

WSR 13-04-008
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 13-15—Filed January 24, 2013, 1:50 p.m., effective February 1, 2013]

Effective Date of Rule: February 1, 2013.

Purpose: Amend recreational fishing rules.

Citation of Existing Rules Affected by this Order:
 Repealing WAC 232-28-61900H.

Statutory Authority for Adoption: RCW 77.12.047 and 77.04.020.

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: Hatchery winter steelhead broodstock collection will be completed on February 1, 2013, and since hatchery steelhead not retained at the hatchery by this date are available for harvest that portion of Whatcom Creek closed by an emergency rule will reopen February 1, 2013. 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Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 0, Repealed 1.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: January 24, 2013.

Philip Anderson
 Director

REPEALER

The following section of the Washington Administrative Code is repealed effective February 1, 2013:

WAC 232-28-61900H	Exceptions to statewide rules—Whatcom Creek. (12-278)
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WSR 13-04-009
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 13-17—Filed January 24, 2013, 4:41 p.m., effective January 30, 2013]

Effective Date of Rule: January 30, 2013.

Purpose: To amend cougar hunting rules described in WAC 232-28-297.

Citation of Existing Rules Affected by this Order:
 Repealing WAC 232-28-29700C; and amending WAC 232-28-297.

Statutory Authority for Adoption: RCW 77.12.047, 77.12.150.

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: To correct an error that establishes contradictory rules governing areas open for hunting cougar. The seasons for cougar hunting have started, so there is no time for standard rule-making time frames; and this correction will help hunters avoid hunting illegally.

This change also closes specific cougar hunting areas that have met or exceeded the area harvest guideline. Immediate action is necessary to protect cougars from over harvest in hunt areas that have met or exceeded the area harvest guideline.

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 Request of a Nongovernmental 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: January 24, 2013.

Philip Anderson
 Director

NEW SECTION

WAC 232-28-29700D 2012-2013, 2013-2014, and 2014-2015 Cougar hunting seasons and regulations. Notwithstanding the provisions of WAC 232-28-297, effective immediately until further notice:

General cougar seasons are closed in Game Management Units (GMUs) 105, 108, 111, 117, 121, 145, 157, 166, 175, 178, 149, 154, 157, 162, 163, 242, 243, 328, 329, 335, 522, 642, 648, and 651.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 232-28-29700C 2012-2013, 2013-2014, and 2014-2015 Cougar hunting seasons and regulations.

WSR 13-04-012
EMERGENCY RULES
HEALTH CARE AUTHORITY
(Medicaid Program)

[Filed January 25, 2013, 9:43 a.m., effective January 26, 2013]

Effective Date of Rule: January 26, 2013.

Purpose: To amend TAKE CHARGE rule sections (WAC 182-532-700 and 182-532-720) so they comply with the special terms and conditions of the federal waiver renewal for the TAKE CHARGE medicaid program. Amendments revise the income requirement to: Allow incomes at or below two hundred fifty percent of the federal poverty level; and change third-party liability requirements, allowing clients with health insurance to apply for TAKE CHARGE.

Citation of Existing Rules Affected by this Order: Amending WAC 182-532-700 and 182-532-720.

Statutory Authority for Adoption: RCW 41.05.021.

Other Authority: RCW 74.09.659.

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; and 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: Amending the TAKE CHARGE rule sections (WAC 182-532-700 and 182-532-720) is needed to immediately comply with the special terms and conditions of the federal waiver renewal for the TAKE CHARGE medicaid program. This emergency rule is necessary as the health care authority proceeds with regular rule making, initiated by filing a CR-101 under WSR 12-16-100.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 2, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental 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 Mak-

ing: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 2, Repealed 0.

Date Adopted: January 25, 2013.

Kevin M. Sullivan
Rules Coordinator

AMENDATORY SECTION (Amending WSR 11-14-075, filed 6/30/11, effective 7/1/11)

WAC 182-532-700 TAKE CHARGE program—Purpose. TAKE CHARGE is a family planning demonstration and research program approved by the federal government under a medicaid program waiver. The purpose of the TAKE CHARGE program is to make family planning services available to men and women with incomes at or below two hundred fifty percent of the federal poverty level. See WAC 388-532-710 for a definition of TAKE CHARGE.

AMENDATORY SECTION (Amending WSR 11-14-075, filed 6/30/11, effective 7/1/11)

WAC 182-532-720 TAKE CHARGE program—Eligibility. (1) The TAKE CHARGE program is for men and women. To be eligible for the TAKE CHARGE program, an applicant must:

(a) Be a United States citizen, U.S. National, or "qualified alien" as described in chapter 388-424 WAC and provide proof of citizenship or qualified alien status, and identity;

(b) Be a resident of the state of Washington as described in WAC 388-468-0005;

(c) Have income at or below two hundred fifty percent of the federal poverty level as described in WAC ((388-478-0075)) 182-505-0100;

(d) Need family planning services;

(e) Apply voluntarily for family planning services with a TAKE CHARGE provider; and

(f) Not be currently covered through another medical assistance program for family planning ((or have any health insurance that covers family planning, except as provided in WAC 388-530-790)).

(2) A client who is pregnant or sterilized is not eligible for TAKE CHARGE.

