

WSR 06-21-007
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 06-258—Filed October 5, 2006, 3:35 p.m., effective October 8, 2006, 7:00 p.m.]

Effective Date of Rule: October 8, 2006, 7:00 p.m.

Purpose: The purpose of this rule making is to allow fishing opportunity in the Columbia River while protecting salmon listed as threatened or endangered under the Endangered Species Act. 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 220-33-01000Y; 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 2005-2007 Interim Management Agreement For Upriver Chinook, Sockeye, Steelhead, Coho & White Sturgeon (May 11, 2005) (Doc. No. 2407); *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; 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: 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 2005-2007 Interim Management Agreement For Upriver Chinook, Sockeye, Steelhead, Coho & White Sturgeon (May 11, 2005) (Doc. No. 2407).

Some Columbia River Basin salmon and steelhead stocks are listed as threatened or endangered under the federal Endangered Species Act. The National Marine Fisheries Service has issued biological opinions under 16 U.S.C. § 1536 that allow for some incidental take of these species in treaty and nontreaty Columbia River fisheries. The Washington and Oregon fish and wildlife commissions have developed policies to guide the implementation of these 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 Endangered Species Act, and commission guidelines. Because conditions change rapidly, the fisheries are managed almost exclusively by emergency rule. Representatives from the Washington and Oregon 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. Regulation is consistent with compact action of October 4, 2006. There is insufficient time to promulgate 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: October 4, 2006.

J. P. Koenings
Director

NEW SECTION

WAC 220-33-01000Z Columbia River season below Bonneville. Notwithstanding the provisions 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. Mainstem Columbia River

a. OPEN AREA: SMCRA 1A, 1B, 1C, 1D, 1E

b. SEASON: 7:00 p.m. Sunday October 8 to 7:00 p.m. Monday October 9, 2006

c. GEAR: No minimum mesh size restriction. 9 3/4-inch maximum mesh size. Drift gillnets only. Monofilament gear is allowed.

d. SANCTUARIES: Elokomin-A, Abernathy, Cowlitz, Kalama-A, Lewis-A, Sandy and Washougal.

2. Blind Slough/Knappa Slough Select Area.

a. OPEN AREA: Blind Slough fishing area includes all waters from markers at the mouth of Gnat Creek located approximately 0.5 mile upstream of the county road bridge downstream to markers at the mouth of Blind Slough. Concurrent waters extend downstream of the railroad bridge. Knappa Slough fishing area includes all waters bounded by a line from the north marker at the mouth of Blind Slough, westerly to a marker on Karlson Island, downstream to boundary lines defined by markers on the west end of

Minaker Island to markers on Karlson Island and the Oregon shore. An area closure of about a 100-foot radius at the mouth of Big Creek defined by markers. All waters in Knappa Slough are under concurrent jurisdiction.

b. SEASON: Monday, Tuesday, Wednesday, and Thursday nights immediately through October 27, 2006. Open hours are 6:00 p.m. to 8:00 a.m.

c. GEAR: Gillnet. Monofilament gear is allowed. 6-inch maximum mesh size. Maximum net length of 100 fathoms. No weight restriction on lead line. Use of additional weights or anchors attached directly to the lead line is allowed.

3. Tongue Point/South Channel Select Area.

a. OPEN AREA: Tongue Point fishing area includes all waters bounded by a line from a marker midway between the red USCG navigation light #2 at the tip of Tongue Point and the downstream (northern most) pier (#8) at the Tongue Point Job Corps facility, to the flashing green USCG navigation light #3 on the rock jetty at the west end of Mott Island, 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. All waters are under concurrent jurisdiction. 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, northwesterly to a marker on Burnside Island defining the upstream terminus of South Channel. All waters are under concurrent jurisdiction.

b. SEASON: Monday, Tuesday, Wednesday, and Thursday nights immediately through October 27, 2006. Open hours are 4:00 p.m. to 8:00 a.m.

c. GEAR: Gillnet. Monofilament gear is allowed. 6-inch maximum mesh. In the Tongue Point area: Net length maximum of 250 fathoms, and weight not to exceed two pounds on any one fathom on the lead line. Participants in the Tongue Point fishery may have stored onboard their boats gill nets with leadline in excess of two pounds per any one fathom. In the South Channel area: Net length maximum of 100 fathoms, and no weight restriction on lead line. Use of additional weights or anchors attached directly to the lead line is allowed.

