

**WSR 07-16-022**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**SOCIAL AND HEALTH SERVICES**  
(Health and Recovery Services Administration)  
[Filed July 20, 2007, 9:06 a.m., effective July 22, 2007]

Effective Date of Rule: July 22, 2007.

Purpose: To comply with the provisions of chapter 5, Laws of 2007 (2SSB 5093) which authorize medical assistance coverage for all children living in households with income at or below 250% of the federal poverty level (FPL). The law is effective July 22, 2007.

Citation of Existing Rules Affected by this Order: Amending WAC 388-416-0015, 388-418-0025, 388-450-0210, 388-478-0075, 388-505-0210, 388-505-0211, 388-542-0010, 388-542-0020, 388-542-0050, and 388-542-0300.

Statutory Authority for Adoption: RCW 74.04.050, 74.04.057, 74.08.090, 74.09.530, and 74.09.700.

Other Authority: Chapter 5, Laws of 2007 (2SSB 5093).

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: To be compliant with state law while the permanent rule-making process, initiated under WSR 07-11-098, is completed.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 10, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 10, Repealed 0.

Date Adopted: July 12, 2007.

Stephanie E. Schiller  
Rules Coordinator

AMENDATORY SECTION (Amending WSR 06-24-036, filed 11/30/06, effective 1/1/07)

**WAC 388-416-0015 Certification periods for categorically needy (CN) ~~((medical and state children's health insurance program (SCHIP)))~~ scope of care medical assistance programs.** (1) A certification period is the period of time a person is determined eligible for a categorically needy (CN) scope of care medical program. Unless otherwise stated in this section, the certification period begins on the first day of the month of application and continues to the last day of the last month of the certification period.

(2) For a child eligible for the newborn medical program, the certification period begins on the child's date of birth and

continues through the end of the month of the child's first birthday.

(3) For a woman eligible for a medical program based on pregnancy, the certification period ends the last day of the month that includes the sixtieth day from the day the pregnancy ends.

(4) For families the certification period is twelve months with a six-month report required as a condition of eligibility as described in WAC 388-418-0011.

(5) For children, the certification period is twelve months. Eligibility is continuous without regard to changes in circumstances other than aging out of the program, moving out of state or death. When the medical assistance unit is also receiving benefits under a cash or food assistance program, the medical certification period is updated to begin anew at each:

(a) Approved application for cash or food assistance; or

(b) Completed eligibility review.

~~((For an SSI-related person the certification period is twelve months-))~~ When the medical assistance unit is also receiving benefits under a cash or food assistance program, the medical certification period is updated to begin anew at each:

(a) Approved application for cash or food assistance; or

(b) Completed eligibility review.

(7) When the child turns nineteen the certification period ends even if the twelve-month period is not over. The certification period may be extended past the end of the month the child turns nineteen when:

(a) The child is receiving inpatient services (see WAC 388-505-0230) on the last day of the month the child turns nineteen;

(b) The inpatient stay continues into the following month or months; and

(c) The child remains eligible except for exceeding age nineteen.

(8) For an SSI-related person the certification period is twelve months.

(9) A retroactive certification period can begin up to three months immediately before the month of application when:

(a) The client would have been eligible for medical assistance if the client had applied; and

(b) The client received covered medical services as described in WAC 388-501-0060 and 388-501-0065.

~~((9))~~ (10) If the client is eligible only during the three-month retroactive period, that period is the only period of certification.

~~((10))~~ (11) Any months of a retroactive certification period are added to the designated certification periods described in this section.

~~((11))~~ ~~For a child determined eligible for SCHIP medical benefits as described in chapter 388-542 WAC:~~

~~(a) The certification periods are described in subsections (1), (5), and (7) of this section;~~

~~(b) There is not a retroactive eligibility period as described in subsections (8), (9), and (10); and~~

~~(c) For a child who has creditable coverage at the time of application, the certification period begins on the first of the~~

month after the child's creditable coverage is no longer in effect, if:

- (i) All other SCHIP eligibility factors are met; and
- (ii) An eligibility decision is made per WAC 388-406-0035.)

(12) There is no retroactive eligibility for premium-based children's healthcare as described in WAC 388-505-0210 and chapter 388-542 WAC. If creditable coverage exists at the time of application, the certification period begins no sooner than the month after creditable coverage ends.

AMENDATORY SECTION (Amending WSR 05-23-013, filed 11/4/05, effective 1/1/06)

**WAC 388-418-0025 Effect of changes on medical program eligibility.** (1) You continue to ~~((be eligible for Medicaid))~~ receive medical assistance until the department determines ~~((your ineligibility or eligibility for another medical program))~~ you are no longer eligible. This applies to you if, during a certification period, you become ineligible for, or are terminated from, or request termination from:

- (a) A CN Medicaid program; ~~((or))~~
- (b) A children's healthcare program; or
- (c) Any of the following cash grants:
  - (i) TANF;
  - (ii) SSI; or
  - (iii) GA-X. See WAC 388-434-0005 for changes reported during eligibility review.

(2) If you become ineligible for refugee cash assistance, refugee medical assistance can be continued through the eight-month limit, as described in WAC 388-400-0035(4).

(3) If you receive a TANF cash grant or family medical, you are eligible for a medical extension, as described under WAC 388-523-0100, when your cash grant or family medical program is terminated as a result of:

- (a) Earned income; or
- (b) Collection of child or spousal support.
- (4) A change in income during a certification period does affect eligibility for all medical programs except:
  - (a) Pregnant women's medical programs;
  - (b) Children's ~~((medical for newborns))~~ healthcare programs (F05), (F06), (F07), and (F08), except as specified in subsection (5);
  - (c) ~~((Children's medical benefits (F06);~~
  - (d) ~~Children's health program (F08); or~~
  - (e) ~~))~~ The first six months of the medical extension benefits.

(d) Family-related institutional medical as described in WAC 388-505-0230.

(5) For a child receiving benefits under ~~((SCHIP))~~ the premium-based children's healthcare programs as described in WAC 388-505-0210 or chapter 388-542 WAC, the department must redetermine eligibility for a ~~((Medicaid))~~ nonpremium-based medical program when the family reports:

- (a) Family income has decreased to less than two hundred percent federal poverty level (FPL);
- (b) The child becomes pregnant;
- (c) A change in family size; or
- (d) The child receives SSI.

AMENDATORY SECTION (Amending WSR 05-23-013, filed 11/4/05, effective 1/1/06)

**WAC 388-450-0210 Countable income for medical programs.** (1) For purposes of medical program eligibility, a client's countable income is income which remains when:

- (a) The income cannot be specifically excluded; and
- (b) All appropriate deductions and disregards allowed by a specific program, have been applied.

(2) A client's countable income cannot exceed the income standard for the specific medical programs described in WAC 388-478-0065, 388-478-0070, 388-478-0075, 388-478-0080, or 388-513-1305, 388-513-1315, or 388-513-1395 unless the program allows for those limits to be exceeded.

(3) Unless modified by subsection (4) of this section, the TANF/SFA income rules, as described in this chapter, are used to determine a client's countable income for the following programs:

- (a) Family medical program as described in WAC 388-505-0220;
- (b) Medical extensions as described in chapter 388-523 WAC;
- (c) Pregnant women's program as described in WAC 388-462-0015;
- (d) Children's ~~((medical))~~ healthcare programs as described in WAC 388-505-0210;
- (e) ~~((Children's health program as described in WAC 388-505-0210; and~~
- (f) ~~))~~ Psychiatric indigent inpatient (PII) program as described in WAC 388-865-0217.

(4) Exceptions to the TANF/SFA cash assistance methodology apply as follows:

(a) The financial responsibility of relatives when a client is applying for medical for families, children, pregnant women or for the psychiatric indigent inpatient program is specified in WAC 388-408-0055;

(b) Actual work-related child and dependent care expenses, which are the client's responsibility, are income deductions (the limits on this deduction in WAC 388-450-0170 (3) and (4) do not apply);

(c) Court or administratively ordered current or back support paid to meet the needs of legal dependents, are income deductions;

(d) Only income actually contributed to an alien client from the alien's sponsor is countable unless the sponsor signed the affidavit of support I-864 or I-864A. See subsection (5) of this section;

(e) TANF/SFA gross earned income limits as described in WAC 388-450-0165 do not apply;

(f) The fifty percent earned income deduction is not used to calculate countable income for CN scope of care programs with income levels based upon the federal poverty level (FPL). These programs are listed in subsections (3)(c), (d) and (e) of this section. The only work related income deductions for these programs are:

- (i) Ninety dollars; and
- (ii) Actual work-related child and dependent care expenses, as described in (b) of this subsection; and
- (iii) Child support as described in (c) of this subsection.
- (g) When determining medically needy (MN) or MN scope of care coverage for children or pregnant women for

the programs described in subsections (3)(c), (d), and (e), the exception described in subsection (4)(f) is not used as the MN income standards are not based on the FPL;

(h) A nonrecurring lump sum payment is considered as income in the month the client receives payment, and a resource if the client retains the payment after the month of receipt;

(i) Diversion cash assistance (DCA), is not countable income;

(j) Effective April 1, 2002, the department will disregard an increase in earned income when:

(i) A family is receiving benefits under the family medical program; and

(ii) The increase occurs during the second or third month of eligibility. The disregard stops the last day of the third month of eligibility for a family medical program.

(5) When an alien's sponsor has signed the affidavit of support I-864 or I-864A, the sponsor's income and resources are counted as described in WAC 388-450-0155, 388-450-0156, 388-450-0160, and 388-470-0060.

(6) Except when this state has adopted more liberal rules, SSI income rules are used to determine a client's countable income for the following programs:

(a) SSI-related CN or MN; and

(b) Medicare savings programs. Refer to chapter 388-475 WAC.

AMENDATORY SECTION (Amending WSR 06-16-026, filed 7/24/06, effective 8/24/06)

**WAC 388-478-0075 Medical programs—Monthly income standards based on the federal poverty level (FPL).** (1) Each year, the federal government publishes new federal poverty level (FPL) income standards in the Federal Register found at <http://aspe.hhs.gov/poverty/index.shtml>. The income standards for the following medical programs change on the first of April every year based on the new FPL:

(a) ~~((Children's health program is one hundred percent of FPL;~~

~~(b))~~ Pregnant women's program up to one hundred eighty-five percent of FPL;

~~((e))~~ ~~(b)~~ Children's ~~((categorically needy))~~ healthcare programs up to two hundred percent of FPL;

~~((d))~~ ~~(c)~~ Healthcare for workers with disabilities (HWD) up to two hundred twenty percent of FPL; and

~~((e) The state children's health insurance program (SCHIP) is))~~ ~~(d)~~ Premium-based coverage under the children's healthcare programs over two hundred percent of FPL but not over two hundred fifty percent of FPL.

(2) The department uses the FPL income standards to determine:

(a) The mandatory or optional Medicaid status of an individual; and

(b) Premium amount, if any, for a Medicaid child.

(3) There are no resource limits for the programs under this section.

AMENDATORY SECTION (Amending WSR 05-23-013, filed 11/4/05, effective 1/1/06)

**WAC 388-505-0210 Children's medical eligibility.**

~~((1) A child under the age of one is eligible for categorically needy (CN) medical assistance when:~~

~~(a) The child's mother was eligible for and receiving coverage under a medical program at the time of the child's birth; and~~

~~(b) The child remains with the mother and resides in the state;~~

~~(2) Children under the age of nineteen are eligible for CN medical assistance when they meet the requirements for:~~

~~(a) Citizenship or U.S. national status as defined in WAC 388-424-0001 or "qualified alien" status as described in WAC 388-424-0006 (1) or (4);~~

~~(b) State residence as described in chapter 388-468 WAC;~~

~~(c) A Social Security number as described in chapter 388-476 WAC; and~~

~~(d) Family income does not exceed two hundred percent federal poverty level (FPL) as described in WAC 388-478-0075 at each application or review.~~

~~(3) Children under the age of nineteen are eligible for the state children's health insurance program (SCHIP), as described in chapter 388-542 WAC, when:~~

~~(a) They meet the requirements of subsection (2)(a), (b), and (c) of this section;~~

~~(b) They do not have other creditable health insurance coverage; and~~

~~(c) Family income exceeds two hundred percent of the federal poverty level (FPL), but does not exceed two hundred fifty percent of the FPL as described in WAC 388-478-0075.~~

~~(4) Children under the age of twenty-one are eligible for CN medical assistance when they meet:~~

~~(a) Citizenship or immigrant status, state residence, and social security number requirements as described in subsection (2)(a), (b), and (c) of this section;~~

~~(b) Income levels described in WAC 388-478-0075; and~~

~~(c) One of the following criteria:~~

~~(i) Reside, or are expected to reside, in a medical hospital, intermediate care facility for mentally retarded (ICF/MR), or nursing facility for thirty days or more;~~

~~(ii) Reside in a psychiatric or chemical dependency facility for ninety days or more;~~

~~(iii) Are in foster care; or~~

~~(iv) Receive subsidized adoption services.~~

~~(d) For a child meeting the criteria (c)(i) of this subsection, the only parental income the department considers available to the child is the amount the parent chooses to contribute.~~

~~(e) For a child meeting the criteria in (c)(ii) of this subsection, parental income is counted as described in WAC 388-408-0055 (1)(c).~~

~~(5) Children are eligible for CN medical assistance if they:~~

~~(a) Receive Supplemental Security Income (SSI) payments based upon their own disability; or~~

~~(b) Received SSI cash assistance for August 1996, and except for the August 1996 passage of amendments to federal~~

disability definitions, would be eligible for SSI cash assistance:

(6) Children under the age of nineteen are eligible for medically needy (MN) medical assistance as defined in chapter 388-500 WAC when they:

(a) Meet citizenship or immigrant status, state residence, and social security number requirements as described in subsection (2)(a), (b), and (c); and

(b) Have income above two hundred fifty percent federal poverty level (FPL) as described in WAC 388-478-0075.

(7) A child is eligible for SSI-related MN when the child:

(a) Meets the blind and/or disability criteria of the federal SSI program or the condition in subsection (5)(b); and

(b) Has countable income above the level described in WAC 388-478-0070(1).

(8) Noncitizen children under the age of eighteen, including visitors or students from another country, undocumented children and "qualified alien" children as defined in WAC 388-424-0001 who are ineligible due to the five-year bar as described in WAC 388-424-0006(3), are eligible for the state-funded children's health program, if:

(a) The department determines the child ineligible for any CN or MN scope of care medical program;

(b) Family income does not exceed one hundred percent federal poverty level (FPL) as described in WAC 388-478-0075;

(c) They meet state residence as described in chapter 388-468 WAC; and

(d) Program limits established by the legislature would not result in an overexpenditure of funds.

(9) There are no resource limits for children under CN, MN, SCHIP, or children's health coverage.

(10) Children may also be eligible for:

(a) Family medical as described in WAC 388-505-0220;

or

(b) Medical extensions as described in WAC 388-523-0100.

(11) Except for a client described in subsection (4)(c)(i) and (ii), an inmate of a public institution, as defined in WAC 388-500-0005, is not eligible for CN or MN medical coverage.)

Effective July 22, 2007, legislation passed expanding children's healthcare programs. Funding for children's healthcare coverage may come through Title XIX (medicaid) or Title XXI of the social security act (SCHIP), or only through state dollars. Children must meet the eligibility criteria listed below to qualify for these programs.

(1) There are no resource limits for children's medical programs.

(2) Newborns are eligible for federally matched categorically needy (CN) coverage through their first birthday when:

(a) The child's mother was eligible for and receiving medical assistance at the time of the child's birth; and

(b) The child remains with the mother and resides in the state.

