

WSR 07-12-015
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 07-89—Filed May 25, 2007, 2:34 p.m., effective May 25, 2007, 2:34 p.m.]

Effective Date of Rule: Immediately.

Purpose: Amend personal use rules.

Citation of Existing Rules Affected by this Order:
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: The department of fish and wildlife is in the process of adopting permanent rules that are necessary to implement the personal use fishing plans agreed-to with resource comanagers at the North of Falcon proceedings. These emergency rules are necessary to comply with agreed-to management plans, and are 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Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 1, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.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: May 24, 2007.

J. P. Koenings
Director

NEW SECTION

WAC 232-28-61900I Exceptions to statewide rules—2007 North of Falcon. Notwithstanding the provisions of WAC 232-28-619, it is unlawful to violate the following provisions:

Cowlitz River - from boundary markers at mouth to Mayfield Dam:

1. Salmon: Effective immediately through July 31, 2007, daily limit 6 hatchery chinook or hatchery coho, of which no more than 2 may be adults. Minimum size is 12 inches. Release chum, pink, sockeye, wild chinook, and wild coho.

2. Salmon: Effective August 1, 2007, until further notice, daily limit is 6 chinook or hatchery coho, of which no

more than 2 may be adult chinook. Minimum size is 12 inches. Release chum, pink, sockeye, and wild coho.

Deep River - from mouth to town bridge:

1. Salmon: Effective immediately through July 31, 2007, daily limit is 6 fish, of which no more than 2 may be adults. Minimum size is 12 inches. Release wild chinook and wild coho.

2. Salmon: Effective August 1, 2007, until further notice, the daily limit is 6 fish. Up to 4 adults may be retained, of which no more than 2 may be adult chinook. Minimum size is 12 inches. Release chum and wild coho.

Kalama River - from mouth to 1,000 feet above the fish-way at the upper salmon hatchery:

1. Salmon: Effective immediately through July 31, 2007, daily limit is 6 fish, of which no more than 2 may be adults. Minimum size is 12 inches. Release wild chinook and wild coho.

2. Salmon: Effective August 1, 2007, until further notice, the daily limit is 6 fish. Up to 4 adults may be retained, of which no more than 2 may be adult chinook. Minimum size is 12 inches. Release chum and wild coho.

Lewis River - from mouth to mouth of East Fork and North Fork Lewis River from mouth of East Fork to Merwin Dam:

1. Salmon: Effective immediately through July 31, 2007, daily limit is 6 fish, of which no more than 2 may be adults. Minimum size 12 inches. Release sockeye, wild chinook, and wild coho.

2. Salmon: Effective August 1, 2007, until further notice, the daily limit is 6 fish. Up to 4 adults may be retained, of which no more than 2 may be adult chinook. Minimum size 12 inches. Release Sockeye, chum, and wild coho.

WSR 07-12-016
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 07-94—Filed May 25, 2007, 2:36 p.m., effective May 25, 2007, 2:36 p.m.]

Effective Date of Rule: Immediately.

Purpose: Amend personal use rules.

Citation of Existing Rules Affected by this Order:
Repealing WAC 232-28-61900J and 232-28-61900L; 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: Moving the closure up 400 feet will prevent anglers from fishing in the Wenatchee River and catching Endangered Species Act (ESA) listed upper Columbia River spring chinook. Although upper Columbia

spring chinook have been listed as endangered under the ESA, the salmon returning to the Icicle River are Carson River stock fish that are not listed as endangered. About 1,000 salmon are needed to meet hatchery broodstock needs. The quantity of salmon returning in 2007 ensures that the hatchery will meet their escapement needs; the remaining fish will be available for harvest. 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: May 24, 2007.

J. P. Koenings
Director

NEW SECTION

WAC 232-28-61900L Exceptions to statewide rules—Icicle River (Chelan Co.) Notwithstanding the provisions of WAC 232-28-619, effective immediately through July 31, 2007, it is lawful to fish for salmon in those waters of the Icicle River from the closure signs located 800 feet upstream of the mouth to 500 feet downstream of the Leavenworth National Fish Hatchery Rack; downstream to a point 400 feet upstream of the mouth of the Icicle River. Daily limit, two salmon; minimum size, 12 inches. Night closure and non-buoyant lure restrictions in effect.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 232-28-61900J Exceptions to statewide rules—Icicle River (Chelan Co.) (07-91)

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

WAC 232-28-61900L Exceptions to statewide rules—Icicle River (Chelan Co.)

**WSR 07-12-017
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE**

[Order 07-95—Filed May 25, 2007, 2:37 p.m., effective May 26, 2007]

Effective Date of Rule: May 26, 2007.

Purpose: Amend personal use rules.

Citation of Existing Rules Affected by this Order: 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: Adult spring chinook straying from select area fishery evaluation sites are entering the Grays and Elochoman rivers. These fish are not needed for broodstock. Hatchery spring chinook are available for harvest in Lake Scanewa. 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 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: May 25, 2007.

J. P. Koenings
Director

NEW SECTION

WAC 232-28-61900M Exceptions to statewide rules—Elochoman River, Grays River and Lake Scanewa. Notwithstanding the provisions of WAC 232-28-619:

(1) Effective May 26 through July 31, 2007, it is lawful to fish for salmon in those waters of the Elochoman River from the mouth to Elochoman Hatchery Bridge located about 400 feet below the upper hatchery rack. Special daily limit of six salmon, of which no more than two may be adults. Minimum size is 12 inches in length. Release wild chinook.

(2) Effective May 26, 2007, until further notice, it is lawful to fish for steelhead in those waters of the Elochoman River from the mouth to Elochoman Hatchery Bridge located about 400 feet below the upper hatchery rack. Special daily limit of two hatchery steelhead. Minimum size is 20 inches in length. Release wild steelhead.

(3) Effective May 26 through July 31, 2007, it is lawful to fish for salmon in those waters of the Grays River from the mouth to South Fork, and in West Fork Grays from the mouth to the hatchery intake/footbridge. Special daily limit of six salmon, of which no more than two may be adults; minimum size is 12 inches in length. Daily limit two hatchery steelhead; minimum size is 20 inches in length. Release all wild chinook and wild steelhead.

(4) Effective May 26 through July 31, 2007, it is lawful to fish for salmon in those waters of Lake Scanewa. Special daily limit of six salmon, of which no more than two may be adults. Minimum size is 12 inches in length. Release wild chinook.

WSR 07-12-018
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 07-96—Filed May 25, 2007, 2:38 p.m., effective May 25, 2007, 2:38 p.m.]

Effective Date of Rule: Immediately.

Purpose: Amend personal use rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-56-25500M and 220-56-25500N; and amending WAC 220-56-255.

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 Columbia River (Ilwaco) recreational halibut fishery is projected to attain its portion of the Pacific halibut quota. These rules conform to federal action by Pacific Fishery Management Council. 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: May 25, 2007.

J. P. Koenings
Director

NEW SECTION

WAC 220-56-25500P Halibut—Seasons—Daily and possession limits. (1) Notwithstanding the provisions of WAC 220-56-255, effective immediately until further notice, it is unlawful to fish for or possess halibut taken for personal use, except as provided in this section:

(a) Catch Record Card Area 1 - Open through 11:59 p.m. May 26, 2007. By-catch restriction: It is unlawful during any vessel trip to bring into port or land bottomfish except sablefish or Pacific Cod if the vessel has brought halibut into port or landed halibut during that trip.

(b) Catch Record Card Area 2 - Closed.

(c) Catch Record Card Areas 3 and 4 - Open only 12:01 a.m. through 11:59 p.m. May 31, 2007. The following area southwest of Cape Flattery is closed to fishing for halibut at all times:

Beginning at 48°18'N., 125°18'W.; thence to 48°18'N., 124°59'W.; thence to 48°11'N., 124°59'W.; thence to 48°11'N., 125°11'W.; thence to 48°04'N., 125°11'W.; thence to 48°04'N., 124°59'W.; thence to 48°N., 124°59'W.; thence to 48°N., 125°18'W.; thence to point of origin.

(i) Effective immediately until further notice, on days when halibut fishing is closed in Catch Record Card Areas 3 and 4 it is unlawful to fish for or possess rockfish and lingcod seaward of a line approximating the 20-fathom depth contour as defined by the following coordinates:

48°23.9'N.; 124°44.2'W.
48°23.6'N.; 124°44.9'W.
48°18.6'N.; 124°43.6'W.
48°18.6'N.; 124°48.2'W.
48°10.0'N.; 124°48.8'W.
48°02.4'N.; 124°49.3'W.
47°37.6'N.; 124°34.3'W.
47°31.7'N.; 124°32.4'W.

