The Dalles Pool, 6:00 a.m. March 15 through 6:00 p.m. March 24, 2018 in John Day Pool.

(b) Gear: Gill nets with no minimum mesh restriction.

(c) Allowable sale: Salmon (any species), steelhead, shad, yellow perch, bass, walleye, catfish and carp may be sold or retained for subsistence. Sturgeon from 43 to 54 inches fork length may be sold only when caught during open periods for that pool. Legal-sized sturgeon may be kept for subsistence purposes. Live release of all oversize and under-size sturgeon is required.

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

(a) Season: Immediately through 6:00 p.m. March 21, 2018.

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

(c) Allowable sale: Salmon (any species), steelhead, shad, yellow perch, bass, walleye, catfish, and carp may be sold or retained for subsistence. Sturgeon from 38 to 54 inches fork length in Bonneville Pool and from 43 to 54 inches fork length in The Dalles and John Day Pools may be sold only when caught during open periods for that pool. Legal sized sturgeon may be kept for subsistence purposes. Live release of all oversize and under-size sturgeon is required.

(3) 24-hour quick reporting is required for Washington wholesale dealers for all areas as provided in WAC 220-352-180, except that all landings from treaty fisheries described above must be reported within 24-hours of completing the fish ticket (not 24-hours after the period concludes).

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

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

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 220-359-02000P Columbia River salmon seasons above Bonneville Dm. (18-26)

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

**WSR 18-07-036**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**

[Order 18-34—Filed March 13, 2018, 11:57 a.m., effective March 22, 2018, 8:00 a.m.]

Effective Date of Rule: March 22, 2018, 8:00 a.m.

Purpose: Amends coastal commercial crab rules.

Citation of Rules Affected by this Order: Repealing WAC 220-340-45000D; and amending WAC 220-340-450.

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: Provisions in state/tribal management agreements will be achieved by the opening dates contained herein. The special management areas are listed in accordance with state/tribal management agreements. The modified boundaries of the special management areas are listed in accordance with state tribal in-season agreements. There is insufficient time to adopt permanent rules.

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

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

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

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

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

Date Adopted: March 13, 2018.

Joe Stohr  
Acting Director

NEW SECTION

**WAC 220-340-45000E Commercial crab fishery—Seasons and areas—Coastal.** Notwithstanding the provisions of WAC 220-340-450, effective immediately until further notice, it is unlawful to fish for Dungeness crab in Washington coastal waters, the Pacific Ocean, Grays Harbor, Willapa Bay, or the Columbia River, except as provided for in this section.

(1) The area from and the U.S./Canada border to the WA/OR border (46°15.00) and Willapa Bay is open.

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

(3) The Quinault Secondary Special Management Area (SSMA) is closed to fishing for Dungeness crab starting at 8:00 A.M., March 22, 2018, from the area shoreward of a line approximating the 27-fathom depth curve between the mouth of the Copalis River (47°08.00) and Split Rock (47°24.50). This area will be closed until further notice. This SSMA is described by the following coordinates:

- Northeast Corner (Split Rock): 47°24.50 N. Lat. 124°20.00 W. Lon.
- Northwest Corner: 47°24.50 N. Lat. 124°32.40 W. Lon.
- Southwest Corner: 47°08.00 N. Lat. 124°25.50 W. Lon.
- Southeast Corner (Copalis River): 47°08.00 N. Lat. 124°11.20 W. Lon.

(4) It is unlawful for a vessel to use more than 200 pots in the area between Split Rock (47°24.50) and Raft River (47°28.00) shoreward of a line approximating the 27-fathom depth curve from 8:00 a.m. March 22, 2018, until 8:00 a.m. April 22, 2018. Fishers must pre-register with the Department of Fish and Wildlife 24 hours prior to deploying gear in this area by one of the three following methods:

- Fax transmission to Carol Henry at 360-249-1229;
- E-mail to: Carol Henry at [Carol.Henry@dfw.wa.gov](mailto:Carol.Henry@dfw.wa.gov); or
- Telephone call to Carol Henry at 360-249-1296.

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

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

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

- Northeast Corner: Tatoosh Island
- Northwest Corner: 48°19.50 N. Lat. 124°50.45 W. Lon.
- Southwest Corner: 48°02.15 N. Lat. 124°50.45 W. Lon.
- Southeast Corner: 48°02.15 N. Lat. 124°41.00 W. Lon.

