

WSR 19-17-002
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 19-185—Filed August 8, 2019, 8:26 a.m., effective August 10, 2019]

Effective Date of Rule: August 10, 2019.

Purpose: Amend recreational salmon fishing rules for Catch Record Card Area 2.

Citation of Rules Affected by this Order: Repealing WAC 220-313-07000P; and amending WAC 220-312-070 [220-313-070].

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

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

Reasons for this Finding: This rule is needed to increase the Chinook portion of the salmon daily limit in Marine Area 2. Sufficient quota remains available to allow for this fishery and is consistent with comanager agreed to fisheries. This emergency rule also covers other coastal areas for permanent rules agreed to at the North of Falcon proceedings until those permanent rules take effect (Marine Area 1) and inseason rule changes made to keep fisheries within agreement parameters (Marine Areas 3 and 4). These rules are also adopted at the recommendation of the Pacific Fisheries Management Council, and have been adopted for federal waters by the National Oceanic and Atmospheric Administration. 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Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at the Request of a Non-governmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 1, Amended 0, Repealed 1.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.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: August 7, 2019.

Kelly Susewind
Director

NEW SECTION

WAC 220-313-07000S Coastal salmon—Saltwater seasons and daily limits. Notwithstanding the provisions of WAC 220-313-070, effective August 10, 2019 until further notice, it is unlawful to violate the provisions below. Unless otherwise amended, all permanent rules remain in effect:

(1) Catch Record Card Area 1:

(a) Open immediately until further notice:

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

(ii) Release wild coho.

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

(2) Catch Record Card Area 2:

(a) Open immediately until further notice:

(i) Daily limit of 2 salmon.

(ii) Release wild coho.

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

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

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

(b) August 12 until further notice: Closed.

(4) Catch Record Card Area 3:

(a) Open immediately until further notice:

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

(ii) Release wild coho.

(5) Catch Record Card Area 4:

(a) Open immediately until further notice:

(i) Daily limit of 2 salmon.

(ii) Release Chinook, wild coho, and chum salmon.

REPEALER

The following section of the Washington Administrative Code is repealed effective August 10, 2019:

WAC 220-313-07000P Coastal salmon—Saltwater seasons and daily limits. (19-157)

WSR 19-17-003

EMERGENCY RULES

DEPARTMENT OF

FISH AND WILDLIFE

[Order 19-184—Filed August 8, 2019, 10:19 a.m., effective August 8, 2019, 10:19 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 220-359-02000K; 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 2018-2027 *United States v. Oregon* Management Agreement (February 26, 2018) (Doc. No. 2607-1). *Northwest Gillnetters Ass'n v. Sandison*, 95 Wn.2d 638, 628 P.2d 800 (1981); Washington fish and wildlife commission policies concerning Columbia River fisheries; 40 Stat. 515 (Columbia River Compact).

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

Reasons for this Finding: This emergency rule closes the treaty sturgeon fishery in the John Day Pool due to the harvest guideline being reached more quickly than expected. This rule is consistent with actions of the Columbia River Compact on June 12, June 27, July 25, July 30, and August 7, 2019. 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 2018-2027 *United States v. Oregon* Management Agreement (February 26, 2018) (Doc. No. 2607-1). Some salmon and steelhead stocks in the Columbia River are listed as threatened or endangered under the federal ESA. On February 23, 2018, the National Marine Fisheries Service issued a biological opinion under 16 U.S.C. § 1536 that allows for some incidental take of these species in the fisheries as described in the 2018-2027 *U.S. v. Oregon* Management Agreement.

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

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

Number of Sections Adopted at 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: August 8, 2019.

Kelly Susewind
Director

NEW SECTION

WAC 220-359-02000L 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, 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: Zone 6 tributary fisheries

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

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

(c) Allowable sale: Salmon (any species), steelhead, shad, carp, catfish, walleye, bass, and yellow perch. Sturgeon from 38 to 54 inches fork length in the Bonneville Pool may be kept for subsistence. Sales of fish are allowed after the open period concludes, as long as the fish were landed during the open period.

(2) Open Area: SMCRA 1H (John Day Pool only)

(a) Season: Immediately through 6 PM Thursday, August 8, 2019

(b) Gear: Setline Gear. Fishers are encouraged to use circle hooks and avoid J-hooks. It is unlawful to use setline gear with more than 100 hooks per set line, with hooks less than the minimum size of 9/0, with treble hooks, without visible buoys attached, and with buoys that do not specify operator and tribal.

(c) Allowable sale: Sturgeon from 43 to 54 inches fork length in the John Day Pool may be sold or kept for subsistence purposes. Sturgeon within the legal size limit and caught in the platform and hook and line fishery may only be sold if caught during the open period and open area of the set line fishery. Fish landed during the open periods are allowed to be sold after the period concludes.

(d) Standard sanctuaries in place for this gear type.

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

(a) Season: Immediately until further notice.

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

(c) Allowable sale: Salmon (any species), steelhead, shad, yellow perch, bass, walleye, catfish, and carp may be sold or retained for subsistence. Sturgeon of legal size may be sold if landed during the open area and period for the set-line fishery within that pool, otherwise sturgeon from 38 to 54 inches fork length in the Bonneville Pool and sturgeon from 43 to 54 inches fork length in The Dalles and John Day Pools may be kept for subsistence purposes.

(d) Standard river mouth and dam sanctuary closures remain in place for this gear. .

(4) Open Areas: Drano Lake and Klickitat River

(a) Season: Immediately until further notice, and only during days and times open under lawfully enacted Yakama Nation tribal subsistence fishery regulations for enrolled Yakama Nation members.

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

(c) Allowable sale: Salmon (any species), steelhead, shad, yellow perch, bass, walleye, catfish, and carp may be sold or retained for subsistence. Sturgeon may not be sold. Sturgeon from 38 to 54 inches fork length may be kept for subsistence.

(5) Open Areas: Areas downstream of Bonneville Dam defined in tribal/state MOU's/MOA's.

(a) Season: Immediately through 11:59 PM October 31.

(b) Gear: Hook and line and/or platform gear identified in tribal rules.

(c) Allowable sale: Salmon (any species), steelhead, shad, yellow perch, bass, walleye, catfish, and carp may be sold or retained for subsistence. Sturgeon may not be retained in fisheries downstream of Bonneville Dam. Sales of fish are not authorized on COE property downstream of Bonneville Dam. Fish must be transported elsewhere for sale.

(6) 24-hour quick reporting is required for Washington wholesale dealers for all areas as provided in WAC 220-352-315, 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).

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

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

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 220-359-02000K Columbia River salmon seasons above Bonneville Dam. (19-174)

WSR 19-17-005 EMERGENCY RULES DEPARTMENT OF FISH AND WILDLIFE

[Order 19-186—Filed August 8, 2019, 3:38 p.m., effective August 12, 2019]

Effective Date of Rule: August 12, 2019.

Purpose: Amend recreational shrimp rules for Puget Sound.

Citation of Rules Affected by this Order: Repealing WAC 220-330-07000T; and amending WAC 220-330-070.