4. Deep River Select Area.

a. OPEN AREA: Deep River fishing area includes all waters downstream of the town of Deep River to the mouth defined by a line from USCG navigation marker #16 southwest to a marker on the Washington shore. Concurrent waters extend downstream of the Highway 4 bridge

b. SEASON: Monday Tuesday, Wednesday, and Thursday nights immediately through October 27, 2006. Open hours are 4:00 p.m. to 8:00 a.m.

c. GEAR: Monofilament gear is allowed. The mesh size is restricted to 6-inch maximum mesh. Net length maximum of 100 fathoms, and no weight restriction on the lead line. Use of additional weights or anchors attached directly to the lead line is allowed. Nets may not be tied off to stationary structures. Nets may not fully cross the navigation channel.

7. ALLOWABLE SALES: Applies to all seasons stated in sections 1-4: Salmon and sturgeon. A maximum of eight

white sturgeon may be possessed or sold by each vessel participating each calendar week (Sunday through Saturday). The possession and sales limit includes mainstem and Select Area fisheries. Green sturgeon retention is prohibited.

8. MISCELLANEOUS REGULATIONS: Applies to all seasons stated in sections 1-4: Quick reporting required for Washington wholesale dealers, WAC 220-69-240.

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

REPEALER

The following section of the Washington Administrative Code is repealed effective 7:00 p.m. October 8, 2006:

WAC 220-33-01000Y Columbia River season
below Bonneville. (06-253)

WSR 06-21-008 EMERGENCY RULES DEPARTMENT OF FISH AND WILDLIFE

[Order 06-259—Filed October 5, 2006, 3:37 p.m., effective October 12, 2006, 7:00 a.m.]

Effective Date of Rule: October 12, 2006, 7:00 a.m.

Purpose: Amend commercial fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-47-50100Z; and amending WAC 220-47-501.

Statutory Authority for Adoption: RCW 77.12.047.

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

Reasons for this Finding: This regulation accommodates treaty fishing scheduled on October 10 and 11. The originally scheduled nontreaty fishery on October 11, 12 and 13 did not allow adequate time for the treaty fishery after the mandatory October 10 start date in accordance with Annex IV chapter 6 of the Pacific Salmon Treaty. There is insufficient time to promulgate 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 Mak-

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

Date Adopted: October 4, 2006.

J. P. Koenings
Director

NEW SECTION

WAC 220-47-50100Z Puget Sound all-citizen commercial salmon fishery. Notwithstanding the provisions of WAC 220-47-311 and WAC 220-47-411, effective immediately until further notice, it is unlawful to take, fish for or possess salmon taken for commercial purposes in Puget Sound Salmon Management and Catch Reporting Areas 7 and 7A except in accordance with the open periods, mesh size, areas, species restrictions, notification, and landing requirements set forth in this section, provided that unless otherwise amended, all permanent rules remain in effect:

Areas 7 and 7A:

Purse Seines - Open 7:00 a.m. to 6:00 p.m. with use of recovery box and 7:00 a.m. to 3:15 p.m. without use of recovery box on October 12, 13, and 14, 2006. Chinook and Coho salmon must be released immediately.

Gill Nets - Open Noon to 11:59 p.m. for nets with 6 1/4-inch minimum mesh size on October 12, 13, and 14, 2006. Coho and chinook salmon must be released and it is unlawful to use a net soak time of more than 45 minutes. Net soak time is defined as the time elapsed from when the first of the gill net web enters the water until the gill net is fully retrieved from the water. Fishers must also use a recovery box in compliance with WAC 220-47-302 (5)(a) through (f).

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 11:59 p.m. October 14, 2006:

WAC 220-47-50100Z Puget Sound all-citizen commercial salmon fishery.

WSR 06-21-009
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 06-261—Filed October 5, 2006, 3:38 p.m., effective October 5, 2006]

Effective Date of Rule: Immediately.

Purpose: Amend commercial fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-44-05000L; and amending WAC 220-44-050.

Statutory Authority for Adoption: RCW 77.12.047.

Under RCW 34.05.350 the agency for good cause finds that immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or

general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.

Reasons for this Finding: These rules were adopted by the Pacific Fisheries Management Council and provide harvest of available stocks of bottomfish, while reserving brood stock for future fisheries. There is insufficient time to promulgate 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: October 5, 2006.