(3) Children under the age of nineteen who are U.S. citizens, U.S. nationals, or qualified aliens as described in WAC 388-424-0001 and WAC 388-424-0006 are eligible for federally matched CN coverage under children's healthcare programs when they meet the following criteria:

(a) State residence as described in chapter 388-468 WAC;

(b) A social security number as described in chapter 388-476 WAC;

(c) Proof of citizenship status and identity as required by WAC 388-490-0005(11);

(d) Family income is at or below two-hundred percent Federal Poverty Level (FPL) at each application or review; or

(e) They received supplemental security income (SSI) cash payments in August 1996 and would continue to be eligible for those payments except for the August 1996 passage of amendments to federal disability definitions.

(4) Non-citizen children under the age of nineteen, who do not meet qualified alien status as described in WAC 388-424-0001 and WAC 388-424-0006, are eligible for state funded CN scope of care coverage under children's healthcare programs when they meet the following criteria:

(a) State residence as described in chapter 388-468 WAC; and

(b) Family income is at or below two hundred percent FPL at each application or review.

(5) Children under the age of nineteen are eligible for premium-based coverage under children's healthcare programs when they meet the following criteria:

(a) State residence as described in chapter 388-468 WAC;

(b) Family income is over two-hundred percent FPL, but not over two-hundred fifty percent FPL at each application or review;

(c) They do not have other creditable health insurance as described in WAC 388-542-0050; and

(d) They pay the required monthly premiums as described in WAC 388-505-0211.

(6) Children under the age of nineteen are eligible for the medically needy (MN) medicaid program when they meet the following criteria:

(a) Citizenship or immigrant status, state residence, and social security number requirements as described in subsection (3)(a), (b), and (c);

(b) Their family income is either:

(i) Above two hundred fifty percent FPL; or

(ii) Above two-hundred percent FPL, but they have creditable coverage preventing them from qualifying for premium-based children's healthcare coverage; and

(c) Meet their spenddown obligation as described in WAC 388-519-0100 and WAC 388-519-0110.

(7) Children under the age of twenty-one who are living in a medical institution, psychiatric facility, or chemical dependency treatment center may be eligible for medical coverage. See WAC 388-505-0230 "Family related institutional medical".

(8) Children who are in foster care under the legal responsibility of the state, or a federally recognized tribe located within the state, are eligible for federally matched CN medicaid coverage through the month of their:

(a) Eighteenth birthday;

(b) Twenty-first birthday if Children's Administration determines they remain eligible for continued foster care services; or

(c) Twenty-first birthday if they were in foster care on their eighteenth birthday and that birthday was on or after July 22, 2007.

(9) Children who receive subsidized adoption services are eligible for federally matched CN medicaid coverage through the month of their:

(a) Nineteenth birthday; or

(b) Twenty-first birthday if they remain in school.

(10) Children under the age of nineteen may also be eligible for:

(a) Family medical as described in WAC 388-505-0220;

(b) Medical extensions as described in WAC 388-523-0100; or

(c) SSI-related MN if they:

(i) Meet the blind and/or disability criteria of the federal SSI program, or the condition of subsection (3)(e); and

(ii) Have countable income above the level described in WAC 388-478-0070(1).

(11) Alien children ineligible for other medical programs may be eligible for the alien emergency medical program (AEM) if they meet the following criteria:

(a) Family income is over two hundred fifty percent FPL;

(b) They have a documented emergent medical condition as defined in WAC 388-500-0005; and

(c) They meet the other AEM program requirements as described in WAC 388-438-0110.

(12) Except for a client described in subsection (7), an inmate of a public institution, as defined in WAC 388-500-0005, is not eligible for children's medical programs.

AMENDATORY SECTION (Amending WSR 04-16-064, filed 7/30/04, effective 8/30/04)

**WAC 388-505-0211 Premium requirements for ((SCHHP)) premium-based children's healthcare programs.** (1) For the purposes of this chapter, "premium" means an amount paid for medical coverage.

(2) For a child ~~((found eligible for the state children's health insurance program (SCHHP) under WAC 388-505-0210(3), payment of a premium is required as a condition of eligibility))~~ living in a family with income above two hundred percent of federal poverty level (FPL), but not above two hundred and fifty percent of FPL, payment of a premium is required as a condition of eligibility unless the child is:

(a) Pregnant; or

(b) An American Indian or Alaskan Native.

(3) ~~((A child is exempt from the premium requirement if the child meets one of the following:~~

~~(a) The child is pregnant; or~~

~~(b) The child is an American Indian or Alaska native.~~

~~((4))~~ The premium requirement begins the first of the month following the determination of eligibility. There is no premium requirement for medical coverage received in a month or months before the determination of eligibility.

~~((5))~~ (4) The premium amount for the assistance unit is based on the net available income as described in WAC 388-450-0005. If the household includes more than one assistance unit, the premium amount billed for the assistance units may be different amounts.

~~((6))~~ (5) The premium amount for each ((SCHHP)) eligible child is fifteen dollars per month per child, up to a maximum of forty-five dollars per month, per household.

~~((7))~~ The department bills the family for the lesser of:

~~(a) A maximum of forty-five dollars per month; or~~

~~(b) The total of the highest premiums, for up to three children in the assistance unit.~~

~~(8) Premium payment is a condition of eligibility for assistance units that include SCHHP children--)~~ (6) All ((SCHHP)) children in an assistance unit are ineligible for medical coverage when the head of household((s)) fails to pay premium payments ((are)) for three consecutive months ((in arrears. Three months in arrears means a balance exists for three months)).

~~((9))~~ (7) When the department terminates the medical coverage of a ((SCHHP)) child due to nonpayment of premiums, the child has a three-month period of ineligibility beginning the first of the following month. The three month period of ineligibility is rescinded only when the:

(a) Past due premiums are paid in full prior to the begin date of the period of ineligibility; or

~~(b) ((SCHHP child has a change in circumstances such that))~~ The child becomes eligible for ((Medicaid)) nonpremium-based medical program. The department ((cannot)) will not rescind the three-month period of ineligibility for reasons other than the criteria described in this subsection.

~~((10))~~ (8) The department may write((s)) off past-due premiums after twelve months.

~~((11))~~ (9) When the designated three-month period of ineligibility is over, all past due premiums that are an obligation of the head of household must be paid or written off before a child can become eligible for ((SCHHP)) premium-based children's healthcare.

~~((12))~~ (10) A family cannot designate partial payment of the billed premium amount as payment for a specific child in the assistance unit. The full ((amount of the)) premium ((bill)) amount is the obligation of the head of household of the assistance unit. A family can decide to request medical coverage only for certain children in the assistance unit, if they want to reduce premium obligation.

~~((13))~~ (11) A change that affects the premium amount is effective the month after the change is reported and processed.

~~((14))~~ (12) A sponsor or other third party may pay the premium on behalf of the child or children in the assistance unit. The premium payment requirement remains the obligation of head of household of the assistance unit. The failure of a sponsor or other third party to pay the premium does not eliminate the:

(a) Establishment of the period of ineligibility described in subsection ((9)) (7) of this section; or

(b) Obligation of the head of household to pay past-due premiums.

AMENDATORY SECTION (Amending WSR 06-15-134, filed 7/19/06, effective 8/19/06)

**WAC 388-542-0010 Purpose and scope of ((SCHHP)) the premium-based children's healthcare programs.**

~~((1))~~ The department administers ((the state children's

health insurance program (SCHIP) to provide access to)) premi-um-based children's healthcare through a combination of state and federal funding sources as described below:

~~((a))~~ (1) Federally-matched medical ~~(care)~~ coverage as authorized by Title XXI of the social security act (SCHIP) and RCW 74.09.450 for:

(a) Citizen and federally-qualified alien children's health care coverage for children whose family income ~~(exceeds the limit for Medicaid eligibility)~~ is above two hundred per-cent of the federal poverty level (FPL) but is not ~~(greater than)~~ above two hundred fifty percent of the ~~((federal pov-erty level (FPL))) FPL;~~ and

(b) Prenatal care and medical services for ~~((a))~~ pregnant ~~((woman))~~ women who are ineligible for medicaid due to immigration status and have family income at or below one hundred eighty-five percent FPL.~~((i) Who is ineligible for Medicaid due to immigration status; and~~

~~((ii) Whose family income is at or below one hundred eighty-five percent FPL.))~~

(2) ~~((SCHIP is authorized by Title XXI of the Social Security Act and by RCW 74.09.450.))~~ State funded chil-dren's premium-based healthcare programs for non-citizen children with family income above two hundred percent FPL, but not over two hundred fifty percent FPL, who are ineligi-ble for Title XXI federally matched children's healthcare pro-grams due to immigration issues.

**Reviser's note:** RCW 34.05.395 requires the use of underlining and deletion marks to indicate amendments to existing rules. The rule published above varies from its predecessor in certain respects not indicated by the use of these markings.

AMENDATORY SECTION (Amending WSR 06-07-014, filed 3/3/06, effective 4/3/06)

**WAC 388-542-0020 Other rules that apply to ~~((SCHIP))~~ premium-based children's healthcare pro-grams.** In addition to the rules of this chapter, ~~((SCHIP))~~ premium-based children's healthcare clients are subject to the following rules:

(1) Chapter 388-538 WAC, Managed care (except WAC 388-538-061, 388-538-063, and 388-538-065);

(2) WAC 388-505-0210 ~~((3) and (8))~~(5), Children's medical eligibility;

(3) WAC 388-505-0211, Premium requirements for ~~((SCHIP children))~~ premium-based children's healthcare pro-grams;

(4) WAC 388-416-0015 ~~((40))~~(12), Certification peri-ods for categorically needy (CN) scope of care medical assis-tance programs; and

(5) WAC 388-418-0025 ~~((4) and (5), Change of circum-stance))~~ Effect of changes on medical program eligibility.

AMENDATORY SECTION (Amending WSR 04-16-064, filed 7/30/04, effective 8/30/04)

**WAC 388-542-0050 Definitions for ~~((SCHIP))~~ pre-mium-based children's healthcare programs terms.** The following definitions, as well as those found in WAC 388-538-050 and in 388-500-0005 Medical definitions, apply to the ~~((state children's health insurance program (SCHIP)))~~ premium-based children's healthcare programs.

**"Creditable coverage"** means most types of public and private health coverage, except Indian health services, that provides access to physicians, hospitals, laboratory services, and radiology services. This term applies to the coverage whether or not the coverage is equivalent to that offered under ~~((SCHIP))~~ premium-based children's healthcare pro-grams. "Creditable coverage" is described in 42 U.S.C. Sec. 1397jj.

**"Employer-sponsored dependent coverage"** means creditable health coverage for dependents offered by a family member's employer or union, for which the employer or union may contribute in whole or part towards the premium. Extensions of such coverage (e.g., COBRA extensions) also qualify as employer-sponsored dependent coverage as long as there remains a contribution toward the premiums by the employer or union.

AMENDATORY SECTION (Amending WSR 04-16-064, filed 7/30/04, effective 8/30/04)

**WAC 388-542-0300 Waiting period for ~~((SCHIP))~~ premium-based healthcare programs coverage following employer coverage.** (1) The ~~((medical assistance administra-tion (MAA)))~~ department requires applicants to serve a wait-ing period of four full consecutive months before ~~((SCHIP))~~ receiving premium-based children's healthcare programs coverage if the client or family:

(a) Chooses to end employer sponsored dependent cov-erage. The waiting period begins the day after the employ-ment-based coverage ends; or

(b) Fails to exercise an optional coverage extension (e.g., COBRA) that meets the following conditions. The waiting period begins on the day there is a documented refusal of the coverage extension when the extended coverage is:

(i) Subsidized in part or in whole by the employer or union;

(ii) Available and accessible to the applicant or family; and

(iii) At a monthly cost to the family meeting the limita-tion of subsection (2)(b)(iv).

(2) ~~((MAA))~~ The department does not require a waiting period prior to ~~((SCHIP))~~ coverage under premium-based children's healthcare programs when:

(a) The client or family member has a medical condition that, without treatment, would be life-threatening or cause serious disability or loss of function; or

(b) The loss of employer-sponsored dependent coverage is due to any of the following:

(i) Loss of employment with no post-employment subsi-dized coverage as described in subsection (1)(b);

(ii) Death of the employee;

(iii) The employer discontinues employer-sponsored dependent coverage;

(iv) The family's total out-of-pocket maximum for employer-sponsored dependent coverage is fifty dollars per month or more;

(v) The plan terminates employer-sponsored dependent coverage for the client because the client reached the maxi-mum lifetime coverage amount;

(vi) Coverage under a COBRA extension period expired;

(vii) Employer-sponsored dependent coverage is not reasonably available (e.g., client would have to travel to another city or state to access care); or

(viii) Domestic violence caused the loss of coverage for the victim.

**WSR 07-17-003**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**EARLY LEARNING**

[Filed August 2, 2007, 2:37 p.m., effective August 2, 2007, 2:37 p.m.]

Effective Date of Rule: Immediately.

Purpose: Amend WAC 170-296-0020, 170-296-0450 and 170-296-0520, to bring the department rules into compliance with an oral ruling in *DeLaO v. Arnold-Williams* and *Fernandez v. DSHS* requiring the department to place limits on the time of inspection and areas that can be inspected in licensed family home child care.

Citation of Existing Rules Affected by this Order: Amending WAC 170-296-0450 and 170-296-0520.

Statutory Authority for Adoption: Chapter 43.215 RCW.

Other Authority: Oral ruling in *DeLaO v. Arnold-Williams* and *Fernandez v. DSHS*.

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: A recent federal district court ruling would invalidate portions of chapter 74.15 RCW and chapter 170-296 WAC unless these limits on time and area were not placed into rule immediately. This would affect the ability of the department to perform inspections that ensure the health, safety, and general welfare of children in licensed care. To avoid filing emergency rules repeatedly while the department continues the negotiated rule-making process underway pursuant to WSR 07-01-068, the department intends to develop permanent rules by filing a CR-105 concurrently with this CR-103. The negotiated rule-making process will continue even after these rules are made permanent through the CR-105 process.

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 3, 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: August 2, 2007.

Jone M. Bosworth  
Director

AMENDATORY SECTION (Amending WSR06-15-075, filed 7/13/06, effective 7/13/06)

**WAC 170-296-0020 What definitions do I need to know to understand this chapter?** For the purpose of this chapter:

**"Accessible to children"** means areas of the facility and materials that children can easily get to on their own.

**"Age appropriate"** means the developing stages of growth typical of children within a given age group.

**"American Indian child"** means any unmarried person under the age of eighteen who is:

(1) A member of or eligible for membership in a federally recognized Indian tribe, or who is Eskimo, Aleut or other Alaska Native and a member of an Alaskan native regional Corporation or Alaska Native Village;

(2) Determined or eligible to be found to be Indian by the Secretary of the Interior, including through issuance of a certificate of degree of Indian blood;

(3) Considered to be Indian by a federally recognized Indian tribe; or

(4) A member or entitled to be a member of a Canadian tribe or band, Metis community, or nonstatus Indian community from Canada.

**"Antibias"** is an approach that recognizes when others are treated unfairly or oppressively based on race, color, national origin, marital status, sexual orientation, gender, class, religion, creed, disability, or age.

**"Assistant"** means a person fourteen years or older (whether a volunteer or an employee) who assists a licensed home provider in the operation of the family home child care and is not solely responsible for the supervision of children.

**"Capacity"** means the highest number of children you can care for at any time, as written on your license.

**"Character, competence, and suitability assessment"** means a determination of whether an applicant should be allowed access to vulnerable people if that applicant has a conviction record, pending charges and/or findings of abuse, neglect, exploitation or abandonment of a child or vulnerable adult and child protective services(CPS) adverse referral history.