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

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

Reasons for this Finding: This regulation is needed to ensure an orderly fishery, manage the fishery within court-ordered sharing requirements, and ensure conservation. Harvestable amounts of spot shrimp are available in Marine Areas 4 (east of the Bonilla-Tatoosh line), 5, and 6. This regulation closes the recreational shrimp fishery in Marine Area 7 West to achieve the harvest target. In addition, harvestable amounts of nonspot shrimp are available in several marine areas, and the depth restrictions and area closures are in effect to protect spot shrimp consistent with signed 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 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: August 8, 2019.

Kelly Susewind
Director

NEW SECTION

WAC 220-330-07000U Shrimp—Areas and seasons. Notwithstanding the provisions of WAC 220-330-070, effective August 12, 2019 until further notice, it is unlawful to fish for or possess shrimp taken for personal use in all waters of Marine Areas 4 (east of the Bonilla-Tatoosh line), 5, 6, 7, 8-1, 8-2, 9, 10, 11, 12, 13 and the Discovery Bay Shrimp District, except as provided for in this section:

(1) Marine Areas 4 (east of the Bonilla-Tatoosh line), 5, and 6 (excluding the Discovery Bay Shrimp District): Open daily to the harvest of all shrimp species until further notice.

(2) Marine Area 7 East:

Open until further notice to the harvest of all species except spot shrimp in waters equal to or less than 200 feet. All spot shrimp caught must be immediately returned to the water unharmed. It is unlawful to set or pull shrimp gear in waters greater than 200 feet deep.

(3) Marine Areas 8-1, 8-2, 9, and 11: Open until further notice to the harvest of all species except spot shrimp in waters equal to or less than 150 feet. All spot shrimp caught must be immediately returned to the water unharmed. It is unlawful to set or pull shrimp gear in waters greater than 150 feet deep.

(4) Marine Area 13: Open until further notice to the harvest of all species except spot shrimp in waters equal to or less than 250 feet. All spot shrimp caught must be immediately returned to the water unharmed. It is unlawful to set or pull shrimp gear in waters greater than 250 feet deep.

REPEALER

The following section of the Washington Administrative Code is repealed effective August 12, 2019:

WAC 220-330-07000T Shrimp—Areas and seasons. (19-156)

WSR 19-17-011
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 19-187—Filed August 9, 2019, 12:09 p.m., effective August 10, 2019]

Effective Date of Rule: August 10, 2019.

Purpose: Amends Puget Sound commercial shrimp rules.

Citation of Rules Affected by this Order: Repealing WAC 220-340-52000E; and amending WAC 220-340-520.

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 2019 state/tribal shrimp harvest management plans for the Strait of Juan de Fuca and Puget Sound require adoption of harvest seasons contained in this emergency rule. This emergency rule (1) continues the pot fishery season for spot shrimp; (2) implements a spot shrimp weekly limit for all areas; (3) implements a minimum mesh size restriction for spot shrimp gear; (4) implements two hundred pound weekly limits in Shrimp Management Areas (SMA) 1A and 1C for spot shrimp harvest; (5) closes a portion of MF/SF Catch Reporting Area 20B within SMA 1B

to harvest of shrimp with trawl gear; and (6) maintains the previous regulations and restrictions for the nonspot trawl and pot fisheries. 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: August 9, 2019.

Kelly Susewind
Director

NEW SECTION

WAC 220-340-52000F Puget Sound shrimp pot and trawl fishery—Season. Notwithstanding the provisions of WAC 220-340-520, effective August 10, 2019 until further notice, it is unlawful to fish for shrimp for commercial purposes in Puget Sound except as provided for in this section:

(1) Shrimp pot gear:

(a) All waters of Shrimp Management Areas 1A, 1B, 1C, 2E, 2W, and 3 are open to the harvest of all shrimp species, effective immediately, until further notice, except as provided for in this section:

(i) All waters of the Discovery Bay Shrimp District are closed.

(ii) All waters of Shrimp Management Area 1A are open to harvest of spot shrimp and closed to the harvest of all other species of shrimp.

(iii) All waters of Shrimp Management Area 1B are closed to the harvest of all species of shrimp.

(iv) All waters of Shrimp Management Area 1C are open to harvest of spot shrimp and closed to the harvest of all other species of shrimp.

(v) All waters of Shrimp Management Area 2E are closed to the harvest of spot shrimp and open to the harvest of non-spot shrimps.

(vi) All waters of Shrimp Management Area 2W are closed to the harvest of spot shrimp and open to the harvest of non-spot shrimps.

(vii) All waters of 23A East in Shrimp Management Area 3 are closed to the harvest of spot shrimp and open to the harvest of non-spot shrimps.

(b) Effective immediately, until further notice, it is unlawful for the combined total harvest of non-spot shrimp by a fisher or the fisher's alternate operator to exceed 600 pounds *per weekly management period* from Shrimp Management Area 2W and 2E combined.

(c) Effective immediately, until further notice, the shrimp weekly management period is Wednesday through Tuesday.

(d) Effective immediately, until further notice, it is unlawful for the combined total harvest of spot shrimp by a fisher or the fisher's alternate operator to exceed 600 pounds per weekly management period. No more than 200 pounds of the 600 pound weekly limit can come from SMA 1A or SMA 1C.

(e) Effective immediately, until further notice, the remaining spot shrimp weekly management periods are (1) July 31 to August 6; (2) August 7 to August 13; (3) August 14 to August 20; (4) August 21 to August 27; (5) August 28 to September 3; and (6) September 4 to September 10.

(f) Only pots with a minimum mesh size of 1 inch may be pulled on calendar days when fishing for or retaining spot shrimp. Mesh size of 1 inch is defined as a mesh opening that a 7/8-inch square peg will pass through, excluding the entrance tunnels, except for flexible (web) mesh pots, where the mesh must be a minimum of 1 3/4-inch stretch measure. Stretch measure is defined as the distance between the inside of one knot to the outside of the opposite vertical knot of one mesh, when the mesh is stretched vertically. There is no size restriction for spot shrimp.

(g) It is unlawful to pull shellfish pots in more than one catch area per day.

(2) Shrimp trawl gear:

(a) Shrimp Management Area (SMA) 3 (outside of the Discovery Bay Shrimp District, Sequim Bay and Catch Area 23D) is open, effective immediately, until further notice. Sequim Bay includes those waters of Catch Area 25A south of a line projected west from Travis Spit on the Miller Peninsula.

(b) That portion of Catch Area 21A within SMA 1B is open.

(c) That portion of Catch Area 22A within SMA 1B is open.

(d) That portion of Catch Area 20B within SMA 1B is closed, effective August 10, 2019, until further notice.

(e) Catch Area 20A is open.

(3) All shrimp taken under this section must be sold to licensed Washington wholesale fish dealers.

REPEALER

The following section of the Washington Administrative Code is repealed August 10, 2019:

WAC 220-340-52000E Puget Sound shrimp pot and beam trawl fishery—Season. (19-177)

WSR 19-17-017
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 19-189—Filed August 12, 2019, 2:09 p.m., effective August 13, 2019]

Effective Date of Rule: August 13, 2019.

Purpose: Amend Puget Sound commercial sea cucumber rules.

Citation of Rules Affected by this Order: Repealing WAC 220-340-73000L; and amending WAC 220-340-730.