(3) A client is authorized for TAKE CHARGE coverage for one year from the date the department determines eligibility or for the duration of the demonstration and research program, whichever is shorter, as long as the criteria in subsection (1) and (2) of this section continue to be met. Upon reapplication for TAKE CHARGE by the client, the department may renew the coverage for additional periods of up to one year each, or for the duration of the demonstration and research program, whichever is shorter.

WSR 13-04-015
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 13-18—Filed January 25, 2013, 3:23 p.m., effective February 1, 2013, 7:30 a.m.]

Effective Date of Rule: February 1, 2013, 7:30 a.m.

Purpose: Amend commercial fishing rules.

Citation of Existing Rules Affected by this Order:

Repealing WAC 220-52-04600G; and amending WAC 220-52-040 and 220-52-046.

Statutory Authority for Adoption: RCW 77.12.047 and 77.04.020.

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 regulation reopens Region 2 West at fifty pots per license to allow the state commercial fishery to reach the full allocation in that area. All other commercial regions will remain at one hundred pots per license. The above regulation continues the closure of the Everett Flats portion of Region 2 East in order to protect soft shell crabs that occur at this time of year in this area. The Puget Sound commercial season is structured to meet harvest allocation objectives negotiated with applicable treaty tribes. There is insufficient time to adopt permanent regulations.

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 Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 2, 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: January 25, 2013.

Philip Anderson
Director

NEW SECTION

WAC 220-52-04000X Commercial crab fishery—Lawful and unlawful gear, methods, and other unlawful acts. Notwithstanding the provisions of WAC 220-52-040:

(1) Effective at 7:30 a.m., Friday, February 1, 2013, until further notice, it is unlawful for any person to fish for crabs for commercial purposes with more than 50 pots per license per buoy tag number in Crab Management Region 2 West.

This region includes Marine Fish-Shellfish Management and Catch Reporting Areas 25B, 25D and 26A West.

(2) The remaining buoy tags per license per region must be onboard the designated vessel and available for inspection.

NEW SECTION

WAC 220-52-04600I Puget Sound crab fishery—Seasons and areas. Notwithstanding the provisions of WAC 220-52-046:

(1) Effective immediately, until further notice, it is permissible to fish for Dungeness crab for commercial purposes in the following areas:

(a) Those waters of Marine Fish-Shellfish Management and Catch Reporting Area 20A between a line from the boat ramp at the western boundary of Birch Bay State Park to the western point of the entrance of the Birch Bay Marina, and a line from the same boat ramp to Birch Point.

(b) Those waters of Marine Fish-Shellfish Management and Catch Reporting Area 22B in Fidalgo Bay south of a line projected from the red number 4 entrance buoy at Cape Sante Marina to the northern end of the eastern-most oil dock.

(c) Those waters of Marine Fish-Shellfish Management and Catch Reporting Area 22A in Deer Harbor north of a line projected from Steep Point to Pole Pass.

(d) Port Gardner: That portion of Marine Fish-Shellfish Management and Catch Reporting Area 26A east of a line projected from the outermost tip of the ferry dock at Mukilteo, projected to the green #3 buoy at the mouth of the Snohomish River, and west of a line projected from that #3 buoy southward to the oil boom pier on the shoreline.

(e) Possession Point to Glendale: That portion of Marine Fish-Shellfish Management and Catch Reporting Area 26A east of a line that extends true north from the green #1 buoy at Possession Point to Possession Point, and west of a line from the green #1 buoy at Possession Point extending northward along the 200-foot depth contour to the Glendale dock.

(f) Langley: That portion of Marine Fish-Shellfish Management and Catch Reporting Area 24C shoreward of the 400-foot depth contour within an area described by two lines projected northeasterly from Sandy Point and the entrance to the marina at Langley.

(g) Those waters of Marine Fish-Shellfish Management and Catch Reporting Area 26A-W in Useless Bay north and east of a line from the south end of the Double Bluff State Park seawall (47°58.782'N, 122°30.840'W) projected 110 degrees true to the boulder on shore (47°57.690'N, 122°26.742'W).

(2) Effective immediately, until further notice, the following areas are closed to commercial crab fishing:

(a) That portion of Marine Fish-Shellfish Management and Catch Reporting Area 25A west of the 123°7.0' longitude line projected from the new Dungeness light due south to the shore of Dungeness Bay.

(b) That portion of Marine Fish-Shellfish Management and Catch Reporting Area 23D west of a line from the eastern tip of Ediz Hook to the ITT Rayonier Dock.

(c) Those waters of Marine Fish-Shellfish Management and Catch Reporting Area 24A east of a line projected true north from the most westerly tip of Skagit Island and extend-

ing south to the most westerly tip of Hope Island, thence southeast to Seal Rocks, thence southeast to the green can buoy at the mouth of Swinomish Channel, thence easterly to the west side of Goat Island.

(3) Effective immediately, until further notice, the Everett Flats portion of Region 2 East will be closed. This area is defined as follows:

(a) That portion of catch area 26A east of a line from Howarth Park due north to the south end of Gedney Island, and that portion of 24B east of a line from the north end of Gedney Island to Camano Head and south of a line drawn from Camano Head to Hermosa Point.