(d) Catch Record Card Areas 6 through 11 and Catch Record Card Area 13 - Open through June 16, 2007, except closed to fishing for halibut 12:01 a.m. of each Tuesday through 11:59 p.m. of each Wednesday.

(e) Catch Record Card Area 5 - Open May 24, 2007, until further notice, except closed to fishing for halibut 12:01 a.m. of each Tuesday through 11:59 p.m. of each Wednesday.

(f) Daily limit one halibut. The possession limit is two daily limits of halibut in any form, except the possession limit aboard the fishing vessel is one daily limit.

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 220-56-25500M Halibut—Seasons—Daily and possession limits. (07-90)

WAC 220-56-25500N Halibut—Seasons—Daily and possession limits. (07-92)

Purpose: The division of developmental disabilities (DDD) has had ongoing discussions with the federal Center for Medicare and Medicaid Services (CMS) and has received approval from CMS to amend its waivers under Section 1915 of the Social Security Act. These amendments also respond to the proposed order and settlement agreement under *Boyle v. Arnold-Williams* and incorporate the provisions of the letter of agreement between the state of Washington (office of financial management) and the Service Employees International Union (SEIU). Finally these rules are necessary to implement the recommendations in a June 2003 performance audit by the joint legislative audit and review committee. These rules have been filed under the proposed rule making CR-102 filed as WSR 07-11-130 on May 22, 2007.

WSR 07-12-022
EMERGENCY RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
 (Aging and Disability Services Administration)
 [Filed May 29, 2007, 8:29 a.m., effective June 1, 2007]

Effective Date of Rule: June 1, 2007.

Citation of Existing Rules Affected by this Order:

Washington Administrative Code	Effect of Rule
388-845-0001 - Definitions	
"DDD assessment" (new)	Defines DDD assessment.
"Family" (new)	Defines family.
"Individual support plan (ISP)" (new)	Defines ISP.
"Legal representative" (new)	Defines legal representative.
"Necessary supplemental accommodation representative" (new)	Defines necessary supplemental accommodation representative.
"Plan of care (POC)" (amended)	Specifies that the POC remains in effect until the DDD assessment is administered and the ISP is developed.
"Providers" (amended)	Clarifies that providers must meet all provider qualifications and are contracted with ADSA.
"Respite assessment" (amended)	Defines the respite assessment as an algorithm.
388-845-0015 (amended)	Eliminates reference to CAP waiver and changes tense to reflect current situation.
388-845-0025 (deleted)	Deletes section as conversion from CAP waiver is complete.
388-845-0030 (amended)	Corrects cross references and adds the ISP as an alternative to the POC.
388-845-0031 (new)	Clarifies that one cannot be enrolled in more than one HCBS waiver at the same time.
388-845-0035 (amended)	Clarifies that enrollment in a new or different HCBS waiver is not guaranteed.
388-845-0040 (amended)	Clarifies that DDD may limit capacity.
388-845-0041 (amended)	Adds the ISP as an alternative to the POC.
388-845-0045 (amended)	Clarifies that individuals may be enrolled from the statewide data base when there is capacity and funding for new waiver participants and revises "health and safety" to "health and welfare."
388-845-0050 (amended)	Adds reference to requests for enrollment in a different waiver.
399-845-0052 (new)	Defines the process for requests to be enrolled in a different waiver and DDD's notice requirement in accordance with the <i>Boyle</i> lawsuit.
388-845-0055 (amended)	Clarifies language concerning ongoing eligibility once one is enrolled in a waiver and changes the reference from the CARE assessment to the DDD assessment.
388-845-0060 (amended)	Clarifies when enrollment in a waiver can be terminated, adds a monthly monitoring plan as an alternative to receiving a waiver service as an eligibility condition, and adds the ISP as an alternative to the POC.
388-845-0070 (amended)	Specifies that DDD uses the DDD assessment as specified in chapter 388-828 WAC to determine if the client needs ICF/MR level of care.
388-845-0075 through 388-845-0096 (deleted)	Deletes these sections as the information is contained in chapter 388-828 WAC.
388-845-0100 (amended)	Defines the criteria for assignment to the most cost-effective DDD waiver and eliminates the criteria use for conversion from the expired CAP waiver.
388-845-0105 (amended)	Adds the ISP as an alternative to the POC.
388-845-0110 (amended)	Adds the ISP as an alternative to the POC.
388-845-0111 (new)	Defines the limitations regarding who can provide waiver services.
388-845-0200 (amended)	Revises the source of the definition of waiver services available from the service plan to the POC or ISP.
388-845-0205 (amended)	Defines the yearly limits as those determined by the DDD assessment and clarifies that emergency services are available only for aggregate services and/or employment/day program services.
388-845-0210 (amended)	Defines the yearly limits as those determined by the DDD assessment and clarifies that emergency services are available only for aggregate services and/or employment/day program services.
388-845-0215 (amended)	Adds the ISP as an alternative to the POC and defines the yearly limits as those determined by the DDD assessment.
388-845-0220 (amended)	Adds the ISP as an alternative to the POC.

Washington Administrative Code	Effect of Rule
388-845-0510 (amended)	Clarifies that approval is required from the DDD regional administrator or designee.
388-845-0800 (amended)	Clarifies that emergency services are available only for aggregate services and/or employment/day program services.
388-845-0820 (amended)	Clarifies that approval is required from the DDD regional administrator or designee, adds the ISP as an alternative to the POC, and clarifies that emergency services are available only for aggregate services and/or employment/day program services.
388-845-0900 (amended)	Adds the ISP as an alternative to the POC.
388-845-0910 (amended)	Clarifies that approval is required from the DDD regional administrator or designee.
388-845-1300 (amended)	Revises the wording and clarifies the reference for personal care services.
388-845-1310 (amended)	Deletes reference to the obsolete children's comprehensive assessment and clarifies that the maximum number of hours of personal care is determined by the CARE assessment within the DDD service level assessment.
388-845-1505(5) (amended)	Clarifies the types of providers for children and corrects WAC cross reference.
388-845-1515 (amended)	Adds limitations to alternate living services within the CORE waiver and requires the initial authorization of residential habilitation services to have prior approval by the DDD regional administrator or designee.
388-845-1605 (amended)	Clarifies that the client is the one eligible for respite care and limits respite to parents who provided care prior to June 2007.
388-845-1606 (deleted)	Deletes reference to exceptions to the requirements before July 2006.
388-845-1610 (amended)	Eliminates state operated living alternative (SOLA) and other certified supported living situations as settings where respite may be provided, and allows the respite provider to take the client into the community.
388-845-1615 (amended)	Corrects cross-references.
388-845-1620 (amended)	Clarifies that the DDD assessment determines how much respite may be received for the Basic, Basic Plus and CORE waivers, clarifies that prior approval is required from the DDD regional administrator or designee, requires prior approval to pay for more than eight hours in a twenty-four hour period in any setting other than the client's home or place of residence, allows the respite provider to take the client into the community, and specifies that DDD cannot pay for fees associated with the respite care.
388-845-1660 (amended)	Specifies that prior approval is required from the DDD regional administrator or designee.
388-845-1710 (amended)	Specifies that prior approval is required from the DDD regional administrator or designee for all skilled nursing services, and changes the agency responsible for determining the need for service and the right to require a second opinion from the department to DDD.
388-845-1800 (amended)	Defines specialized medical equipment and supplies, clarifies that these services cannot be available through Medicaid or the state plan, adds a cross reference to WAC 388-543-1000, and clarifies that these services are available in all four DDD HCBS waivers.
388-845-1810 (amended)	Specifies that prior approval is required from the DDD regional administrator or designee, and changes the agency responsible for determining the need for the right to require a second opinion from the department to DDD.
388-845-1910 (amended)	Specifies that prior approval is required from the DDD regional administrator or designee for all specialized psychiatric services.
388-845-2000 (amended)	Adds the ISP as an alternative to the POC.
388-845-2005 (amended)	Adds recreational therapists as a qualified provider of staff/family consultation and training.
388-845-2010 (amended)	Specifies that prior approval is required from the DDD regional administrator or designee.
388-845-2200 (amended)	Adds the ISP as an alternative to the POC, and clarifies that transportation services are available only if the cost and responsibility for transportation is not already included in the provider's contract and payment.
388-845-2210 (amended)	Specifies that prior approval is required from the DDD regional administrator or designee.
388-845-3000 (amended)	Specifies that service needs are determined through the DDD assessment, only identified health and welfare needs will be authorized for payment, the amount of respite care for the Basic, Basic Plus and CORE waivers is determined by the DDD assessment, and adds the ISP as an alternative to the POC.
388-845-3005 through 388-845-3050 (deleted)	Deletes these sections as they are contained in the DDD assessment and service planning process as defined in chapter 388-828 WAC.
388-845-3055 (amended)	Specifies that the ISP replaces the POC; clarifies that the POC remains in effect until the ISP is developed; specifies that the ISP must include identified health and welfare needs, and both paid and unpaid services approved to meet these identified health and welfare needs; and specifies that a signature or verbal consent by the client or legal representative is required on an initial, reassessment or review of the ISP.
388-845-3056 (new)	Specifies what actions DDD will take if an individual needs additional help in understanding the ISP.
388-845-3060 (amended)	Adds the ISP as an alternative to the POC, and specifies that a signature or verbal consent is required on an initial, reassessment or review of the ISP.
388-845-3061 (new)	Specifies that a change in the plan of care or ISP can be made immediately upon a verbal request prior to receiving a signature.
388-845-3062 (new)	Specifies who must sign or give verbal consent to the ISP and adds a reference to WAC 388-845-3056 if an individual needs assistance to understand the ISP.