J. P. Koenings
Director

NEW SECTION

WAC 220-44-05000M Coastal bottom fish catch limits. Notwithstanding the provisions of WAC 220-44-050, effective immediately until further notice: (1) It is unlawful to possess, transport through the waters of the state, or land into any Washington port bottom fish taken from Marine Fish-Shellfish Management and Catch Reporting Areas 58B, 59A-1, 59A-2, 60A-1, 60A-2, 61, 62, or 63 in excess of the amounts or less than the minimum sizes, or in violation of any gear, handling or landing requirement, established by the Pacific Fisheries Management Council and published in the Federal Register, Vol. 71, No. 191, published October 3, 2006. Therefore, persons must consult the federal regulations, which are incorporated by reference and made a part of Chapter 220-44 WAC. Where rules refer to the fishery management area, that area is extended to include Washington State waters coterminous with the Exclusive Economic Zone.

(a) Effective immediately until further notice, it is unlawful to possess, transport through the waters of the state, or land into any Washington port, walleye pollock taken with trawl gear from Marine Fish-Shellfish Management and Catch Reporting Areas 58B, 59A-1, 59A-2, 60A-1, 60A-2, 61, 62, or 63, except by trawl vessels participating in the directed Pacific whiting fishery and the directed coastal groundfish fishery.

(b) Effective immediately until further notice, it is unlawful for trawl vessels participating in the directed Pacific whiting and/or the directed coastal groundfish fishery to land incidental catches of walleye pollock greater than forty percent of their total landing by weight, not to exceed 10,000 pounds.

(2) At the time of landing of coastal bottom fish into a Washington port, the fish buyer receiving the fish is required to clearly mark on the fish receiving ticket, in the space reserved for dealer's use, all legally defined trawl gear aboard the vessel at the time of delivery. The three trawl gear types are: midwater trawl, roller trawl and small foot rope trawl (foot rope less than eight inches in diameter). The notation of the gear type(s) aboard the vessel is required prior to the signing of the fish receiving ticket by the vessel representative.

(3) Vessels engaged in chartered research for National Marine Fisheries Service (NMFS) may land and sell bottomfish caught during that research without the catch being counted toward any trip or cumulative limit for the participating vessel. Vessels that have been compensated for research work by NMFS with an Exempted Fishing Permit (EFP) to land fish as payment for such research may land and sell fish authorized under the EFP without the catch being counted toward any trip or cumulative limit for the participating vessel. Any bottomfish landed during authorized NMFS research or under the authority of a compensating EFP for past chartered research work must be reported on a separate fish receiving ticket and not included on any fish receiving ticket reporting bottomfish landed as part of any trip or cumulative limit. Bottomfish landed under the authority of NMFS research work or an EFP compensating research with fish must be clearly marked "NMFS Compensation Trip" on the fish receiving ticket in the space reserved for dealer's use. The NMFS scientist in charge must sign the fish receiving ticket in the area reserved for dealer's use if any bottomfish are landed during authorized NMFS research. If the fish are landed under the authority of an EFP as payment for research work, the EFP number must be listed in the dealer's use space.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 220-44-05000L Coastal bottomfish catch limits. (06-160)

**WSR 06-21-020
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE**

[Order 06-260—Filed October 6, 2006, 2:09 p.m., effective October 7, 2006, 12:01 a.m.]

Effective Date of Rule: October 7, 2006, 12:01 a.m.

Purpose: Amend personal use rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 232-28-61900X; and amending WAC 232-28-619.

Statutory Authority for Adoption: RCW 77.12.047.

Under RCW 34.05.350 the agency for good cause finds that immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of

notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.

Reasons for this Finding: Significant numbers of chinook are holding immediately downstream of the Chandler Power Plant and illegal snagging has become a significant problem in the area. Closing this small area will continue to allow anglers the opportunity to catch a chinook in other areas that are open to salmon on the Yakima. There is insufficient time to promulgate 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: October 5, 2006.

J. P. Koenings
Director

NEW SECTION

WAC 232-28-61900X Exceptions to statewide rules—Yakima River. Notwithstanding the provisions of WAC 232-28-619, effective 12:01 a.m. October 7 through October 22, 2006, it is unlawful to fish in those waters of the Yakima River within 400 feet of the Chandler Power Plant.

REPEALER

The following section of the Washington Administrative Code is repealed effective 12:01 a.m. October 23, 2006:

WAC 232-28-61900X Exceptions to statewide rules—Yakima River.

**WSR 06-21-039
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE**

[Order 06-265—Filed October 11, 2006, 3:10 p.m., effective October 11, 2006]

Effective Date of Rule: Immediately.

Purpose: Amend personal use rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 232-28-61900Y; and amending WAC 232-28-619.

Statutory Authority for Adoption: RCW 77.12.047.