**"Child"** means a person who has not yet reached the age of twelve years.

**"Child care"** means the developmentally appropriate care, protection and supervision of children that is designed to promote positive growth and educational experiences for children outside of their home for periods of less than twenty-four hours a day.

**"Child abuse and neglect"** means the injury, sexual abuse, sexual exploitation, negligent treatment or maltreatment of a child by any person indicating that the child's health, welfare, and safety is harmed.

**"Communicable disease"** means an illness that can be spread from one person to another, in the child care setting, by either direct or indirect contact.

**"Conditions of the license"** means what you must do to keep a license.

**"Confidentiality"** means the protection of personal information, such as the child's records, from persons who are not authorized to see or hear it.

**"Corporal punishment"** means the infliction of pain by any means for the purpose of punishment, correction, discipline, instruction or any other reason.

**"Cultural relevancy"** means an environment in which the learning experiences, play materials and activities are meaningful, inclusive and respectful for the participating children, their families and the community at large.

**"Department," "we," "us," or "our"** refers to and means the state department of social and health services (DSHS), including but not limited to the division of child care and early learning (DCCEL).

**"Department of health"** means the state department of health.

**"Developmentally appropriate"** means activities and interactions that recognize and address how children learn and what they can do at each stage of development - socially, emotionally, cognitively, and physically.

**"Discipline"** means a process of guiding children to develop internal, positive social behaviors through methods that include consistent use of the following: Modeling appropriate behavior, positive reinforcement, active listening, limit setting, redirecting and modifying the environment.

**"Division" or "DCCEL"** means the division of child care and early learning within the department of social and health services (DSHS).

**"Facility licensing compliance agreement"** means a written notice of rule violations and the intention to initiate enforcement, including a corrective action plan.

**"Family home"** means a single dwelling unit and accessory buildings occupied for living purposes by a family which provides permanent provisions for living, sleeping, eating, cooking, and sanitation.

**"Family home child care"** means a facility licensed to provide direct care, supervision and early learning opportunities for twelve or fewer children, in the home of the licensee where the licensee resides and is the primary provider.

**"Family home child care provider"** means a person who provides direct care, supervision, behavior management, and early learning opportunities for twelve or fewer children in their family home living quarters for periods of less than twenty-four hours.

**"I," "you," and "your"** refer to and mean the licensee or applicant for a child care license.

**"Inaccessible to children"** means areas kept or items stored in a manner that makes it impossible for children to reach, enter, or use potentially hazardous items or areas. Examples of how this can be accomplished are through the use of locks, gates, or other means that are effective to prevent access by the children in your care.

**"Infant"** means a child birth through eleven months of age.

**"License"** means an official document that certifies you have been granted permission by the department to operate a family home child care in compliance with the rules.

**"Licensed space,"** means the indoor and outdoor space approved by the department as useable space where children in care may be present, or space that is otherwise accessible to children.

**"Licensee"** means the person or persons named on the license as having been issued the license and who are responsible for maintaining compliance with the regulations.

**"Licensor"** means the person with authority to grant licenses.

**"Parent"** means a child's parent or legal guardian.

**"Premises"** means the buildings where the home is located and the adjoining grounds (at the same address) over which the licensee has control.

**"Preschool age child"** means a child thirty months through five years of age not attending kindergarten or elementary school.

**"Primary staff person"** means a person who has been approved by the department, age eighteen years or older, who has responsibilities for the operation of the program and the direct supervision, behavior management and care of children.

**"Provider"** means the same as licensee.

**"Repeatedly"** means a violation of a licensing regulation that is written on a facility licensing compliance agreement that occurs more than once during a twelve-month time frame.

**"Reportable communicable disease"** means an illness that can be spread from one person to another by either direct or indirect contact, and is of the type that is required by law to be reported to the department of health. Examples include Hepatitis, measles, smallpox, and tuberculosis.

**"Revocation"** means the formal act of closing your child care business and taking your license from you due to your failure to follow the rules.

**"Sanitize"** means a surface must be clean and the number of germs reduced to a level where disease transmissions by that surface are unlikely.

**"Staff"** means a child care giver or group of child care givers employed by the licensee to assist with or supervise children served at the family home child care.

**"STARS"** (Washington state training and registry system) means the entity approved by the department to determine the classes, courses, and workshops that licensees and staff may take to satisfy training requirements.

**"Summary suspension"** means the formal act of immediately stopping your license for a certain time because the health, safety or well being of a child is at risk.

**"Supervision of children,"** means the knowledge of and responsibility for the activity and whereabouts of each child in care and assuring immediate intervention of staff to safeguard a child from harm.

**"Terms of the license"** means the address, number and ages of children, and the beginning and ending dates listed on the license issued by the department.

**"Toddler"** means a child twelve months through twenty-nine months of age.

**"Unsupervised access"** means not in the absence of the licensed child care provider or primary staff person. (Anyone sixteen years or older who lives at the same address as the provider must pass a complete criminal history background check.)

**"Useable space"** means the space actually available for children to engage in developmentally appropriate activities, that has been inspected and approved by the department for providing child care.

**"Weapons"** means an instrument or device of any kind that is designed to be used to inflict harm on another person. For example, BB guns, pellet guns, air rifles, stun guns, antique guns, bows and arrows, handguns, rifles, shotguns, knives.

AMENDATORY SECTION (Amending WSR 06-15-075, filed 7/13/06, effective 7/13/06)

**WAC 170-296-0450 When will my license be denied, suspended or revoked?** (1) When you demonstrate that you cannot provide the required care for children in a way that promotes their safety, health and well-being we must deny, suspend or revoke your license.

(2) We must deny, suspend or revoke your license if you:

(a) Have been disqualified by your background check (see DSHS secretary's list of disqualifying convictions for ESA at [http://www1.dshs.wa.gov/esa/dccel/pdf/Crime\\_and\\_Backg\\_Chex.pdf](http://www1.dshs.wa.gov/esa/dccel/pdf/Crime_and_Backg_Chex.pdf));

(b) Have been found to have committed or have allowed others to commit child abuse, child neglect or exploitation, or you or others you supervise treat, permit or assist in treating children in your care with cruelty, or indifference;

(c) Fail to report instances of alleged child abuse, child neglect and exploitation to children's administration intake or law enforcement when an allegation of abuse, neglect or exploitation is reported to you;

(d) Or anyone residing at the same address as you had a license denied or revoked by an agency that provided care to children or vulnerable adults;

(e) Try to get or keep a license by deceitful means, such as making false statements or leaving out important information on the application;

(f) Commit, permit or assist in an illegal act at the address of your child care business;

(g) Use illegal drugs, or excessively use alcohol or abuse prescription drugs;

(h) Knowingly allow employees or volunteers with false statements on their applications to work at your facility;

(i) Repeatedly lack the required number of qualified staff to care for the number and types of children under your care;

(j) Repeatedly fail to provide the required level of supervision for a child in care;

(k) Repeatedly care for more children than your license allows;

(l) Refuse to allow our authorized staff and inspectors requested information or access to your licensed space (~~and premises~~), child and program files, or staff and children in care during times when licensed activities are conducted; or

(m) Are unable to manage the property, fiscal responsibilities, or staff in your facility.

AMENDATORY SECTION (Amending WSR 06-15-075, filed 7/13/06, effective 7/13/06)

**WAC 170-296-0520 How long must I keep child records and what am I required to document while operating my business?** (1) A child's presence in the child care must be documented, on a daily basis, by the child's parent or guardian or an authorized person by using the sign-in and sign-out procedure for each child in attendance. The parent, guardian or authorized person must use their full signature when signing the child in and out of the child care.

(2) When the school age child arrives at or leaves the child care home due to school or off-site activities as authorized by the parent, you or your staff must sign out the child, and sign in the child on return to the home.

(3) Daily attendance records, listing the dates and hours of attendance of each child must be kept up-to-date and maintained in the licensed space of the family home child care for five years.

(4) When a child is no longer enrolled, the date of the child's withdrawal must be recorded in the child's file. You must maintain the child's file for at least five years from the child's last date of attendance. After five years the file may be destroyed or returned to the parent. The child's file must be made available for review by the child's parents and us during this period.

(5) You must call and report, within twenty-four hours to:

(a) Children's administration intake an incident or injury that required the services of a medical professional, including a dentist, that occurred while the child was in attendance.

(b) DCCEL and to animal control any incident where a child is bitten by an animal while in attendance.

(c) DCCEL any fire on your premises that required the use of a fire extinguisher or the services of a fire department.

(6) You must submit a written incident report to the child's parent and to your licensor within two working days of the same incident or injury as described in subsection (3) of this section.

(7) You must acquire written parental permission for field trips. You must notify parents in advance when you plan to use vehicles to transport children. Parents may grant general authorization for walking field trips.

(8) You must maintain all records and reports required by these regulations in an up-to-date manner (~~(at)~~) in the licensed space of the facility. The records and reports are subject to inspection and you must allow us access to them (~~(at the time we request them)~~) during all hours in which licensed activities are conducted.

**WSR 07-17-006**

**EMERGENCY RULES**

**DEPARTMENT OF  
FISH AND WILDLIFE**

[Order 07-162—Filed August 2, 2007, 2:44 p.m., effective August 2, 2007, 2:44 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: Repealing WAC 220-32-05700Z and 220-32-05700A; and amending WAC 220-32-057.

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); *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: Clarifies language to allow sales only of sturgeon caught in the John Day pool, including platform and hook and line caught sturgeon. The John Day pool is open for a sturgeon set line season. There is room on the guideline to allow for a season, and harvestable numbers of sturgeon are available. Conforms state rules to tribal rules. Consistent with compact action of July 26, 2007. There is insufficient time to promulgate permanent regulations.

The Yakama, Warm Springs, Umatilla, and Nez Perce Indian tribes have treaty fishing rights in the Columbia River and inherent sovereign authority to regulate their fisheries. Washington and Oregon also have some authority to regulate fishing by treaty Indians in the Columbia River, authority that the states exercise jointly under the congressionally ratified Columbia River compact. *Sohappy v. Smith*, 302 F. Supp. 899 (D. Or. 1969). The tribes and the states adopt parallel regulations for treaty Indian fisheries under the supervision of the federal courts. A court order sets the current parameters. *United States v. Oregon*, Civil No. 68-513-KI (D. Or.), Order Adopting 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.

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 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: August 2, 2007.

J. P. Koenings  
Director

#### NEW SECTION

**WAC 220-32-05700A Columbia River sturgeon seasons above Bonneville Dam** Notwithstanding the provisions of WAC 220-32-057, effective immediately, it is unlawful to take, fish for or possess sturgeon 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 Yakama, Warm Springs, Umatilla, and Nez Perce treaties may fish for sturgeon with set line gear under the following provisions:

1) **Open period:** Immediately through 6:00 p.m. August 18, 2007.

2) **Open area:** 1H (John Day Pool only).

3) **Gear:** Setlines. Fishers are encouraged to use circle hooks and avoid J-hooks. It is unlawful to use setline gear with more than 100 hooks per set line, with hooks less than the minimum size of 9/0, with treble hooks, without visible buoys attached, and with buoys that do not specify operator and tribal identification.

4) **Allowable Sales:** Sturgeon caught in the John Day pool between 4 feet and 5 feet in length may be sold. Sturgeon within the size limits stated above and caught in the John Day pool platform and hook and line fishery may be sold during the open periods of the set line fishery. Sturgeon between 45 inches and 60 inches in length may be retained in the Bonneville Pool (1F) for subsistence purposes only. Sturgeon between 4 feet and 5 feet in length may be retained in The Dalles and John Day pools (1G, 1H) for subsistence purposes.

5) **Sanctuaries:** Notwithstanding the provisions of WAC 220-22-010, during the open periods described above:

6) **Area 1F (Bonneville Pool)** shall include those waters of the Columbia River upstream from the Bridge of the Gods, located approximately 2.3 miles above Bonneville Dam, and downstream of a line projected from the west end of the Port of The Dalles Dock across the Columbia River to a Washing-

ton department of fisheries' boundary marker on the Washington shore.

7) **Area 1G (The Dalles Pool)** shall include those waters of the Columbia River upstream from a line projected from an Oregon department of fish and wildlife deadline marker on the Oregon shore to the 5-mile-lock light (6 seconds red) on an island near the Oregon shore, to an island near the Washington shore to a Washington department of fisheries' fishing boundary marker on the Washington shore at the southwest corner of Horsethief Lake, SP&S Railroad fill and downstream of a line projected across the thread of the Columbia River at the grain elevator at Rufus, Oregon, to a deadline marker on the Washington shore.

8) **Area 1H (John Day Pool)** shall include those waters of the Columbia River upstream from a line projected across the thread of the Columbia River from a fishing boundary marker approximately 1/2-mile above the John Day River, Oregon, to a fishing boundary marker on the Washington shore and downstream of a line projected across the thread of the Columbia River from the upstream bank of the Umatilla River.

9) **Miscellaneous:** It is unlawful to sell, barter, or attempt to sell or barter sturgeon eggs that have been removed from the body cavity of a sturgeon prior to sale of the sturgeon to a wholesale dealer licensed under chapter RCW 75.28, or to sell or barter sturgeon eggs at retail. It is unlawful to deliver to a wholesale dealer licensed under chapter RCW 75.28 any sturgeon that are not in the round with the head and tail intact.

10) **OTHER:** Quick reporting required for Washington wholesale dealers, WAC 220-69-240. When quick reporting is required, Columbia River reports must be submitted within 24 hours of closure of the designated fishery.

**REPEALER**

The following section of the Washington Administrative Code is repealed:

WAC 220-32-05700Z Columbia River sturgeon seasons above Bonneville. (07-156)

The following section of the Washington Administrative Code is repealed, effective 6:01 p.m. August 18, 2007:

WAC 220-32-05700A Columbia River sturgeon seasons above Bonneville Dam.

**WSR 07-17-009  
EMERGENCY RULES  
DEPARTMENT OF  
FISH AND WILDLIFE**

[Order 07-163—Filed August 3, 2007, 11:13 a.m., effective August 5, 2007, 12:01 a.m.]

Effective Date of Rule: August 5, 2007, 12:01 a.m.  
Purpose: Amend personal use rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 232-28-62100Y; and amending WAC 232-28-621.

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: Estimates indicate that the Areas 5 and 6 chinook selective fishery quota of 4,000 harvested chinook has been attained. This regulation prohibits the retention of chinook in Areas 5 and 6. These emergency rules are necessary to comply with agreed-to management plans. There is insufficient time to promulgate permanent rules.

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

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

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

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

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

Date Adopted: August 3, 2007.

Loreva M. Preuss  
for Jeff Koenings  
Director

**NEW SECTION**

**WAC 232-28-62100Z Puget Sound salmon seasons.** Notwithstanding the provisions of WAC 232-28-621, WAC 220-56-128, and WAC 220-56-195, effective 12:01 a.m. August 5, 2007, until further notice, it is unlawful to fish for salmon in Puget Sound except as provided for in this section, provided that unless otherwise amended, all permanent rules remain in effect:

(1) **Area 5** - Open immediately until further notice - Daily limit 2 salmon plus 2 additional pink, except release chum, Chinook, and wild coho. Single-point barbless hooks required.

(2) **Area 6** - Open immediately until further notice - Daily limit 2 salmon plus 2 additional pink, except release chum, Chinook, and wild coho. Single-point barbless hooks required.

(3) **Area 7:**

(a) Waters of Bellingham Bay described in WAC 220-56-195(1) closed immediately through August 15. Open August 16 until further notice - Daily limit 4 salmon, not more than 2 of which may be Chinook salmon; release pink.

(b) All other waters of Area 7 - Open immediately until further notice, daily limit 2 salmon, not more than one of which may be a Chinook salmon, plus 2 additional pink, except release chum and wild coho. Single-point barbless hooks required.