REPEALER

The following section of the Washington Administrative Code is repealed effective 7:30 a.m. February 1, 2013:

WAC 220-52-04600G Puget Sound crab fishery—
Seasons and areas. (13-13)

WSR 13-04-027
EMERGENCY RULES
OFFICE OF

INSURANCE COMMISSIONER

[Insurance Commissioner Matter No. R 2013-03—Filed January 29, 2013,
3:08 p.m., effective January 29, 2013, 3:08 p.m.]

Effective Date of Rule: Immediately.

Purpose: Provide health plan issuers with specific guidance regarding form and rate filing of nongrandfathered individual and small group health plans for the 2014 benefit year, in relation to ensuring that an issuer's product and plan filing is substantially equal to the essential health benefits (EHB)-benchmark plan, and that the actuarial values for each EHB category are substantially equal to the EHB-benchmark plan. The rules identify the specific services that are classified to the ten EHB categories, as found in the base-benchmark plan and the supplemental benchmark plans; habilitative services are defined and benefit limitation and scope for those services are set forth in the rule.

Statutory Authority for Adoption: RCW 48.02.060, 48.21.241, 48.21.320, 48.44.460, 48.44.341, 48.46.291, 48.46.530, and 48.43.715.

Other Authority: P.L. 111-148, section 1302 (2010).

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: Health plan issuers must replace currently offered nongrandfathered individual and small group plans for the 2014 benefit year due to a number of required changes pursuant to federal health care reform. The deadline for state decisions to approve or disapprove proposed replacement products is July 31, 2013. To meet this deadline, products must be filed for review by the commissioner not later than April 1, 2013. This emergency rule pro-

vides issuers with the necessary information to ensure that products are timely filed, so that issuers are able to participate in the individual and small group health plan markets in Washington.

Number of Sections Adopted in Order to Comply with Federal Statute: New 9, Amended 0, Repealed 0; Federal Rules or Standards: New 9, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 9, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental 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 9, Amended 0, Repealed 0.

Date Adopted: January 29, 2013.

Mike Kreidler

Insurance Commissioner

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 13-05 issue of the Register.

WSR 13-04-032
RESCISSION OF EMERGENCY RULES
OFFICE OF
INSURANCE COMMISSIONER

[Filed January 30, 2013, 11:34 a.m.]

The insurance commissioner is withdrawing the CR-103E Emergency rule making for R 2013-03 *Essential health benefits designations*, filed on January 29, 2013, and published by the code reviser in WSR 13-04-027.

Mike Kreidler

WSR 13-04-033
EMERGENCY RULES
OFFICE OF
INSURANCE COMMISSIONER

[Insurance Commissioner Matter No. R 2013-04—Filed January 30, 2013,
2:33 p.m., effective January 30, 2013, 2:33 p.m.]

Effective Date of Rule: Immediately.

Purpose: Provide health plan issuers with specific guidance regarding form and rate filing of nongrandfathered individual and small group health plans for the 2014 benefit year, in relation to ensuring that an issuer's product and plan filing is substantially equal to the essential health benefits (EHB)-benchmark plan, and that the actuarial values for each EHB category are substantially equal to the EHB-benchmark plan. The rules identify the specific services that are classified to the ten EHB categories, as found in the base-benchmark plan and the supplemental benchmark plans; habilitative services

are defined and benefit limitation and scope for those services are set forth in the rule.

Statutory Authority for Adoption: RCW 48.02.060, 48.21.241, 48.21.320, 48.44.460, 48.44.341, 48.46.291, 48.46.530, and 48.43.715.

Other Authority: P.L. 111-148, section 1302 (2010).

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: Health plan issuers must replace currently offered nongrandfathered individual and small group plans for the 2014 benefit year due to a number of required changes pursuant to federal health care reform. The deadline for state decisions to approve or disapprove proposed replacement products is July 31, 2013. To meet this deadline, products must be filed for review by the commissioner not later than April 1, 2013. This emergency rule provides issuers with the necessary information to ensure that products are timely filed, so that issuers are able to participate in the individual and small group health plan markets in Washington.

Number of Sections Adopted in Order to Comply with Federal Statute: New 9, Amended 0, Repealed 0; Federal Rules or Standards: New 9, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 9, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental 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 9, Amended 0, Repealed 0.

Date Adopted: January 30, 2013.

Mike Kreidler
Insurance Commissioner

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 13-05 issue of the Register.

WSR 13-04-036
EMERGENCY RULES
HORSE RACING COMMISSION

[Filed January 31, 2013, 9:30 a.m., effective January 31, 2013, 9:30 a.m.]

Effective Date of Rule: Immediately.

Purpose: In order to maintain the integrity of horse racing and ensure the safety of participants, the Washington horse racing commission is amending chapter 260-34 WAC to address the passage of I-502 legalizing the use and possession of marijuana for individuals over the age of twenty-one.

This addresses the legalization of the substance while still prohibiting its use and possession in the restricted areas.

Citation of Existing Rules Affected by this Order: Amending chapter 260-34 WAC.

Statutory Authority for Adoption: RCW 67.16.020.

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: Allowing the use of marijuana in the stable area would allow the possible cross contamination to the equines and use by licensees may affect their ability to perform their duties safely.