(7) It is unlawful for a vessel to use more than 200 pots in the Makah SMA until 8:00 A.M. March 28, 2018. Fishers must pre-register with the Department of Fish and Wildlife 24 hours prior to deploying gear in this area by one of the three following methods:

- Fax transmission to Carol Henry at 360-249-1229;
- E-mail to Carol Henry at [Carol.Henry@dfw.wa.gov](mailto:Carol.Henry@dfw.wa.gov); or
- Telephone call to Carol Henry at 360-249-1296.

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

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

### REPEALER

The following section of the Washington Administrative Code is repealed effective 8:00 a.m. March 22, 2018:

WAC 220-340-45000D Coastal crab seasons (18-24)

**WSR 18-07-048**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**SOCIAL AND HEALTH SERVICES**  
(Economic Services Administration)

[Filed March 14, 2018, 10:35 a.m., effective March 14, 2018, 10:35 a.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: The department is amending WAC 388-400-0060 Who is eligible for aged, blind or disabled (ABD) cash assistance?, 388-400-0070 Who is eligible for referral to the housing and essential needs (HEN) program?, 388-447-0001 What are the incapacity requirements for referral to the housing and essential needs (HEN) program?, 388-447-0040 Progressive evaluation process step II—How does the department determine the severity of mental impairments?, and WAC 388-447-0060 Progressive evaluation process step IV—How does the department determine the severity of multiple impairments?

These amendments are necessary to comply with changes mandated by ESHB 2667 (2018 legislative session). These amendments expand eligibility criteria for a referral to the HEN program and clarify the eligibility process to support this change.

Citation of Rules Affected by this Order: Amending WAC 388-400-0060, 388-400-0070, 388-447-0001, 388-447-0040, and 388-447-0060.

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

Other Authority: ESHB 2667.

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: ESHB 2667 mandates the department to adopt rules for immediate implementation in order to preserve the health, safety, and general welfare of the public. These amendments seek to ensure qualified individuals have greater access to acquire new and maintain existing housing supports.

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 5, Repealed 0.

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

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

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

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 5, Repealed 0.

Date Adopted: March 14, 2017 [2018].

Katherine I. Vasquez  
Rules Coordinator

AMENDATORY SECTION (Amending WSR 13-24-040, filed 11/26/13, effective 1/1/14)

**WAC 388-400-0060 Who is eligible for aged, blind or disabled (ABD) cash assistance?** (1) ~~(Effective November 1, 2014,)~~ The aged, blind, or disabled (ABD) cash assistance program provides a state-funded cash stipend and a referral to the housing and essential needs (HEN) program under WAC 388-400-0065 to eligible low-income individuals.

~~(2) You are eligible for ((aged, blind, or disabled (ABD) cash benefits)) ABD if you:~~

(a) Are:

(i) At least sixty-five years old;

(ii) Blind as defined by the Social Security Administration (SSA); or

(iii) Likely to be disabled as defined in WAC 388-449-0001 through 388-449-0100; and

(b) Are at least eighteen years old or, if under eighteen, a member of a married couple;

(c) Are in financial need according to ABD cash income and resource rules in chapters 388-450, 388-470 and 388-488 WAC. We determine who is in your assistance unit according to WAC 388-408-0060;

(d) Have countable income, as defined in WAC 388-450-0162, at or below the monthly income limits defined in WAC 388-478-0090;

(e) Meet the citizenship/alien status requirements under WAC 388-424-0015;

(f) Provide a Social Security number as required under WAC 388-476-0005;

(g) Reside in the state of Washington as required under WAC 388-468-0005;

(h) Sign an interim assistance reimbursement authorization agreeing to repay the monetary value of general assistance, disability lifeline, or aged blind or disabled benefits subsequently duplicated by supplemental security income benefits as described under WAC 388-449-0200, 388-449-0210 and 388-474-0020;

(i) Report changes of circumstances as required under WAC 388-418-0005; and

(j) Complete a mid-certification review and provide proof of any changes as required under WAC 388-418-0011.