(4) **Area 8-1** - Open immediately until further notice, daily limit 2 salmon, except release Chinook and pink.

**(5) Area 8-2:**

(a) Effective immediately until further notice - Waters adjacent to Tulalip Bay west of the line from Mission Point to Hermosa Point, and within 2,000 feet of shore, north of pilings at old Bower's Resort and south of the fishing marker 1.4 miles northwest of Hermosa Point, open Friday through 11:59 a.m. the following Monday of each week. Daily limit 2 salmon plus 2 additional pink.

(b) Effective immediately until further notice - All other waters of Area 8-2 open. Daily limit 2 salmon plus 2 additional pink, except release Chinook.

**(6) Area 9:**

(a) Salmon fishing open year-round from the Edmonds fishing pier. Daily limit 2 salmon, not more than one of which may be a Chinook, plus 2 additional pink, except release chum.

(b) Effective immediately until further notice - All other waters of Area 9, open. Daily limit 2 salmon plus 2 additional pink, except release Chinook and chum.

**(7) Area 10:**

(a) Salmon fishing open year-round from the Elliott Bay public fishing pier, Seacrest pier, Waterman pier, Bremerton boardwalk, and Illahee State Park pier. Daily limit 2 salmon, not more than one of which may be a Chinook, release chum, plus 2 additional pink.

(b) Effective immediately until further notice, all other waters of Area 10 open with the following area rules, limits, and species restrictions:

(i) Effective immediately until further notice, daily limit 2 salmon plus 2 additional pink, except release Chinook and chum.

(ii) Shilshole Bay east of a line from Meadow Point to West Point is closed.

(iii) Waters of Sinclair Inlet and Port Orchard south of the Manette Bridge, south of a line projected true west from Battle Point and west of a line projected true south from Point White: daily limit 2 salmon, lawful to retain any Chinook, and except release chum.

(iv) Effective immediately through August 21, Elliott Bay east of a line from West Point to Alki Point is closed; except immediately through 11:59 a.m. August 20 - Open east of a line from Pier 91 to Duwamish Head, Friday through Monday of each week - Daily limit of 2 salmon plus 2 additional pink, lawful to retain any Chinook, and except release chum.

(v) Effective immediately until further notice, Duwamish waterway downstream from the First Avenue South Bridge to an east-west line through Southwest Hanford Street on Harbor Island parallel to Southwest Spokane Street where it crosses Harbor Island: Night closure, only 1 single-point barbless hook may be used, and only fish hooked inside the mouth may be retained.

**(8) Area 11:**

(a) Salmon fishing open year-round from the Les Davis public fishing pier, Des Moines public fishing pier, Redondo public fishing pier, Dash Point dock, and Point Defiance Boathouse dock. Daily limit 2 salmon, not more than one of which may be a Chinook, plus 2 additional pink.

(b) Effective immediately until further notice - All other waters of Area 11 open. Daily limit 2 salmon plus 2 additional pink, except release wild Chinook. Single-point barbless hooks required.

**(9) Area 13:**

(a) Salmon fishing open year-round from the Fox Island public fishing pier. Daily limit 2 salmon, not more than one of which may be a Chinook, except release wild coho; and single-point barbless hooks required.

(b) Effective immediately until further notice, all other waters of Area 13 open. Daily limit 2 salmon, except release wild coho and wild Chinook. Single-point barbless hooks required.

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

**REPEALER**

The following section of the Washington Administrative Code is repealed, effective 12:01 a.m. August 5, 2007:

WAC 232-28-62100Y      Puget Sound salmon seasons.  
(07-159)

**WSR 07-17-012**

**EMERGENCY RULES**

**DEPARTMENT OF**

**FISH AND WILDLIFE**

[Filed August 3, 2007, 2:47 p.m., effective August 3, 2007, 2:47 p.m.]

Effective Date of Rule: Immediately.

Purpose: To support existing aquatic invasive species (AIS) laws under chapter 77.120 RCW, and to implement new requirements for AIS control under E2SSB 5923, which became effective on July 22, 2007.

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: A new law, E2SSB 5923, became effective on July 22, 2007. The law regulates the control of AIS and the management of ballast water. AIS poses a significant risk to the marine and fresh waters of the state, and therefore to the health, safety, and general welfare of Washington residents. It is vitally important to prevent the introduction of AIS because once introduced, these species are very difficult and costly to eradicate.

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 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 1, 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: August 3, 2007.

Loreva M. Preuss  
for Jeff Koenings  
Director

#### NEW SECTION

**WAC 220-77-100 Aquatic invasive species check stations—Inspection of watercraft and equipment—Requirements—Penalty.** Any operator of a motor vehicle transporting a recreational or commercial watercraft and approaching or entering an aquatic invasive species check station must stop and allow check station staff to inspect the watercraft and any associated equipment for the presence of aquatic invasive species. For this purpose, the check station will be plainly marked by signs and must be operated by at least one uniformed fish and wildlife officer.

(1) A person is guilty of unlawfully avoiding an aquatic invasive species check station if the person fails to:

- (a) Obey check station signs; or
- (b) Stop and report at a check station if directed to do so by a uniformed fish and wildlife officer.

(2) Unlawfully avoiding an aquatic invasive species check station is a gross misdemeanor.

**WSR 07-17-018  
EMERGENCY RULES  
DEPARTMENT OF  
FISH AND WILDLIFE**

[Order 07-158—Filed August 6, 2007, 2:39 p.m., effective August 6, 2007, 2:39 p.m.]

Effective Date of Rule: Immediately.

Purpose: Amend commercial fishing rules.

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

Statutory Authority for Adoption: RCW 77.12.047.

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

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

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

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

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

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

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

Date Adopted: August 6, 2007.

J. P. Koenings  
Director

#### NEW SECTION

**WAC 220-44-05000S Coastal bottom fish catch limits.** Notwithstanding the provisions of WAC 220-44-050, effective immediately until further notice:

(1) It is unlawful to possess, transport through the waters of the state, or land into any Washington port, bottom fish taken from Marine Fish-Shellfish Management and Catch Reporting Areas 58B, 59A-1, 59A-2, 60A-1, 60A-2, 61, 62, or 63, in excess of the amounts or less than the minimum sizes, or in violation of any gear, handling or landing requirement, established by the Pacific Fisheries Management Council and published in the Federal Register, Volume 72, Number 149 published on August 3, 2007. Therefore, persons must consult the federal regulations, which are incorporated by reference and made a part of Chapter 220-44 WAC. Where rules refer to the fishery management area, that area is extended to include Washington State waters coterminous with the Exclusive Economic Zone.

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

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

(2) At the time of landing of coastal bottom fish into a Washington port, the fish buyer receiving the fish is required

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

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

#### REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 220-44-05000R Coastal bottomfish catch limits. (07-143)

**WSR 07-17-019**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**

[Order 07-154—Filed August 6, 2007, 2:49 p.m., effective August 7, 2007]

Effective Date of Rule: August 7, 2007.

Purpose: Amend personal use rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 232-28-61900J; 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: Washington department of fish and wildlife enforcement is encountering and giving tickets to an excessive number of anglers snagging salmon in the Columbia River. The department is also receiving many complaints from other anglers who witness salmon being snagged and kept. The nonbuoyant lure restriction will reduce the incidence of illegal snagging of salmon. 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: August 6, 2007.

J. P. Koenings  
Director

#### NEW SECTION

**WAC 232-28-61900J Exceptions to statewide rules—Columbia and Okanogan rivers.** Notwithstanding the provisions of WAC 232-28-619, effective August 7 through October 15, 2007, non-buoyant lure restrictions are in effect in the following waters:

(1) Columbia River from Highway 173 Bridge at Brewster to Highway 17 Bridge at Bridgeport.

(2) Okanogan River from the mouth to the Highway 97 Bridge upstream of the mouth.

#### REPEALER

The following section of the Washington Administrative Code is repealed effective October 16, 2007:

WAC 232-28-61900J Exceptions to statewide rules—Columbia and Okanogan rivers.

**WSR 07-17-030**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**

[Order 07-167—Filed August 7, 2007, 10:44 a.m., effective August 9, 2007, 12:01 a.m.]

Effective Date of Rule: August 9, 2007, 12:01 a.m.

Purpose: Amend personal use rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 232-28-62100Z; and amending WAC 232-28-621.

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: For Marine Areas 5 and 6, harvest of chinook last week was less than anticipated, leaving additional fish to be harvested while staying within the 4,000 chinook quota. This regulation allows one additional day of fishing to harvest the additional fish. This regulation prohibits the retention of chinook in Areas 5 and 6 afterwards. These emergency rules are necessary to comply with agreed-to management plans. There is insufficient time to promulgate permanent rules.

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

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

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

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

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

Date Adopted: August 7, 2007.

Phil Anderson  
for Jeff Koenings  
Director

## NEW SECTION

### **WAC 232-28-62100A Puget Sound salmon seasons.**

Notwithstanding the provisions of WAC 232-28-621, WAC 220-56-128, and WAC 220-56-195, effective 12:01 a.m. August 9, 2007, until further notice, it is unlawful to fish for salmon in Puget Sound except as provided for in this section, provided that unless otherwise amended, all permanent rules remain in effect:

#### **(1) Area 5:**

(a) Open 12:01 a.m. August 9 through 11:59 p.m. August 9, 2007 - Daily limit 2 salmon plus 2 additional pink, except release chum, wild Chinook, and wild coho. Single-point barbless hooks required.

(b) Open 12:01 a.m. August 10 until further notice - Daily limit 2 salmon plus 2 additional pink, except release chum, Chinook, and wild coho. Single-point barbless hooks required.

#### **(2) Area 6:**

(a) Open 12:01 a.m. August 9 through 11:59 p.m. August 9, 2007 - Daily limit 2 salmon plus 2 additional pink, except release chum and wild coho; release wild Chinook west of a true north-south line through Buoy #2 immediately east of Ediz Hook; and release all Chinook east of a true north-south line through Buoy #2 immediately east of Ediz Hook. Single-point barbless hooks required.

(b) Open 12:01 a.m. August 10 until further notice - Daily limit 2 salmon plus 2 additional pink, except release chum, Chinook, and wild coho. Single-point barbless hooks required.

#### **(3) Area 7:**

(a) Waters of Bellingham Bay described in WAC 220-56-195(1) closed immediately through August 15. Open August 16 until further notice - Daily limit 4 salmon, not more than 2 of which may be Chinook salmon; release pink.

(b) All other waters of Area 7 - Open immediately until further notice, daily limit 2 salmon, not more than one of which may be a Chinook salmon, plus 2 additional pink, except release chum and wild coho. Single-point barbless hooks required.

**(4) Area 8-1** - Open immediately until further notice, daily limit 2 salmon, except release Chinook and pink.

#### **(5) Area 8-2:**

(a) Effective immediately until further notice - Waters adjacent to Tulalip Bay west of the line from Mission Point to Hermosa Point, and within 2,000 feet of shore, north of pilings at old Bower's Resort and south of the fishing marker 1.4 miles northwest of Hermosa Point, open Friday through 11:59 a.m. the following Monday of each week. Daily limit 2 salmon plus 2 additional pink.

(b) Effective immediately until further notice - All other waters of Area 8-2 open. Daily limit 2 salmon plus 2 additional pink, except release Chinook.

#### **(6) Area 9:**

(a) Salmon fishing open year-round from the Edmonds fishing pier. Daily limit 2 salmon, not more than one of which may be a Chinook, plus 2 additional pink, except release chum.

(b) Effective immediately until further notice - All other waters of Area 9, open. Daily limit 2 salmon plus 2 additional pink, except release Chinook and chum.

#### **(7) Area 10:**

(a) Salmon fishing open year-round from the Elliott Bay public fishing pier, Seacrest pier, Waterman pier, Bremerton boardwalk, and Illahee State Park pier. Daily limit 2 salmon, not more than one of which may be a Chinook, release chum, plus 2 additional pink.

(b) Effective immediately until further notice, all other waters of Area 10 open with the following area rules, limits, and species restrictions:

(i) Effective immediately until further notice, daily limit 2 salmon plus 2 additional pink, except release Chinook and chum.

(ii) Shilshole Bay east of a line from Meadow Point to West Point is closed.

(iii) Waters of Sinclair Inlet and Port Orchard south of the Manette Bridge, south of a line projected true west from Battle Point and west of a line projected true south from Point

White: daily limit 2 salmon, lawful to retain any Chinook, and except release chum.

(iv) Effective immediately through August 21, Elliott Bay east of a line from West Point to Alki Point is closed; except immediately through 11:59 a.m. August 20 - Open east of a line from Pier 91 to Duwamish Head, Friday through Monday of each week - Daily limit of 2 salmon plus 2 additional pink, lawful to retain any Chinook, and except release chum.

(v) Effective immediately until further notice, Duwamish waterway downstream from the First Avenue South Bridge to an east-west line through Southwest Hanford Street on Harbor Island parallel to Southwest Spokane Street where it crosses Harbor Island: Night closure, only 1 single-point barbless hook may be used, and only fish hooked inside the mouth may be retained.

**(8) Area 11:**

(a) Salmon fishing open year-round from the Les Davis public fishing pier, Des Moines public fishing pier, Redondo public fishing pier, Dash Point dock, and Point Defiance Boathouse dock. Daily limit 2 salmon, not more than one of which may be a Chinook, plus 2 additional pink.

(b) Effective immediately until further notice - All other waters of Area 11 open. Daily limit 2 salmon plus 2 additional pink, except release wild Chinook. Single-point barbless hooks required.

**(9) Area 13:**

(a) Salmon fishing open year-round from the Fox Island public fishing pier. Daily limit 2 salmon, not more than one of which may be a Chinook, except release wild coho; and single-point barbless hooks required.

(b) Effective immediately until further notice, all other waters of Area 13 open. Daily limit 2 salmon, except release wild coho and wild Chinook. Single-point barbless hooks required.

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

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

**REPEALER**

The following section of the Washington Administrative Code is repealed, effective 12:01 a.m. August 9, 2007:

WAC 232-28-62100Z Puget Sound salmon seasons.  
(07-163)

**WSR 07-17-033  
EMERGENCY RULES  
DEPARTMENT OF  
FISH AND WILDLIFE**

[Order 07-168—Filed August 7, 2007, 2:58 p.m., effective August 7, 2007, 2:58 p.m.]

Effective Date of Rule: Immediately.

Purpose: Amend commercial fishing rules.

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

Statutory Authority for Adoption: RCW 77.12.047.

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

Reasons for this Finding: The regional 2007 state/tribal shrimp harvest management plans for Puget Sound require adoption of harvest seasons and the prohibition on night time fishing contained in this emergency rule. This emergency rule closes the shrimp fishery in Shrimp Management Areas 1C, 2E and 2W because of projected quota completion in those areas. 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: August 7, 2007.

Phil Anderson  
for Jeff Koenings  
Director

**NEW SECTION**

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

(1) Shrimp pot gear:

(a) All waters of Shrimp Management Areas 1B, 1C, 2E, 2W, 3, 4, and 6 are open immediately to the harvest of all shrimp species, until further notice, except as provided for in this section:

(i) All waters of Catch Areas 23A-E, 23A-W, 23B, 26B-1, 26C and the Discovery Bay Shrimp District are closed.

(ii) Effective immediately until further notice, all waters of Shrimp Management Areas 1C and 2W will be closed to the harvest of spot shrimp.

(iii) Effective 6:00 p.m., on August 7, 2007, until further notice, all waters of Shrimp Management Area 2E will be closed to the harvest of spot shrimp.

(iv) Effective immediately until further notice, all waters of Catch Area 26D are closed to the harvest of spot shrimp.

(b) The shrimp accounting week is Monday through Sunday.