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 Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

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

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 1, 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 1, Repealed 0.

Date Adopted: January 31, 2013.

Douglas L. Moore
Deputy Secretary

AMENDATORY SECTION (Amending WSR 06-07-064, filed 3/10/06, effective 4/10/06)

WAC 260-34-010 Primary purpose. In order to protect the integrity of horse racing in the state of Washington, and to protect the safety of the public and all participants, the Washington horse racing commission intends to regulate the use of any illegal controlled substances, the use and possession of marijuana, and the use of alcohol by licensees at all race meets. This chapter shall be applicable to all licensees or applicants on the grounds of any racetrack during its licensed race meet.

AMENDATORY SECTION (Amending WSR 11-07-030, filed 3/10/11, effective 4/10/11)

WAC 260-34-020 Drug and alcohol violations. No licensee or applicant, while acting in an official capacity or participating directly in horse racing, will commit any of the following violations, while on the grounds of a licensed race track during its licensed race meet and periods of training:

(1) Be under the influence of or affected by intoxicating liquor and/or drugs, have an alcohol concentration of 0.08 percent or higher, or have within their body any illegal con-

trolled substance (~~((while on the grounds of any licensed race meet))~~);

The alcohol concentration for persons on horseback may not be 0.02 percent or higher.

(2) Engage in the illegal sale or distribution of alcohol;

(3) Engage in the illegal sale or distribution of a controlled substance or possess an illegal controlled substance with intent to deliver;

(4) Possess an illegal controlled substance;

(5) Possess marijuana or be under the influence of or affected by marijuana, or have in their body any measurable concentration of tetrahydrocannabinol (THC):

Possess any equipment, products or materials of any kind, which are used or intended for use in injecting, ingesting, inhaling or otherwise introducing into the human body marijuana;

(6) Possess on the grounds of any licensed race meet any equipment, products or materials of any kind which are used or intended for use in planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, containing, or concealing an illegal controlled substance, or any equipment, products or materials of any kind, which are used or intended for use in injecting, ingesting, inhaling or otherwise introducing into the human body an illegal controlled substance; or

~~((6))~~ (7) Refuse to submit to blood, breath, oral fluids, and/or urine testing, when notified that such testing is conducted pursuant to the conditions of WAC 260-34-030.

Failure to provide a blood, breath, oral fluids, and/or urine sample when directed or intentional contamination of the sample by any person tested for the purpose of preventing accurate analysis of the sample, or other actions with intent to subvert the test, will be considered a refusal to submit to a test.

"Controlled substance" or "drug" as used in this chapter means any substance listed in chapter 69.50 RCW or legend drug as defined in chapter 69.41 RCW. The presence of a controlled substance or drug in any quantity measured by the testing instrument establishes the presence of that substance for the purpose of this section. The fact that a licensee or applicant is or has been entitled to use a drug under the laws of the state of Washington will not constitute a defense against a violation for being under the influence of or affected by intoxicating liquor and/or any drug.

WSR 13-04-037
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 13-20—Filed January 31, 2013, 10:52 a.m., effective January 31, 2013, 6:00 p.m.]

Effective Date of Rule: January 31, 2013, 6:00 p.m.

Purpose: The purpose of this rule making is to 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 making 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 Existing Rules Affected by this Order: Repealing WAC 220-33-01000V; and amending WAC 220-33-010.

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

Other Authority: *United States v. Oregon*, Civil No. 68-513-KI (D. Or.), Order Adopting 2008-2017 *United States v. Oregon* Management Agreement (Aug. 12, 2008) (Doc. No. 2546); *Northwest Gillnetters Ass'n v. Sandison*, 95 Wn.2d 638, 628 P.2d 800 (1981); Washington fish and wildlife commission policies concerning Columbia River fisheries; 40 Stat. 515 (Columbia River compact).

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

Reasons for this Finding: Sets the 2013 winter season sturgeon fishery. Based on the 2013 white sturgeon abundance estimates and 2013 commission guidance, a total of 10,105 white sturgeon are available for sport and commercial harvest in 2013. Out of this, a total of twenty percent (2,021) are available for commercial harvest in 2013. The commercial industry suballocates the allowable commercial harvest into seasons throughout the year. This fishery is based on a catch guideline of two hundred eighty fish for the winter/spring season, and will provide economic benefit and market stability. Regulation is consistent with compact action of January 30, 2013. There is insufficient time to promulgate permanent rules.

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

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

Columbia River nontreaty fisheries are monitored very closely to ensure compliance with federal court orders, the

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 0, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental 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: January 31, 2013.