Washington Administrative Code	Effect of Rule
388-845-3065 (amended)	Specifies that the plan of care remains in effect until it is replaced by the ISP and that the ISP is effective through the last day of the twelfth month following the effective date or until a new ISP is completed.
388-845-3070 (amended)	Changes plan of care to ISP; specifies that on an initial plan, DDD will be unable to provide waiver services if a signature or verbal consent is not obtained, will not assume consent, and will follow the steps described in WAC 388-845-3056; specifies that for a reassessment or review, if a client is able to understand the ISP, and if a signature or verbal consent is not obtained, DDD will continue existing services through the end of the advance notice period and at the end of the advance notice period, DDD will assume consent and implement the new ISP without a signature or verbal consent; specifies that for a reassessment or review, if a client is not able to understand the ISP, and if a signature or verbal consent is not obtained, DDD will continue existing services in accordance with WAC 388-845-3056; and includes an additional cross-reference for appeal rights.
388-845-3075 (amended)	Adds the ISP as an alternative to the POC.
388-845-3095 (amended)	Clarifies the client's responsibility in paying toward the cost of waiver services.
388-845-4000 (amended)	Clarifies additional appeal rights under the waiver.
388-845-4005 (amended)	Clarifies appeal rights to include the provisions contained in the <i>Boyle</i> lawsuit.

Statutory Authority for Adoption: RCW 71A.12.30 [71A.12.030].

Other Authority: Title 71A RCW.

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: These amendments are necessary to comply with the proposed order and settlement listed above and to allow the state of Washington to continue to claim federal matching funds under Title XIX of the Social Security Act. These rules are also necessary to implement the recommendations in a June 2003 performance audit by the joint legislative audit and review committee and to support chapter 388-828 WAC, which will become permanent on June 1, 2007.

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 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 6, Amended 51, Repealed 16.

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 6, Amended 51, Repealed 16.

Date Adopted: May 15, 2007.

Stephanie E. Schiller
Rules Coordinator

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 07-14 issue of the Register.

**WSR 07-12-036
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE**

[Order 07-97—Filed May 30, 2007, 3:16 p.m., effective May 30, 2007, 3:16 p.m.]

Effective Date of Rule: Immediately.

Purpose: Amend personal use rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 232-28-61900L and 232-28-61900N; 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: Moving the closure up 400 feet will prevent anglers from fishing in the Wenatchee River and catching ESA listed upper Columbia River spring chinook. Although upper Columbia spring chinook have been listed as endangered under the Endangered Species Act, the salmon returning to the Icicle River are Carson River stock fish that are not listed as endangered. About 1,000 salmon are needed to meet hatchery broodstock needs. The quantity of salmon returning in 2007 ensures that the hatchery will meet their escapement needs; the remaining fish will be available for harvest. 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 Mak-

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

Date Adopted: May 30, 2007.

J. P. Keonings [Koenings]
Director

NEW SECTION

WAC 232-28-61900N Exceptions to statewide rules—Icicle River (Chelan Co.) Notwithstanding the provisions of WAC 232-28-619, effective immediately through July 31, 2007, it is lawful to fish for salmon in those waters of the Icicle River from the closure signs located 800 feet upstream of the mouth to 500 feet downstream of the Leavenworth National Fish Hatchery Rack. Daily limit, two salmon; minimum size, 12 inches. Night closure and non-buoyant lure restrictions in effect.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 232-28-61900L Exceptions to statewide rules—Icicle River (Chelan Co.) (07-94)

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

WAC 232-28-61900N Exceptions to statewide rules—Icicle River (Chelan Co.)

WSR 07-12-037

EMERGENCY RULES DEPARTMENT OF FISH AND WILDLIFE

[Order 07-99—Filed May 30, 2007, 3:17 p.m., effective May 30, 2007, 3:17 p.m.]

Effective Date of Rule: Immediately.

Purpose: Amend personal use rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 232-28-61900A and 232-28-61900Q; 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: High river flows have reduced anticipated catch rates. There is additional opportunity for spring Chinook fishing under the current Endangered Species Act (ESA) guideline. The extended season is expected to harvest hatchery Chinook while minimizing impacts to ESA

listed species. 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: May 30, 2007.

J. P. Koenings
Director

NEW SECTION

WAC 232-28-61900Q Exceptions to statewide rules—Columbia River. Notwithstanding the provisions of WAC 232-28-619, effective immediately through June 15, 2007, in those waters of the Columbia River adjacent to Ringold Springs Rearing Facility (in Franklin County), from the Washington Department of Fish and Wildlife markers 1/4 mile downstream of the Ringold irrigation wasteway outlet, to the markers 1/2 mile upstream of Ringold Springs Creek, the daily limit is two hatchery salmon, and the minimum size 12 inches in length. Fishing only from the hatchery side (east bank) and only from the bank. Night closure and non-buoyant lure restrictions in effect.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 232-28-61900A Exceptions to statewide rules—Columbia River. (07-57)

The following section of the Washington Administrative Code is repealed effective 12:01 a.m. June 16, 2007:

WAC 232-28-61900Q Exceptions to statewide rules—Columbia River.

WSR 07-12-038

EMERGENCY RULES DEPARTMENT OF FISH AND WILDLIFE

[Order 07-100—Filed May 30, 2007, 3:19 p.m., effective May 31, 2007, 11:59 p.m.]

Effective Date of Rule: May 31, 2007, 11:59 p.m.

Purpose: Amend personal use rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-56-32500T; and amending WAC 220-56-325.

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 is needed to ensure an orderly fishery, manage within court-ordered sharing requirements, and to ensure conservation. The state recreational share of spot shrimp has been taken in Marine Area 7. Harvestable amounts of nonspot shrimp are available in several marine areas and the short closure period allows illegal and abandoned gear to be removed from the area. Depth restrictions and area closures are in effect to protect spot shrimp. 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: May 30, 2007.

J. P. Koenings
Director

NEW SECTION

WAC 220-56-32500U Shrimp—Areas and seasons. Notwithstanding the provisions of WAC 220-56-325, effective immediately until further notice:

1) Effective 11:59 p.m. May 31, 2007, until 4:59 a.m. June 4, 2007, it is unlawful to fish for or possess shrimp taken for personal use in all waters of Marine Area 7.

2) Effective 5:00 a.m. June 4, 2007, until further notice, it is unlawful to fish for or possess shrimp taken for personal use in all waters of Marine Area 7, except as provided for in this section.

(a) Marine Area 7 south of a line from Biz Point on Fidalgo Island to Cape Saint Mary on Lopez Island, then south of a line from Davis Point on Lopez Island to Cattle Point on San Juan Island, then south of a line due west from Lime Kiln Point light to the international boundary, is closed to the harvest of all shrimp species.

(b) Marine Area 7 north of a line from Biz Point on Fidalgo Island to Cape Saint Mary on Lopez Island, then north of a line from Davis Point to Cattle Point on San Juan Island, then north of a line due west from Lime Kiln Point light to the international boundary:

a. Open to the harvest of all shrimp species except Spot shrimp. It is unlawful to possess Spot shrimp, and all Spot shrimp must immediately be returned to the water unharmed.

b. It is unlawful to set or pull shrimp gear in waters greater than 200 feet deep.