(c) Effective immediately until further notice, it is unlawful for the harvest of spot shrimp by a fisher and/or the fisher's alternate operator to exceed 200 pounds per week from Shrimp Management Areas 1B and 1C.

(e) Effective immediately until further notice, it is unlawful for the combined total harvest of spot shrimp by a fisher and/or the fisher's alternate operator to exceed 600 pounds per week, except that any fisher whose weekly shrimp harvest activity is exclusively limited to Marine Fish-Shellfish Catch and Reporting Area 29 shall not be subject to the weekly spot shrimp trip limit for that week. It is unlawful to fish for any shrimp while in possession, on board the fishing vessel, of any spot shrimp from any previous accounting week.

(f) It is unlawful to set or pull shellfish pots with a mesh size of less than the size as defined below in all waters of Shrimp Management Areas 1B, 1C, 2E, 2W, 4, and 6, on days when fishing for or retaining spot shrimp. Spot shrimp taken in these areas are not subject to the minimum carapace length restriction.

(i) The minimum mesh size for rigid mesh pots is 1-inch defined as a mesh opening that a 7/8-inch square peg will pass through, excluding the entrance tunnels.

(ii) The minimum mesh size for flexible mesh pots is defined as 1-3/4-inch stretched mesh measure.

(g) It is unlawful to retain spot shrimp taken by shellfish pot gear that have a carapace length less than 1-3/16 inch as measured from the posterior mid-dorsal margin to the posterior-most part of the eye stalk orbit, in all waters of Shrimp Management Area 3.

(h) It is unlawful to fish for shrimp for commercial purposes in Puget Sound using shellfish pot gear in more than one Marine Fish-Shellfish Management and Catch Reporting Area per day. Fishers may move all of their shellfish pot gear from one Marine Fish-Shellfish Management and Catch Reporting Area to another Marine Fish-Shellfish Management and Catch Reporting Area if a harvest report is made before the shellfish pot gear is moved. The harvest activity report must be made consistent with the provisions of WAC 220-52-075 and must also include the following additional information:

(i) The number of pots being moved to a new area, and the Marine Fish-Shellfish Management and Catch Reporting Area that the pots are being moved to.

(i) It is unlawful to set or pull shellfish pots in one Marine Fish-Shellfish Management and Catch Reporting Area while in possession of shrimp harvested from another Marine Fish-Shellfish Management and Catch Reporting Area, except that shellfish pots may be set in a new fishing area subsequent to making a report as indicated in Section 1(g) above.

(2) Shrimp beam trawl gear:

Shrimp Management Area 3 (outside of the Discovery Bay Shrimp District, Sequim Bay, and Catch Area 23D) is open immediately, until further notice. Sequim Bay includes

those waters of Catch Area 25A south of a line projected west from Travis Spit on the Miller Peninsula.

(a) Catch areas 20A and that portion of Catch Areas 20B, 21A and 22A within Shrimp Management Area 1B are open immediately, until further notice.

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

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

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

### REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 220-52-05100J      Puget Sound shrimp pot and beam trawl fishery—Season (07-160)

### **WSR 07-17-045 EMERGENCY RULES DEPARTMENT OF FISH AND WILDLIFE**

[Order 07-169—Filed August 9, 2007, 10:33 a.m., effective August 9, 2007, 10:33 a.m.]

Effective Date of Rule: Immediately.

Purpose: Amend personal use rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-56-25500V; 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: This rule conforms to federal action taken by Pacific Fisheries Management Council. There is sufficient recreational halibut quota to provide for additional fishing in Marine Areas 3 and 4. 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: August 9, 2007.

Phil Anderson  
for Jeff Koenings  
Director

#### NEW SECTION

**WAC 220-56-25500W 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 until further notice, except closed to fishing for halibut 12:01 a.m. of each Monday through 11:59 p.m. of each Thursday. 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. August 18 through 11:59 p.m. August 19, 2007, shoreward of a line approximating 30 fathoms from the Bonilla-Tatoosh line south to the Queets River as described by the following coordinates:

48°24.79'N.lat.;124°44.07'W.long.;  
48°24.80'N.lat.;124°44.74'W.long.;  
48°23.94'N.lat.;124°44.70'W.long.;  
48°23.51'N.lat.;124°45.01'W.long.;  
48°22.59'N.lat.;124°44.97'W.long.;  
48°21.75'N.lat.;124°45.26'W.long.;  
48°21.23'N.lat.;124°47.78'W.long.;  
48°20.32'N.lat.;124°49.53'W.long.;  
48°16.72'N.lat.;124°51.58'W.long.;  
48°10.00'N.lat.;124°52.58'W.long.;  
48°05.63'N.lat.;124°52.91'W.long.;  
47°56.25'N.lat.;124°52.57'W.long.;  
47°40.28'N.lat.;124°40.07'W.long.;  
47°31.70'N.lat.;124°37.03'W.long.;

(i) Effective immediately until further notice, on days when halibut fishing is closed in Catch Record Card Areas 3, and 4, unless otherwise provided, it is unlawful to fish for or possess bottomfish 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.

(ii) 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.

(d) Catch Record Card Areas 6 through 11 and Catch Record Card Area 13 - Closed.

(e) Catch Record Card Area 5 - Closed.

(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 section of the Washington Administrative Code is repealed:

WAC 220-56-25500V Halibut—Seasons—Daily and possession limits. (07-152)

#### **WSR 07-17-050 EMERGENCY RULES DEPARTMENT OF FISH AND WILDLIFE**

[Order 07-172—Filed August 9, 2007, 4:20 p.m., effective August 9, 2007, 4:20 p.m.]

Effective Date of Rule: Immediately.

Purpose: Amend commercial fishing rules.

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

Statutory Authority for Adoption: RCW 77.12.047.

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

Reasons for this Finding: The regional 2007 state/tribal shrimp harvest management plans for Puget Sound require adoption of harvest seasons and the prohibition on night time fishing contained in this emergency rule. This emergency rule closes the shrimp fishery in Shrimp Management Area 1B and lowers the weekly limit in Catch Area 26B-2 because of projected quota completion in those areas. 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: August 9, 2007.

Phil Anderson  
for Jeff Koenings  
Director

### NEW SECTION

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

(1) Shrimp pot gear:

(a) All waters of Shrimp Management Areas 1B, 1C, 2E, 2W, 3, 4, and 6 are open immediately to the harvest of all shrimp species, until further notice, except as provided for in this section:

(i) All waters of Catch Areas 23A-E, 23A-W, 26B-1, 26C and the Discovery Bay Shrimp District are closed.

(ii) All waters of Shrimp Management Areas 1B, 1C, 2W, and Catch Areas 23B and 26D are closed to the harvest of spot shrimp.

(iii) All waters of Shrimp Management Area 2E are closed to the harvest of spot shrimp, except open from 6:00 a.m. August 13, 2007 to 1:00 p.m. August 14, 2007, with a weekly limit of 170 pounds.

(b) The shrimp accounting week is Monday through Sunday.

(c) Effective immediately until further notice, it is unlawful for the harvest of spot shrimp by a fisher and/or the fisher's alternate operator to exceed 150 pounds per week from Catch Area 26B-2.

(d) Effective immediately until further notice, it is unlawful for the combined total harvest of spot shrimp by a fisher and/or the fisher's alternate operator to exceed 600 pounds per week, except that any fisher whose weekly shrimp harvest activity is exclusively limited to Marine Fish-Shellfish Catch and Reporting Area 29 shall not be subject to the weekly spot shrimp trip limit for that week. It is unlawful to fish for any shrimp while in possession, on board the fishing vessel, of any spot shrimp from any previous accounting week.

(e) It is unlawful to set or pull shellfish pots with a mesh size of less than the size as defined below in all waters of Shrimp Management Areas 2E, 4 and 6, on days when fishing

for or retaining spot shrimp. Spot shrimp taken in these areas are not subject to the minimum carapace length restriction.

(i) The minimum mesh size for rigid mesh pots is 1-inch defined as a mesh opening that a 7/8-inch square peg will pass through, excluding the entrance tunnels.

(ii) The minimum mesh size for flexible mesh pots is defined as 1-3/4-inch stretched mesh measure.

(f) It is unlawful to retain spot shrimp taken by shellfish pot gear that have a carapace length less than 1-3/16 inch as measured from the posterior mid-dorsal margin to the posterior-most part of the eye stalk orbit, in all waters of Shrimp Management Area 3.

(g) It is unlawful to fish for shrimp for commercial purposes in Puget Sound using shellfish pot gear in more than one Marine Fish-Shellfish Management and Catch Reporting Area per day. Fishers may move all of their shellfish pot gear from one Marine Fish-Shellfish Management and Catch Reporting Area to another Marine Fish-Shellfish Management and Catch Reporting Area if a harvest report is made before the shellfish pot gear is moved. The harvest activity report must be made consistent with the provisions of WAC 220-52-075 and must also include the following additional information:

(i) The number of pots being moved to a new area, and the Marine Fish-Shellfish Management and Catch Reporting Area that the pots are being moved to.

(h) It is unlawful to set or pull shellfish pots in one Marine Fish-Shellfish Management and Catch Reporting Area while in possession of shrimp harvested from another Marine Fish-Shellfish Management and Catch Reporting Area, except that shellfish pots may be set in a new fishing area subsequent to making a report as indicated in Section 1(g) above.

(2) Shrimp beam trawl gear:

Shrimp Management Area 3 (outside of the Discovery Bay Shrimp District, Sequim Bay, and Catch Area 23D) is open immediately, until further notice. Sequim Bay includes those waters of Catch Area 25A south of a line projected west from Travis Spit on the Miller Peninsula.

(a) Catch areas 20A and that portion of Catch Areas 20B, 21A and 22A within Shrimp Management Area 1B are open immediately, until further notice.

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

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

### REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 220-52-05100K	Puget Sound shrimp pot and beam trawl fishery—Season. (07-168)
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**WSR 07-17-051**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**

[Order 07-170—Filed August 9, 2007, 4:27 p.m., effective August 9, 2007, 4:27 p.m.]

Effective Date of Rule: Immediately.

Purpose: Amend personal use rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-56-25500W; 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: It is expected that the remaining halibut quota for Marine Area 1 will be taken by August 12, 2007. This rule conforms to federal action taken by Pacific Fisheries Management Council. If sufficient quota remains, the fishery may reopen for another fishing day. 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: August 9, 2007.

Phil Anderson  
for Jeff Koenings  
Director

NEW SECTION

**WAC 220-56-25500X 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 August 12, except closed to fishing for halibut 12:01 a.m. of each Monday through 11:59 p.m. of each Thursday. 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. August 18 through 11:59 p.m. August 19, 2007, shoreward of a line approximating 30 fathoms from the Bonilla-Tatoosh line south to the Queets River as described by the following coordinates:

48°24.79'N.lat.; 124°44.07'W.long.;  
 48°24.80'N.lat.; 124°44.74'W.long.;  
 48°23.94'N.lat.; 124°44.70'W.long.;  
 48°23.51'N.lat.; 124°45.01'W.long.;  
 48°22.59'N.lat.; 124°44.97'W.long.;  
 48°21.75'N.lat.; 124°45.26'W.long.;  
 48°21.23'N.lat.; 124°47.78'W.long.;  
 48°20.32'N.lat.; 124°49.53'W.long.;  
 48°16.72'N.lat.; 124°51.58'W.long.;  
 48°10.00'N.lat.; 124°52.58'W.long.;  
 48°05.63'N.lat.; 124°52.91'W.long.;  
 47°56.25'N.lat.; 124°52.57'W.long.;  
 47°40.28'N.lat.; 124°40.07'W.long.;  
 47°31.70'N.lat.; 124°37.03'W.long.;

(i) Effective immediately until further notice, on days when halibut fishing is closed in Catch Record Card Areas 3, and 4, unless otherwise provided, it is unlawful to fish for or possess bottomfish 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.

(ii) 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.

(d) Catch Record Card Areas 6 through 11 and Catch Record Card Area 13 - Closed.

(e) Catch Record Card Area 5 - Closed.

(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 section of the Washington Administrative code is repealed:

WAC 220-56-25500W Halibut—Seasons—Daily and possession limits. (07-169)

**WSR 07-17-052**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**

[Filed August 9, 2007, 4:33 p.m., effective August 9, 2007, 4:33 p.m.]

Effective Date of Rule: Immediately.

Purpose: To repeal requirements by rule for aquatic invasive species (AIS) check stations, since such requirements are already provided under E2SSB 5923, which became effective on July 22, 2007.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-77-100.

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: A new law, E2SSB 5923, became effective on July 22, 2007. The law regulates the control of AIS and the management of ballast water. The Washington department of fish and wildlife filed an emergency rule on August 3, 2007, under WSR 07-17-012, to give effect to E2SSB 5923 regarding AIS check stations. However, no such rule is needed to implement the AIS check-station requirement under E2SSB 5923. Therefore, WSR 07-17-012 was filed in error. This emergency rule repeals the erroneous rule.

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

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

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

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

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

Date Adopted: August 9, 2007.

Loreva M. Preuss  
 for Jeff Koenings  
 Director

**REPEALER**

The following section of the Washington Administrative Code is repealed:

WAC 220-77-100	Aquatic invasive species check stations—Inspection of watercraft and equipment—Requirements—Penalty.
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**WSR 07-17-056**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**

[Order 07-175—Filed August 10, 2007, 1:58 p.m., effective August 17, 2007, 8:00 a.m.]

Effective Date of Rule: August 17, 2007, 8:00 a.m.

Purpose: Amend commercial fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-52-04600G; and amending WAC 220-52-046.

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: California Assembly Bill 2773 (effective January 1, 2007) limits the geographic area where a CA coastal Dungeness crab license is valid to the state and federal waters adjacent to the coast of California. WDFW agreed to adopt reciprocal regulations limiting the area that Washington coastal Dungeness crab licenses are valid to the state and federal waters adjacent to the coast of Washington. Similar reciprocal rules between Oregon and Washington were in place at the beginning of the 2005-2006 season. Special management areas for tribal fishing are included as part of the crab management plan agreements. 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: August 10, 2007.

Phil Anderson  
 Deputy Director

**NEW SECTION**

**WAC 220-52-04600J Coastal crab season.** Notwithstanding the provisions of WAC 220-52-046, effective 8:00 a.m. August 17, 2007, until further notice, it is unlawful to commercially fish for Dungeness crab in the following areas:

(1) A Quinalt special management area (QIN SSMA) is closed to fishing for Dungeness crab. The QIN SSMA includes the coastal waters shoreward of a line approximating

the 25-fathom depth curve from Copalis River to Point Grenville as described by the following coordinates:

- Northeast Corner: 47°18.35 N Lat. - 124°16.00 W Lon.
- Northwest Corner: 47°18.35 N Lat. - 124.28.40 W Lon.
- Southwest Corner: 47°08.00 N. Lat. - 124°23.50 W Lon.
- Southeast Corner: 47°08.00 N. Lat. - 124°11.20 W Lon.

(2) It is unlawful for a vessel to use more than 200 pots in the area described herein from 8:00 a.m. August 17, 2007 through September 15, 2007. Fishers must pre-register with the Department of Fish and Wildlife 24 hours prior to deploying gear in this area by one of the three following methods:

- Fax transmission to Brandon Bryant at 360-664-0689;
- Email to Brandon Bryant at: [bryanblb@dfw.wa.gov](mailto:bryanblb@dfw.wa.gov) or
- Telephone call to: Brandon Bryant at 360-249-4628, ext. 229
- The restricted pot area includes the coastal waters shoreward of a line approximating the 30-fathom depth curve from Point Grenville to Split Rock as described by the following coordinates:
  - Northeast corner: 47°24.50 N Lat. - 124°20.00 W Lon.
  - Northwest corner: 47°24.50 N Lat. - 124°33.70 W Lon.
  - Southwest corner: 47°18.35 N Lat. - 124°31.20 W Lon.
  - Southeast corner: 47°18.35 N Lat. - 124°16.00 W Lon.