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 close the Puget Sound commercial sea cucumber fishery in Sea Cucumber Management District 2-2 (23B, 25A, 25C, 25D, 25E). The harvest quota is expected to be reached by the end of the day August 12, 2019. This closure is necessary to prevent overharvest. Harvestable surpluses of sea cucumbers remain in districts specified to remain open. 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: August 12, 2019.

Kelly Susewind
Director

NEW SECTION

WAC 220-340-73000M Commercial sea cucumber fishery. Notwithstanding the provisions of WAC 220-340-730, effective August 13, 2019, it is unlawful to take or possess sea cucumbers taken for commercial purposes except as provided for in this section:

(1) Sea cucumber harvest using shellfish diver gear is allowed in the following Marine Fish-Shellfish Catch Reporting Areas of Sea Cucumber District 1, Monday through Sunday of each week: 20A, 20B, 21A, 21B, 22A, and 22B.

(2) Sea cucumber harvest using shellfish diver gear is allowed in the following Marine Fish-Shellfish Catch Reporting Areas of Sea Cucumber District 2, Monday through Sunday of each week: 29, 23A, 23D, and 23C east of a line projected true north from the shoreline at 123 degrees 48.3 minutes west longitude, and west of a line projected true north from the shoreline at 123 degrees 52.7 minutes west longitude.

(3) Sea cucumber harvest using shellfish diver gear is allowed in the Marine Fish-Shellfish Catch Reporting Areas of Sea Cucumber District 5, Monday through Sunday of each week: 28B, 28C, 28D, and 28A except for all waters of Hale Passage and Wollochet Bay within the following lines: west of a line projected true south from the shoreline near Point Fosdick at 122 degrees 35 minutes west longitude to 47 degrees 14 minutes north latitude, and thence projected true west to the shoreline of Fox Island, and east of a line projected true south from the shoreline near Green Point at 122 degrees 41 minutes west longitude to 47 degrees 16.5 minutes north latitude, and thence projected true east to the shoreline of Fox Island.

(4) The maximum cumulative landing of sea cucumbers for each weekly fishery opening period is 1,800 pounds per valid designated sea cucumber harvest license.

REPEALER

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

WAC 220-340-73000L Commercial sea cucumber fishery. (19-178)

**WSR 19-17-020
EMERGENCY RULES
DEPARTMENT OF
CHILDREN, YOUTH, AND FAMILIES**

[Filed August 12, 2019, 6:26 p.m., effective August 12, 2019, 6:26 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: Updating rules in early childhood education and assistance program (ECEAP), chapter 110-425 WAC, to include 2019 legislative session changes of 2SSB 5437 and SSB 5089 that modify requirements related to enrollment of children in the early childhood education and assistance program.

Citation of Rules Affected by this Order: New WAC 110-425-0085; and amending WAC 110-425-0030 and 110-425-0080.

Statutory Authority for Adoption: RCW 43.216.065, 43.216.525, 43.216.512.

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: Necessary for the preservation of the **general welfare** of the public, and observing the time requirements would be contrary to the public interest.

Reasons:

- Without emergency rules, ECEAP is unable to meet the intent of 2SSB 5437 and SSB 5089 for the 2019-20 school year. The earliest date that permanent rules could take effect is after enrollment requirements and timelines have passed. The legislature intended the department of

children, youth, and families (DCYF) to implement, as soon as possible, these changes that remove barriers to high quality early learning opportunities that ECEAP provides and are proven to increase kindergarten readiness, family stability, and healthy outcomes for children and their families. Without emergency rules:

- Contractors will have to turn away children and families transitioning from early support for infants and toddlers or early head start who will not have any services available to them for one full year.
- Contractors will have to turn away children and families in the allowable category who have the opportunity to participate in ECEAP.
- Contractors may not have enough funding to serve eligible, entitled children if they do not also have the funding for these allowed children.
- There is high potential for family and community disruption due to DCYF needing to pull open slots away from contractors.
- Washington state would be paying for unfilled seats when there are children available to be served.

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 1, Amended 2, 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: August 12, 2019.

Brenda Villarreal
Rules Coordinator

Reviser's note: The material contained in this filing exceeded the page-count limitations of WAC 1-21-040 for appearance in this issue of the Register. It will appear in the 19-18 issue of the Register.

**WSR 19-17-023
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE**

[Order 19-190—Filed August 13, 2019, 10:59 a.m., effective August 14, 2019]

Effective Date of Rule: August 14, 2019.

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 220-358-03000D; and amending WAC 220-358-030.

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

Other Authority: *United States v. Oregon*, Civil No. 68-513-KI (D. Or.), Order Adopting 2018-2027 *United States v. Oregon* Management Agreement (February 26, 2018) (Doc. No. 2607-1). *Northwest Gillnetters Ass'n v. Sandison*, 95 Wn.2d 638, 628 P.2d 800 (1981); Washington fish and wildlife commission policies concerning Columbia River fisheries; 40 Stat. 515 (Columbia River Compact).

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

Reasons for this Finding: Add mainstem commercial fisheries to the previously set 2019 fall select area commercial seasons. Impacts to nonlocal stocks are expected to be minimal and local Chinook stocks reared for the select area sites are available for harvest. The fishery is consistent with the *U.S. v. Oregon* Management Agreement and the associated biological opinion. Conforms Washington state rules with Oregon state rules. Regulation is consistent with the compact action of July 30 and August 12, 2019. There is insufficient time to promulgate permanent rules.

Washington and Oregon jointly regulate Columbia River fisheries under the congressionally ratified Columbia River Compact. Four Indian tribes have treaty fishing rights in the Columbia River. The treaties preempt state regulations that fail to allow the tribes an opportunity to take a fair share of the available fish, and the states must manage other fisheries accordingly. *Sohappy v. Smith*, 302 F. Supp. 899 (D. Or. 1969). A 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 2018-2027 *United States v. Oregon* Management Agreement (February 26, 2018) (Doc. No. 2607-1). Some salmon and steelhead stocks in the Columbia River are listed as threatened or endangered under the federal ESA. On February 23, 2018, the National Marine Fisheries Service issued a biological opinion under 16 U.S.C. § 1536 that allows for some incidental take of these species in the fisheries as described in the 2018-2027 *U.S. v. Oregon* Management Agreement.

Some Columbia River Basin salmon and steelhead stocks are listed as threatened or endangered under the federal ESA. On February 23, 2018, the National Marine Fisheries Service issued a biological opinion under 16 U.S.C. § 1536 that allows for some incidental take of these species in treaty and nontreaty Columbia River fisheries governed by the 2018-2027 *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: August 12, 2019.

Kelly Susewind
Director

NEW SECTION

WAC 220-358-03000E 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:** Monday and Wednesday nights August 26-29, 2019.

Monday, Tuesday, Wednesday, and Thursday nights September 2 - October 25

Open Hours: 7 PM - 7 AM through September 6 and 4 PM - 10 AM thereafter

(b) **Area:** The Tongue Point Select Area is defined as waters of the Columbia River bounded by a line from a regulatory marker on the eastern shore of Tongue Point (midway between the red USCG light "2" at the tip of Tongue Point and the northern-most pier (#8) at the Tongue Point Job Corps facility) to the flashing green USCG light "3" on the rock jetty at the northwest tip 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 on the Oregon shore approximately 300 yards northwest of the railroad bridge crossing the John Day River projecting easterly to a regulatory marker on the southwest shore of Lois Island.