3) It is unlawful to fish for or possess shrimp taken for personal use in all waters of Marine Area 10 and the Discovery Bay and Hood Canal (Marine Area 12) Shrimp Districts.

4) Effective immediately until further notice, all waters equal to or less than 150 feet in depth in Marine Areas 8-1, 8-2, 9 and 11 are open daily to the harvest of all shrimp species except Spot shrimp. All Spot shrimp caught must be returned to the water immediately. It is unlawful to set or pull shrimp gear in waters greater than 150 feet deep.

REPEALER

The following section of the Washington Administrative Code is repealed, effective 11:59 p.m. May 31, 2007:

WAC 220-56-32500T Shrimp—Areas and seasons
(07-87)

WSR 07-12-041 EMERGENCY RULES DEPARTMENT OF FISH AND WILDLIFE

[Order 07-98—Filed May 31, 2007, 11:03 a.m., effective May 31, 2007,
11:03 a.m.]

Effective Date of Rule: Immediately.

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 232-28-61900H; and amending WAC 232-28-619.

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.

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 (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.

The upriver spring Chinook run is tracking close to the preseason forecast of 78,500 fish. With a projected run of this size, additional opportunity for sport fisheries in the Columbia River is available. The spring Chinook fishery below the I-5 Bridge is extended through June 15 - allowable ESA impacts remain on the guideline. The summer season and fall season fisheries (beginning June 16) are in place until permanent rules become effective in August 2007. There is insufficient time to promulgate permanent regulations.

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 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: May 30, 2007.

J. P. Koenings
Director

NEW SECTION

WAC 232-28-61900P Exceptions to statewide rules—Columbia River. Notwithstanding the provisions of WAC 232-28-619, it is unlawful to violate the following provisions, provided that unless otherwise amended, all permanent rules remain in effect:

Columbia River:

1) From the Rocky Point/Tongue Point line upstream to the I-5 Bridge (except for those waters closed under permanent regulations): Salmon and steelhead: Open immediately through June 15, 2007. Daily limit, 6 salmon, of which no more than 2 may be adult salmon. Release all wild chinook, wild coho, sockeye and chum. Minimum size, 12 inches. Daily limit, 2 trout; release wild steelhead and wild cutthroat. Minimum size, 12-inches.

a) For the mainstem Columbia River salmon and steelhead fishery upstream of the Rocky Point/Tongue Point line, effective through June 15, 2007, salmon and steelhead required to be released may not be totally removed from the water, except anglers fishing from vessels thirty feet or longer as shown on their state registration or Coast Guard documentation are exempt from this subsection.

2) From a true north-south line through Buoy 10, to a line between Rocky Point in Washington to Tongue Point in Oregon: Salmon: Release chinook from August 1 through August 22, 2007.

3) From the Rocky Point - Tongue Point line to Bonneville Dam: Salmon: Release adult chinook July 1 through July 31, 2007.

4) Camas Slough: Waters of the Columbia River downstream from the mouth of the Washougal River, north of Lady Island, and downstream of the Highway 14 Bridge at the upstream end of Lady Island: Open when the adjacent mainstem Columbia or Washougal rivers are open to fishing for salmon. Daily limit: same as most the liberal regulation of either area.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 232-28-61900H Exceptions to statewide rules—Columbia River. (07-86)

WSR 07-12-048
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 07-93—Filed June 1, 2007, 8:48 a.m., effective June 1, 2007]

Effective Date of Rule: June 1, 2007.

Purpose: Amend personal use rules.

Citation of Existing Rules Affected by this Order:
 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: Autumn floods in 2003 and 2006 and low summer flows in 2005 and 2006 have reduced bull trout populations significantly throughout the Skagit Basin. Harvest does not appear to be associated with this decline; however, this regulation will help maximize the number of bull trout spawners of the Skagit populations in 2007. 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 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: May 29, 2007.

J. P. Koenings
 Director

NEW SECTION

WAC 232-28-61900K Exceptions to statewide rules—Skagit River. Notwithstanding the provisions of WAC 232-28-619, effective June 1, through September 28, 2007, it is unlawful to retain Dolly Varden/Bull trout in the following waters:

(1) Those waters of Skagit River from Rockport to Gorge Dam.

(2) Those waters of the Sauk River from the mouth and upstream

(3) Those waters of Cascade River from the mouth and upstream.

WSR 07-12-049
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 07-101—Filed June 1, 2007, 8:50 a.m., effective June 1, 2007, 8:50 a.m.]

Effective Date of Rule: Immediately.

Purpose: Amend personal use rules.

Citation of Existing Rules Affected by this Order:
 Repealing WAC 220-56-33000Y and 220-56-33000Z; and amending WAC 220-56-330.

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 rule opens the recreational fishery in Marine Area 6 on the date in accordance with this year's state and tribal management agreement. 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: May 31, 2007.

J. P. Koenings
 Director

NEW SECTION

WAC 220-56-33000Z Crab—Areas and seasons. Notwithstanding the provisions of WAC 220-56-330, effective 7:00 a.m. June 27, 2007, through one hour after official sunset on September 3, 2007, it is lawful to fish for and possess crab taken for personal use in those waters of Marine Area 6, on Wednesdays, Thursdays, Fridays, and Saturdays.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 220-56-33000Y Crab—Areas and seasons.
 (07-27)

The following section of the Washington Administrative Code is repealed one hour after official sunset on September 3, 2007:

WAC 220-56-33000Z Crab—Areas and seasons.

WSR 07-12-050

EMERGENCY RULES

DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Aging and Disability Services Administration)

[Filed June 1, 2007, 10:37 a.m., effective June 1, 2007]

Effective Date of Rule: June 1, 2007.

Purpose: The division of developmental disabilities (DDD) is filing this emergency rule to amend the current emergency rule (WSR 07-12-022) to ensure consistent application of rules across the programs.

Citation of Existing Rules Affected by this Order: Amending WAC 388-845-1605.

Statutory Authority for Adoption: RCW 71A.12.30 [71A.12.030].

Other Authority: Title 71A RCW.

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: This emergency rule supersedes the current emergency rule WAC 388-845-1605 filed under WSR 07-12-022. Based on legislative action, this amended rule is necessary to ensure consistency in applying rules across DDD programs. The current emergency rule has language that conflicts with other department program rules. This filing amends the current emergency rule to ensure consistent application of rules across the programs.

Without this emergency rule, clients may be incorrectly found eligible or ineligible for services or benefits.

This rule is also necessary to implement the recommendations in a June 2003 performance audit by the joint legislative audit and review committee and to support chapter 388-828 WAC, which will become permanent on June 1, 2007. The DDD has had ongoing discussions with the federal Center for Medicare and Medicaid Services (CMS) and has received approval from CMS to amend its waivers under Section 1915 of the Social Security Act.

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 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: May 31, 2007.

Stephanie E. Schiller
Rules Coordinator

AMENDATORY SECTION (Amending WSR 06-01-024, filed 12/13/05, effective 1/13/06)

WAC 388-845-1605 Who is eligible to receive respite care? ~~((The person providing your care is))~~ You are eligible to receive respite care if you are in the Basic, Basic Plus or CORE waiver and:

(1) You live in a private home ~~((with an unpaid caregiver))~~ and no one living with you is paid to be your caregiver; ~~((or))~~

(2) You live with a paid caregiver who is ~~((~~

~~(a) A natural, step or adoptive parent;~~

~~(b)) your natural, step or adoptive parent; or~~

(3) You live with a caregiver who is paid by DDD to provide care to you and is:

~~(a)~~ (a) A contracted companion home provider; or

~~((or))~~ (b) A licensed children's foster home provider.

WSR 07-12-051

EMERGENCY RULES

STATE BOARD OF HEALTH

[Filed June 1, 2007, 11:17 a.m., effective June 1, 2007, 11:17 a.m.]

Effective Date of Rule: Immediately.

Other Findings Required by Other Provisions of Law as Precondition to Adoption or Effectiveness of Rule: RCW 34.05.350 authorizes adoption of an emergency rule when necessary for the preservation of public health (see below justification).

Purpose: Creates a new section WAC 246-282-006, needed to implement a sampling protocol and control plan designed to detect and prevent illnesses associated with the bacteria *vibrio parahaemolyticus* (*Vp*) in shellfish. This plan is required for the summer months of 2007, when the presence of these bacteria is typically high and [the] shellfish consuming public are [is] at highest risk of potential illness.

Statutory Authority for Adoption: RCW 34.05.350, 69.30.030.