(3) It is unlawful to fish for or possess Dungeness crabs or to set crab gear in waters of the Pacific Ocean adjacent to the states of Oregon or California without the licenses or permits required to commercially fish for Dungeness crab within the state waters of Oregon or California. Washington coastal Dungeness crab permits are valid only in Washington state waters, the Columbia River, Willapa Bay, Grays Harbor, and the Pacific Ocean in federal waters north of the Washington/Oregon border (46°15.00 N. Latitude), extending 200 nautical miles westward.

(4) All other provisions of the permanent rule remain in effect.

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

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

#### REPEALER

The following section of the Washington Administrative Code is repealed effective 8:00 a.m. on August 17, 2007:

WAC 220-52-04600G Coastal crab season. (07-75)

#### **WSR 07-17-061 EMERGENCY RULES DEPARTMENT OF**

#### **SOCIAL AND HEALTH SERVICES**

(Aging and Disability Services Administration)

[Filed August 13, 2007, 8:05 a.m., effective August 13, 2007, 8:05 a.m.]

Effective Date of Rule: Immediately.

Purpose: The department is proposing these amendments and new text to change transfer of asset rules for clients found eligible for long-term care (LTC) services. This change is due to the 2005 federal Deficit Reduction Act (DRA) (P.L. 109-171). The new WAC section is entitled, WAC 388-513-1363 Evaluating the transfer of an asset for clients found eligible for LTC services on or after May 1, 2006. The department is also updating WAC 388-513-1330 to include a reference to WAC 388-513-1363 and 388-513-1364.

Citation of Existing Rules Affected by this Order: Amending WAC 388-513-1330.

Statutory Authority for Adoption: RCW 74.04.050, 74.04.057, 74.08.090, 74.09.575.

Other Authority: Public Law 109-171.

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

Reasons for this Finding: The department must adopt the applicable language from the 2005 federal Deficit Reduction Act (Public Law 109-171) in order for the state to remain eligible for federal medicaid funding. This filing continues the emergency rule filed as WSR 07-09-062 while the department completes adoption of permanent rules initiated under WSR 06-10-020. A CR-102 has been filed as WSR 07-14-019 and a public hearing was held on August 7, 2007.

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

Date Adopted: August 7, 2007.

Stephanie E. Schiller  
Rules Coordinator

#### NEW SECTION

**WAC 388-513-1363 Evaluating the transfer of an asset for clients found eligible for LTC services on or after May 1, 2006.** This section describes how the department evaluates asset transfers made on or after May 1, 2006, by a

client who is applying for or receiving Long Term Care (LTC) services. The department must consider whether a transfer made within a specified time before the month of application, or while the client is receiving LTC services, requires a penalty period. Clients subject to asset transfer penalty periods are not eligible for LTC services. Refer to WAC 388-513-1364 for rules used to evaluate asset transfers made on or after April 1, 2003 and before May 1, 2006. Refer to WAC 388-513-1365 for rules used to evaluate asset transfer made prior to April 1, 2003. Transfer of asset penalties do not apply to Hospice or PACE services.

(1) The department does not apply a penalty period to the following transfers by the client, if they meet the conditions described:

(a) Gifts or donations totaling the average daily private nursing facility rate or less in any month;

(b) The transfer of an excluded resource described in WAC 388-513-1350 with the exception of the client's home, unless the transfer of the client's home meets the conditions described in subsection (1)(d);

(c) The transfer of an asset for less than fair market value (FMV), if the client can provide evidence to the department of one of the following:

(i) An intent to transfer the asset at FMV or other adequate compensation;

(ii) The transfer is not made to qualify for LTC services;

(iii) The client is given back ownership of the asset;

(iv) The denial of eligibility would result in an undue hardship, see subsection (13) for further instructions.

(d) The transfer of ownership of the client's home, if it is transferred to the client's:

(i) Spouse; or

(ii) Child, who:

(A) Meets the disability criteria described in WAC 388-511-1105 (1)(b) or (c); or

(B) Is less than twenty-one years old; or

(C) Lived in the home for at least two years immediately before the client's current period of institutional status, and provided care that enabled the client to remain in the home; or

(iii) Brother or sister, who has:

(A) Equity in the home, and

(B) Lived in the home for at least one year immediately before the client's current period of institutional status.

(e) The asset is transferred to the client's spouse or to the client's child, if the child meets the disability criteria described in WAC 388-511-1105 (1)(b) or (c);

(f) The transfer of an asset, if the transfer meets the conditions described in subsection (2), and the asset is transferred:

(i) To another person for the sole benefit of the spouse;

(ii) From the client's spouse to another person for the sole benefit of the spouse;

(iii) To trust established for the sole benefit of the client's child who meets the disability criteria described in WAC 388-511-1105 (1)(b) or (c);

(iv) To a trust established for the sole benefit of a person who is sixty-four years old or younger and meets the disability criteria described in WAC 388-511-1105 (1)(b) or (c); or

(2) The department considers the transfer of an asset or the establishment of a trust to be for the sole benefit of a person described in subsection (1)(f), if the transfer or trust:

(a) Is established by a legal document that makes the transfer irrevocable;

(b) Provides that no individual or entity except the spouse, blind or disabled child, or disabled individual can benefit from the assets transferred in any way, whether at the time of the transfer or at any time during the life of the primary beneficiary; and

(c) Provides for spending all assets involved for the sole benefit of the individual on a basis that is actuarially sound based on the life expectancy of that individual or the term of the trust, whichever is less; and

(d) The requirements in subsection (2)(c) of this section do not apply to trusts described in WAC 388-561-0100 (6)(a) and (b) and (7)(a) and (b).

(3) The department does not establish a period of ineligibility for the transfer of an asset to a family member prior to the current period of institutional status, if:

(a) The transfer is in exchange for care services the family member provided the client;

(b) The client has a documented need for the care services provided by the family member;

(c) The care services provided by the family member are allowed under the Medicaid state plan or the department's waived services;

(d) The care services provided by the family member do not duplicate those that another party is being paid to provide;

(e) The FMV of the asset transferred is comparable to the FMV of the care services provided;

(f) The time for which care services are claimed is reasonable based on the kind of services provided; and

(g) Compensation has been paid as the care services were performed or with no more time delay than one month between the provision of the service and payment.

(4) The department considers the transfer of an asset in exchange for care services given by a family member that does not meet the criteria as described under subsection (3) as the transfer of an asset without adequate consideration.

(5) When evaluating the effect of the transfer of an asset made on or after May 1, 2006 on a client's eligibility for LTC services the department counts sixty months before the month of application to establish what is referred to as the "look-back" period.

(6) If a client or the client's spouse transfers an asset within the look-back period without receiving adequate compensation, the result is a penalty period in which the client is not eligible for LTC services.

(7) If a client or the client's spouse transfers an asset on or after May 1, 2006, the department must establish a penalty period by adding together the total uncompensated value of all transfers made on or after May 1, 2006. The penalty period:

(a) For a LTC services applicant, begins on the date the client would be otherwise eligible for LTC services based on an approved application or the first day after any previous penalty period has ended; or

(b) For a LTC services recipient, begins the first of the month following the transfer allowing for reporting require-

ment timeframes described in WAC 388-418-007; or the first day after any previous penalty period has ended; and

(c) Ends on the last day of the number of whole days found by dividing the total uncompensated value of the assets by the statewide average daily private cost for nursing facilities at the time of application or the date of transfer, whichever is later.

(8) If an asset is sold, transferred, or exchanged, the portion of the proceeds:

(a) That is used within the same month to acquire an excluded resource described in WAC 388-513-1360 does not affect the client's eligibility;

(b) That remain after an acquisition described in subsection (8)(a) becomes an available resource as of the first day of the following month.

(9) If the transfer of an asset to the client's spouse includes the right to receive a stream of income not generated by a transferred resource, the department must apply rules described in WAC 388-513-1330 (6) through (8).

(10) If the transfer of an asset for which adequate compensation is not received is made to a person other than the client's spouse and includes the right to receive a stream of income not generated by a transferred resource, the length of the penalty period is determined and applied in the following way:

(a) The total amount of income that reflects a time frame based on the actuarial life expectancy of the client who transfers the income is added together;

(b) The amount described in subsection (10)(a) is divided by the statewide average daily private cost for nursing facilities at the time of application; and

(c) A penalty period equal to the number of whole days found by following subsections (7)(a), (b), and (c).

(11) A penalty period for the transfer of an asset that is applied to one spouse is not applied to the other spouse, unless:

(a) Both spouses are receiving LTC services; and

(b) A division of penalty period between the spouses is requested.

(12) If a client or the client's spouse disagrees with the determination or application of a penalty period, that person may request a hearing as described in chapter 388-02 WAC.

(13) An undue hardship exists when application of the transfer of assets provision would deprive the individual:

(a) Of medical care that would endanger an individual's health or life; or

(b) Of food, clothing, shelter, or other necessities of life; or

(c) Which provides for:

(i) Notice to recipients that an undue hardship exception exists;

(ii) A timely process for determining whether an undue hardship waiver will be granted; and

(iii) A process under which an adverse determination can be appealed.

AMENDATORY SECTION (Amending WSR 06-07-077, filed 3/13/06, effective 4/13/06)

**WAC 388-513-1330 Determining available income for legally married couples for long-term care (LTC) services.** This section describes income the department considers available when determining a legally married client's eligibility for LTC services.

(1) The department must apply the following rules when determining income eligibility for LTC services:

(a) WAC 388-450-0005(3), Income—Ownership and availability and WAC 388-475-0200, SSI-related medical;

(b) WAC 388-450-0085, Self-employment income—Allowable expenses;

(c) WAC 388-450-0210 (4)(b) and (e), Countable income for medical programs, and WAC 388-475-0750, SSI-related medical - Countable unearned income;

(d) WAC 388-506-0620, SSI-related medical clients; and

(e) WAC 388-513-1315 (15) and (16), Eligibility for long-term care (institutional, waiver, and hospice) services.

(2) For an institutionalized client married to a community spouse who is not applying or approved for LTC services, the department considers the following income available, unless subsection (4) applies:

(a) Income received in the client's name;

(b) Income paid to a representative on the client's behalf;

(c) One-half of the income received in the names of both spouses; and

(d) Income from a trust as provided by the trust.

(3) The department considers the following income unavailable to an institutionalized client:

(a) Separate or community income received in the name of the community spouse; and

(b) Income established as unavailable through a fair hearing.

(4) For the determination of eligibility only, if available income described in subsections (2)(a) through (d) minus income exclusions described in WAC 388-513-1340 exceeds the special income level (SIL), then:

(a) The department follows community property law when determining ownership of income;

(b) Presumes all income received after marriage by either or both spouses to be community income; and

(c) Considers one-half of all community income available to the institutionalized client.

(5) If both spouses are either applying or approved for LTC services, then:

(a) The department allocates one-half of all community income described in subsection (4) to each spouse; and

(b) Adds the separate income of each spouse respectively to determine available income for each of them.

(6) The department considers income generated by a transferred resource to be the separate income of the person or entity to which it is transferred.

(7) The department considers income not generated by a transferred resource available to the client, even when the client transfers or assigns the rights to the income to:

(a) The spouse; or

(b) A trust for the benefit of the spouse.

(8) The department evaluates the transfer of a resource described in subsection (6) according to WAC 388-513-1363, 388-513-1364, 388-513-1365 and 388-513-1366 to determine whether a penalty period of ineligibility is required.

**WSR 07-17-075**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**

[Order 07-171—Filed August 14, 2007, 9:18 a.m., effective August 14, 2007, 9:18 a.m.]

Effective Date of Rule: Immediately.

Purpose: Amend personal use fishing rules.

Citation of Existing Rules Affected by this Order:  
Amending WAC 220-56-510.

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 was inadvertently left out of the permanent rules 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: August 14, 2007.

J. P. Koenings  
Director

NEW SECTION

**WAC 220-56-51000A Game fish possession limits and size limits.** Notwithstanding the provisions of WAC 220-56-510, effective immediately until further notice, the daily limit for Tiger Muskellunge (Musky) is one fish with a 36-inch minimum size limit.

**WSR 07-17-076**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**

[Order 07-174—Filed August 14, 2007, 9:52 a.m., effective August 15, 2007]

Effective Date of Rule: August 15, 2007.

Purpose: Amend personal use fishing rules.

Citation of Existing Rules Affected by this Order:  
Repealing WAC 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: The upper Columbia River summer chinook return at Wells Dam is adequate to provide necessary escapement goals, along with a harvest fishery. The stocks are stable and not listed under the ESA. 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: August 14, 2007.

J. P. Koenings  
Director

NEW SECTION

**WAC 232-28-61900L Exceptions to statewide rules—Okanogan and Similkameen rivers.** Notwithstanding the provisions of WAC 232-28-619, effective August 15 through September 15, 2007, a person may fish in the following waters:

(1) Okanogan River (Okanogan Co.) Those waters from the Highway 97 bridge near the mouth to the Highway 97 bridge just south of Oroville. Daily limit of six salmon, no more than two adults. Release all coho and sockeye. Night closure and non-buoyant lure restriction in effect. Effective September 1 through September 15, 2007, in those waters upstream of the highway bridge in Malott, statewide game-fish rules are in effect, except release all trout

(2) Similkameen River (Okanogan County) Those waters from the confluence with the Okanogan River

upstream to the county road bridge in Oroville. Daily limit of six salmon, no more than two adults. Release all coho and sockeye. Night closure and non-buoyant lure restriction in effect. Release all fish except salmon.

#### REPEALER

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

WAC 232-28-61900LV Exceptions to statewide rules—Okanogan and Similkameen rivers

#### **WSR 07-17-077**

##### **EMERGENCY RULES**

#### **DEPARTMENT OF LICENSING**

[Filed August 14, 2007, 3:02 p.m., effective August 14, 2007, 3:02 p.m.]

Effective Date of Rule: Immediately.

Purpose: To make a correction in part 3 concerning the calculation of lapse date for public financing transactions and manufactured home transactions.

Citation of Existing Rules Affected by this Order: Amending WAC 308-390-306.

Statutory Authority for Adoption: RCW 62A.9A-526.

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 legislation does not authorize a lapse date of thirty years from the date of the initial financing statement, so that language in WAC 308-390-306 is being removed.

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 0, Repealed 0.

Date Adopted: August 14, 2007.

Nancy Skewis  
UCC Administrator

AMENDATORY SECTION (Amending WSR 01-10-056, filed 4/27/01, effective 7/1/01)

**WAC 308-390-306 Initial financing statement.** Upon the filing of an initial financing statement, the status of the parties and the status of the financing statement shall be as follows:

(1) Status of secured party. Each secured party named on an initial financing statement shall be a secured party of record, except that if the UCC record names an assignee, the secured party/assignor shall not be a secured party of record and the secured party/assignee shall be a secured party of record.

(2) Status of debtor. The status of a debtor named on the record shall be active and shall continue as active until one year after the financing statement lapses.

(3) Status of financing statement. The status of the financing statement shall be active. A lapse date shall be calculated, five years from the file date, unless ((~~the initial financing statement indicates that it is filed with respect to a public financing transaction or a manufactured home transaction, in which case the lapse date shall be thirty years from the file date, or if~~) the initial financing statement indicates that it is filed against a transmitting utility, in which case there shall be no lapse date. A financing statement remains active until one year after it lapses, or if it is indicated to be filed against a transmitting utility, until one year after it is terminated with respect to all secured parties of record.