(i) If the marker on the eastern shore of Tongue Point is not in place, the downstream boundary is defined by a line projecting from a point (46°12'31.1"N latitude 123°45'34.0"W longitude) on the eastern shore of Tongue Point to the flashing green USCG light "3" on the rock jetty at the northwest tip of Mott Island.

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

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

(c) **Gear:** Gillnets with a 6-inch maximum mesh size restriction. Maximum net length of 250 fathoms.

In the Tongue Point Select Area, the lead line weight may not exceed two pounds per any one fathom; however, unstored gillnets legal for use in South Channel may be onboard.

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

(d) **Allowable Sales:** Salmon (except Chum), white sturgeon, and shad. A maximum of three white sturgeon with a fork length of 44-50 inches may be possessed or sold by each participating vessel during each calendar week (Sunday through Saturday).

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

(2) Blind Slough/Knappa Slough Select Area

(a) **Dates:** Monday and Wednesday nights August 26-29, 2019

Monday, Tuesday, Wednesday, and Thursday nights September 2 - October 25

Open hours: 7 PM - 7 AM through September 6 and 6 PM - 10 AM thereafter.

(b) Area:

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

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

The waters of Knappa Slough within a 100-foot radius of the railroad bridge crossing Big Creek are closed.

(c) Gear:

Gillnets with a maximum mesh size restriction of 9 3/4-inch through September 6, and a 6-inch maximum thereafter. Maximum net length is 100 fathoms. There is no lead line weight limit and attachment of additional weight and anchors directly to the lead line is permitted.

(d) **Allowable sales:** Salmon (except Chum), white sturgeon, and shad. A maximum of three white sturgeon with a fork length of 44-50 inches may be possessed or sold by each participating vessel during each calendar week (Sunday through Saturday).

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

(3) Deep River Select Area

(a) **Dates:** Monday and Wednesday nights during August 26-29, 2019.

Monday, Tuesday, Wednesday, Thursday, and Friday nights September 2-21

Monday, Tuesday, Wednesday, and Thursday nights September 23-27

Monday and Wednesday nights during September 30 - October 3

Monday, Tuesday, Wednesday, and Thursday nights October 7-18

Monday, Tuesday, Wednesday, Thursday, and Friday nights Oct. 21 - Nov. 16

Monday, Tuesday, Wednesday, and Thursday nights November 18-further notice.

Open hours: 7 PM - 7 AM August 26-29, 6 PM - 9 AM September 2 to November 2, and 5 PM - 8 AM thereafter

(b) **Area:** The Deep River fishing area includes all waters from West Deep River Road Bridge at the town of Deep River downstream to the mouth defined by a line from USCG navigation marker #16 southwest to a marker on the Washington shore.

(c) **Gear:** Gillnets. Maximum mesh size restriction is 9 3/4-inch through September 7, and a 6-inch maximum thereafter. Maximum net length is 100 fathoms. No weight restriction on leadline. Use of additional weights or anchors attached directly to the leadline is allowed. No nets can be tied off to stationary structures. Nets may not fully cross the navigation channel. It is unlawful to operate in any river, stream, or channel any gillnet gear longer than three-fourths the width of the river, stream, or channel. "River, stream, or channel width" is defined as bank-to-bank, where the water meets the banks, regardless of the time of tide or the water level.

(d) **Allowable sales:** Salmon (except Chum), white sturgeon, and shad. A maximum of three white sturgeon with a fork length of 44-50 inches may be possessed or sold by each participating vessel during each calendar week (Sunday through Saturday).

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

(4) The white sturgeon possession and sales limit includes all open Select Area fisheries.

(5) Multi-Net Rule: Nets not specifically authorized for use in these areas may be onboard a vessel if properly stored (WAC 220-358-010(2)) in Select Area Fisheries.

(6) Columbia River Mainstem, Zones 4-5

(a) Dates:

9 PM Wednesday August 14 to 6 AM Thursday August 15, 2019

9 PM Monday August 19 to 6 AM Tuesday August 20, 2019

9 PM Wednesday August 21 to 6 AM Thursday August 22, 2019

9 PM Monday August 26 to 6 AM Tuesday August 27, 2019

9 PM Wednesday August 28 to 6 AM Thursday August 29, 2019

(b) Area: The deadline at the lower end of Zone 4 is defined as a straight line projected from the Warrior Rock Lighthouse on the Oregon shore of the Columbia River easterly through the green navigation Buoy #1 and continuing to the Washington shore of the Columbia River. Washougal and Sandy River sanctuaries are in effect.

(c) Gear: Gillnets with a 9-inch minimum mesh size. Multi-net rule **NOT** in effect, which means nets not authorized for this fishery may not be onboard.

(d) Allowable Sales: Salmon (except chum), shad, and white sturgeon. A maximum of seven white sturgeon with a fork length of 44-50 inches may be possessed or sold by each participating vessel during each calendar week (Sunday through Saturday). This white sturgeon possession and sales limit applies to mainstem fisheries only.

(e) Miscellaneous: 24-hour quick reporting required for Washington buyers, pursuant to WAC 220-352-315. Oregon buyers are required to electronically submit fish receiving tickets pursuant to OAR 635-006-0210. Electronic fish tickets must be submitted within 24 hours of closure of the fishing period, or within 24 hours of landing for fishing periods lasting longer than 24 hours.

(7) 24-hour quick reporting is in effect for Washington buyers WAC 220-352-315. Permanent transportation rules in effect.

(8) 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.

REPEALER

The following section of the Washington Administrative Code is repealed August 14, 2019:

WAC 220-358-03000D Columbia River seasons below
Bonneville. (19-176)

**WSR 19-17-024
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE**

[Order 19-191—Filed August 13, 2019, 11:09 a.m., effective August 13, 2019, 11:09 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 220-359-02000L; 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 2018-2027 *United States v. Oregon* Management Agreement (February 26, 2018) (Doc. No. 2607-1). *Northwest Gillnetters Ass'n v. Sandison*, 95 Wn.2d 638, 628 P.2d 800 (1981); Washington fish and wildlife commission policies concerning Columbia River fisheries; 40 Stat. 515 (Columbia River Compact).

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

Reasons for this Finding: This emergency rule opens treaty set and drift gillnet fisheries throughout SMCRA 1F, 1G, and 1H (Zone 6) due to the availability of fish for harvest. This rule is consistent with actions of the Columbia River Compact on June 12, June 27, July 25, July 30, August 7, and August 12, 2019. 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 2018-2027 *United States v. Oregon* Management Agreement (February 26, 2018) (Doc. No. 2607-1). Some salmon and steelhead stocks in the Columbia River are listed as threatened or endangered under the federal ESA. On February 23, 2018, the National Marine Fisheries Service issued a biological opinion under 16 U.S.C. § 1536 that allows for some incidental take of these species in the fisheries as described in the 2018-2027 *U.S. v. Oregon* Management Agreement.

