



# Whatcom County

COUNTY COURTHOUSE  
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## Agenda Bill Master Report

File Number: AB2023-416

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<b>File ID:</b>	AB2023-416	<b>Version:</b>	1	<b>Status:</b>	Adopted as Amended
<b>File Created:</b>	06/14/2023	<b>Entered by:</b>			
<b>Department:</b>	Council Office	<b>File Type:</b>	Ordinance Requiring a Public Hearing		
<b>Assigned to:</b>	Council	<b>Final Action:</b>	07/11/2023		
<b>Agenda Date:</b>	07/11/2023	<b>Enactment #:</b>	ORD 2023-040		

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Primary Contact Email: DBrown@co.whatcom.wa.us

### TITLE FOR AGENDA ITEM:

Ordinance 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

### SUMMARY STATEMENT OR LEGAL NOTICE LANGUAGE:

This ordinance amends Whatcom County Code 11.20.025, Flotation Devices on the South Fork of the Nooksack River, to better protect ESA-listed Chinook salmon by restricting the use of specific flotation devices on the South Fork between the dates of June 1 and October 31, except under certain circumstances. The provisions of this ordinance will be in effect until the number of the South Fork Nooksack Early Chinook natural-origin spawners reach 50% of the recovery goal of 9,900.

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### HISTORY OF LEGISLATIVE FILE

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Date:	Acting Body:	Action:	Sent To:
06/20/2023	Council	SUBSTITUTE INTRODUCED FOR PUBLIC HEARING	Council
		Aye: 4 Buchanan, Donovan, Frazey, and Galloway	
		Nay: 3 Byrd, Elenbaas, and Kershner	
07/11/2023	Council	ADOPTED AS AMENDED	
		Aye: 4 Buchanan, Donovan, Frazey, and Galloway	
		Nay: 2 Byrd, and Elenbaas	
		Absent: 1 Kershner	

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**Attachments:** Substitute Ordinance Introduced 6.20.2023, South Fork Presentation, 2022 SEPA Determination, Joint Letter from Fish and Wildlife, Lummi Nation and Nooksack Indian Tribe, Letter from WRIA 1 Environmental Caucus, Presentation for 7.11.2023, Public Hearing Sign In Sheet

**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;



1       **WHEREAS**, the 1855 Treaty of Point Elliot reserved and the 1974 Boldt Decision  
2 affirmed tribal fishing rights to Lummi Nation and the Nooksack Indian Tribe; and  
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4       **WHEREAS**, Whatcom County shall honor and uphold tribal treaty rights by taking  
5 every possible measure to protect salmon;  
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7       **WHEREAS**, the Whatcom County Council also recognizes the importance and  
8 multiple benefits of accessible and responsible outdoor recreation, and supports increased  
9 education and outreach to ensure both a thriving environment and local economy; and  
10

11       **WHEREAS**, the Whatcom County Council acknowledges and appreciates the letter  
12 dated January 19, 2023, from the Whatcom County Parks and Recreation Commission  
13 regarding recreation on the South Fork of the Nooksack River, and will continue to work  
14 with them on these important issues; and  
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16       **WHEREAS**, in 2022 the Whatcom County SEPA Official reviewed a similar proposed  
17 ordinance and issued a Determination of Non-Significance on July 25, 2022 (SEP2022-  
18 00068); and  
19

20       **WHEREAS**, the intent of this ordinance addresses the same general scope and scale  
21 of the proposed action considered under SEP2022-00068; and  
22

23       **WHEREAS**, the Whatcom County SEPA Official notified Council staff on June 14,  
24 2023, that no further SEPA review is required for this ordinance and the current proposal  
25 may rely on the previous 2022 SEPA determination.  
26

27       **NOW, THEREFORE, BE IT ORDAINED** by the Whatcom County Council that:  
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29       **SECTION 1.** Whatcom County Code 11.20.025 is hereby amended as presented in Exhibit  
30 A.  
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32       **SECTION 2.** Whatcom County shall seek relevant data from Washington Department of Fish  
33 Wildlife, Lummi Nation or the Nooksack Indian Tribe, and report data to the County Council  
34 annually.  
35

36       **SECTION 3.** This ordinance shall be effective until Whatcom County receives data pursuant  
37 to Section 2 above that shows the number of South Fork Nooksack Early chinook natural-  
38 origin spawners has reached 50% of the recovery goal of 9,900.  
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40       **ADOPTED** this 11th day of July, 2023.  
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42       ATTEST:  
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45       Dana Brown-Davis, Clerk of the Council  
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47       WHATCOM COUNTY EXECUTIVE  
48       APPROVED AS TO FORM:  
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50       /s/Karen Frakes approved via email on 7/10/2023/MR  
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52       Karen Frakes, Civil Deputy Prosecutor  
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54       WHATCOM COUNTY COUNCIL  
55       WHATCOM COUNTY, WASHINGTON  
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57         
58       Barry Buchanan, Council Chair

59       WHATCOM COUNTY, WASHINGTON  
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61         
62       Satpal Sidhu, County Executive

63       (☒) Approved       (    ☐ ) Denied

64       Date Signed: 7/14/23

**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).