Philip Anderson
Director

NEW SECTION

WAC 220-33-01000V Columbia River season below Bonneville. Notwithstanding the provision of WAC 220-33-010 and 220-33-020, it is unlawful for a person to take or possess salmon or sturgeon taken for commercial purposes from Columbia River Salmon Management and Catch Reporting Areas 1A, 1B, 1C, 1D, and 1E, except as provided in the following subsections:

- 1) **AREA:** SMCRA 1A, 1B, 1C, 1D, and 1E (Zones 1-5)
- 2) **SEASON:** 6 PM January 31 - 6 PM February 1, 2013; 6 PM February 4 - 6 PM February 5, 2013; 6 PM February 6 - 6 PM February 7, 2013.
- 3) **GEAR:** Drift gillnet only. 9-inch minimum mesh. Nets fished any time between official sunset and official sunrise must have lighted buoys on both ends of the net. If the net is attached to the boat, then one lighted buoy on the end of the net opposite the boat is required.
- 4) **ALLOWABLE SALES:** White Sturgeon and adipose fin-clipped salmon. A maximum of ten white sturgeon may be possessed or sold by each participating vessel during each calendar week (Sunday through Saturday) that the fishery is open. Green sturgeon retention prohibited. Sturgeon sales are limited to sturgeon 43-54 inches in fork length (as measured from nose to the fork in the tail).
- 5) **QUICK REPORT:** 24-hour quick reporting required for Washington wholesale dealers, pursuant to WAC 220-69-240. When quick reporting is required, Columbia River reports must be submitted within 24 hours of the closure of each fishing period.

REPEALER

The following section of the Washington Administrative code is repealed effective 6:01 p.m. February 7, 2013:

WAC 220-33-01000V Columbia River season below Bonneville.

WSR 13-04-038
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 13-21—Filed January 31, 2013, 11:06 a.m., effective February 1, 2013, 6:00 a.m.]

Effective Date of Rule: February 1, 2013, 6:00 a.m.

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 Existing Rules Affected by this Order: Repealing WAC 220-32-05100C; and amending WAC 220-32-051.

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

Other Authority: *United States v. Oregon*, Civil No. 68-513-KI (D. Or.), Order Adopting 2008-2017 *United States v. Oregon* Management Agreement (Aug. 12, 2008) (Doc. No. 2546); *Northwest Gillnetters Ass'n v. Sandison*, 95 Wn.2d 638, 628 P.2d 800 (1981); Washington fish and wildlife commission policies concerning Columbia River fisheries; 40 Stat. 515 (Columbia River compact).

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

Reasons for this Finding: Sets the 2013 treaty Indian winter gillnet season. Allows sales of fish caught with platform and hook and line gear above and below Bonneville Dam as long as the commercial gillnet sales are open. Fisheries are consistent with the 2008-2017 management agreement and the associated biological opinion. Rule is consistent with action of the Columbia River compact on January 23, 2012, when the compact adopted the rules as permanent. The process for making the rule permanent is not complete at this time. This regulation will cover the fishery until the rule-making process is complete. Conforms state rules with tribal rules. There is insufficient time to promulgate permanent regulations.

The Yakama, Warm Springs, Umatilla, and Nez Perce Indian tribes have treaty fishing rights in the Columbia River and inherent sovereign authority to regulate their fisheries. Washington and Oregon also have some authority to regulate fishing by treaty Indians in the Columbia River, authority that

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

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

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

Number of Sections Adopted at Request of a Nongovernmental 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: January 31, 2013.

Philip Anderson
Director

NEW SECTION

WAC 220-32-05100C Columbia River salmon seasons above Bonneville Dam. Notwithstanding the provisions of WAC 220-32-050, WAC 220-32-051, WAC 220-32-052 and WAC 220-32-058, effective immediately until further notice, it is unlawful for a person to take or possess salmon, steelhead, sturgeon, shad, carp, catfish, walleye, bass, or yellow perch taken for commercial purposes in Columbia River Salmon Management and Catch Reporting Areas 1F, 1G, and 1H. However, those individuals possessing treaty fishing rights under the Yakima, Warm Springs, Umatilla, and Nez Perce treaties may fish for salmon, steelhead, sturgeon, shad, carp, catfish, walleye, bass, or yellow perch under the following provisions:

1. Open Areas: SMCRA 1F, 1G, 1H (Zone 6):
 - a. Season: 6:00 a.m. February 1 through 6:00 p.m. March 21, 2013.
 - b. Gear: Gill nets, hoop nets, dip bag nets, and rod and reel with hook and line. No mesh restriction on gillnets.
 - c. Allowable sale: Salmon, steelhead, sturgeon, shad, carp, catfish, walleye, bass, and yellow perch. Sturgeon between 38-54 inches in fork length in the Bonneville Pool and sturgeon between 43-54 inches in fork length in The Dalles and John Day pools may be sold or retained for subsistence purposes. Live release of all oversize and under-size sturgeon is required. Sales of platform/hook-and-line caught fish can be sold during open commercial seasons. Fish caught during open commercial periods can be sold after the season closes.
 - d. River mouth sanctuaries (WAC 220-32-058) remain in effect, except for the Spring Creek Hatchery sanctuary (sub-section 5) of WAC 220-32-058.
 - e. 24-hour quick reporting required for Washington wholesale dealers, WAC 220-69-240.