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 department of health (DOH's) monitoring efforts in 2006 followed the existing

national standard approved by the FDA. Despite this, there were [was] an unprecedented number of vibrio illnesses associated with Washington oysters in the summer of 2006. The emergency plan modifies the existing monitoring and control protocols to better identify the presence of high levels of *Vp* and help prevent vibriosis in humans.

The Washington state department of health (DOH) monitors for *Vp* in oysters. *Vp* is a naturally occurring bacteria found in shallow marine waters. Molluscan shellfish acquire *Vp* through filter feeding. Humans who consume raw or undercooked shellfish containing *Vp* can develop an intestinal disease called vibriosis. Both shucked shellfish and shellfish in the shell (shellstock) have been implicated in illnesses.

Vibriosis causes nausea, diarrhea, vomiting, abdominal cramps, headache, fever, and chills; hospitalization may be required in severe cases. The level of *Vp* required to cause illness is typically present only in warm summer months, when air and water temperatures are high.

The National Shellfish Sanitation Program (NSSP) model ordinance, a national guideline adopted by the International Shellfish Sanitation Conference (ISSC), approved by the United States Food and Drug Administration (FDA), and adopted by Washington state in chapter 246-282 WAC, requires specific monitoring and control protocols for *Vp*. Despite DOH's efforts, in 2006 there were [was] an unprecedented number of vibriosis illnesses in Washington state. There were one hundred thirteen reported cases involving Washington oysters. Although the Centers for Disease Control (CDC) have not yet reported final numbers, they have indicated that approximately three hundred cases associated with Pacific Northwest oysters were reported last year from across the United States. The actual number of cases in last year's outbreak is estimated to be much higher. CDC estimates that for every reported case, twenty cases go unreported. It is therefore likely that six thousand people became ill from Pacific Northwest oysters in the 2006 outbreak.

After the outbreak, DOH worked with FDA and the shellfish industry to analyze the information collected last year to determine the contributing factors in the outbreak. This analysis determined time-to-temperature control to be a major contributing factor to high levels of *Vp*. A consensus was reached that, to reduce the risk of *Vp* illnesses, a reduc-

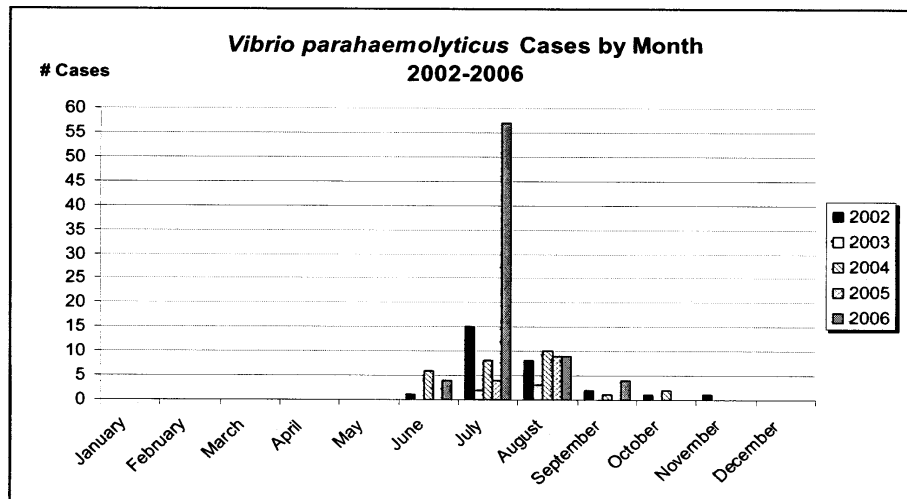
tion in the amount of time harvested oysters were without temperature control was needed during the warmest months of the year.

Review of the historical data on vibrio illnesses in Washington showed that most of the illnesses occurred in the summer months, with the majority in July and August (see graph below). The illnesses were associated with oysters harvested in the following growing areas: Case Inlet, Eld Inlet, Grays Harbor, Hammersley Inlet, all of Hood Canal south of the Hood Canal Bridge, Mystery Bay, Oakland Bay, Samish Bay, Skookum Inlet, Totten Inlet, Westcott Bay, Willapa Bay (Bay Center and Nahcotta).

Through workshops, meetings, and teleconferences with ISSC, FDA, tribal representatives, shellfish growers, and other stakeholders, it has become apparent that modifications to the existing *Vp* control plan are needed to better protect shellfish consumers. The time required to modify the control plan through permanent rule making would extend beyond the upcoming 2007 summer season.

In order to better protect public health, the state board of health is adopting an emergency rule to implement a temporary revised *Vp* control plan for the summer months of 2007. DOH formulated a workgroup consisting of DOH staff, members of the shellfish industry, and representatives from the tribes and the FDA to assess and recommend changes to the existing control plan derived from the 2003 NSSP model ordinance. Recommendations put forward by the workgroup have been incorporated into the proposed temporary *Vp* control plan.

RCW 34.05.350 authorizes adoption of an emergency rule when it "...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." Observing the typical time requirements for notice and comment opportunity associated with standard rule making is not appropriate because it would extend beyond the upcoming 2007 summer season when the potential for a *Vp* illness outbreak is high. This rule is needed immediately so that a sampling protocol and control plan will be in place in time for the warm summer months of 2007 in order to protect shellfish consumers from *Vp* related illnesses.



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 1, Amended 0, Repealed 0.

Date Adopted: June 1, 2007.

Craig McLaughlin
Executive Director

NEW SECTION

WAC 246-282-006 Washington state *Vibrio parahaemolyticus* control plan for June through September 2007.

(1) The Washington state *Vibrio parahaemolyticus* control plan for June through September 2007, is also known as the control plan. This plan is designed to cover the harvest and shipment of oysters intended for raw consumption during the months of June through September. It does not apply to shucked oyster meats labeled "for cooking only." Growing areas subject to the requirements of this section are identified in subsection (9) of this section. The control plan consists of:

(a) A modification of Chapter VIII of the 2003 National Shellfish Sanitation Program Model Ordinance (NSSP), Requirements for Harvesters, .03 Shellfish Temperature, Control Option 2;

(b) More stringent time-to-temperature controls when one of three triggers is met: The month of the year, the presence of the pathogenic form of *Vibrio parahaemolyticus*, or a vibrio illness;

(c) A monitoring program; and

(d) A series of harvest method options that dealers may choose to further reduce risk of illness.

(2) The control plan allows for climatic differences between Puget Sound and coastal growing areas:

Puget Sound Growing Areas:

Months of Control	Time-to-Temperature Control
June, July, August and September	Ten hours

Coastal Growing Areas:

Months of Control	Time-to-Temperature Control
June and September	Twenty-four hours
July and August	Ten hours

(3) Dealer and harvester license holders shall maintain harvest records showing the time of harvest to assure compli-

ance with the control plan. The harvest times begin as follows:

(a) Intertidal (exposed) harvest - Time shall begin after the first oysters to be harvested are exposed to the air by the receding tide.

(b) Submerged (dredged) harvest - Time shall begin after the first oysters harvested are exposed to the air and have been placed onto a conveyance, such as a barge or boat. Submerged harvest includes dredge harvesting or retrieval of harvest tubs, bags, baskets, or other containers of oysters filled previously which have been under water for a minimum of two hours for coastal areas and four hours for Puget Sound growing areas.

(4) The department shall require a monitoring program based on a biweekly sampling protocol, as defined in Chapter IV of the 2003 NSSP, section .03. If a thermo labile hemolysin level of 100 colony forming units per gram or greater is detected in a sample of oyster meats, the sampling frequency of the growing area shall be increased to weekly. The department, or designee of the department, shall collect samples using the following protocol:

(a) Samplers shall select oysters with the longest exposure to outside air temperature at the harvest site.

(b) Samplers shall record specific environmental data regarding the growing area conditions on the sample collection sheet and submit it with the sample to the department's public health laboratory. The following data will be recorded:

- (i) Outside air temperature;
- (ii) Surface water temperature; and
- (iii) Internal temperature of one oyster.