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

Reasons for this Finding: This emergency rule is necessary to correspond with the original intent of regulations developed through North of Falcon and as reflected in language in the sport fishing rules pamphlet. Emergency rule is interim until permanent rules take effect.

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: October 11, 2006.

J. P. Koenings
Director

NEW SECTION

WAC 232-28-61900Y Exceptions to statewide rules—Wishkah River. Notwithstanding the provisions of WAC 232-28-619, effective immediately through December 31, 2006, it is lawful to fish for or possess salmon in those waters of the Wishkah River from the mouth of the West Fork to 200 feet below the dam at Wishkah Rearing Ponds (formerly Mayr Bros.) Daily limit 6 fish of which no more than 2 may be adult salmon. Release adult Chinook.

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

REPEALER

The following section of the Washington Administrative Code is repealed effective January 1, 2007:

WAC 232-28-61900Y	Exceptions to statewide rules—Wishkah River.
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WSR 06-21-045 EMERGENCY RULES DEPARTMENT OF FISH AND WILDLIFE

[Order 06-266—Filed October 12, 2006, 1:52 p.m., effective October 12, 2006, 7:00 p.m.]

Effective Date of Rule: October 12, 2006, 7:00 p.m.

Purpose: The purpose of this rule making is to allow fishing opportunity in the Columbia River while protecting salmon listed as threatened or endangered under the Endangered Species Act. This rule making implements federal court order 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 220-33-01000Z; 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 2005-2007 Interim Management Agreement For Upriver Chinook, Sockeye, Steelhead, Coho & White Sturgeon (May 11, 2005) (Doc. No. 2407); *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; 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: 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 2005-2007 Interim Management Agreement For Upriver Chinook, Sockeye, Steelhead, Coho & White Sturgeon (May 11, 2005) (Doc. No. 2407).

Some Columbia River Basin salmon and steelhead stocks are listed as threatened or endangered under the federal Endangered Species Act. The National Marine Fisheries Service has issued biological opinions under 16 U.S.C. § 1536 that allow for some incidental take of these species in treaty and nontreaty Columbia River fisheries. The Washington and Oregon fish and wildlife commissions have developed policies to guide the implementation of these 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 Endangered Species Act, and commission guidelines. Because conditions change rapidly, the fisheries are managed almost exclusively by emergency rule. Representatives from the Washington and Oregon 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. Regulation is consistent with compact action of October 11, 2006. There is insufficient time to promulgate 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: October 11, 2006.

J. P. Koenings
Director
by Larry Peck

NEW SECTION

WAC 220-33-01000A Columbia River season below Bonneville. Notwithstanding the provisions 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. Mainstem Columbia River

a. OPEN AREA: SMCRA 1D, 1E

b. SEASON: 7:00 p.m. Thursday October 12 to 7:00 a.m. Friday October 13, 2006

c. GEAR: 8-inch minimum mesh size restriction. 9 3/4-inch maximum mesh size. Drift gillnets only. Monofilament gear is allowed.

d. SANCTUARIES: Sandy and Washougal.

2. Mainstem Columbia River

a. OPEN AREA: SMCRA 1A, 1B, 1C, 1D, 1E

b. SEASON: 7:00 p.m. Monday October 16 to 7:00 a.m. Tuesday October 17, 2006

c. GEAR: 9-inch minimum mesh size restriction. 9 3/4-inch maximum mesh size. Drift gillnets only. Monofilament gear is allowed.

d. SANCTUARIES: Elokomin-A, Abernathy, Cowlitz, Kalama-A, Lewis-A, Sandy and Washougal.

3. Blind Slough/Knappa Slough Select Area.

a. OPEN AREA: Blind Slough fishing area includes all waters from markers at the mouth of Gnat Creek located approximately 0.5 mile upstream of the county road bridge downstream to markers at the mouth of Blind Slough. Concurrent waters extend downstream of the railroad bridge. Knappa Slough fishing area includes all waters bounded by a line from the north marker at the mouth of Blind Slough, westerly to a marker on Karlson Island, downstream to boundary lines defined by markers on the west end of Minaker Island to markers on Karlson Island and the Oregon shore. An area closure of about a 100-foot radius at the mouth of Big Creek defined by markers. All waters in Knappa Slough are under concurrent jurisdiction.

b. SEASON: Monday, Tuesday, Wednesday, and Thursday nights immediately through October 27, 2006. Open hours are 6:00 p.m. to 8:00 a.m.

c. GEAR: Gillnet. Monofilament gear is allowed. 6-inch maximum mesh size. Maximum net length of 100 fathoms. No weight restriction on lead line. Use of additional weights or anchors attached directly to the lead line is allowed.