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

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

Number of Sections Adopted at 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: August 13, 2019.

Kelly Susewind
Director

NEW SECTION

WAC 220-359-02000M 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, 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: Zone 6 tributary fisheries

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

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

(c) Allowable sale: Salmon (any species), steelhead, shad, carp, catfish, walleye, bass, and yellow perch. Sturgeon from 38 to 54 inches fork length in the Bonneville Pool may be kept for subsistence. Sales of fish are allowed after the open period concludes, as long as the fish were landed during the open period.

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

(a) Season: Immediately until further notice.

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

(c) Allowable sale: Salmon (any species), steelhead, shad, yellow perch, bass, walleye, catfish, and carp may be sold or retained for subsistence. Sturgeon of legal size may be sold if landed during the open area and period for the set-line fishery within that pool, otherwise sturgeon from 38 to 54 inches fork length in the Bonneville Pool and sturgeon from 43 to 54 inches fork length in The Dalles and John Day Pools may be kept for subsistence purposes.

(d) Standard river mouth and dam sanctuary closures remain in place for this gear.

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

(a) Season:

6 AM Monday August 26 to 6 PM Wednesday August 28

6 AM Monday September 2 to 6 PM Thursday September 5

(b) Gear: Set and Drift gillnets with an 8-inch 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. Fish landed during the open periods are allowed to be sold after the period concludes. Sturgeon may not be sold, but sturgeon from 38 to 54 inches fork length in the Bonneville Pool and sturgeon from 43 to 54 inches fork length in The Dalles and John Day pools may be kept for subsistence purposes.

(d) Standard river mouth and dam sanctuary closures remain in place for this gear, including the Spring Creek Hatchery sanctuary.

(4) Open Areas: Drano Lake and Klickitat River

(a) Season: Immediately until further notice, and only during days and times open under lawfully enacted Yakama Nation tribal subsistence fishery regulations for enrolled Yakama Nation members.

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

(c) Allowable sale: Salmon (any species), steelhead, shad, yellow perch, bass, walleye, catfish, and carp may be sold or retained for subsistence. Sturgeon may not be sold. Sturgeon from 38 to 54 inches fork length may be kept for subsistence.

(5) Open Areas: Areas downstream of Bonneville Dam defined in tribal/state MOU's/MOA's.

(a) Season: Immediately through 11:59 PM October 31.

(b) Gear: Hook and line and/or platform gear identified in tribal rules.

(c) Allowable sale: Salmon (any species), steelhead, shad, yellow perch, bass, walleye, catfish, and carp may be sold or retained for subsistence. Sturgeon may not be retained in fisheries downstream of Bonneville Dam. Sales of fish are not authorized on COE property downstream of Bonneville Dam. Fish must be transported elsewhere for sale.

(6) 24-hour quick reporting is required for Washington wholesale dealers for all areas as provided in WAC 220-352-315, 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).

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

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 220-359-02000L Columbia River salmon seasons above Bonneville Dam. (19-184)

WSR 19-17-035
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 19-192—Filed August 14, 2019, 4:23 p.m., effective August 14, 2019, 4:23 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: Amends Puget Sound commercial shrimp rules.

Citation of Rules Affected by this Order: Repealing WAC 220-340-52000F; and amending WAC 220-340-520.

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 2019 state/tribal shrimp harvest management plans for the Strait of Juan de Fuca and Puget Sound require adoption of harvest seasons contained in this emergency rule. This emergency rule (1) continues the pot fishery season for spot shrimp; (2) continues a spot shrimp weekly limit for all areas; (3) implements a minimum mesh size restriction for spot shrimp gear; (4) opens Shrimp Management Area (SMA) 1B for spot shrimp harvest; (5) opens SMA 5 for a commercial spot shrimp harvest targeting four thousand six hundred twenty-five pounds from August 18 through August 31; (6) implements three hundred pound weekly limits in SMAs 1A, 1B, 1C, 3 (23A West), and 3 (23A Central, 23B) for spot shrimp harvest; (7) implements a two hundred pound weekly limit in SMA 3 (25A) for spot shrimp harvest; (8) maintains the closure of a portion of MF/SF Catch Reporting Area 20B within SMA 1B to harvest of shrimp with trawl gear; and (9) maintains other regulations and restrictions for the nonspot trawl and pot fisheries. 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: August 14, 2019.

Ron Warren
for Kelly Susewind
Director

NEW SECTION

WAC 220-340-52000G Puget Sound shrimp pot and trawl fishery—Season. Notwithstanding the provisions of WAC 220-340-520, effective immediately, until further notice, it is unlawful to fish for shrimp for commercial purposes in Puget Sound except as provided for in this section:

(1) Shrimp pot gear:

(a) All waters of Shrimp Management Areas (SMA) 1A, 1B, 1C, 2E, 2W, 3, and 5 are open to the harvest of all shrimp species, effective immediately, until further notice, except as provided for in this section:

(i) All waters of the Discovery Bay Shrimp District are closed.

(ii) All waters of Shrimp Management Area 1A are open to harvest of spot shrimp and closed to the harvest of all other species of shrimp

(iii) All waters of Shrimp Management Area 1B are open to harvest of spot shrimp and closed to the harvest of all other species of shrimp

(iv) All waters of Shrimp Management Area 1C are open to harvest of spot shrimp and closed to the harvest of all other species of shrimp.

(v) All waters of Shrimp Management Area 2E are closed to the harvest of spot shrimp and open to the harvest of non-spot shrimps.

(vi) All waters of Shrimp Management Area 2W are closed to the harvest of spot shrimp and open to the harvest of non-spot shrimps.

(vii) All waters of 23A East in Shrimp Management Area 3 are closed to the harvest of spot shrimp and open to the harvest of non-spot shrimps.

(viii) All waters of Shrimp Management Area 5 are open to the harvest of spot shrimp from 12:01 am on August 18, 2019 through 11:59 pm August 31, 2019. SMA 5 is closed to the harvest of non-spot shrimp.

(b) Effective immediately, until further notice, it is unlawful for the combined total harvest of non-spot shrimp by a fisher or the fisher's alternate operator to exceed 600 pounds *per weekly management period* from Shrimp Management Area 2W and 2E combined.

(c) Effective immediately, until further notice, the shrimp weekly management period is Wednesday through Tuesday.

(d) Effective immediately, until further notice, it is unlawful for the combined total harvest of spot shrimp by a fisher or the fisher's alternate operator to exceed 600 pounds per weekly management period. No more than 300 pounds of

the 600 pound weekly limit can come from SMA 1A (20B and 22A West), SMA 1B (20B, 22A East, 21A), SMA 1C (20A, 21A, 21B and 22B), SMA 3 (23A West), or SMA 3 (23A Central, 23B). No more than 200 pounds of the 600 pound weekly limit can come from SMA 3 (25A).

(e) Effective immediately, until further notice, the remaining spot shrimp weekly management periods are (1) August 14 to August 20; (2) August 21 to August 27; (3) August 28 to September 3; and (4) September 4 to September 10.