(5) When the *Vibrio parahaemolyticus* monitoring program yields results showing a 0.03 most probable number (MPN) per 0.1 gram (detectable) or greater level of thermo direct hemolysin (*tdh*) in a growing area, another sample from that growing area shall be taken within four days. If the second sample also shows results of 0.03 MPN/0.1 gram (detectable) or greater level of *tdh*, the following time-to-temperature control and record requirements shall apply to that growing area:

Time-to-Temperature Control	Records Required
Five hours	Time records

(6) In the event of a single *Vibrio parahaemolyticus*-associated illness where oysters from a particular growing area are epidemiologically associated (linked) as the source, the following protocols shall apply:

(a) The department or designee of the department shall collect a sample as soon as possible as specified in subsection (4) of this section and test for *Vibrio parahaemolyticus*;

(b) Licensed harvesters and dealers in the implicated growing area shall immediately implement the time-to-temperature control and record requirements specified in subsection (5) of this section regardless of the time of year;

(c) The implicated growing area shall remain under the time-to-temperature control and record requirements specified in subsection (5) of this section until two successive samples taken no less than four days apart show no detectable *tdh*.

(7) In the event of a *Vibrio parahaemolyticus*-associated illness outbreak where oysters from a particular growing area are epidemiologically associated as the source, the requirements as stated in the 2003 NSSP, Chapter II, Risk Assessment and Risk Management, shall apply.

(8) Dealers who elect to further reduce their *Vibrio parahaemolyticus* risk exposure may employ a modification to their method(s) of harvest and incorporate it into their Hazard Analysis Critical Control Points (HACCP) plan, as defined in Chapter X of the 2003 NSSP, section .01, after consultation and approval by the department's shellfish program.

(9) This section applies to the following growing areas beginning June 2007 through September 2007:

- (a) Case Inlet;
- (b) Eld Inlet;
- (c) Grays Harbor;
- (d) Hammersley Inlet;
- (e) All of Hood Canal south of the Hood Canal bridge, including all inlets and embayments;
- (f) Mystery Bay;
- (g) Oakland Bay;
- (h) Samish Bay;
- (i) Skookum Inlet;
- (j) Totten Inlet;
- (k) Westcott Bay;
- (l) Willapa Bay (Bay Center); and
- (m) Willapa Bay (Nahcotta).

(10) In the event an illness occurs from a growing area not listed in subsection (9) of this section, that growing area shall be added to the control plan and shall be subject to the requirements of this section.

WSR 07-12-054
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 07-103—Filed June 1, 2007, 3:14 p.m., effective June 5, 2007]

Effective Date of Rule: June 5, 2007.

Purpose: Amend personal use rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-56-32500U; and amending WAC 220-56-325.

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 is needed to ensure an orderly fishery, manage within court-ordered sharing requirements, and to ensure conservation. Harvestable amounts of spot shrimp are available in the Hood Canal shrimp district and the southern portion of Marine Area 7. 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: June 1, 2007.

Loreva M. Preuss
for Jeff Koenings
Director

NEW SECTION

WAC 220-56-32500V Shrimp—Areas and seasons. Notwithstanding the provisions of WAC 220-56-325, effective immediately until further notice:

1) It is unlawful to fish for or possess shrimp taken for personal use in all waters of Marine Area 7, except as provided for in this section.

(a) Marine Area 7 north of a line from Biz Point on Fidalgo Island to Cape Saint Mary on Lopez Island, then north of a line from Davis Point to Cattle Point on San Juan Island, then north of a line due west from Lime Kiln Point light to the international boundary:

a. Open to the harvest of all shrimp species except Spot shrimp. It is unlawful to possess Spot shrimp, and all Spot shrimp must immediately be returned to the water unharmed.

b. It is unlawful to set or pull shrimp gear in waters greater than 200 feet deep.

(b) Effective 5:00 a.m., June 20, 2007, until 9:00 p.m., June 24, 2007, Marine Area 7 south of a line from the Initiative 77 marker on Fidalgo Island to Point Colville on Lopez Island, then south of a line from Davis Point on Lopez Island to Cattle Point on San Juan Island, then south of a line due west from Lime Kiln Point light to the international boundary, is open to the harvest of all shrimp species.

2) It is unlawful to fish for or possess shrimp taken for personal use in all waters of the Hood Canal Shrimp District (Marine Area 12), except open from 9:00 a.m. through 1:00 p.m., on June 7, 2007.

3) It is unlawful to fish for or possess shrimp taken for personal use in all waters of Marine Area 10 and the Discovery Bay Shrimp District.

4) All waters equal to or less than 150 feet in depth in Marine Areas 8-1, 8-2, 9 and 11 are open daily to the harvest of all shrimp species except Spot shrimp. All Spot shrimp caught must be returned to the water immediately. It is unlawful to set or pull shrimp gear in waters greater than 150 feet deep.

5) All waters of Marine Areas 4 east of the Bonilla-Tatoosh line, and Marine Areas 5, 6 and 13 (excluding the

Shrimp Districts), are open daily to the harvest of all shrimp species.

REPEALER

The following section of the Washington Administrative Code is repealed, effective June 5, 2007:

WAC 220-56-32500U Shrimp—Areas and seasons
(07-100)

WSR 07-12-055
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 07-104—Filed June 1, 2007, 3:15 p.m., effective June 4, 2007]

Effective Date of Rule: June 4, 2007.

Purpose: Amend personal use rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 232-28-61900S; 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: The return of spring chinook to the Klickitat River is below preseason expectations at this time. The closure for adult retention is necessary to provide fish for escapement to the Klickitat Hatchery. Coordination with the Yakama Nation has occurred and the tribal fishery will be closed during the month of June as well. 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: June 1, 2007.

Loreva M. Preuss
for Jeff Koenings
Director

NEW SECTION

WAC 232-28-61900S Exceptions to statewide rules—Klickitat River. Notwithstanding the provisions of WAC 232-28-619, effective June 4, 2007, through July 31, 2007, in those waters of the Klickitat River from the mouth to Fisher Hill Bridge, open 7 days per week. Daily limit of six hatchery jack chinook; minimum size, 12 inches. Release all adult chinook and wild chinook jacks.

REPEALER

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

WAC 232-28-61900S Exceptions to statewide
rules—Klickitat River.

WSR 07-12-083
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 07-102—Filed June 5, 2007, 3:48 p.m., effective June 5, 2007, 3:48 p.m.]

Effective Date of Rule: Immediately.

Purpose: Amend personal use rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 232-28-61900V; 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: The closure is necessary because Washington and Oregon fish managers estimate that the harvest guideline of one hundred sixty-five fish will be caught by June 10, 2007. 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: June 5, 2007.

Loreva M. Preuss
for Jeff Koenings
Director

NEW SECTION

WAC 232-28-61900R Exceptions to statewide rules—Columbia River sturgeon. Notwithstanding the provisions of WAC 232-28-619:

(1) Effective immediately until further notice, it is unlawful to retain sturgeon caught in those waters of the Columbia River and tributaries from the Wauna powerlines upstream to Bonneville Dam, except Thursdays, Fridays, Saturdays and Sundays.

(2) Effective immediately through July 4, 2007, it is lawful to retain sturgeon caught in those waters of the Columbia River and tributaries from the Wauna powerlines downstream to the mouth.

(3) Effective immediately until further notice, it is unlawful to retain sturgeon caught in those waters of the Columbia River and tributaries from the The Dalles Dam upstream to John Day Dam.

(4) Effective June 11, 2007, until further notice, it is unlawful to retain sturgeon caught in those waters of the Columbia River and tributaries from John Day Dam upstream to McNary Dam.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 232-28-61900V Exceptions to statewide
rules—Columbia River stur-
geon (07-48)

WSR 07-12-084
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 07-105—Filed June 5, 2007, 3:48 p.m., effective June 5, 2007, 3:48 p.m.]

Effective Date of Rule: Immediately.

Purpose: The purpose of this rule making is to provide for treaty Indian fishing opportunity in the Columbia 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 and federal law governing Washington's relationship with Oregon.

Citation of Existing Rules Affected by this Order: Amending WAC 220-32-056.

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, Steel-

head, Coho & White Sturgeon (May 11, 2005) (Doc. No. 2407); *Puget Sound Gillnetters Ass'n v. Moos*, 92 Wn.2d 939, 603 P.2d 819 (1979); 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: The tribes have developed a shad fishing plan, which has been in place since 1996 and incorporates terms and conditions under which the fishery should operate that are intended to minimize potential impacts of the fishery to salmonids. The shad fishery plan has been coordinated with the shad fishery task team (a subgroup of the Fish Passage Operation and Maintenance (FPOM), which has the Army Corps of Engineers, state, tribal, and federal representatives). The state supports the tribes' objective to develop fisheries to harvest shad. This action will allow the sale of shad caught during subsistence fisheries as well.

Rule is consistent with action of the Columbia River compact on June 5, 2007. Conforms state rules with tribal rules.