2. Open Area: SMCRA 1E. Each of the four Columbia River treaty tribes has an MOA or MOU with the Washington Department of Fish and Wildlife regarding tribal fisheries in the area just downstream of Bonneville Dam. Tribal fisheries in this area may only occur in accordance with the appropriate MOA or MOU specific to each tribe.

a. Participants: Tribal members may participate under the conditions described in the appropriate MOA or MOU specific to each tribe. Tribal members must carry an official tribal enrollment card.

b. Season: 6:00 a.m. February 1 through 6:00 p.m. March 21, 2013.

c. Gear: Hoop nets, dip bag nets, and rod and reel with hook and line, or as defined by each tribe's MOU or MOA.

d. Allowable sales: Salmon, steelhead, shad, carp, catfish, walleye, bass, and yellow perch. Sales of platform/hook-and-line caught fish can be sold during open commercial seasons. Fish caught during open Zone 6 commercial periods can be sold after the season closes. Sturgeon retention is prohibited; sturgeon may not be sold or retained for ceremonial or subsistence purposes. Sales may not occur on USACE property.

e. 24-hour quick reporting required for Washington wholesale dealers, WAC 220-69-240.

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

REPEALER

The following section of the Washington Administrative Code is repealed effective 6:01 p.m. March 21, 2013:

WAC 220-32-05100C Columbia River salmon seasons above Bonneville Dam.

WSR 13-04-045
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 13-22—Filed January 31, 2013, 3:24 p.m., effective February 7, 2013, 12:01 a.m.]

Effective Date of Rule: February 7, 2013, 12:01 a.m.

Purpose: Amend recreational fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-56-36000Q; and amending WAC 220-56-360.

Statutory Authority for Adoption: RCW 77.12.047 and 77.04.020.

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: Survey results show that adequate clams are available for harvest in Razor Clam Areas 1, 3, 4 and 5. Washington department of health has certified clams from these beaches to be safe for human consumption. 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 Request of a Nongovernmental 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: January 31, 2013.

Philip Anderson
 Director

NEW SECTION

WAC 220-56-36000Q Razor clams—Areas and seasons. Notwithstanding the provisions of WAC 220-56-360, it is unlawful to dig for or possess razor clams taken for personal use from any beach in Razor Clam Areas 1, 3, 4, or 5, except as provided for in this section:

1. Effective 12:01 p.m. February 8 through 11:59 p.m. February 10, 2013, razor clam digging is allowed in Razor Clam Area 1. Digging is allowed from 12:01 p.m. to 11:59 p.m. each day only.

2. Effective 12:01 p.m. February 7 through 11:59 p.m. February 12, 2013, razor clam digging is allowed in Razor Clam Area 3. Digging is allowed from 12:01 p.m. to 11:59 p.m. each day only.

3. Effective 12:01 p.m. February 8 through 11:59 p.m. February 9, 2013, razor clam digging is allowed in Razor Clam Area 4. Digging is allowed from 12:01 p.m. to 11:59 p.m. each day only.

4. Effective 12:01 p.m. February 8 through 11:59 p.m. February 9, 2013, razor clam digging is allowed in Razor Clam Area 5. Digging is allowed from 12:01 p.m. to 11:59 p.m. each day only.

5. It is unlawful to dig for razor clams at any time in Long Beach, Twin Harbors Beach or Copalis Beach Clam sanctuaries defined in WAC 220-56-372.

REPEALER

The following section of the Washington Administrative Code is repealed effective 12:01 a.m. February 13, 2013:

WAC 220-56-36000Q Razor clams—Areas and seasons.

WSR 13-04-057
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 13-23—Filed February 1, 2013, 11:04 a.m., effective February 11, 2013, 7:00 p.m.]

Effective Date of Rule: February 11, 2013, 7:00 p.m.

Purpose: The purpose of this rule making is to 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 making 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 Existing Rules Affected by this Order: Amending WAC 220-33-010.

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

Other Authority: *United States v. Oregon*, Civil No. 68-513-KI (D. Or.), Order Adopting 2008-2017 *United States v. Oregon* Management Agreement (Aug. 12, 2008) (Doc. No. 2546); *Northwest Gillnetters Ass'n v. Sandison*, 95 Wn.2d 638, 628 P.2d 800 (1981); Washington fish and wildlife commission policies concerning Columbia River fisheries; 40 Stat. 515 (Columbia River compact).

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

Reasons for this Finding: Sets the 2013 winter and spring select area commercial seasons. Impacts to nonlocal stocks are expected to be minimal. The fishery is consistent with the *U.S. v. Oregon* Management Agreement and the associated biological opinion. Conforms Washington state

rules with Oregon state rules. Regulation is consistent with compact action of January 30, 2013. There is insufficient time to promulgate permanent rules.

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

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

Columbia River nontreaty fisheries are monitored very closely to ensure compliance with federal court orders, the 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 0; Federal Rules or Standards: New 1, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental 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: February 1, 2013.