(f) Only pots with a minimum mesh size of 1 inch may be pulled on calendar days when fishing for or retaining spot shrimp. Mesh size of 1 inch is defined as a mesh opening that a 7/8-inch square peg will pass through, excluding the entrance tunnels, except for flexible (web) mesh pots, where the mesh must be a minimum of 1 3/4-inch stretch measure. Stretch measure is defined as the distance between the inside of one knot to the outside of the opposite vertical knot of one mesh, when the mesh is stretched vertically. There is no size restriction for spot shrimp.

(g) It is unlawful to pull shellfish pots in more than one catch area per day.

(2) Shrimp trawl gear:

(a) Shrimp Management Area (SMA) 3 (outside of the Discovery Bay Shrimp District, Sequim Bay and Catch Area 23D) is open, effective immediately, until further notice. Sequim Bay includes those waters of Catch Area 25A south of a line projected west from Travis Spit on the Miller Peninsula.

(b) That portion of Catch Area 21A within SMA 1B is open.

(c) That portion of Catch Area 22A within SMA 1B is open.

(d) That portion of Catch Area 20B within SMA 1B is closed.

(e) Catch Area 20A is open.

(3) All shrimp taken under this section must be sold to licensed Washington wholesale fish dealers.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 220-340-52000F Puget Sound shrimp pot and beam trawl fishery—Season. (19-187)

WSR 19-17-036
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 19-193—Filed August 14, 2019, 4:28 p.m., effective August 17, 2019]

Effective Date of Rule: August 17, 2019.

Purpose: Amends recreational salmon fishing rules in Puget Sound.

Citation of Rules Affected by this Order: Amending WAC 220-313-060.

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

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

Reasons for this Finding: This rule is necessary to require the release of pink salmon in Catch Record Card Area 8-1. These measures are necessary to protect returning Skagit River pink salmon, allowing more fish to reach spawning grounds. Early season abundance indicators confirm that the return is below harvestable levels, escapement goals are not expected to be met. 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: August 14, 2019.

Ron Warren
for Kelly Susewind
Director

NEW SECTION

WAC 220-313-06000I Puget Sound salmon—Saltwater seasons and daily limits. Notwithstanding the provisions of WAC 220-313-060, effective August 17 through October 31, 2019: Catch Record Card Area 8-1: Release all pink salmon.

WSR 19-17-044

EMERGENCY RULES

HEALTH CARE AUTHORITY

[Filed August 15, 2019, 1:29 p.m., effective August 15, 2019, 1:29 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: The agency is creating new sections and amending others within chapter 182-547 WAC, Hearing aids, to restore coverage of hearing instruments for adults.

Citation of Rules Affected by this Order: New WAC 182-547-0750, 182-547-0850, 182-547-0950 and 182-547-1050; and amending WAC 182-547-0100, 182-547-0200, and 182-547-1100.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160; E2SSB 5179, 65th legislature, 2018 regular session.

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: This emergency is necessary to continue the current emergency filed under WSR 19-10-010, which is set to expire on August 17, 2019, while the agency completes the permanent rule-making process. This emergency implements the requirements of E2SSB 5179, 65th legislature, 2018 regular session, effective January 1, 2019. Since the last emergency filing, the agency has completed the internal review, external review, and plans to file the CR-102 Proposed rule making in the near future.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 4, Amended 3, 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 4, Amended 3, Repealed 0.

Date Adopted: August 15, 2019.

Wendy Barcus
Rules Coordinator

AMENDATORY SECTION (Amending WSR 13-20-013, filed 9/20/13, effective 10/21/13)

WAC 182-547-0100 (~~(Hearing aids)~~)General(~~—~~For clients twenty years of age and younger). Unless otherwise defined in WAC 182-547-0200, the terms within this chapter are intended to correspond with the terms in chapter 18.35 RCW.

(1) The medicaid agency covers the hearing aids listed in this chapter, according to agency rules and subject to the limitations and requirements in this chapter. See also WAC 182-531-0375 audiology services.

(2) The agency pays for hearing aids when:

(a) Covered;

(b) Within the scope of an eligible client's medical care program;

(c) Medically necessary as defined under WAC 182-500-0070;

(d) Authorized, as required within this chapter, chapters 182-501 and 182-502 WAC, and the agency's published billing instructions and provider notices;

(e) Billed according to this chapter, chapters 182-501 and 182-502 WAC, and the agency's published billing instructions and provider notices; and

(f) The client (~~(is twenty years of age or younger and~~) completes a hearing evaluation, including an audiogram and/or developmentally appropriate diagnostic physiologic test results performed and/or interpreted by a hearing health care professional.

(3) The agency requires prior authorization for covered hearing aids when the clinical criteria set forth in this chapter are not met. The agency evaluates these requests on a case-by-case basis to determine whether they are medically necessary, according to the process found in WAC 182-501-0165.

AMENDATORY SECTION (Amending WSR 13-20-013, filed 9/20/13, effective 10/21/13)

WAC 182-547-0200 (~~(Hearing aids)~~)Definitions. The following definitions and those found in chapter 182-500 WAC apply to this chapter.

"Bone-anchored hearing aid (BAHA)" or "bone conduction hearing device" means a type of hearing aid that transmits sound vibrations through bones in the head. The inner ear translates the vibrations the same way a normal ear translates sound waves. These devices can be surgically implanted or worn on headbands.

"Cochlear implant" means an electronic hearing device designed to produce useful hearing sensations to a person with severe to profound deafness by electrically stimulating nerves inside the inner ear. A cochlear implant has a surgically implanted receiver and electrode system in the inner ear and an external microphone, sound processor, and transmitter system. The external system may be worn entirely behind the ear or its parts may be worn in a pocket, belt pouch, or harness.

"Digital hearing aids"(~~(—Hearing aids)~~) means wearable sound-amplifying devices that use a digital circuit to analyze and process sound.

"Hearing aids"(~~(—)~~) means wearable sound-amplifying devices that are intended to compensate for hearing loss. Hearing aids are described by where they are worn in the ear as in-the-ear (ITE), behind-the-ear (BTE), etc. Hearing aids can also be described by how they process the amplified signal. This would include analog conventional, analog programmable, digital conventional, and digital programmable.

"Hearing health care professional"(~~(—)~~) means an audiologist or hearing aid fitter/dispenser licensed under chapter 18.35 RCW, or an otorhinolaryngologist or otologist licensed under chapter 18.71 RCW.

"Maximum allowable fee"(~~(—)~~) means the maximum dollar amount that the agency will pay a provider for specific services, supplies and equipment.

"Prior authorization"(~~(—)~~) means a form of authorization used by the provider to obtain approval for a specific hearing aid and service(s). The approval is based on medical necessity and must be received before the service(s) are provided to clients as a precondition for payment.

AMENDATORY SECTION (Amending WSR 13-20-013, filed 9/20/13, effective 10/21/13)

WAC 182-547-1100 (~~(Hearing aids)~~)Reimbursement—General. (1) The medicaid agency's payment for purchased hearing aids includes all of the following:

- (a) ~~((A prefitting))~~ The audiometric evaluation;
- (b) An impression for an ear mold;
- (c) The ear mold; ~~(and~~
- (e) A minimum of three post-fitting consultations.))
- (d) The dispensing fee;
- (e) A conformity evaluation, if done;
- (f) Three batteries; and
- (g) Up to three follow-up visits for the fitting, orientation, and checking of the hearing aid.