4. Tongue Point/South Channel Select Area.

a. OPEN AREA: Tongue Point fishing area includes all waters bounded by a line from a marker midway between the red USCG navigation light #2 at the tip of Tongue Point and the downstream (northern most) pier (#8) at the Tongue Point Job Corps facility, to the flashing green USCG navigation light #3 on the rock jetty at the west end of Mott Island, 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. All waters are under concurrent jurisdiction. 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, northwesterly to a marker on Burnside Island defining the upstream terminus of South Channel. All waters are under concurrent jurisdiction.

b. SEASON: Monday, Tuesday, Wednesday, and Thursday nights immediately through October 27, 2006. Open hours are 4:00 p.m. to 8:00 a.m.

c. GEAR: Gillnet. Monofilament gear is allowed. 6-inch maximum mesh. In the Tongue Point area: Net length maximum of 250 fathoms, and weight not to exceed two pounds on any one fathom on the lead line. Participants in the Tongue Point fishery may have stored onboard their boats gill nets with leadline in excess of two pounds per any one fathom. In the South Channel area: Net length maximum of 100 fathoms, and no weight restriction on lead line. Use of additional weights or anchors attached directly to the lead line is allowed.

5. Deep River Select Area.

a. OPEN AREA: Deep River fishing area includes all waters downstream of the town of Deep River to the mouth defined by a line from USCG navigation marker #16 southwest to a marker on the Washington shore. Concurrent waters extend downstream of the Highway 4 bridge

b. SEASON: Monday Tuesday, Wednesday, and Thursday nights immediately through October 27, 2006. Open hours are 4:00 p.m. to 8:00 a.m.

c. GEAR: Monofilament gear is allowed. The mesh size is restricted to 6-inch maximum mesh. Net length maximum of 100 fathoms, and no weight restriction on the lead line. Use of additional weights or anchors attached directly to the lead line is allowed. Nets may not be tied off to stationary structures. Nets may not fully cross the navigation channel.

7. ALLOWABLE SALES: Applies to all seasons stated in sections 1-5: Salmon and sturgeon. A maximum of eight white sturgeon may be possessed or sold by each vessel participating each calendar week (Sunday through Saturday). The possession and sales limit includes mainstem and Select Area fisheries. Green sturgeon retention is prohibited.

8. MISCELLANEOUS REGULATIONS: Applies to all seasons stated in sections 1-5: Quick reporting required for Washington wholesale dealers, WAC 220-69-240.

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

REPEALER

The following section of the Washington Administrative Code is repealed effective 7:00 p.m. October 12, 2006:

WAC 220-33-01000Z Columbia River season below Bonneville. (06-258)

WSR 06-21-046
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 06-267—Filed October 12, 2006, 1:52 p.m., effective October 13, 2006, 12:01 a.m.]

Effective Date of Rule: October 13, 2006, 12:01 a.m.

Purpose: The purpose of this rule making is to allow fishing opportunity in the Columbia River while protecting salmon listed as threatened or endangered under the Endangered Species Act. 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 232-28-61900W.

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 2005-2007 Interim Management Agreement For Upriver Chinook, Sockeye, Steelhead, Coho & White Sturgeon (May 11, 2005) (Doc. No. 2407); *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; 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: 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 2005-2007 Interim Management Agreement For Upriver Chinook, Sockeye, Steelhead, Coho & White Sturgeon (May 11, 2005) (Doc. No. 2407).

Some Columbia River Basin salmon and steelhead stocks are listed as threatened or endangered under the federal Endangered Species Act. The National Marine Fisheries Service has issued biological opinions under 16 U.S.C. § 1536 that allow for some incidental take of these species in treaty and nontreaty Columbia River fisheries. The Washington and Oregon fish and wildlife commissions have developed policies to guide the implementation of these 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 Endangered Species Act, and commission guidelines. Because conditions change rapidly, the fisheries are managed almost exclusively by emergency rule. Representatives from the Washington and Oregon 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. Regulation is consistent with compact action of October 11, 2006. The impacts to the ESA-listed Snake River wild fall chinook allowed for this fishery are expected to be minor and within the total allowable for non-Indian fisheries. Reopens chinook retention from Rocky Point/Tongue Point upstream to Bonneville Dam. There is insufficient time to promulgate 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: October 12, 2006.