Philip Anderson
Director

NEW SECTION

WAC 220-33-01000W Columbia River seasons below Bonneville. Notwithstanding the provisions of WAC 220-33-010, WAC 220-33-020, and WAC 220-33-030, 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. Deep River Select Area

a) **Dates:** Winter Season: Open hours are 7 PM to 7 AM Monday and Thursday nights from February 11 through March 15, 2013, and Monday nights from March 18 through April 2, 2013. Spring Season: Open hours are 7 PM to 7 AM Thursday night, April 18; Tuesday night, April 23; and each Monday and Thursday night from April 25, 2013, until further notice.

b) **Area:** From the markers at USCG navigation marker #16, upstream to the Highway 4 Bridge.

c) **Gear:** Gillnets. Winter season: 7-inch minimum mesh. Spring season: 9 3/4-inch maximum mesh. Nets are restricted to 100 fathoms in length with no weight restriction on leadline. Use of additional weights or anchors attached directly to the leadline is allowed. Nets cannot be tied off to stationary structures. Nets may not fully cross navigation channel. It is unlawful to operate in any river, stream or channel any gillnet longer than three-fourths the width of the stream (WAC 220-20-015)(1). It shall be unlawful in any area to use, operate, or carry aboard a commercial fishing vessel a licensed net or combination of such nets, whether fished singly or separately, in excess of the maximum lawful size or length prescribed for a single net in that area, except as otherwise provided for in the rules and regulations of the department (WAC 220-20-010)(17). Nets not specifically authorized for use in these areas **may be onboard** a vessel if properly stored (WAC 220-33-001)(2). 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.

d) **Allowable Possession:** Salmon, shad, and white sturgeon. The sturgeon landing limit is four fish in the winter season and two fish in the spring season. The sturgeon landing limit acts to limit the number of white sturgeon possessed or sold by each participating vessel during each calendar week (Sunday through Saturday) that the fishery is open.

e) **Miscellaneous:** Transportation or possession of fish outside the fishing area (except to the sampling station) is unlawful until WDFW staff has biologically sampled individual catches. After sampling, fishers will be issued a transportation permit by WDFW staff. **During the winter season, fishers are required to call 360-795-0319** to confirm the place and time of sampling. In the spring season, a sampling station will be established at WDFW's Oneida Road boat ramp, about 0.5 miles upstream of the lower Deep River area boundary (USCG navigation marker #16).

f) **24-hour** quick reporting is in effect for Washington buyers. (WAC 220-69-240 (14)(d)).

2. Tongue Point/South Channel

a) **Dates:** Winter Season: Monday and Thursday nights from February 11 through March 12, 2013. Open hours are 7:00 PM to 7:00 AM. Spring Season: Monday and Thursday

nights from April 25, 2013, until further notice. Open hours are 7:00 PM to 7:00 AM.

b) **Area:** Tongue Point fishing area includes all waters bounded by a line extended from the upstream (southern most) pier (#1) at the Tongue Point Job Corps facility, through navigation marker #6 to Mott Island (new spring lower deadline); a line from a marker at the southeast end of Mott Island, northeasterly to a marker on the northwest tip of Lois Island; and a line from a marker on the southwest end of Lois Island, westerly to a marker on the Oregon shore.

The South Channel area includes all waters bounded by a line from a marker on John Day Point through the green USCG buoy #7 to a marker on the southwest end of Lois Island, upstream to an upper boundary line from a marker on Settler Point, northwesterly to the flashing red USCG marker #10, and northwesterly to a marker on Burnside Island defining the upstream terminus of South Channel.

c) **Gear:** Gillnets. Winter season: 7-inch minimum mesh. Spring season: 9 3/4-inch maximum mesh. In the Tongue Point fishing area, gear restricted to a maximum net length of 250 fathoms, and weight not to exceed two pounds on any one fathom. In the South Channel fishing area, gear restricted to a maximum net length of 100 fathoms, no weight restriction on leadline, and use of additional weights or anchors attached directly to the leadline is allowed.

Nets not specifically authorized for use in these areas **may be onboard** a vessel if properly stored (WAC 220-33-001(2)). 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.

d) **Allowable Possession:** Salmon, shad, and white sturgeon. The sturgeon landing limit is four fish in the winter season and two fish in the spring season. The sturgeon landing limit acts to limit the number of white sturgeon possessed or sold by each participating vessel during each calendar week (Sunday through Saturday) that the fishery is open.

e) **Miscellaneous:** Fishers are required to call 971-230-8247 and leave a message including name, catch, and where and when fish will be sold. Permanent transportation rules in effect.

f) **24-hour** quick reporting is in effect for Washington buyers. (WAC 220-69-240 (14)(d)).

3. Blind Slough/Knappa Slough Select Area

a) **Area:** Winter season: Blind Slough open entire season. Knappa Slough is open only through March 12. Spring season: Blind Slough and Knappa Slough areas are both open. From May 2 until further notice, the lower boundary of the Knappa Slough fishing area is extended downstream to boundary lines defined by markers on the west end of Minaker Island to markers on Karlson Island and the Oregon Shore (fall season boundary).

b) **Dates:** Winter Season: Monday and Thursday nights from February 11 through March 15, 2013, and Monday nights from March 18 through April 2, 2013. Open hours are 7:00 PM to 7:00 AM

Spring Season: Thursday night, April 18; Tuesday night, April 23; and Monday and Thursday nights from April 25 until further notice. Open hours are 7:00 PM to 7:00 AM

c) **Gear:** Gillnets. Winter season: 7-inch minimum mesh. Spring Season: 9 3/4-inch maximum mesh. Nets are restricted to 100 fathoms in length, with no weight restriction on leadline. Use of additional weights or anchors attached directly to the leadline is allowed.