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 2005-2007 Interim Management Agreement For Upriver Chinook, Sockeye, Steelhead, Coho & White Sturgeon (May 11, 2005) (Doc. No. 2407). Some salmon and steelhead stocks in the Columbia River are listed as threatened or endangered under the federal Endangered Species Act. The National Marine Fisheries Service has 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 2005-2007 interim management agreement. Columbia River fisheries are monitored very closely to ensure consistency with court orders and Endangered Species Act 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. There is insufficient time to promulgate permanent rules.

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 1, 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: June 5, 2007.

Loreva M. Preuss
for Jeff Koenings
Director

NEW SECTION

WAC 220-32-05600A Columbia River above Bonneville Dam—Shad. Notwithstanding the provisions of WAC 220-22-010, WAC 220-32-050, WAC 220-32-051, WAC 220-32-052 and WAC 220-32-056, effective immediately until further notice, it is unlawful for a person to take or possess shad for commercial purposes in Columbia River Salmon Management Catch Reporting Areas 1F, 1G, and 1H; except that those individuals possessing treaty fishing rights under the Yakima, Warm Springs, Umatilla, and Nez Perce treaties may fish for shad under the following provisions:

1. Open Periods: 6:00 a.m. June 6, 2007 until further notice
 - a) Open Areas: SMCRA 1F, 1G, 1H
 - b) Gear: hoop nets, dip bag nets, and rod and reel with hook and line.
2. Open Periods: 6:00 a.m. June 6, 2007 until further notice
 - a) Open Areas: SMCRA 1F, 1G, 1H
 - b) Gear: Trap net: as per tribal regulations
3. Allowable sales: shad.

**WSR 07-12-085
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE**

[Order 07-106—Filed June 5, 2007, 3:48 p.m., effective June 5, 2007, 3:48 p.m.]

Effective Date of Rule: Immediately.

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 232-28-61900P; and amending WAC 232-28-619.

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.

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 (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.

The upriver spring Chinook run is tracking to exceed the preseason forecast of 78,500 fish. With a projected run of this size, additional opportunity for sport fisheries in the Columbia River is available. Allowable ESA impacts remain on the guideline. The spring Chinook fishery in the area from I-5 Bridge to Bonneville Dam and from Bonneville Dam to McNary Dam is open through June 15. The action of the June 5, 2007, hearing, in effect, opens the area from Tongue Point/Rocky Point upstream to McNary Dam for retention of hatchery Chinook and hatchery steelhead. The summer season and fall season fisheries (beginning June 16) are in place until permanent rules become effective in August 2007.

There is insufficient time to promulgate permanent regulations.

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 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: June 5, 2007.

Loreva M. Preuss
for Jeff Koenings
Director

NEW SECTION

WAC 232-28-61900T Exceptions to statewide rules—Columbia River. Notwithstanding the provisions of WAC 232-28-619, it is unlawful to violate the following provisions, provided that unless otherwise amended, all permanent rules remain in effect:

Columbia River:

1) From the Rocky Point/Tongue Point line upstream to I-5 Bridge (except for those waters closed under permanent regulations): Salmon and steelhead: immediately through June 15, 2007. Daily limit, 6 salmon, of which no more than 2 may be adult salmon. Release all wild chinook, wild coho, sockeye and chum. Minimum size, 12 inches. Daily limit, 2 trout; release wild steelhead and wild cutthroat. Minimum size, 12-inches.

2) From the I-5 Bridge upstream to Bonneville Dam (except for those waters closed under permanent regulations): Salmon and steelhead: June 6 through June 15, 2007. Daily limit, 6 salmon, of which no more than 2 may be adult salmon. Release all wild chinook, wild coho, sockeye and chum. Minimum size, 12 inches. Daily limit, 2 trout; release wild steelhead and wild cutthroat. Minimum size, 12-inches.

3) From Tower Island power lines in Bonneville Pool upstream to McNary Dam, (except for those waters closed under permanent regulations): Salmon, steelhead and shad: Open June 6 through June 15, 2007. Daily limit, 6 salmon, of which no more than 2 may be adult salmon. Release all wild Chinook, sockeye and chum. Minimum size, 12 inches. Daily limit, 2 trout; release wild steelhead. Minimum size, 12-inches.

a) For the mainstem Columbia River salmon and steelhead fishery upstream of the Rocky Point/Tongue Point line, effective through June 15, 2007, salmon and steelhead required to be released may not be totally removed from the water, except by anglers fishing from vessels thirty feet or

longer as shown on their state registration or Coast Guard documentation.

4) From a true north-south line through Buoy 10, to a line between Rocky Point in Washington to Tongue Point in Oregon: Salmon: Release chinook from August 1 through August 22, 2007.

5) From the Rocky Point - Tongue Point line to Bonneville Dam: Salmon: Release adult chinook July 1 through July 31, 2007.

6) Camas Slough: Waters of the Columbia River downstream from the mouth of the Washougal River, north of Lady Island, and downstream of the Highway 14 Bridge at the upstream end of Lady Island: Open when the adjacent mainstem Columbia or Washougal rivers are open to fishing for salmon. Daily limit: same as most the liberal regulation of either area.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 232-28-61900P Exceptions to statewide rules—Columbia River. (07-86)

**WSR 07-12-086
EMERGENCY RULES
DEPARTMENT OF
LABOR AND INDUSTRIES**

[Filed June 5, 2007, 4:19 p.m., effective June 18, 2007]

Effective Date of Rule: June 18, 2007.

Purpose: The Washington state constitution mandates that "The legislature shall pass laws for the protection of persons working in mines, factories, and other employments dangerous to life or deleterious to health."¹ In enacting chapter 49.17 RCW, Washington Industrial Safety and Health Act (WISHA), the Washington legislature found "that personal injuries and illnesses arising out of conditions of employment impose a substantial burden upon employers and employees in terms of lost production, wage loss, medical expenses, and payment of benefits under the Industrial Insurance Act. Therefore, in the public interest for welfare of the people of the state of Washington and in order to assure, insofar as may be reasonably possible, safe and healthful working conditions for every man and woman working in the state of Washington, the legislature ... in keeping with the mandates of article II, section 35 of the state constitution, declares its purpose by the provisions of this chapter to create, maintain, continue, and enhance the industrial safety and health program of the state..."²

WISHA mandates that the director of L&I shall "[p]rovide for the promulgation of health and safety standards and the control of conditions in all work places concerning ... harmful physical agents which shall set a standard which most adequately assures, to the extent feasible, on the basis of the best available evidence, that no employee will suffer material impairment of health or functional capacity."³

On July 18, 2005, a farm worker collapsed while cutting weeds with a machete in hop fields near Yakima. He died, and the coroner ruled that the cause of death was heat-related illness. L&I investigated the death and later cited and fined the company for an inadequate safety program, not providing drinking water, and lack of training for workers. The safety program should have included a plan to prevent heat-related illness by providing rest breaks, shade, worker hydration and administrative controls such as a work-rest regimen.

The citation was issued December 23, 2005, and the subsequent appeal was affirmed with a negotiated penalty of \$3,000. L&I did not seek criminal sanctions since the violations cited were not considered willful (a prerequisite for a referral to a county prosecuting attorney).

Immediately following this workplace death, L&I heard from farm worker advocates that they were very concerned about this fatality and that they wanted an emergency rule issued similar to California's emergency heat-stress rule. L&I responded by issuing a hazard alert to the agriculture industry, and then proceeded with a study to determine what was needed to protect workers for the 2006 summer season.

L&I reviewed the workers' compensation injury and illness claims for the past ten years and found that one other person had died from heat-related illness in Washington (also in the Yakima area in a lawn-service business). L&I also found approximately four hundred fifty workers' compensation claims for heat-related illness during that same time.

Based on this information, L&I evaluated its existing rules to determine if they adequately addressed heat-related illness. After this evaluation, L&I believed that these fatalities and illnesses may have been prevented with rules that are more protective of workers. In *Rios v. Dept. of L&I*, the Washington supreme court concluded that L&I must consider rule making for recognized workplace hazards.⁴

Prior to the summer of 2006, L&I held extensive meetings with business and labor representatives and worker advocates, and began developing an awareness and education campaign that would occur during the summer regardless of the final decision.

After considering the available options, L&I concluded that the best approach was to adopt an emergency rule that extends an existing rule on indoor work in hot temperatures to include outdoor work. The emergency rule was effective June 1, 2006, through September 27, 2006.

The emergency rule amended a current rule to clarify that every employer must evaluate their workplace and have procedures in place if their employees will be at risk from heat-related illnesses. Employers were required to look at things such as adequate water and shade, how to recognize heat-related illness, and what to do about it.