#### **WSR 07-17-078**

##### **RESCISSION OF EMERGENCY RULES**

#### **DEPARTMENT OF FISH AND WILDLIFE**

[Filed August 14, 2007, 2:32 p.m.]

The Washington department of fish and wildlife is rescinding the emergency rule filed on July 31, 2007, as WSR 07-16-124 amending WAC 220-77-090 and 220-77-095.

Loreva M. Preuss  
Rules Coordinator

#### **WSR 07-17-079**

##### **EMERGENCY RULES DEPARTMENT OF FISH AND WILDLIFE**

[Order 07-173—Filed August 14, 2007, 2:33 p.m., effective August 14, 2007, 2:33 p.m.]

Effective Date of Rule: Immediately.

Purpose: Amend fishing rules.

Citation of Existing Rules Affected by this Order: Amending WAC 220-77-090 and 220-77-095.

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: A new law, E2SSB 5923, became effective on July 22, 2007. The law regulates the control of aquatic invasive species (AIS) and the management of ballast water. Ballast water can carry chemicals, other pollutants, and AIS, making it a significant risk to the marine and fresh waters of the state, and therefore to the health, safety, and general welfare of Washington residents. It is vitally important to prevent the introduction of AIS and ballast-water pollution because once introduced, they are very difficult and costly to eradicate. 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 2, 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: August 14, 2007.

J. P. Koenings  
Director

## NEW SECTION

**WAC 220-77-0900C Ballast water management and control—Reporting and sampling requirements.** Notwithstanding the provisions of WAC 220-77-090:

(1) Vessels that are subject to chapter 77.120 RCW must report ballast water management information at least twenty-four hours prior to entering Washington waters by filing a ballast water reporting form pursuant to Title 33 C.F.R. Part 151.2045. Forms must be submitted in electronic format (preferred) or by fax to:

(a) The department, at ballastwater@dfw.wa.gov or 360-902-2845, for any vessel entering state waters at any location; or

(b) The Marine Exchange of Puget Sound in Seattle, at waballast@aol.com or 206-443-3839, for vessels bound for Puget Sound or coastal ports; or

(c) The Merchants Exchange of Portland, at marine.room@pdxmex.com or 503-295-3660, for vessels bound for Washington ports on the Columbia River.

(2) Vessels not intending to discharge ballast water into Washington state waters shall notify the department in one of the following ways:

(a) Owners or operators of one or more vessels who do not wish to file a ballast water reporting form may send a signed form letter, as provided by the department and at least thirty days prior to entering Washington waters, to the depart-

ment by e-mail at ballastwater@dfw.wa.gov; by fax at 360-902-2845; or by U.S. mail to the ANS Coordinator, Department of Fish and Wildlife, 600 Capitol Way No., Olympia, WA 98501-1091. The signed letter must include the following information:

(i) Vessel name(s), identification number(s) (International Maritime Organization, Lloyds of London, or U.S. Coast Guard registry number), owner, agent, and vessel type(s);

(ii) A statement that the vessel will not discharge ballast water into Washington state waters;

(iii) A statement that if the vessel does need to discharge on a voyage, they will file a ballast water report 24 hours prior to discharge; and

(iv) The signature of the owner, operator, or other authorized representative.

(b) Vessels that would normally discharge ballast water, but will not discharge on a particular trip, may file the ballast water reporting form at least twenty-four hours prior to entering Washington waters, with "NOT DISCHARGING" written in the ballast water history section.

(3) The department, or designated representatives, may at reasonable times and in a reasonable manner, during a vessel's scheduled stay in port, take samples of ballast water and sediment, may examine ballast water management records, and may make other appropriate inquiries to assess the compliance of vessels with ballast water reporting and control requirements.

(4) Vessel operators claiming a safety exemption under RCW 77.120.030(4) must notify the department of their intent to do so on the ballast water reporting form as required in subsection (1) of this section. Notification requires writing the words "SAFETY EXEMPTION" on the form where it asks "If no ballast treatment conducted, state reason why not:" and stating the cause as either "ADVERSE WEATHER," "VESSEL DESIGN LIMITATION," "EQUIPMENT FAILURE," or "EXTRAORDINARY CONDITION."

(a) No safety exemption request is required if the vessel does not intend to discharge unexchanged or untreated ballast water and the crew follows the requirements under subsection (2) of this section.

(b) Vessel operators may rescind a safety exemption claim by filing an amended ballast water reporting form and notifying the department as required in subsection (1) of this section.

(5) The department will review safety exemption claims as noted in subsections (3) and (4) of this section.

(a) The department will determine whether a compliance plan and alternative strategy are required. Compliance plans and alternative strategies will be established to minimize discharge of future unexchanged ballast water until compliance with this section can be met.

(b) The department will assess a safety exemption fee using the following as guidance:

(i) Minimum five hundred dollar fee for administrative costs to assess compliance; and

(ii) Larger fees may be assessed by the department based on vessel history, risk, and degree of failure to implement prior compliance plans and alternative strategies.

(6) The department may impose civil penalties ranging from a warning letter up to twenty-seven thousand five hundred dollars for violation of the requirements of this section pursuant to RCW 77.120.070. Each day of a continuing violation constitutes a separate violation. The department will assess civil penalties based on elements that include, but are not limited to:

- (a) Degree and nature of failure in meeting reporting requirements;
- (b) Degree and nature of failure in allowing reasonable department inspection of a vessel's ballast water management records or allowing samples to be taken from ballast tanks;
- (c) Degree and nature of failure in preventing or stopping discharge upon request by department;
- (d) Volume and risk of introducing invasive species based on the source of unexchanged or untreated discharge;
- (e) Discharge of treated water using a technology that has not been approved for use in waters of the state; and
- (f) Vessel and operator violation history.

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

#### NEW SECTION

**WAC 220-77-09500A Interim ballast water discharge standard approval process.** Notwithstanding the provisions of WAC 220-77-095:

(1) The Washington state interim ballast water discharge standard is inactivation or removal of ninety-five percent of zooplankton organisms and ninety-nine percent of phytoplankton and bacteria organisms.

(2) Vessels subject to chapter 77.120 RCW that have not adequately exchanged their ballast water must treat their ballast to meet or exceed the state discharge standards prior to discharging ballast water into Washington waters.

(3) An interim approval process shall be used to provide approval for ballast water treatment technologies that are determined to meet, or have the potential to meet, the Washington state interim ballast water discharge standard. Only ballast water treatment technologies that are approved through this process may be used on specified vessels to discharge treated ballast water into Washington waters.

(a) Approval for use of a technology in waters of the state must meet one or more of the following criteria:

(i) The technology was previously approved by the department for use in waters of the state for the term as specified in their approval letter;

(ii) The technology is approved by the U.S. Coast Guard for use in national waters;

(iii) The vessel is enrolled in the U.S. Coast Guard STEP program;

(iv) The technology is approved by the state of California for use in their state waters;

(v) The technology is approved by the International Maritime Organization (IMO) and authorized by the U.S. State Department and U.S. Coast Guard for use in national waters; or

(vi) The vessel is enrolled in the IMO approval process and is authorized by the U.S. State Department and U.S. Coast Guard for use in national waters.

(b) Technologies using chemicals or that produce chemical by-products upon discharge will be evaluated by the department of ecology for meeting state water quality standards before acceptance.

(c) Technologies may be approved for use on specific vessels in state waters for up to five years.

(d) The director or the director's designee will accept applications for approval at any time. The applicant is to be notified of the department's receipt of the application package within ten working days. If the application package is incomplete, the application will be returned to the applicant with an explanation of the deficiencies or, if the deficiencies are minimal, held for thirty days to allow the applicant to correct the deficiencies. Formal reviews of supporting records and water quality data will be completed within forty-five days of receipt of the complete application package.

(e) The director, or the director's designee, shall make one of the following determinations:

(i) Approval - The ballast water treatment technology is approved for use in Washington state; or

(ii) Deny approval - The ballast water treatment technology is not approved for use in Washington state.

(f) Criteria for review. Applications for interim approval of a ballast water treatment system shall be evaluated on the completeness of the following:

(i) Documentation verification that the technology and vessel(s) meet one of the criteria noted in (a) of this subsection;

(ii) Documentation verifying that the residual concentrations of any primary treatment chemicals or chemicals that occur as by-products of the treatment meet all applicable regulatory requirements; and

(iii) Documentation describing the technical, operational, and installation characteristics of the system.

(g) Conditions of approval:

(i) Approval of a technology shall be withdrawn if the technology or vessel is no longer enrolled in the U.S. Coast Guard STEP or IMO approval process, is no longer approved for use in California waters, or has not been approved for use by the U.S. Coast Guard in national waters or by the IMO in international waters;

(ii) Systems approved under the interim process will be subject to all subsequent standards and regulations upon the expiration of the interim approval period;

(iii) Vessels or technologies receiving interim approval shall be subject to inspections by the department or the department's designated representative to verify adherence with the terms of this interim approval agreement and the operation of the treatment systems; and

(iv) Nothing in these rules, ballast water legislation, or laws authorizes the discharge of other pollutants or assures that the technology is safe to operate or that it meets other state, federal, and international laws governing business, marine applications, or other elements.

**WSR 07-17-080**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**

[Order 07-177—Filed August 14, 2007, 3:36 p.m., effective August 14, 2007, 3:36 p.m.]

Effective Date of Rule: Immediately.

Purpose: Amend commercial fishing rules.

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

Statutory Authority for Adoption: RCW 77.12.047.

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

Reasons for this Finding: The regional 2007 state/tribal shrimp harvest management plans for Puget Sound require adoption of harvest seasons and the prohibition on night time fishing contained in this emergency rule. This emergency rule closes the spot shrimp fishery in Shrimp Management Area 2E and Catch Area 23A-C and lowers the weekly limit in Catch Area 26B-2 because of projected quota completion in those areas. 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: August 14, 2007.

Phil Anderson  
for Jeff Koenings  
Director

**NEW SECTION**

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

(1) Shrimp pot gear:

(a) All waters of Shrimp Management Areas 1B, 1C, 2E, 2W, 3, 4, and 6 are open immediately to the harvest of all

shrimp species, until further notice, except as provided for in this section:

(i) All waters of Catch Areas 23A-E, 23A-W, 26B-1, 26C and the Discovery Bay Shrimp District are closed.

(ii) All waters of Shrimp Management Areas 1B, 1C, 2E, 2W, and Catch Areas 23B and 26D are closed to the harvest of spot shrimp.

(iii) All waters of Catch Area 23A-C will close to the harvest of spot shrimp, effective 1:00 p.m. August 15, 2007. Until closure for spot shrimp harvest, a weekly trip limit of 130 pounds is in effect.

(b) The shrimp accounting week is Monday through Sunday.

(c) Effective immediately until further notice, it is unlawful for the harvest of spot shrimp by a fisher and/or the fisher's alternate operator to exceed 189 pounds per week from Catch Area 26B-2.

(d) Effective immediately until further notice, it is unlawful for the combined total harvest of spot shrimp by a fisher and/or the fisher's alternate operator to exceed 600 pounds per week, except that any fisher whose weekly shrimp harvest activity is exclusively limited to Marine Fish-Shellfish Catch and Reporting Area 29 shall not be subject to the weekly spot shrimp trip limit for that week. It is unlawful to fish for any shrimp while in possession, on board the fishing vessel, of any spot shrimp from any previous accounting week.

(e) It is unlawful to set or pull shellfish pots with a mesh size of less than the size as defined below in all waters of Shrimp Management Areas 2E, 4 and 6, on days when fishing for or retaining spot shrimp. Spot shrimp taken in these areas are not subject to the minimum carapace length restriction.

(i) The minimum mesh size for rigid mesh pots is 1-inch defined as a mesh opening that a 7/8-inch square peg will pass through, excluding the entrance tunnels.

(ii) The minimum mesh size for flexible mesh pots is defined as 1-3/4-inch stretched mesh measure.

(f) It is unlawful to retain spot shrimp taken by shellfish pot gear that have a carapace length less than 1-3/16 inch as measured from the posterior mid-dorsal margin to the posterior-most part of the eye stalk orbit, in all waters of Shrimp Management Area 3.

(g) It is unlawful to fish for shrimp for commercial purposes in Puget Sound using shellfish pot gear in more than one Marine Fish-Shellfish Management and Catch Reporting Area per day. Fishers may move all of their shellfish pot gear from one Marine Fish-Shellfish Management and Catch Reporting Area to another Marine Fish-Shellfish Management and Catch Reporting Area if a harvest report is made before the shellfish pot gear is moved. The harvest activity report must be made consistent with the provisions of WAC 220-52-075 and must also include the following additional information:

(i) The number of pots being moved to a new area, and the Marine Fish-Shellfish Management and Catch Reporting Area that the pots are being moved to.

(h) It is unlawful to set or pull shellfish pots in one Marine Fish-Shellfish Management and Catch Reporting Area while in possession of shrimp harvested from another Marine Fish-Shellfish Management and Catch Reporting

Area, except that shellfish pots may be set in a new fishing area subsequent to making a report as indicated in Section 1(g) above.

(2) Shrimp beam trawl gear:

Shrimp Management Area 3 (outside of the Discovery Bay Shrimp District, Sequim Bay, and Catch Area 23D) is open immediately, until further notice. Sequim Bay includes those waters of Catch Area 25A south of a line projected west from Travis Spit on the Miller Peninsula.

(a) Catch areas 20A and that portion of Catch Areas 20B, 21A and 22A within Shrimp Management Area 1B are open immediately, until further notice.

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

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

#### REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 220-52-05100L Puget Sound shrimp pot and beam trawl fishery—Season. (07-172)

**WSR 07-17-081**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**

[Order 07-180—Filed August 14, 2007, 3:56 p.m., effective August 14, 2007, 3:56 p.m.]

Effective Date of Rule: Immediately.

Purpose: Amend hunting rules.

Citation of Existing Rules Affected by this Order: Amending WAC 232-28-285.

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: Allow the fish and wildlife commission to authorize a fourth year of the pilot cougar hunting seasons with the aid of dogs, consistent with ESHB 1756 (approved by the governor on April 21, 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 1, 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: August 14, 2007.

J. P. Koenings  
Director

#### NEW SECTION

**WAC 232-28-28500A 2006-2007 Pilot cougar hunting seasons with the aid of dogs** Notwithstanding the provisions of WAC 232-28-285, effective immediately, pilot cougar hunting seasons with the aid of dogs are extended through the 2007-08 calendar year. All dates used for the 2006-07 season remain the same, except they apply to the 2007-08 season.

**WSR 07-17-090**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**

[Order 07-182—Filed August 15, 2007, 3:43 p.m., effective August 15, 2007, 3:43 p.m.]

Effective Date of Rule: Immediately.

Purpose: Amend commercial fishing rules.

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

Statutory Authority for Adoption: RCW 77.12.047.

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

Reasons for this Finding: The regional 2007 state/tribal shrimp harvest management plans for Puget Sound require adoption of harvest seasons and the prohibition on night time fishing contained in this emergency rule. This emergency rule closes the shrimp fishery in Catch Area 26B-2 because of projected quota completion in this area. 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: August 15, 2007.

Phil Anderson  
for Jeff Koenings  
Director

#### NEW SECTION

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

(1) Shrimp pot gear:

(a) All waters of Shrimp Management Areas 1B, 1C, 2E, 2W, 3, 4, and 6 are open immediately to the harvest of all shrimp species, until further notice, except as provided for in this section:

(i) All waters of Catch Areas 23A-E, 23A-W, 26B-1, 26C and the Discovery Bay Shrimp District are closed.

(ii) All waters of Shrimp Management Areas 1B, 1C, 2E, 2W, and Catch Areas 23A-C, 23B and 26D are closed to the harvest of spot shrimp.

