**TITLE OF DOCUMENT:**
Ordinance amending Title 11 Boating and Swimming - Flotation Devices on Hoosac

**ATTACHMENTS:**

<table>
<thead>
<tr>
<th>SEP-4 review required?</th>
<th>Yes</th>
<th>No</th>
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<td>SEP-4 review completed?</td>
<td>Yes</td>
<td>No</td>
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**SUMMARY STATEMENT OR LEGAL NOTICE LANGUAGE:** (If this item is an ordinance or requires a public hearing, you must provide the language for use in the required public notice. Be specific and cite RCW or WCC as appropriate. Be clear in explaining the intent of the action.)

Ordinance amending Whatcom County Code, Title 11, Boating and Swimming to limit the use of limb-propelled flotation devices on the South Fork of the Hoosac River.

**COMMITTEE ACTION:**

- **9/13/2005:** Discussed in Natural Resources Committee and amended. Held to 9/27.
- **9/27/05:** Minor amendments made to ordinance. Ready for Public Hearing 10/11/05
- **11/22/05:** Amended & approved in committee amendment: In finding 11, delete “quiet”

**COUNCIL ACTION:**

- **8/9/2005:** Introduced
- **10/11/05:** Adoption to be scheduled at a later date
- **11/22/2005:** Held - Hearing to be held on December 6th
- **12/6/2005:** Adopted 7-0, Ord. #2005-089

**Related County Contract #:**

**Related File Numbers:**

**Ordinance or Resolution Number:**
Ord. #2005-089

*Please Note: Once adopted and signed, ordinances and resolutions are available for viewing and printing on the County’s website at: www.co.whatcom.wa.us/council.*
AMENDING WHATCOM COUNTY CODE TITLE 11, BOATING AND SWIMMING, TO LIMIT THE USE OF LIME-PROPELLED FLOTATION DEVICES ON THE SOUTH FORK OF THE NOOKSACK RIVER FROM JUNE 1 THROUGH OCTOBER 31

WHEREAS, salmon recovery efforts in the Nooksack River Basin continue to be a high priority in our community; and

WHEREAS, Nooksack River Basin salmon have historical and cultural significance in our community; and

WHEREAS, substantial resources have been devoted to salmon recovery in the Nooksack River; and

WHEREAS, numerous steps have been taken to protect and enhance critical salmon habitat; and

WHEREAS, South Fork Nooksack Chinook Salmon are listed as a threatened species under the Endangered Species Act; and

WHEREAS these salmon spawn in the South Fork of the Nooksack River in the area between Edrio Creek and the Acme Bridge from June 1 through October 31; and

WHEREAS the South Fork Nooksack provides water-based recreation opportunities for the community; and

WHEREAS, the salmon are often disturbed during this critical time by people using the Nooksack River for various recreational activities; and

WHEREAS, the Whatcom County Council is dedicated to continued protection and restoration of salmon in the Nooksack River, and, therefore, finds it necessary to limit recreational use of the river between June 1 and October 31; and

WHEREAS, the County Council must balance the requirements of salmon recovery with ongoing provision of recreation opportunities; and

WHEREAS, the Whatcom County Council hereby enters the following findings of fact and conclusions in support of this ordinance:

FINDINGS OF FACT
1. South Fork Nook-sack Chinook Salmon (hereafter "Salmon") are a threatened species listed pursuant to the Endangered Species Act. These Salmon spawn in the South Fork of the Nook-sack River (hereafter "South Fork") in the area between Edfrø Creek and the Acme Bridge.

2. Salmon recovery is a high priority both in the community and among local legislative bodies. Substantial resources have been devoted to salmon recovery. North Fork Nook-sack Chinook Salmon have already been protected via a closure of the North Fork of the Nook-sack River to rafters during critical times by the United States Forest Service.

3. The salmon spawning cycle is four years. The salmon swim out to sea for the bulk of that time. Salmon that survive their four-year ordeal return to the South Fork to spawn between the dates of June 1 and October 31. Spawning is a delicate process. Stress and physical disturbance of salmon during spawning can prevent successful spawning. Salmon construct nests called "redds" in the bed of the river. Disturbance of salmon during the creation of reds can prevent redd establishment, displace salmon to less suitable habitats, and/or lead to the creation of poorly constructed reds. During spawning, disturbance of the salmon can lead to improperly constructed egg pockets, scattering of eggs, and/or prevention of spawning altogether. Post-spawning, disturbance can lead to displacement of the female salmon protecting the reds. While the eggs are in the reds, they are vulnerable to trampling.