~~((2))~~ (3) You aren't eligible for ~~((aged, blind, or disabled cash benefits))~~ ABD if you:

(a) Are eligible for temporary assistance for needy families (TANF) benefits;

(b) Are eligible for state family assistance (SFA) benefits;

(c) Refuse or fail to meet a TANF or SFA eligibility rule;

(d) Refuse or fail to pursue federal aid assistance, including but not limited to medicaid, without good cause;

(e) Refuse or fail to participate in drug or alcohol treatment as required in WAC 388-449-0220 without good cause;

(f) Refuse or fail to follow through with the SSI application as required in WAC 388-449-0200 without good cause;

(g) Refuse or fail to participate in vocational rehabilitation services as required in WAC 388-449-0225 without good cause;

(h) Are eligible for supplemental security income (SSI) benefits;

(i) Are an ineligible spouse of an SSI recipient; or

(j) Failed to follow a Social Security Administration (SSA) program rule or application requirement and SSA denied or terminated your benefits.

~~((3))~~ (4) If you reside in a public institution and meet all other requirements, your eligibility for ABD ~~((cash))~~ depends on the type of institution. A "public institution" is an institution that is supported by public funds, and a governmental unit either is responsible for it or exercises administrative control over it.

(a) You may be eligible for ABD ~~((cash))~~ if you are:

(i) A patient in a public medical institution; or

(ii) A patient in a public mental institution and:

(A) Sixty-five years of age or older; or

(B) Twenty years of age or younger.

~~((4))~~ (5) You aren't eligible for ABD ~~((cash))~~ when you are in the custody of or confined in a public institution such as a state penitentiary or county jail including placement:

(a) In a work release program; or

(b) Outside of the institution including home detention.

**AMENDATORY SECTION** (Amending WSR 13-24-044, filed 11/26/13, effective 1/1/14)

**WAC 388-400-0070 Who is eligible for referral to the housing and essential needs (HEN) program?** (1) You are eligible for referral to the housing and essential needs (HEN) program if you:

(a) Apply for cash assistance as detailed in WAC 388-406-0010;

(b) Complete an interview with the department;

(c) Are incapacitated as defined in WAC 388-447-0001 through 388-447-0100;

(d) Are at least eighteen years old or, if under eighteen, legally emancipated or a member of a married couple;

(e) Are in financial need according to income rules in chapter 388-450 WAC and resource requirements in RCW 74.04.005 and chapter 388-470 WAC. We determine who is in your assistance unit according to WAC 388-408-0070;

(f) Have countable income, as defined in WAC 388-450-0162, at or below the monthly income limits defined in WAC 388-478-0090;

(g) Meet the citizenship/alien status requirement for ABD cash assistance under WAC 388-424-0015;

(h) Meet the Social Security number verification requirement for cash assistance under WAC 388-476-0005;

(i) Meet the residency requirement for cash assistance under WAC 388-468-0005;

(j) Meet verification requirements for cash assistance detailed in WAC 388-490-0005.

(k) To remain eligible for HEN referral, you must also:

(i) Report changes in your circumstances as required for cash assistance under WAC 388-418-0007; and

(ii) Complete and return eligibility reviews we send you under WAC 388-434-0005.

(2) You are not eligible for referral to the HEN program if you:

(a) ~~((Are eligible for the aged, blind, or disabled (ABD) cash assistance program;~~

~~((b)))~~ Are eligible for the pregnant women assistance (PWA) program;

~~((c)))~~ (b) Are eligible for temporary assistance for needy families (TANF) program;

~~((d)))~~ (c) Refuse or fail to meet a TANF rule without good cause;

~~((e)))~~ (d) Refuse or fail to cooperate in obtaining federal aid assistance, including but not limited to medicaid, without good cause;

~~((f)))~~ (e) Refuse or fail to participate in drug or alcohol treatment as required in WAC 388-447-0120;

~~((g)))~~ (f) Are eligible for supplemental security income (SSI) benefits and receiving a state supplemental payment (SSP) under WAC 388-474-0012;

~~((h)))~~ (g) Are an ineligible spouse of an SSI recipient;

~~((i)))~~ (h) Refuse or fail to follow a Social Security Administration (SSA) program rule or application requirement without good cause and SSA denied or terminated your benefits;

~~((j)))~~ (i) Are terminated from ABD for refusing or failing to sign an interim assistance reimbursement authorization agreement under WAC 388-400-0060; ~~((k)))~~

~~((l)))~~ (j) Are fleeing to avoid prosecution of, or to avoid custody or confinement for conviction of, a felony, or an attempt to commit a felony as described in WAC 388-442-0010~~((-))~~; or

~~((m)))~~ (k) Are disqualified from receiving cash assistance due to a conviction related to unlawful practices in obtaining cash assistance as described in WAC 388-446-0005.