J. P. Koenings
Director
by Larry Peck

REPEALER

The following section of the Washington Administrative Code is repealed effective 12:01 a.m. October 13, 2006:

WAC 232-28-61900W Exceptions to statewide rules—Columbia River. (06-254)

J. P. Koenings
Director

WSR 06-21-052
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 06-269—Filed October 13, 2006, 2:41 p.m., effective October 15, 2006, 6:00 p.m.]

Effective Date of Rule: October 15, 2006, 6:00 p.m.

Purpose: Amend commercial fishing rules.

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

Statutory Authority for Adoption: RCW 77.12.047.

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

Reasons for this Finding: Ends sale of platform and hook and line caught fish. The tribes will issue some C&S permits for the remainder of the fall season. Continues to allow the sale of fish caught in Yakama Nation tributary fisheries to be sold when those tributaries are open under Yakama Nation rules, including Drano Lake. Impacts to listed Snake River wild chinook are projected to be 18.4% through the end of the fall season, compared to the ESA guideline of 23.04%. Harvestable numbers of salmon and steelhead are available under the ESA guideline. The fishery catches are expected to remain within the allocation and guidelines of the 2005-2007 management agreement. Rule is consistent with action of the Columbia River compact on October 13, 2006. Conforms state rules with tribal rules. There is insufficient time to promulgate 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 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: October 13, 2006.

NEW SECTION

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

1. Effective 6:00 p.m. October 15 through December 31, 2006 it shall be unlawful to sell salmon, steelhead, walleye, shad, carp or sturgeon from platforms or from hook and line fisheries in SMCRA 1F, 1G, 1H.

2. Open Periods: Immediately until further notice and only during those days and hours when those tributaries are open under lawfully enacted Yakama Nation tribal subsistence fisheries, for enrolled Yakama Nation members.

a) Open Areas: White Salmon and Klickitat rivers and Drano Lake.

b) Gear: hoop nets, dip bag nets, and rod and reel with hook and line. Gillnets in Drano Lake only

c) Allowable sale: salmon, steelhead, walleye, shad, carp. Sockeye may be retained but not sold. Sturgeon may not be sold, but may be retained for subsistence purposes. Legal size limits for sturgeon retention are between 45 inches and 60 inches in the Bonneville Pool (SMCRA 1F) and between 48 inches and 60 inches in The Dalles and John Day pools (SMCRA 1G, 1H). Fish taken in the Klickitat and White Salmon rivers, and Drano Lake may be sold when those rivers are open pursuant to lawfully enacted tribal rules.

d) Yakama tribal members transporting fish for sale outside the immediate fishing areas are required to possess a Yakama Nation issued fish transport permit.

REPEALER

The following section of the Washington Administrative Code is repealed effective 6:00 p.m. October 15, 2006:

WAC 220-32-05100E Columbia River salmon seasons above Bonneville Dam. (06-250)

WSR 06-21-053
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 06-270—Filed October 13, 2006, 2:42 p.m., effective October 15, 2006, 5:00 p.m.]

Effective Date of Rule: October 15, 2006, 5:00 p.m.

Purpose: Amend commercial fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-52-05100A; and amending WAC 220-52-051.

Statutory Authority for Adoption: RCW 77.12.047.

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

Reasons for this Finding: The 2006 state/tribal Puget Sound shrimp harvest management plans require adoption of harvest seasons contained in this emergency rule. The extension of the trawl fishery in a portion of Region 3 is pursuant to waivers by the tribes of the closure date in the Region 3 Shrimp Management Plan. This extension has been allowed in consideration of the state's allocation remaining and is contingent on sampling of the shrimp catch to monitor presence of egg-bearing female shrimp and a maximum count of shrimp per pound. There is insufficient time to promulgate 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: October 13, 2006.

J. P. Koenings
Director

NEW SECTION

WAC 220-52-05100B Puget Sound shrimp pot and beam trawl fishery—Season. Notwithstanding the provisions of WAC 220-52-051, effective immediately until further notice, it is unlawful to fish for shrimp for commercial purposes in Puget Sound except as provided for in this section:

(1) Shrimp beam trawl gear:

(a) Marine Fish-Shellfish Management and Catch Reporting Areas 23A (east), 23B and 25A, within Shrimp Management Area 3 outside of the shrimp districts, are open immediately for non-spot shrimp until 4:00 p.m., November 15, 2006.

(b) It is unlawful to set or pull shrimp beam trawl gear from one hour after official sunset to one hour before official sunrise.

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

REPEALER

The following section of the Washington Administrative Code is repealed effective 5:00 p.m. October 15, 2006:

WAC 220-52-05100A Puget Sound shrimp beam trawl fishery—Season (06-241)

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

WSR 06-21-064
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 06-271—Filed October 16, 2006, 4:02 p.m., effective October 19, 2006, 6:30 p.m.]

