PROPOSED BY: __Galloway__
INTRODUCTION DATE: _____

ORDINANCE NO. _____

AMENDING WHATCOM COUNTY CODE SECTION 11.20.025 (FLOTATION DEVICES ON THE SOUTH FORK OF THE NOOKSACK RIVER) TO BETTER PROTECT ESA-LISTED CHINOOK SALMON

WHEREAS, in 1999, Puget Sound Chinook were listed as "threatened" under the federal Endangered Species Act, and recovery of both North Fork/Middle Fork Early Chinook and South Fork Nooksack Early Chinook is considered essential for species delisting; and

WHEREAS, the early-timed spring Chinook salmon in the South Fork of the Nooksack River are particularly imperiled, and their continued existence is at risk if no action is taken to increase protection; and

WHEREAS, the South Fork Nooksack is identified as an impaired waterbody on Ecology's 303(d) list for high stream temperature, which is a known stressor for salmon; and

WHEREAS, in summer 2021, over 2,400 returning adult Chinook died on the South Fork spawning grounds before they could spawn due to a disease outbreak exacerbated by low river flows, high temperatures, and a lack of adequate habitat; and

WHEREAS, this mortality event prompted Lummi Nation to declare an emergency and both Lummi Nation and the Nooksack Indian Tribe to petition Governor Inslee to establish a crisis team to implement solutions to avoid future mortality events and to invest $25.5 million to fund critically important actions in the South Fork; and

WHEREAS, the South Fork Nooksack River has been a top priority for habitat restoration, with over $10 million invested from the Salmon Recovery Funding Board, and significant river restoration projects completed by Lummi Nation and the Nooksack Indian Tribe over the years;

WHEREAS, upcoming restoration projects spearheaded by Lummi Nation and the Nooksack Indian Tribe have received over $9.4 million from federal funds and $13.4 million from state funds

WHEREAS, the number of natural-origin spawners remain critically low and far below the recovery goal of at least 9,900; and

WHEREAS, the impacts of hundreds of people recreating daily in the South Fork during summer months when water temperatures are high further threaten the survival of South Fork Nooksack Early Chinook and the millions of dollars invested in habitat restoration; and

WHEREAS, log jams are a critically important feature of healthy salmon habitats and constructing log jams is a key habitat restoration strategy, yet such extensive instream restoration may have safety implications for recreational river users especially during in-water construction;

WHEREAS, extremely low numbers of both Nooksack early Chinook populations have reduced harvest opportunity for treaty and non-treaty recreational and commercial fishers when fisheries are reduced or eliminated to protect these weak populations;

WHEREAS, the 1855 Treaty of Point Elliot reserved and the 1974 Boldt Decision affirmed tribal fishing rights to Lummi Nation and the Nooksack Indian Tribe; and

WHEREAS, Whatcom County shall honor and uphold tribal treaty rights by taking every possible measure to protect salmon;

WHEREAS, the Whatcom County Council also recognizes the importance and multiple benefits of accessible and responsible outdoor recreation, and supports increased education and outreach to ensure both a thriving environment and local economy; and

WHEREAS, the Whatcom County Council acknowledges and appreciates the letter dated January 19, 2023 from the Whatcom County Parks and Recreation Commission regarding recreation on the South Fork of the Nooksack River, and will continue to work with them on these important issues; and

WHEREAS, in 2022 the Whatcom County SEPA Official reviewed a similar proposed ordinance and issued a Determination of Non-Significance on July 25, 2022 (SEP2022-00068); and

WHEREAS, the intent of this ordinance addresses the same general scope and scale of the proposed action considered under SEP2022-00068; and

WHEREAS, the Whatcom County SEPA Official notified Council staff on June 14, 2023, that no further SEPA review is required for this ordinance and the current proposal may rely on the previous 2022 SEPA determination.

NOW, THEREFORE, BE IT ORDAINED by the Whatcom County Council that:

SECTION 1. Whatcom County Code 11.20.025 is hereby amended as presented in Exhibit A and shall become effective immediately after the County Executive signs this ordinance.

SECTION 2. Whatcom County shall seek relevant data from Washington Department of Fish Wildlife, Lummi Nation or the Nooksack Indian Tribe, and report data to the County Council annually.

SECTION 3. This ordinance shall be effective until the number of South Fork Nooksack Early chinook natural-origin spawners reach 50% of the recovery goal of 9,900.

ADOPTED this _____ day of _____, 2023.

	WHATCOM COUNTY COUNCIL
ATTEST:	WHATCOM COUNTY, WASHINGTON
_____	_____
Dana Brown-Davis, Clerk of the Council	Barry Buchanan, Council Chair
WHATCOM COUNTY EXECUTIVE	
APPROVED AS TO FORM:	WHATCOM COUNTY, WASHINGTON
_____	_____
Civil Deputy Prosecutor	Satpal Sidhu, County Executive
	( ) Approved ( ) Denied
	Date Signed: _____

EXHIBIT A
WCC 11.20.025 WATER SKIING, SWIMMING AND SKIN DIVING REGULATIONS

11.20.025 Flotation devices on the South Fork of the Nooksack River.
No person shall operate a paddleboard, innertube, inflatable flotation device, foam flotation device, limb-propelled flotation device, ~~or~~ rubber raft, canoe, or kayak, unless the use is in the exercise of federal treaty rights, ~~intended for limb use~~ on the ~~section of the~~ South Fork of the Nooksack River ~~between Edfro Creek and the Acme Bridge~~ between the dates of June 1st and October 31st. The provisions of this section shall not apply to:

A. Devices engaged principally in commercial operations constituting an act of interstate or foreign commerce or bona fide scientific research;

B. Use for emergency purposes when there is reasonable belief that such use is necessary to protect or preserve persons, animals or property;

C. Use by law enforcement agencies to enforce the above provisions;

D. Department of Natural Resources-designated and Whatcom County-designated swimming/boating areas on the South Fork of the Nooksack River. (Ord. 2020-002 (Exh. A); Ord. 2019-046 (Exh. A); Ord. 2005-089 Exh. A).