(3) If you reside in a public institution and meet all other requirements, your eligibility for referral to the HEN program depends on the type of institution. A "public institution" is an institution that is supported by public funds, and a governmental unit either is responsible for it or exercises administrative control over it.

(a) You may be eligible for referral to the HEN program if you are:

- (i) A patient in a public medical institution; or
- (ii) A patient in a public mental institution and are sixty-five years of age or older.

(b) You aren't eligible for referral to the HEN program if you are in the custody of or confined in a public institution such as a state penitentiary or county jail, including placement:

- (i) In a work release program; or
- (ii) Outside of the institution including home detention.

**AMENDATORY SECTION** (Amending WSR 13-24-044, filed 11/26/13, effective 1/1/14)

**WAC 388-447-0001 What are the incapacity requirements for referral to the housing and essential needs (HEN) program?** (1) For the purposes of this chapter, the following definitions apply:

(a) "We" and "us" mean the department of social and health services.

(b) "You" means the applicant or recipient.

(c) "Incapacitated" means you cannot be gainfully employed due to a physical or mental impairment that is expected to continue for at least ninety days from the date you apply.

(d) "Mental impairment" means a diagnosable mental disorder.

(e) "Physical impairment" means a diagnosable physical illness.

(2) You must be incapacitated in order to receive a HEN referral.

(3) We determine if you are incapacitated when:

- (a) You apply for a referral to the HEN program;
- (b) You become gainfully employed;
- (c) You obtain work skills by completing a training program;
- (d) We receive new information that indicates you may be able to work; or
- (e) Your incapacity authorization period ends.

(4) We deny your HEN referral if you are gainfully employed at the time of application for referral to the HEN program. "Gainfully employed" means you are performing, in a regular predictable manner, an activity usually done for pay or profit and earning more than the substantial gainful activity standard defined by the Social Security Administration (SSA).

(5) We do not consider you to be gainfully employed if you are working:

- (a) Under special conditions that go beyond providing reasonable accommodation; or
- (b) Occasionally or part-time because your impairment limits the hours you are able to work compared to unimpaired workers in the same job.

(6) We determine you are incapacitated if you are:

(a) Eligible for the aged, blind, or disabled (ABD) cash assistance program;

(b) Approved through the progressive evaluation process (PEP). The PEP is a sequence of eight steps described in WAC 388-447-0030 through 388-447-0100;

~~((b))~~ (c) Eligible for services from the Developmental Disabilities Administration (DDA);

~~((e))~~ (d) Diagnosed as having an intellectual disability based on a full scale score of seventy or lower on the Wechsler adult intelligence scale (WAIS);

~~((f))~~ (e) Eligible for long-term care services from Aging and Long-term Support Administration (AL TSA);

~~((e))~~ (f) Released from a medical institution where you received services from AL TSA within the past 90 days; or

~~((f))~~ (g) Released from inpatient treatment for a mental impairment within the past 90 days if:

(i) The release from inpatient treatment was not against medical advice; and

(ii) You were discharged into outpatient mental health treatment.

(7) If you have a physical or mental impairment~~((s))~~ or are impaired ~~((by alcohol or drug addiction))~~ due to a substance use disorder, and do not meet the other incapacity criteria in section 6 ~~((b))~~ (c) through ~~((f))~~ (g), we decide if you are incapacitated by applying the PEP. ~~((We do not consider symptoms related to substance use or a diagnosis of chemical dependency when determining incapacity when we have evidence substance use is material to your impairment(s).))~~

(8) ~~((We consider substance use material to your impairment(s) if you are disabled primarily because of drug or alcohol addiction.))~~

~~((9) If your impairment will persist at least sixty days after you stop using drugs or alcohol, we do not consider substance use to be material to your impairment(s).))~~

~~((10))~~ In determining incapacity, we consider only your ability to perform basic work-related activities. "Basic work-related activities" are activities that anyone would be required to perform in a work setting. They consist of: Sitting, standing, walking, lifting, carrying, handling; and other physical functions (including manipulative or postural functions such as pushing, pulling, reaching, handling, stooping, or crouching), seeing, hearing, communicating, remembering, understanding and following instructions, responding appropriately to supervisors and co-workers, tolerating the pressures of a work setting, maintaining appropriate behavior, using judgment, and adapting to changes in a routine work setting.