Effective Date of Rule: October 19, 2006, 6:30 p.m.

Purpose: Amend commercial fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-52-04000Y; and amending WAC 220-52-040.

Statutory Authority for Adoption: RCW 77.12.047.

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

Reasons for this Finding: Pot limit changes for the commercial crab fishery in the Puget Sound licensing district is to maintain commercial harvest allocation plans. There is insufficient time to promulgate 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: October 16, 2006.

J. P. Koenings
Director
by Larry Peck

NEW SECTION

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

(1) Effective 6:30 p.m. October 19, 2006 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 1 (which includes Marine Fish Shellfish Catch Reporting Areas 20A, 20B, 21A, 21B, 22A, and 22B). The remaining 50 buoy tags per license must be onboard the designated vessel and available for inspection in the pot-limited areas.

(2) Effective 6:30 p.m. October 19, 2006 until further notice, it is unlawful for any person to fish for crabs for commercial purposes with more than 75 pots per license, per buoy tag number in Crab Management Region 2 East (which includes Marine Fish Shellfish Catch Reporting Areas 24A, 24B, 24C, 24D, 26A-E). The remaining 25 buoy tags per license must be onboard the designated vessel and available for inspection in the pot-limited areas.

(3) No commercial crab pots are allowed to be set, pulled or fished west of the 123°6.5' longitude line projected from the new Dungeness light due south to the shore of Dungeness Bay.

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

REPEALER

The following section of the Washington Administrative Code is repealed effective 6:30 p.m. October 19, 2006:

WAC 220-52-04000Y	Commercial crab fishery— Lawful and unlawful gear, methods, and other unlawful acts. (06-245)
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WSR 06-21-103 EMERGENCY RULES DEPARTMENT OF FISH AND WILDLIFE

[Order 06-272—Filed October 17, 2006, 11:27 a.m., effective October 17, 2006, 6:30 p.m.]

Effective Date of Rule: October 17, 2006, 6:30 p.m.

Purpose: Amend commercial fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-52-04000Y and 220-52-04000Z; and amending WAC 220-52-040.

Statutory Authority for Adoption: RCW 77.12.047.

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

Reasons for this Finding: Pot limit changes for the commercial crab fishery in the Puget Sound licensing district is to maintain commercial harvest allocation plans. There is insufficient time to promulgate 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 2.

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: October 17, 2006.

J. P. Koenings
Director

NEW SECTION

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

(1) Effective 6:30 p.m. October 17, 2006 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 1 (which includes Marine Fish Shellfish Catch Reporting Areas 20A, 20B, 21A, 21B, 22A, and 22B). The remaining 50 buoy tags per license must be onboard the designated vessel and available for inspection in the pot-limited areas.

(2) Effective 6:30 p.m. October 17, 2006 until further notice, it is unlawful for any person to fish for crabs for commercial purposes with more than 75 pots per license, per buoy tag number in Crab Management Region 2 East (which includes Marine Fish Shellfish Catch Reporting Areas 24A,

24B, 24C, 24D, 26A-E). The remaining 25 buoy tags per license must be onboard the designated vessel and available for inspection in the pot-limited areas.

(3) No commercial crab pots are allowed to be set, pulled or fished west of the 123°6.5' longitude line projected from the new Dungeness light due south to the shore of Dungeness Bay.

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

REPEALER

The following sections of the Washington Administrative Code are repealed effective 6:30 p.m. October 17, 2006:

WAC 220-52-04000Y	Commercial crab fishery— Lawful and unlawful gear, methods, and other unlawful acts. (06-245)
WAC 220-52-04000Z	Commercial crab fishery— Lawful and unlawful gear, methods, and other unlawful acts. (06-271)

WSR 06-21-115

EMERGENCY RULES

SECRETARY OF STATE

[Filed October 17, 2006, 3:48 p.m., effective October 17, 2006]

Effective Date of Rule: Immediately.

Purpose: To promote consistency in county canvassing board decisions statewide and to comply with requirement set by the Help America Vote Act.

Citation of Existing Rules Affected by this Order: Amending WAC 434-261-070 and 434-261-075.

Statutory Authority for Adoption: RCW 29A.04.611.

Under RCW 34.05.350 the agency for good cause finds that state or federal law or federal rule or a federal deadline for state receipt of federal funds requires immediate adoption of a rule.