4. Salmon require cool water, minimal disturbance, hiding areas, clean gravel, and clean water to spawn. The South Fork has a lack of woody debris in the water, and, as a result, the Salmon have few places to hide. The summer water temperatures in the South Fork are higher than optimal for spawning. The salmon are severely stressed by these environmental conditions.

USE OF LIMP-PROPELLED FLATION DEVICES AND SIMILAR CRAFT

5. The area between Edfrø Creek and the Acme Bridge is heavily used by persons recreating in various flotation devices, including inner tubes and other "limp-propelled flotation devices" (LPFD's). LPFD's are a unique type of water device. Legs and arms extend outside of LPFD's for propulsion and steering. Typical recreational use of LPFD's includes large groups, extensive splashing, disturbance of the water, and walking or wading.
6. Hundreds of users of LPFD's and similar flotation devices can be observed operating on the South Fork on a given day between the dates of June 1 and October 31. The river is too narrow and shallow to accommodate these numbers without significant disturbance of salmon and/or redds.

7. Salmon incur stress when disturbed. LPFD users have been observed to disturb the salmon both intentionally and unintentionally. This causes some or all of the disturbance-related impacts upon the salmon listed above.

8. LPFD's are the most disruptive and harmful form of water-borne recreation on the South Fork Nooksack identified on this record.

9. The Washington State Legislature has not enacted regulations regarding the use of LPFD's in salmon spawning areas unique to Whatcom County.

OTHER EFFECTS OF LIMB-PROPELLED FLOTATION DEVICE USAGE

10. Additional harmful byproducts of the use of LPFD's and similar flotation devices on the Nooksack river include: Littering, unsanitary & public urination/defecation, illegal parking, drunken driving, and trespassing on private property along the river.

PRESERVATION OF OTHER RECREATION

11. Other enjoyment of the river is preserved and enhanced by partial closure of the river to LPFD's, including but not limited to permitted fishing and hiking.

SUPPORTING AGENCIES

12. The Washington Department of Fish & Wildlife, the United States Forest Service, and the Lummi Tribe all support closure of the South Fork to LPFD's and similar flotation devices between the dates of June 1 and October 31.

CONCLUSIONS

1. The above effects of the use of LPFD's and similar devices in the South Fork are incompatible and inconsistent with the cooperative and highly prioritized salmon recovery efforts of Whatcom County and other government entities and agencies.

2. Additional harms associated with the use of LPFD's and similar craft negatively impact the environment along the river.
3. It is necessary to close the South Fork to use by LPFD’s and similar flotation devices between the dates of June 1 and October 31 to protect spawning salmon and the environment.

4. This partial closure of the river shall involve only the portion of the river described. This partial closure shall last for only five months of the year. This partial closure shall only involve the limited type of recreational activity defined above. This partial closure shall not prohibit other recreational activities. This balance provides for salmon recovery while recognizing the importance of open space recreation to the community.

5. These measures serve the public good and are consistent with salmon recovery policies already in place.

6. The Whatcom County SEPA Official has reviewed this ordinance and issued a Determination of Non-Significance on 11/09, 2005.

NOW, THEREFORE, BE IT ORDAINED by the Whatcom County Council that Whatcom County Code Title 11, Boating and Swimming, is hereby amended as indicated in Exhibit A to this ordinance.

BE IT FINALLY ORDAINED that adjudication of invalidity of any of the sections, clauses, or provisions of this ordinance shall not affect or impair the validity of the ordinance as a whole or any part thereof other than the part so declared to be invalid.

[Signature]
6 day of December, 2005.

Approved as to form:
Civil Deputy Prosecutor

[Signature]

Pete Kremen, County Executive

Date 12-13-05

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EXHIBIT A

11.04.010 Definitions
K. "Limb propelled floatation device" shall be any floatation device that lacks steering or propulsion. Watercraft designed for use with oars or a paddle are not included in this definition.

11.20.025 Floatation devices on the South Fork Nooksack River

No person shall operate a paddleboard, innertube, inflatable floatation device, foam floatation device, limb propelled floatation device, or rubber raft intended for limb use on the section of the South Fork of the Nooksack River between Edro Creek and the Acme Bridge between the dates of June 1 and October 31.

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- and Whatcom County-designated swimming/boating areas on the South Fork of the Nooksack River.