**AMENDATORY SECTION** (Amending WSR 13-24-044, filed 11/26/13, effective 1/1/14)

**WAC 388-447-0040 Progressive evaluation process step II—How does the department determine the severity of mental impairments?** If you are diagnosed with a mental impairment by a professional described in WAC 388-447-0005, we use information from the medical evidence provider to determine how the impairment limits work-related activities.



(1) We review the following psychological evidence to determine the severity of your mental impairment:

- (a) Psychosocial and treatment history records;
- (b) Clinical findings of specific abnormalities of behavior, mood, thought, orientation, or perception;
- (c) Results of psychological tests; and
- (d) Symptoms observed by the examining professional that show how your impairment affects your ability to perform basic work-related activities.

~~(2) (We do not consider diagnoses or symptoms of alcohol or substance use or dependency when the only impairment supported by objective medical evidence is drug or alcohol addiction.~~

~~(3))~~ If you are diagnosed with an intellectual disability, the diagnosis must be based on the Wechsler adult intelligence scale (WAIS). The following test results determine the severity rating:

Intelligence Quotient (IQ) Score	Severity Rating
85 or above	1
71 to 84	3
70 or lower	5

~~((4))~~ (3) If you are diagnosed with a mental impairment with physical causes, we assign a severity rating based on the most severe of the following four areas of impairment:

- (a) Short term memory impairment;
- (b) Perceptual or thinking disturbances;
- (c) Disorientation to time and place; or
- (d) Labile, shallow, or coarse affect.

~~((5))~~ (4) We base the severity of an impairment diagnosed as a mood, anxiety, thought, memory, personality, or cognitive disorder on a clinical assessment of the intensity and frequency of symptoms that:

- (a) Affect your ability to perform basic work-related activities; and
- (b) Are consistent with a diagnosis of a mental impairment as listed in the most recent version of the *Diagnostic and Statistical Manual of Mental Disorders* (DSM).

~~((6))~~ (5) We base the severity rating for a functional mental impairment on accumulated severity ratings for the symptoms in subsection (5) of this section as follows:

Condition	Severity Rating
(a) The clinical findings and objective evidence are consistent with a significant limitation on performing one or more basic work activities.	Moderate (3)
(b) You are diagnosed with a functional disorder with psychotic features;	Marked (4)
(c) You have had two or more hospitalizations for psychiatric reasons in the past two years;	

Condition	Severity Rating
(d) You have had more than six months of continuous psychiatric inpatient or residential treatment in the past two years;	
(e) The clinical findings and objective evidence are consistent with very significant limitations on ability to perform one or more basic work activities.	
(f) The clinical findings and objective evidence are consistent with an inability to perform one or more basic work activities.	Severe (5)

~~((7))~~ (6) If you are diagnosed with any combination of mental retardation, mental impairment with physical causes, or functional mental impairment, we assign a severity rating as follows:

Condition	Severity Rating
(a) Two or more disorders with moderate severity (3) ratings; or	Marked (4)
(b) One or more disorders rated moderate severity (3), and one rated marked severity (4).	
(c) Two or more disorders rated marked severity (4).	Severe (5)

~~((8))~~ (7) We deny incapacity when you haven't been diagnosed with a significant physical impairment and the overall severity of your mental impairment is one or two;

~~((9))~~ (8) We approve incapacity when your overall mental severity rating is severe (5).

AMENDATORY SECTION (Amending WSR 13-24-044, filed 11/26/13, effective 1/1/14)

**WAC 388-447-0060 Progressive evaluation process step IV—How does the department determine the severity of multiple impairments?**

(1) If you have more than one impairment, we determine the overall severity rating by deciding if your impairments have a combined effect on your ability to be gainfully employed.

(2) When you have two or more diagnosed impairments that limit work activities, we assign an overall severity rating as follows:

Condition	Severity Rating
(a) All impairments are mild and there is no cumulative effect on basic work activities.	Mild 2

Condition	Severity Rating
(b) All impairments are mild and there is a significant cumulative effect on one or more basic work activities.	Moderate 3
(c) Two or more impairments are of moderate severity and there is a very significant cumulative effect on basic work activities.	Marked 4
(d) Two or more impairments are of marked severity.	Severe 5

(3) We deny incapacity at this step when(~~(a)) the overall severity rating is two((; or (b) Substance use is material to your impairment under WAC 388-447-0001 and your overall severity rating is two when symptoms related to substance use or a diagnosis of chemical dependency are not considered)).~~)

(4) We approve incapacity at this step when the overall severity rating is five.