In addition, L&I conducted a coordinated hazard-awareness campaign with business and labor organizations and, as part of regularly scheduled inspections and consultations in affected industries, L&I staff visited farms and other employers all summer to make sure they were protecting their workers from heat stress.

Some worker advocate groups felt very strongly about the heat-related illness issue and didn't believe the emergency rule was specific enough. On the other hand, some employers wanted no rule at all.

Last summer, Washington state suffered the loss of two employees due to heat-related illness.

- On May 18, 2006, an employee passed away as a result of heat-related illness he developed on July 12, 2004. The employee was a roofer and collapsed while working. He arrived at the emergency room with a core temperature of 108°F. The employee did return to consciousness but never fully recovered. At the time of his death, he was awaiting a liver transplant. The claim cost was \$216,000 before pension.
- On June 26, 2006, at approximately 2:30 p.m., a laborer/pipefitter became ill on an excavation project in Carson, Washington. The crew had been working since 8:30 a.m., and the ambient temperature rose throughout the day to over 100 degrees. This employee was in and out of a 4-foot-deep trench laying, cutting and joining water pipe. The employer, other employees and a PUD inspector on the site state that the deceased neither showed nor complained of signs or symptoms of heat-related illness. He drank 4-1/2 bottles of water during the day and ate his lunch. None of the crew took formal breaks, but they were allowed to if they wanted. He wore lightweight clothes, and had no medical condition that the employer knew of. The employer provided on-scene first aid until emergency medical help arrived. He was transported to Emmanuel Hospital in Portland, Oregon, where he died five days later, on July 1, 2006.

After the expiration of the 2006 emergency rule, L&I consulted with DOSH compliance and consultation staff and held a stakeholder meeting to discuss the experiences with the emergency rule and preproposal draft issues. In addition, on January 26, 2007, L&I received a petition for rule making from Columbia Legal Services with specific recommendations for rule requirements and content. Based on this input, L&I developed a draft rule that was significantly different from the emergency rule language adopted last summer. This language clearly communicates the department's expectations while allowing employers the ability to create heat-related illness procedures that will be most effective for their worksites. The draft rule was sent to stakeholders for a review process. L&I also held a stakeholder meeting. The emergency rule language is a result of this process.

While L&I plans to continue development of a permanent heat-related illness rule, it is important to have a rule that provides clear expectations to employers in place during the summer of 2007. This rule is intended to reduce or eliminate the number of serious incidents and fatalities by increasing worker protection from heat-related illness while the department continues the permanent rule-making process. An emergency rule is necessary to ensure protection of workers during the summer months when there is a greater risk for heat-related illness. In addition, L&I will provide awareness training for employers over the summer.

¹Wash. Const. art. 2 § 35.

²RCW 49.17.010.

³RCW 49.17.050(4).

⁴Hillis, 131 Wn.2d at 383.

Statutory Authority for Adoption: RCW 49.17.010, 49.17.040, 49.17.050, 49.17.060.

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: See Purpose above.

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 8, 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 8, Amended 0, Repealed 0.

Date Adopted: June 5, 2007.

Judy Schurke
Director

NEW SECTION

WAC 296-62-095 Heat-related illness in the outdoor environment.

NEW SECTION

WAC 296-62-09510 Scope and purpose. (1) WAC 296-62-095 through 296-62-09570 applies to all employers with one or more employees performing work in an outdoor environment. It requires employers to implement workplace practices designed to reduce or eliminate the risks of heat-related illness resulting from outdoor exposure to temperature, humidity, and other environmental factors, or any combination thereof.

(2) WAC 296-62-095 through 296-62-09570 does not apply to incidental outdoor exposure.

NEW SECTION

WAC 296-62-09520 Definitions. (1) **Acclimatization** means the body's temporary adaptation to work in the heat that occurs gradually as a person is exposed to it.

(2) **Drinking water** means water satisfying the department of health's requirements as potable water suitable for drinking by the public. Water packaged as a consumer product is an acceptable source of drinking water.

(3) **Environmental factors for heat-related illness** means working conditions that increase the susceptibility for heat-related illness including air temperature, relative humidity, radiant heat from the sun and other sources, conductive heat sources such as the ground, air movement, workload

severity and duration, and personal protective equipment worn by employees.

(4) **Heat-related illness** means a medical condition resulting from the body's inability to cope with a particular heat load, and includes, but is not limited to, heat cramps, heat rash, heat exhaustion, fainting, and heat stroke.

(5) **Heat-related illness hazard** means exposure to environmental factors for heat-related illness.

(6) **Incidental outdoor exposure** means limited non-strenuous outdoor exposure such as an employee that works in an air-conditioned building who may be outdoors to travel from one building to another or a forklift operator regularly working in a warehouse who occasionally drives a load outside the warehouse.

(7) **Outdoor environment** means an environment where work activities are conducted outside of a building shell (generally referring to a ceiling and at least three sides). Environments such as vehicle cabs, sheds, and tents or other nonpermanent structures may be considered an outdoor environment when the environmental factors are not controlled.

(8) **Personal factors for heat-related illness** means factors including, but not limited to, an individual's age, degree of acclimatization, medical conditions, water consumption, alcohol consumption, caffeine consumption, nicotine use, and use of prescription and nonprescription medications that affect the body's water retention or other physiological responses to heat.

NEW SECTION

WAC 296-62-09530 Employer responsibility. The employer must establish, implement, and maintain effective written procedures to prevent the occurrence of heat-related illness which include, but are not limited to, the following elements:

(1) Identification and evaluation of temperature, humidity, and other environmental factors associated with heat-related illness;

(2) Provisions to prevent, control, and correct hazards associated with the occurrence of heat-related illness including, but not limited to:

- The provision of rest breaks that are adjusted for environmental factors;
- Encouraging frequent consumption of water, as described in WAC 296-62-09560 (2)(e) Information and training; and

(3) Procedures for responding to signs or symptoms of possible heat-related illness and accessing medical aid.

NEW SECTION

WAC 296-62-09540 Drinking water. When heat-related illness hazards are present, drinking water must be provided and made readily accessible in sufficient quantity to provide at least one quart per employee per hour.

NEW SECTION

WAC 296-62-09550 Responding to signs and symptoms of heat-related illness. (1) Employees showing signs or demonstrating symptoms of heat-related illness must be

relieved from duty and provided with a sufficient means to reduce body temperature. Examples include, but are not limited to, the provision of shaded rest areas, misting stations, or temperature controlled environments (for example, air conditioned trailers).

(2) Employees showing signs or demonstrating symptoms of heat-related illness must be carefully evaluated to determine whether it is appropriate to return to work or if medical attention is necessary.

NEW SECTION

WAC 296-62-09560 Information and training. (1) All training must be provided prior to outdoor work assignments presenting heat-related illness hazards, and at least annually thereafter.

(2) Employee training. Training in the following topics must be provided to all employees who may be exposed to a heat-related illness hazard.

(a) The environmental factors that contribute to the risk of heat-related illness;

(b) Awareness of personal factors that may increase susceptibility to heat illness;

(c) The employer's procedures for identifying, evaluating, and controlling exposure;

(d) The importance of removing personal protective equipment during all breaks;

(e) The importance of frequent consumption of small quantities of water. One quart or more over the course of an hour may be necessary when the work environment is hot and employees may be sweating more than usual in the performance of their duties;

(f) The importance of acclimatization;

(g) The different types of heat-related illness and the common signs and symptoms of heat-related illness;

(h) The importance of immediately reporting to the employer, directly or through the employee's supervisor, symptoms or signs of heat illness in themselves, or in co-workers;

(i) The employer's procedures for responding to symptoms of possible heat-related illness, including how emergency medical services will be provided should they become necessary; and

(j) The purpose and requirements of this standard.

(3) Supervisor training. Prior to assignment, supervisors must have training on the following topics:

(a) The information required to be provided in subsection (2) of this section;

(b) The procedures the supervisor is to follow to implement the applicable provisions in this section;

(c) The procedures the supervisor is to follow when an employee exhibits signs or symptoms consistent with possible heat-related illness, including emergency response procedures;

(d) Procedures for moving employees to a place where they can be reached by an emergency medical service provider, if necessary; and

(e) How to provide clear and precise directions to the emergency medical provider who needs to find the work site.

NEW SECTION

WAC 296-62-09570 Effective date. The provisions and requirements of WAC 296-62-095 through 296-62-09560 are effective on June 18, 2007.