Nets not specifically authorized for use in these areas may be onboard a vessel if properly stored (WAC 220-33-001(2)). 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.

d) **Allowable Possession:** Salmon, shad, and white sturgeon. The sturgeon landing limit is four fish in the winter season and two fish in spring season. The sturgeon landing limit acts to limit the number of white sturgeon possessed or sold by each participating vessel during each calendar week (Sunday through Saturday) that the fishery is open.

e) **24-hour** quick reporting is in effect for Washington buyers (WAC 220-69-240 (14)(d)). Permanent transportation rules in effect.

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

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

WSR 13-04-058

EMERGENCY RULES

DEPARTMENT OF

FISH AND WILDLIFE

[Order 13-24—Filed February 1, 2013, 11:06 a.m., effective February 15, 2013]

Effective Date of Rule: February 15, 2013.

Purpose: Amend recreational fishing rules.

Citation of Existing Rules Affected by this Order:
Amending WAC 232-28-619.

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

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

Reasons for this Finding: Sets the 2013 spring recreational salmon season in the Columbia River during March and April in the area from Buoy 10 upstream to the Oregon/Washington border. Adjusts the hatchery adult bag limit in Deep River to be consistent with the adjacent Columbia River when both areas are open. Prohibits full removal of nonlegal fish from the water. Maintains emergency regulations previously put in place regarding use of barbless hooks, and the Sand Island Slough closure. Regulation is consistent with guidance from Washington fish and wildlife commission and director, and compact/joint state action of January 30, 2013. 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. There is insufficient time to adopt permanent rules.

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

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

Columbia River nontreaty fisheries are monitored very closely to ensure compliance with federal court orders, the 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 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 Request of a Nongovernmental 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: February 1, 2013.

Philip Anderson
Director

NEW SECTION

WAC 232-28-61900U Exceptions to statewide rules—Columbia River. Notwithstanding the provisions of WAC 232-28-619, it is unlawful to violate the following pro-

visions, provided that unless otherwise amended, all permanent rules remain in effect:

1. **Columbia River:**

a. Effective March 1 through April 5, 2013, except closed March 26 and April 2: Open for fishing for salmonids and shad. From a true north-south line through Buoy 10 upstream to 600 feet downstream of the fish ladder at the new Bonneville Dam powerhouse (#2). HOWEVER, closed to fishing from boats upstream of Beacon Rock (defined as a deadline marker on the Oregon bank, located approximately four miles downstream from Bonneville Dam Powerhouse #1, projecting a straight line through the western tip of Pierce Island to a deadline marker on the Washington bank at Beacon Rock). Daily salmonid limit is 6 fish (hatchery Chinook or hatchery steelhead), of which no more than 2 may be adults and no more than 1 may be an adult Chinook. Release all wild Chinook and wild steelhead. Salmon minimum size is 12 inches.

b. Effective March 16 through May 5, 2013: Open to fishing from the Tower Island power lines in Bonneville Pool (located approximately 6 miles below The Dalles Dam) upstream to the Oregon and Washington border, plus the Washington bank between Bonneville Dam and the Tower Island power lines (except for those waters closed under permanent regulations). Daily salmonid limit is 6 fish (hatchery Chinook or hatchery steelhead), of which no more than 2 may be adult Chinook salmon or hatchery steelhead, or 1 of each. Release all wild Chinook and wild steelhead. Salmon minimum size is 12 inches.

c. Effective February 15, 2013, until further notice: For the mainstem Columbia River salmon and steelhead fishery from the Rocky Point/Tongue Point line upstream to Oregon/Washington border, it is unlawful when fishing from vessels which are less than 30 feet in length, substantiated by Coast Guard documentation or Marine Board registration, to totally remove from the water any salmon or steelhead required to be released.

2. **Deep River (Wahkiakum Co.):** Effective March 1, 2013, until further notice: the hatchery adult Chinook daily limit will be the same as the adjacent mainstem Columbia River during those days when the mainstem Columbia River is open for adult Chinook retention. When the adjacent mainstem Columbia River is closed for adult Chinook retention, the salmon daily limit will revert to permanent rules for Deep River.

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

WSR 13-04-066
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 13-25—Filed February 1, 2013, 4:26 p.m., effective February 1, 2013, 4:26 p.m.]

Effective Date of Rule: Immediately.

Purpose: The purpose of this emergency rule is to change the season-end date for the North Skagit and Monroe

spring black-bear hunts from May 31 to June 15, 2013, and to change the number of permits for the North Skagit hunt from 20 to 30.

Citation of Existing Rules Affected by this Order: Amending WAC 232-28-286.

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: Without a longer season in both spring black-bear hunt areas, and additional permits in the North Skagit hunt area, bear damage to trees will exceed the landowner's tolerance thresholds.

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 Request of a Nongovernmental 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: February 1, 2013.

Philip Anderson
Director

NEW SECTION

WAC 232-28-28600E 2013, 2014, and 2015 Spring black bear seasons and regulations. (1) Notwithstanding the provisions of WAC 232-28-286, effective immediately until further notice:

(a) The season timeframe for the Monroe spring black-bear hunt is April 15 - June 15, 2013.

(b) The season timeframe for the North Skagit spring black-bear hunt is April 15 - June 15, 2013, and the number of permits is 30.

(2) Unless otherwise amended, all other provisions of WAC 232-28-286 remain in effect.