**WSR 18-07-051  
EMERGENCY RULES  
DEPARTMENT OF  
FISH AND WILDLIFE**

[Order 18-36—Filed March 14, 2018, 2:27 p.m., effective April 12, 2018]

Effective Date of Rule: April 12, 2018.

Purpose: Amends recreational fishing rules for Kline Pond kids fishing event.

Citation of Rules Affected by this Order: Repealing WAC 220-312-03000M; and amending WAC 220-312-030.

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

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

Reasons for this Finding: This emergency rule is necessary to ensure a safe and successful event. The fish will be planted one day prior to the event to better acclimate them before the event. Fish will be placed into netted areas along the shoreline of the pond. On the days of the event, preregistered kids will be allowed to fish within these netted areas. There is insufficient time to adopt permanent rules.

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

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

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

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

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

Date Adopted: March 14, 2018.

Nate Pamplin  
for Joe Stohr  
Acting Director

NEW SECTION

**WAC 220-312-03000M Exceptions to statewide rules —Kline Pond (Clark Co.)** Notwithstanding the provisions of WAC 220-312-030, effective 12:01 a.m. April 12 through April 14, 2018, it is unlawful to fish in those waters of Kline Pond, except as provided in this section:

(1) Open to fishing 8:00 a.m. to 4:00 p.m. April 13 and 14, 2018, in the netted area, to juvenile anglers participating in the Kline Kids Fishing Event.

(2) Daily limit of two fish.

REPEALER

The following section of the Washington Administrative Code is repealed effective April 15, 2018:

WAC 220-312-03000M Exceptions to statewide rules—  
Kline Pond (Clark Co.)

**WSR 18-07-052  
EMERGENCY RULES  
DEPARTMENT OF  
FISH AND WILDLIFE**

[Order 18-32—Filed March 14, 2018, 2:47 p.m., effective March 14, 2018, 2:47 p.m.]

Effective Date of Rule: Immediately upon filing.

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

Citation of Rules Affected by this Order: Repealing WAC 220-358-03000L; and amending WAC 220-358-030.

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

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

mission policies concerning Columbia River fisheries; 40 Stat. 515 (Columbia River Compact).

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

Reasons for this Finding: Sets the 2018 winter, spring, and summer select area commercial seasons. Impacts to non-local stocks are expected to be minimal and local Chinook stocks reared for the select area sites are available for harvest. The proposed fishing periods provide additional opportunity to access select area spring Chinook at high ex-vessel prices. The fishery is consistent with the *U.S. v. Oregon Management Agreement* and the associated biological opinion. Conforms Washington state rules with Oregon state rules. Regulation is consistent with compact action of March 13, 2018. There is insufficient time to promulgate permanent rules.

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

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

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

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

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

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

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

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

Date Adopted: March 14, 2018.

Joe Stohr  
Acting Director

## NEW SECTION

**WAC 220-358-03000M Columbia River seasons below Bonneville.** Notwithstanding the provisions of WAC 220-358-030, WAC 220-358-040, and WAC 220-358-050, it is unlawful for a person to take or possess salmon, sturgeon, and shad for commercial purposes from Columbia River Salmon Management and Catch Reporting Areas 1A, 1B, 1C, 1D, 1E and Select Areas, except during the times and conditions listed below:

### **(1) Tongue Point/South Channel**

#### **(a) Dates:**

Tongue Point and South Channel open:

Winter Season:

7 PM to 11 PM Thursday March 15 and 9 AM to 1 PM Monday March 19, 2018

Spring Season: 10 PM to 2 AM Thursday night April 19, 2018; and 3 PM to 7 PM Tuesday April 24, 2018; and 5 PM to 9 PM Thursday April 26, 2018; and 7 AM to 7 PM Monday and Thursday nights April 30, 2018 until further notice.