Reasons for this Finding: The federal law, Help America Vote Act, requires each state to adopt rules to determine what a valid vote is for each voting system. These WACs will require the secretary of state to adopt a manual for that purpose in time for the November 7 general election.

Number of Sections Adopted in Order to Comply with Federal Statute: New 1, Amended 2, 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 2, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 1, Amended 2, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 1, Amended 2, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: October 17, 2006.

Steve Excell

Assistant Secretary of State

AMENDATORY SECTION (Amending WSR 06-11-042, filed 5/10/06, effective 6/10/06)

WAC 434-261-070 Manual inspection of ballots. (1)

Upon receiving absentee ballots and upon breaking the seals and opening the ballot containers from the precincts, all voting positions on voted ballots shall be manually inspected on both sides of the ballot to determine whether the ballot will be readable by the vote tabulating system. This manual inspection is a required part of processing ballots.

(2) The inspection of ballots tabulated at the poll site is not required provided that the poll site ballot programming provisions of RCW 29A.44.340 are in effect.

(3) If the manual inspection process detects any physically damaged ballots, unreadable ballots which might not be correctly counted by the tabulating equipment, or marks that differ from those specified in the voting instructions, ~~((but the marks clearly form a discernible and consistent pattern on the ballot to the extent that the voter's intent can be clearly determined;))~~ the county auditor ~~((may either:~~

~~(a) Refer the ballots to the county canvassing board; or~~

~~(b) Duplicate the ballots if authorized by the county canvassing board.~~

~~If the voter's intent is not clear, the ballot must be referred)) shall refer such ballots to the county canvassing board.~~

(4) Nothing in this section shall alter the authority of the county canvassing board to delegate in writing, to the county auditor or the county auditor's staff, the performance of any task assigned by law to the canvassing board as set forth in RCW 29A.60.140(2).

AMENDATORY SECTION (Amending WSR 06-14-047, filed 6/28/06, effective 7/29/06)

WAC 434-261-075 Manual inspection of ballot—Acceptability of marks. (1) If the voter returns voting responses by mail on any form other than the ballot sent, the votes thereon shall be acceptable and tallied provided that:

(a) Only votes for offices or measures for which the voter is eligible are counted.

(b) The candidate or measure response position for which the voter is voting can be clearly identified.

(c) The ballot issued is not returned, or if returned, contains no marks indicating an attempt to vote it.

(d) A valid signature on an absentee oath is on file with the county auditor.

The votes accepted must then be duplicated to a ballot that can be read by the electronic voting equipment.

(2) Corrected absentee ballots shall be counted in the following manner:

(a) If a voter follows the instructions for correcting a vote, either the written instructions or other instructions given to the voter by the county auditor, the correction shall be made by duplicating the ballot and then tabulating the duplicated ballot.

(b) If a voter appears to have corrected the ballot in a manner other than as instructed, the vote for that candidate or issue shall not be tabulated unless the voter provides written instructions directing how the vote should be counted or has clearly attempted to erase a mark.

(3) If a voter has indicated a write-in vote on the ballot which duplicates the name of a candidate who already appears on the ballot for the same office, the ballot shall be duplicated to count one vote for the candidate indicated. Such a vote shall be counted pursuant to RCW 29A.60.021.

(4) If a ballot contains marks that differ from those specified in the voting instructions, those marks shall not be counted as valid votes unless ~~((there is a discernable and consistent pattern, to the extent that the voter's intent can clearly be determined. If there is such a pattern, the ballot shall be duplicated to reflect the voter's intent))~~ the marks are made in the same manner for each office or issue for which the voter has indicated a preference. Voter intent in any single contest may not be determined based upon a pattern of partisan voting on the ballot.

NEW SECTION

WAC 434-261-086 Statewide standards on determining voter intent. (1) The secretary of state, pursuant to the provisions of the Help America Vote Act, shall prepare and distribute to each county canvassing board a manual that defines what constitutes a vote and what will be counted as a vote for each category of voting system used in the state, consistent with state law and administrative rules. The manual shall contain reasonably comprehensive illustrations of irregularly marked ballots and shall provide standards for determining whether or not a valid vote has been cast.

(2) The secretary of state shall periodically review the manual as necessary to keep it updated. Wherever practical the secretary shall seek input from county canvassing boards and other interested parties to ensure that the manual remains as comprehensive as possible. The currently adopted manual shall be posted on the secretary of state web site (www.sec.state.wa.gov) for public review or reference at any time.

(3) Compliance by county canvassing boards with the standards set forth in the manual shall be mandatory.