(2) The agency denies payment for hearing aids and/or services when claims are submitted without the prior authorization number, when required, or the appropriate diagnosis or procedure code(s).

(3) The agency does not pay for hearing aid charges paid by insurance or other payer source.

(4) To receive payment, the provider must keep documentation in the client's medical file to support the medical necessity for the specific make and model of the hearing aid ordered for the client. This documentation must include the record of the audiology testing providing evidence that the client's hearing loss meets the eligibility criteria for a hearing aid.

NEW SECTION

WAC 182-547-0750 Eligibility—Clients age twenty-one and older. (1) Clients age twenty-one and older who are receiving services under one of the following medical assistance programs are eligible for hearing aids and related services:

- (a) A categorically needy (CN) medicaid program;
- (b) The medical care services (MCS) program; or
- (c) An alternative benefit plan (ABP) program.

(2) Clients enrolled in a medicaid agency-contracted managed care organization (MCO) must arrange for hearing aid and related services directly through the client's MCO. Additionally, clients enrolled in an agency-contracted MCO must obtain replacement parts for cochlear implants and bone-anchored hearing aids (Baha®), including batteries, through their MCO.

NEW SECTION

WAC 182-547-0850 Coverage—Clients age twenty-one and older. (1) **Nonrefurbished, monaural hearing aids.** The medicaid agency covers one new nonrefurbished monaural hearing aid, which includes the ear mold, every five years for clients age twenty-one and older.

(a) The client must have an average decibel loss of forty-five or greater in the better ear, based on a pure-tone audiometric evaluation by a licensed audiologist or a licensed hearing aid specialist at 1000, 2000, 3000, and 4000 hertz (Hz) with effective masking as indicated.

(b) The hearing aid must meet the client's specific hearing needs and carry a manufacturer's warranty for a minimum of one year.

(2) **Binaural hearing aids.** The agency covers binaural hearing aids with prior authorization (PA).

(3) **Replacement.** The agency covers the following replacements if the need for replacement is not due to the cli-

ent's carelessness, negligence, recklessness, deliberate intent, or misuse under WAC 182-501-0050:

(a) One replacement hearing aid, including the ear mold, in a five-year period when the client's hearing aid(s) is lost or broken and cannot be repaired, and the warranty is expired; and

(b) One replacement ear mold, per year, when the client's existing ear mold is damaged or no longer fits the client's ear.

(4) **Repair of hearing aids.** The agency covers two repairs, per hearing aid, per year, when the cost of the repair is less than fifty percent of the cost of a new hearing aid. To receive payment, all of the following must be met:

(a) All warranties are expired; and

(b) The repair is under warranty for a minimum of ninety days.

(5) **Repair or replacement of external parts of cochlear devices and bone-anchored hearing aids (BAHAs).** The agency covers the following with PA.

(a) Repair or replacement of external parts of cochlear devices. If the client has bilateral cochlear devices, both devices are eligible for repair and replacement of external parts; and

(b) Repair or replacement of external parts of BAHAs, whether implanted or worn with a headband. If the client has bilateral BAHAs, both devices are eligible for repair and replacement of external parts.

(6) **Rental of hearing aids.** The agency covers rental hearing aid(s) for up to two months while the client's own hearing aid(s) is being repaired. For rental hearing aid(s) only, the agency pays separately for an ear mold(s).

(7) **Second hearing aid.** The agency pays for a second hearing aid when the client meets the following expedited prior authorization clinical criteria or PA for a limitation extension is requested:

(a) The client tries one hearing aid for a six-month period, but the hearing aid does not adequately meet the client's hearing need; and

(b) One of the following reasons is documented in the client's record:

(i) Inability to hear has caused difficulty with job performance;

(ii) Inability to hear has caused difficulty in functioning in the school environment; or

(iii) Client is legally blind.

NEW SECTION

WAC 182-547-0950 Noncovered services—Clients age twenty-one and older. (1) The medicaid agency does not cover the following items for clients age twenty-one and older:

(a) Batteries;

(b) Tinnitus maskers;

(c) Frequency modulation (FM) systems, including the computer-aided hearing devices for FM systems; and

(d) Nonprescription hearing aids or similar devices including, but not limited to:

(i) Personal sound amplification products (PSAPs);

(ii) Hearables; and

(iii) Pocket talkers or similar devices.

(2) The agency evaluates requests for noncovered hearing aids and related services according to WAC 182-501-0160.

NEW SECTION

WAC 182-547-1050 Prior authorization—Clients age twenty-one and older. (1) For covered services that require prior authorization (PA), the provider must properly request authorization in accordance with the medicaid agency's rules and billing instructions.

(2) The agency evaluates requests for covered services that are subject to limitations or other restrictions and considers such services beyond those limitations or restrictions as described in WAC 182-501-0169.

(3) When the agency authorizes hearing aids or hearing aid-related services, the PA indicates only that the specific service is medically necessary; it is not a guarantee of payment. The client must be eligible for covered services at the time those services are provided.

(4) To receive payment, providers must order and disperse hearing aids and hearing aid-related services within the authorized time frame.

WSR 19-17-046

EMERGENCY RULES

DEPARTMENT OF

FISH AND WILDLIFE

[Order 19-195—Filed August 15, 2019, 3:45 p.m., effective August 16, 2019]

Effective Date of Rule: August 16, 2019.

Purpose: Amend coastal salmon troll rules.

Citation of Rules Affected by this Order: Repealing WAC 220-354-30000T; and amending WAC 220-354-300.

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

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

Reasons for this Finding: This rule is necessary to raise the weekly landing and possession limit per vessel for Chinook. A harvestable quota of salmon is available for the troll fleet. This regulation meets conservation limits and provides fishing opportunity and its corresponding economic benefit. These rules are adopted at the recommendation of the Pacific Fisheries Management Council, in accordance with pre-season fishing plans, and have been adopted for federal waters by the National Oceanic and Atmospheric Administration. 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: August 15, 2019.

James B. Scott, Jr.
for Kelly Susewind
Director

NEW SECTION

WAC 220-354-30000U Coastal salmon troll seasons—Commercial. Notwithstanding the provisions of WAC 220-354-300, effective August 16, 2019 until further notice, it is unlawful to fish for salmon with troll gear or to land salmon taken with troll gear into a Washington port except during the seasons provided below:

(1) Salmon Management and Catch Reporting Areas 1, 2, 3, and that portion of Area 4 west of 125°05'00" W longitude and south of 48°23'00" N latitude open:

Immediately through September 30, 2019.

(2) Landing and possession limit of 160 Chinook and 150 coho per vessel per landing week, defined as Thursday through Wednesday.

(3) The Cape Flattery and Columbia River Control Zones are closed. The Mandatory Yelloweye Rockfish Conservation Area is closed. The Grays Harbor Control Zone is closed beginning August 12.

(4) All retained coho must be marked with a healed adipose fin clip.

(5) No chum retention north of Cape Alava, WA in August and September.