South Channel open:

Winter Season: 7 PM Monday March 26 to 7 AM Tuesday March 27

#### **(b) Area:**

The winter-spring-summer season Tongue Point Select Area is defined as those waters of the Columbia River bounded by a line from a point at the end of the southernmost (upstream) pier (Pier #1) at the Tongue Point Job Corps facility projecting in a straight line from through flashing red USCG light "6" to the shore of Mott Island, a line from a regulatory marker at the southeast end of Mott Island northeasterly to a regulatory marker on the northwest shore of Lois Island, and a line from a regulatory marker (located at 46.18270 degrees N, -123.74313 degrees W) on the Oregon shore 500 feet north of the railroad bridge crossing the John Day River projecting easterly to a regulatory marker on Lois Island.

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

#### **(c) Gear:** Gillnets.

Winter season: 7-inch minimum mesh size restriction

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

In Tongue Point, gear is restricted to a maximum net length of 250 fathoms and weight not to exceed two pounds on any one fathom.

In South Channel, gear is restricted to a maximum net length of 250 fathoms and no weight restriction on leadline. Use of additional weights and/or anchors attached directly to the leadline is allowed. Nets not specifically authorized for use in these areas may be onboard a vessel if properly stored. A properly stored net is defined as a net on a drum that is fully covered by a tarp (canvas or plastic) and bound with a minimum of ten revolutions of rope with a diameter of 3/8 (0.375) inches or greater.

**(d) Miscellaneous:**

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

24-hour quick reporting required for Washington buyers, pursuant to WAC 220-352-180.

**(2) Blind Slough/Knappa Slough Select Area**

**(a) Dates:** Winter Season: Open Monday, Wednesday, and Thursday nights 7 PM to 7 AM through March 23; and 6 PM to 10 PM Monday March 26; and 7 PM to 11 PM Thursday March 29; and 10 PM to 2 AM Monday night April 2.

Spring Season: Open 7 PM to 7 AM Tuesday and Thursday nights from April 19-27; and 7 PM to 7 AM Monday, Wednesday, and Thursday nights from April 30, through June 15, 2018, until further notice.

**(b) Area:** Winter season:

The Blind Slough Select Area is defined as those waters of Blind Slough and Gnat Creek from a north-south line formed by regulatory markers at the mouth of Blind Slough to a regulatory marker in Gnat Creek located approximately 0.5 miles southeasterly (upstream) of the Barendse Road Bridge.

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

Beginning April 30, the lower boundary of the Knappa Slough Select Area is extended downstream to a boundary line projecting southerly from a regulatory marker on the southwestern tip of Karlson Island through markers on the western tips of Minaker Island to a marker on the Oregon shore (fall boundary).

**(c) Gear:** Gillnets. Winter season: 7-inch minimum mesh. Spring Season:

Nets restricted to 100 fathoms in length with no weight restriction on leadline. Use of additional weights and/or anchors attached directly to the leadline is allowed. Nets not specifically authorized for use in these areas may be onboard a vessel if properly stored. A properly stored net is defined as a net on a drum that is fully covered by a tarp (canvas or plastic) and bound with a minimum of ten revolutions of rope with a diameter of 3/8 (0.375) inches or greater. .

**(d) Miscellaneous:** Permanent transportation rules in effect. In accordance with WACs 220-352-040 (1)(i) and 220-301-010 (9)(a-b), commercial fishers are expected, and fish dealers are required, to report landings for winter-summer fisheries in Knappa Slough and Blind Slough separately using appropriate zone codes. Fish dealers are requested to keep landings from these two sites separate to aid in sampling.

**(3) Allowable Possession:** Salmon and shad. Retention and sale of sturgeon is prohibited.

**(4) 24-hour quick reporting** is in effect for Washington buyers (WAC 220-352-180)). Permanent transportation rules in effect.

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

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

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

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

**REPEALER**

The following section of the Washington Administrative Code is repealed:

WAC 220-358-03000L Columbia River seasons below Bonneville. (18-17)

**WSR 18-07-071  
EMERGENCY RULES  
DEPARTMENT OF  
FISH AND WILDLIFE**

[Order 18-42—Filed March 16, 2018, 2:03 p.m., effective April 1, 2018]

Effective Date of Rule: April 1, 2018.

Purpose: Amends recreational fishing rules for Lincoln Park Pond.

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

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

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

Reasons for this Finding: This emergency rule is needed to close Lincoln Park Pond prior to the annual kid's fishing derby which is scheduled for Saturday, April 7, 2017 [2018].

Closing the pond for the week preceding the derby will allow cleaning and preparation of the area around the pond, while protecting the trout to be planted as they acclimate during the week prior to the derby which will provide angling opportunity. There is insufficient time to adopt permanent rules.

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

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

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

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

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

Date Adopted: March 16, 2018.

James B. Scott, Jr.  
for Joe Stohr  
Director

#### NEW SECTION

**WAC 220-312-02000W Freshwater exceptions to statewide rules—Coast.** Notwithstanding the provisions of WAC 220-312-020, effective April 1 through April 6, 2018, it is unlawful to fish in the waters of Lincoln Park Pond (Clallam County).

#### REPEALER

The following section of the Washington Administrative Code is repealed effective April 7, 2018:

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

**WSR 18-07-084**  
**EMERGENCY RULES**  
**SUPERINTENDENT OF**  
**PUBLIC INSTRUCTION**

[Filed March 20, 2018, 9:23 a.m., effective March 20, 2018, 9:23 a.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: In 2017, EHB 1595 authorized the office of superintendent of public instruction (OSPI), along with other Washington state agencies, to charge for the copying and transmission of certain public records, including records stored in an electronic format. Under EHB 1595, these fees must be identified in agency rules or following an opportunity for notice and comment. OSPI is temporarily adopting fees under EHB 1595 and is considering permanent adoption of these fees.

Citation of Rules Affected by this Order: Amending WAC 392-105-030.

Statutory Authority for Adoption: RCW 42.56.070, 42.56.120.

Other Authority: EHB 1595 (2017).

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: Immediate adoption of this rule is necessary for the preservation of the general welfare. OSPI currently imposes charges for the copying [of] public records. OSPI adopted an emergency rule (WSR 17-16-038) upon the effective date of HB [EHB] 1595 so that the agency would not lose its authority to continue charging costs for providing public records. OSPI refiled the emergency rule (WSR 17-23-143) as the agency continues the regular rule-making process in updating chapter 392-105 WAC. OSPI is actively undertaking the appropriate procedures to adopt the rule as a permanent rule and make additional changes to the agency's public records rules in chapter 392-105 WAC. Observing the time requirements of notice and opportunity to comment upon adoption of the permanent rule at this time would be contrary to the public interest.

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 the Request of a Non-governmental Entity: New 0, Amended 0, Repealed 0.

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

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

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

Date Adopted: March 20, 2018.

Chris P. S. Reykdal  
State Superintendent  
of Public Instruction

AMENDATORY SECTION (Amending WSR 93-07-039, filed 3/11/93, effective 4/11/93)

**WAC 392-105-030 Charges for copying.** (1) Pursuant to RCW 42.56.120 (2)(b), the office of superintendent of public instruction has determined that calculating the actual costs the agency charges for providing public records is unduly burdensome. The office of superintendent of public instruction does not use a single staffing or equipment resource when responding to public records requests. Rather, the agency uses assorted equipment located across the agency to photocopy, scan, upload, or transmit records for the public. The actual costs of using this equipment varies across the

agency's cost centers. The office of superintendent of public instruction does not have budget capacity to perform a cost study for these purposes.

(2) No fee shall be charged for the inspection of public records. The superintendent of public instruction (~~may impose a reasonable charge for providing copies of public records and for the use by any person of agency equipment to copy public records; such charges shall not exceed the amount necessary to reimburse SPI for its actual costs incident to such copying.~~) imposes the following charges for the costs of copying public records:

(a) Fifteen cents per page for photocopies of public records, printed copies of electronic public records when requested by the person requesting records, or for the use of agency equipment to photocopy public records;

(b) Ten cents per page for public records scanned into an electronic format or for the use of agency equipment to scan the records;

(c) Five cents per each four electronic files or attachment uploaded to email, cloud-based data storage service, or other means of electronic delivery;

(d) Ten cents per gigabyte for the transmission of public records in an electronic format or for the use of agency equipment to send the records electronically. The agency shall take reasonable steps to provide the records in the most efficient manner available to the agency in its normal operations; and

(e) The actual cost of any digital storage media or device provided by the agency, the actual cost of any container or envelope used to mail the copies to the requestor, and the actual postage or delivery charge.

(3) No person shall be released a record so copied until and unless the person requesting the copied public record has tendered payment for such copying to the appropriate official. All charges must be paid by money order, check, or cash in advance.