(6) Minimum size for Chinook salmon is 28 inches in length. Minimum size for coho salmon is 16 inches in length. No minimum size for pink, sockeye or chum salmon.

(7) Lawful troll gear is restricted to all legal troll gear with single point, single shank barbless hooks.

(8) Fishers must land and deliver their catch within 24 hours of any closure of a fishery provided for in this section. Vessels in possession of salmon north of the Queets River may not cross the Queets River line without first notifying WDFW by phone at (360) 249-1215 or by email at Wendy.Beeghley@dfw.wa.gov with Area fished, total Chinook, coho, and halibut catch aboard, and destination. Vessels in possession of salmon south of the Queets River may not cross the Queets River line without first notifying WDFW by phone at (360) 249-1215 or by email at Wendy.Beeghley@dfw.wa.gov with Area fished, total Chinook, coho, and halibut catch aboard, and destination. Vessels fishing, or in possession of salmon north of Leadbetter Point must land and deliver all species of fish in a Washington port and must possess a Washington troll license. For delivery to Washington ports south of Leadbetter Point, vessels must

notify WDFW at (360) 249-1215 or by email at Wendy.Beehley@dfw.wa.gov prior to crossing the Leadbetter Point line with area fished, total Chinook, coho, and halibut catch aboard, and destination with approximate time of delivery. Vessels may not land fish east of the Sekiu River or east of the Megler-Astoria bridge. During any single trip, only one side of the Leadbetter Point line may be fished. Vessels fishing or in possession of salmon south of Leadbetter Point must land and deliver their fish within the area and south of Leadbetter Point.

(9) The Cape Flattery Control Zone is defined as the area from Cape Flattery (48°23'00" N latitude) to the northern boundary of the U.S. Exclusive Economic Zone, and the area from Cape Flattery south to Cape Alava, 48°10'00" N latitude, and east of 125°05'00" W longitude.

(10) The Columbia Control Zone is defined as an area at the Columbia River mouth, bounded on the west by a line running northeast/southwest between the red lighted Buoy #4 (46°13'35" N. Lat., 124°06'50" W. long.) and the green lighted Buoy #7 (46°15'09" N. lat., 124°06'16" W. long.); on the east, by the Buoy #10 line which bears north/south at 357° true from the south jetty at 46°14'00" N. lat., 124°03'07" W. long, to its intersection with the north jetty; on the north, by a line running northeast/southwest between the green lighted Buoy #7 to the tip of the north jetty (46°15'48" N. lat., 124°05'20" W. long.), and then along the north jetty to the point of intersection with the Buoy #10 line; and, on the south, by a line running northeast/southwest between the red lighted Buoy #4 and tip of the south jetty (46°14'03" N. lat., 124°04'05" W. long.), and then along the south jetty to the point of intersection with the Buoy #10 line.

(11) The Mandatory Yelloweye Rockfish Conservation Area is defined as the area in Washington Marine Catch Area 3 from 48°00.00' N latitude; 125°14.00' W longitude to 48°02.00' N latitude; 125°14.00' W longitude to 48°02.00' N latitude; 125°16.50' W longitude to 48°00.00' N latitude; 125°16.50' W longitude and connecting back to 48°00.00' N latitude; 125°14.00' W longitude.

(12) It is unlawful to fish in Salmon Management and Catch Reporting Areas 1, 2, 3 or 4 with fish on board taken south of Cape Falcon, Oregon and all fish taken from Salmon Management and Catch Reporting Areas 1, 2, 3, and 4 must be landed before fishing south of Cape Falcon, Oregon.

(13) It is unlawful for wholesale dealers and trollers retailing their fish to fail to report their landing by 10:00 a.m. the day following landing. Ticket information can be telephoned in by calling 1-866-791-1279, faxing the information to (360) 902-2949, or e-mailing to trollfishtickets@dfw.wa.gov. Report the dealer name, the dealer license number, the purchasing location, the date of purchase, the fish ticket numbers, the gear used, the catch area, the species, the total number for each species, and the total weight for each species, including halibut.

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

REPEALER

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

WAC 220-354-30000T Coastal salmon troll seasons—
Commercial. (19-158)

WSR 19-17-047 EMERGENCY RULES DEPARTMENT OF FISH AND WILDLIFE

[Order 19-194—Filed August 15, 2019, 4:11 p.m., effective August 17, 2019]

Effective Date of Rule: August 17, 2019.

Purpose: Amends recreational Puget Sound salmon rules.

Citation of Rules Affected by this Order: Amending WAC 220-313-060.

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 Marine Area 10 to the retention of Chinook salmon. Preliminary estimates indicate that anglers have harvested over ninety-five percent of the summer quota through August 15, 2019. 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: August 15, 2019.

James B. Scott, Jr.
for Kelly Susewind
Director

NEW SECTION

WAC 220-313-06000J Puget Sound salmon—Salt-water seasons and daily limits. Notwithstanding the provisions of WAC 220-313-060, effective August 17 through

November 15, 2019: Marine Area 10: Release all Chinook salmon.

Chris P. S. Reykdal
State Superintendent
of Public Instruction

REPEALER

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

WAC 220-313-06000J Puget Sound salmon—Saltwater seasons and daily limits.

WSR 19-17-059
EMERGENCY RULES
SUPERINTENDENT OF
PUBLIC INSTRUCTION

[Filed August 19, 2019, 3:59 p.m., effective August 19, 2019, 3:59 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: The purpose of this emergency rule is to provide funding parameters to school districts that choose to be early adopters of the early screening of dyslexia (E2SSB 6162) starting in school year 2019-20.

Citation of Rules Affected by this Order: New WAC 392-162-120.

Statutory Authority for Adoption: RCW 28A.300.730.

Other Authority: RCW 28A.165.035.

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 to provide direction and guidance to school districts before the start of the 2019-2020 school year regarding the allowable expenditure of learning assistance program funds for early screening of dyslexia. The rule is necessary to ensure that school districts maintain support for other academic initiatives for the betterment of all students in the district. The office of superintendent of public instruction intends to file a preproposal statement of inquiry to initiate rule making adopting this amendment as a permanent rule.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 1, 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: August 19, 2019.

NEW SECTION

WAC 392-162-120 Early implementation of K-2 literacy screening requirements—Use of funds. (1) **Definitions.** As used in this section the terms:

(a) "Literacy interventions" means services and activities under RCW 28A.165.035(1) and 28A.320.260(3) to support students in kindergarten through second grade who show indications of below grade level literacy development or indications of, or areas of weakness associated with, dyslexia.

(b) "Literacy screening tool" means one of the literacy screening tools identified and approved by the dyslexia advisory council and the office of superintendent of public instruction in accordance with RCW 28A.300.700.

(2) **Early implementation.** A school district that chooses to implement the screening and intervention requirements under RCW 28A.320.260 prior to the beginning of the 2021-22 school year may use the district's learning assistance program base allocation under WAC 392-122-605 (2)(a) to fund:

(a) The purchase of a literacy screening tool as defined under this section; and

(b) Literacy interventions as defined under this section.

(3) **Reporting.** A school district that chooses to expend learning assistance program funds as permitted under this section must submit data according to specifications established by the office of the superintendent of public instruction in accordance with RCW 28A.165.100.