(iii) All waters of Catch Area 26B-2 will close to the harvest of all shrimp species, effective 12:00 p.m. August 16, 2007.

(b) The shrimp accounting week is Monday through Sunday.

(c) Effective immediately until further notice, it is unlawful for the combined total harvest of spot shrimp by a fisher and/or the fisher's alternate operator to exceed 600 pounds per week, except that any fisher whose weekly shrimp harvest activity is exclusively limited to Marine Fish-Shellfish Catch and Reporting Area 29 shall not be subject to the weekly spot shrimp trip limit for that week. It is unlawful to fish for any shrimp while in possession, on board the fishing vessel, of any spot shrimp from any previous accounting week.

(d) It is unlawful to set or pull shellfish pots with a mesh size of less than the size as defined below in all waters of Shrimp Management Areas 2E, 4 and 6, on days when fishing for or retaining spot shrimp. Spot shrimp taken in these areas are not subject to the minimum carapace length restriction.

(i) The minimum mesh size for rigid mesh pots is 1-inch defined as a mesh opening that a 7/8-inch square peg will pass through, excluding the entrance tunnels.

(ii) The minimum mesh size for flexible mesh pots is defined as 1-3/4-inch stretched mesh measure.

(e) It is unlawful to retain spot shrimp taken by shellfish pot gear that have a carapace length less than 1-3/16 inch as measured from the posterior mid-dorsal margin to the posterior-most part of the eye stalk orbit, in all waters of Shrimp Management Area 3.

(f) It is unlawful to fish for shrimp for commercial purposes in Puget Sound using shellfish pot gear in more than one Marine Fish-Shellfish Management and Catch Reporting

Area per day. Fishers may move all of their shellfish pot gear from one Marine Fish-Shellfish Management and Catch Reporting Area to another Marine Fish-Shellfish Management and Catch Reporting Area if a harvest report is made before the shellfish pot gear is moved. The harvest activity report must be made consistent with the provisions of WAC 220-52-075 and must also include the following additional information:

(i) The number of pots being moved to a new area, and the Marine Fish-Shellfish Management and Catch Reporting Area that the pots are being moved to.

(g) It is unlawful to set or pull shellfish pots in one Marine Fish-Shellfish Management and Catch Reporting Area while in possession of shrimp harvested from another Marine Fish-Shellfish Management and Catch Reporting Area, except that shellfish pots may be set in a new fishing area subsequent to making a report as indicated in Section 1(g) above.

(2) Shrimp beam trawl gear:

Shrimp Management Area 3 (outside of the Discovery Bay Shrimp District, Sequim Bay, and Catch Area 23D) is open immediately, until further notice. Sequim Bay includes those waters of Catch Area 25A south of a line projected west from Travis Spit on the Miller Peninsula.

(a) Catch areas 20A and that portion of Catch Areas 20B, 21A and 22A within Shrimp Management Area 1B are open immediately, until further notice.

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

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

#### REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 220-52-05100M Puget Sound shrimp pot and beam trawl fishery—Season. (07-177)

#### **WSR 07-17-092**

#### **EMERGENCY RULES**

#### **BUILDING CODE COUNCIL**

[Filed August 16, 2007, 8:50 a.m., effective August 16, 2007, 8:50 a.m.]

Effective Date of Rule: Immediately.

Purpose: To extend the emergency rule for WAC 51-51-0302 (2006 International Residential Code) related to fire separation distance, previously adopted under WSR 07-09-096. The council is currently in the process of adopting a permanent rule for this section under WSR 07-16-026.

Citation of Existing Rules Affected by this Order: Amending WAC 51-51-0302.

Statutory Authority for Adoption: RCW 19.27.074 and 19.27.020.

Other Authority: Chapters 19.27 and 34.05 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.

Reasons for this Finding: The state building code council (council), based on the following good cause, finds that an emergency affecting the general welfare of the state of Washington exists. The council further finds that immediate amendment of a certain council rule is necessary for the public welfare and that observing the time requirements of notice and opportunity to comment would be contrary to the public interest.

The declaration of emergency affecting the general welfare of the state of Washington is based on the following findings:

The council adopted the 2006 edition of the International Residential Code (IRC) effective July 1, 2007. The IRC regulates the construction of one and two family residences and townhouses. The 2006 IRC contains provisions related to fire separation distance found in the new section R302 and Table R302.1, that cause a high degree of uncertainty in the building industry. The immediate impact would affect potentially as many as 40,000 building lots in high growth counties in the state.

The council appointed a technical advisory group to examine a number of uncertainties related to the new provisions including: The distance for exterior wall separation to the lot line; the method of protecting the building eaves; the separation distance of the eave projection; how to measure the fire separation distance including the definition of building line, lot line, and fire separation distance; whether or not the building face includes the finish materials; and how to provide venting in the eave to prevent trapping moisture in the attic. The benefits of increased fire safety with the new provisions were inconclusive given the lack of clarity and the typical zoning provisions in place regulating building separation distance. The technical advisory group concluded that the new provisions would lead to inconsistent interpretations and severe market disruption.

The council concluded that it is in the best interest of the general welfare of the state of Washington to retain the provisions related to fire separation distance in section R302 of the 2003 edition of the IRC.

The council is currently in the process of adopting a permanent rule for this section. The CR-102 has been filed under WSR 07-16-026, and hearings are scheduled for September 14 and October 12. The council will take action on a permanent rule on November 9, 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 1, Repealed 0.

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

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

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

Date Adopted: August 10, 2007.

John P. Neff  
Council Chair

## NEW SECTION

### **WAC 51-51-0302 Section R302—Location on lot.**

**R302.1 Exterior Walls.** Exterior walls with a fire separation distance less than 3 feet (914 mm) shall have not less than a one-hour fire-resistive rating with exposure from both sides. Projections shall not extend to a point closer than 2 feet (610 mm) from the line used to determine the fire separation distance.

EXCEPTION: Detached garages accessory to a dwelling located within 2 feet of a lot line may have roof eave projections not exceeding 4 inches.

Projections extending into the fire separation distance shall have not less than one-hour fire-resistive construction on the underside. The above provisions shall not apply to walls which are perpendicular to the line used to determine the fire separation distance.

EXCEPTION: Tool and storage sheds, playhouses and similar structures exempted from permits by R105.2 are not required to provide wall protection based on location on the lot. Projections beyond the exterior wall shall not extend over the lot line.

**R302.2 Openings.** Openings shall not be permitted in the exterior wall of a dwelling or accessory building with a fire separation distance less than 3 feet (914 mm). This distance shall be measured perpendicular to the line used to determine the fire separation distance.

EXCEPTION: 1. Openings shall be permitted in walls that are perpendicular to the line used to determine the fire separation distance.  
2. Foundation vents installed in compliance with this code are permitted.

**R302.3 Penetrations.** Penetrations located in the exterior wall of a dwelling with a fire separation distance of less than 3 feet (914 mm) shall be protected in accordance with Section R317.3.

EXCEPTION: Penetrations shall be permitted in walls that are perpendicular to the line used to determine the fire separation distance.

## **WSR 07-17-094**

### **EMERGENCY RULES BUILDING CODE COUNCIL**

[Filed August 16, 2007, 9:47 a.m., effective August 16, 2007, 9:47 a.m.]

Effective Date of Rule: Immediately.

Purpose: To amend the 2006 International Residential Code, WAC 51-51-0403 related to foundation anchoring and structural stability.

Citation of Existing Rules Affected by this Order: Amending WAC 51-51-0403.

Statutory Authority for Adoption: RCW 19.27.074 and 19.27.020.

Other Authority: Chapters 19.27 and 34.05 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.

Reasons for this Finding: The state building code council (council), based on the following good cause, finds that an emergency affecting the general welfare of the state of Washington exists. The council further finds that immediate amendment of a certain council rule is necessary for the public welfare and that observing the time requirements of notice and opportunity to comment would be contrary to the public interest.

The declaration of emergency affecting the general welfare of the state of Washington is based on the following findings:

The council's amendment of WAC 51-51-0403 was found to contain a serious and unintended error affecting the structural stability of these residential buildings. The requirement that bearing walls be anchored to the foundation in Seismic Design Categories C, D<sub>0</sub>, D<sub>1</sub>, and D<sub>2</sub> was inadvertently omitted by substituting the word "braced" for "bearing" in Section R403.1.6.1. Immediate adoption of this amendment is necessary to maintain proper structural stability in these regions.

The council concluded that it is in the best interest of the general safety and welfare of the state of Washington to amend the provisions related to Section R403.1.6.1 concerning foundation anchoring and amend WAC 51-51-0403 as stated.

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 1, Repealed 0.

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

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

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

Date Adopted: August 10, 2007.

John P. Neff  
Council Chair

AMENDATORY SECTION (Amending WSR 07-01-090, filed 12/19/06, effective 7/1/07)

### WAC 51-51-0403 Section R403—Footings.

**R403.1 General.** All exterior walls shall be supported on continuous solid or fully grouted masonry or concrete footings, wood foundations, or other approved structural systems which shall be of sufficient design to accommodate all loads specified in Section R301 and to transmit the resulting loads to the supporting soil within the limitations determined from the characteristics of the soil. Footings shall be supported on undisturbed natural soil or engineered fill. Foundation walls complying with Section R404 or stem walls complying with Section R403.1.3 shall be permitted to support exterior walls, exterior braced wall lines and exterior braced wall panels provided they are supported by continuous footings.

**R403.1.2 Braced Wall Panels in Seismic Design Categories D<sub>0</sub>, D<sub>1</sub> and D<sub>2</sub>.** The braced wall panels at exterior and interior walls of buildings located in Seismic Design Categories D<sub>0</sub>, D<sub>1</sub> and D<sub>2</sub> shall be supported by foundations.

- EXCEPTIONS:
1. In buildings in Seismic Design Categories D<sub>0</sub> and D<sub>1</sub>, and in one-story buildings in Seismic Design Category D<sub>2</sub>, interior braced wall panels are not required to be supported by foundations, provided no building plan dimension perpendicular to the interior braced wall lines is greater than 50 feet.
  2. In two-story buildings in Seismic Design Category D<sub>2</sub>, interior braced wall panels are not required to be supported by foundations, provided all of the following conditions are met:
    - 2.1. No building plan dimension perpendicular to the interior braced wall lines exceeds 50 feet;
    - 2.2. The distances between braced wall lines do not exceed twice the building width measured parallel to the braced wall lines;
    - 2.3. The braced wall panels at the first story are continuously supported by floor joists, blocking or floor beams; and
    - 2.4. The heights of braced wall panels in under-floor spaces do not exceed 48 inches (1219 mm).

**R403.1.2.1 Foundations.** Foundations at braced wall panels shall be constructed of masonry or concrete foundation walls in accordance with Sections R402 and R404, and masonry or concrete footings in accordance with Sections R402 and R403.

- EXCEPTIONS:
1. In under-floor spaces, cripple walls shall be permitted to substitute for masonry or concrete foundation walls provided they comply with the following:
    - a. They are located directly below the interior braced wall panels above;
    - b. They are braced in accordance with Sections R602.10.2 and R602.10.11.4 for cripple wall bracing; and
    - c. They are supported by footings complying with Sections R402 and R403, except that the footing of a foundation supporting an interior braced wall panel is not required to be continuous.
  2. Footings of foundations supporting interior braced wall panels are not required to be continuous but shall be constructed beyond the ends of foundation walls, stem walls and cripple walls supporting braced wall panels for a minimum distance of 4 inches and a maximum distance of the footing thickness. The footing extension is not required at intersections with other footings.

**R403.1.3 Seismic reinforcing in Seismic Design Categories D<sub>0</sub>, D<sub>1</sub> and D<sub>2</sub>.** Concrete footings of buildings assigned to Seismic Design Categories D<sub>0</sub>, D<sub>1</sub> and D<sub>2</sub> shall comply with this section and have minimum reinforcement as specified by Section R403.1.3.1 or R403.1.3.2. Bottom reinforcement shall be located a minimum of 3 inches (76 mm) from the bottom of the footing.

Where a construction joint is created between a concrete footing and a concrete stem wall, minimum vertical reinforcement of one No. 4 bar shall be provided at not more than 4 feet (1219 mm) on center. The bars shall extend to 3 inches (76 mm) clear of the bottom of the footing, have a standard hook, and extend into the stem wall the lesser of 2 inches (49 mm) clear of the top of the wall and 14 inches (357 mm).

Where a solidly grouted masonry stem wall is supported on a concrete footing, minimum vertical reinforcement of one No. 4 bar shall be provided at not more than 4 feet (1219 mm) on center. The bars shall extend to 3 inches (76 mm) clear of the bottom of the footing, have a standard hook, and extend into the stem wall to 2 inches (49 mm) clear of the top of the wall.

Masonry stem walls without solid grout and vertical reinforcing are not permitted.

Concrete and masonry stem walls shall comply with the requirements of Section R404 for foundation walls.

**EXCEPTION:** In detached one- and two-family dwellings of light-framed construction and three stories or less above grade, plain concrete footings supporting walls, columns or pedestals are permitted.

**R403.1.3.1 Foundation stem walls.** Foundation stem walls shall have installed a minimum of one No. 4 bar within 12 inches (305 mm) of the top of the stem wall and one No. 4 bar located 3 inches (76 mm) to 4 inches (102 mm) from the bottom of the footing.

**R403.1.4 Minimum depth.** All exterior footings shall be placed at least 12 inches (305 mm) below the undisturbed ground surface. Where applicable, the depth of footings shall also comply with Sections R403.1.4.1 through R403.1.4.2.

**R403.1.4.1 Frost protection.** Except where otherwise protected from frost, foundation walls, piers and other permanent supports of buildings and structures shall be protected from frost by one or more of the following methods:

1. Extend below the frost line specified in Table R301.2(1);
2. Construct in accordance with Section R403.3;
3. Construct in accordance with ASCE 32; or
4. Erect on solid rock.

**EXCEPTIONS:** 1. Protection of freestanding accessory structures with an area of 600 square feet (56 m<sup>2</sup>) or less and an eave height of 10 feet (3048 mm) or less shall not be required.  
2. Protection of freestanding accessory structures with an area of 400 square feet (37 m<sup>2</sup>) or less, of other than light-framed construction, with an eave height of 10 feet (3048 mm) or less shall not be required.  
3. Decks not supported by a dwelling need not be provided with footings that extend below the frost line.

Footings shall not bear on frozen soil unless such frozen condition is of a permanent character.

**R403.1.6 Anchorage at braced wall panels.** Where braced wall panels are supported by monolithic slabs, footings or foundations, the wood sole plates, wood sill plates or cold-formed steel bottom tracks shall be anchored to the slab cast monolithically with a footing, footing or foundation in accordance with ~~(this)~~ Section R403.1.6.

The wood sole or sill plate shall be anchored to the monolithic slab, footing or foundation with anchor bolts spaced a maximum of 6 feet (1829 mm) on center. There shall be a minimum of two bolts per plate section with one bolt located not more than 12 inches (305 mm) and not less than seven bolt diameters from each end of the plate section. Bolts shall be at least 1/2 inch (13 mm) in diameter and shall extend a minimum of 7 inches (178 mm) into masonry or concrete. A nut and washer shall be tightened to a snug-tight condition on each bolt to the plate.

Cold-formed steel framing systems shall be fastened to wood sill plates or anchored directly to the foundation in accordance with Section R505.3.1 or R603.3.1.

- EXCEPTIONS:**
1. Foundation anchorage, spaced as required to provide equivalent anchorage to 1/2-inch-diameter (13 mm) anchor bolts.
  2. Walls 24 inches (610 mm) in total length or shorter connecting offset braced wall panels shall be anchored to the footing or foundation with a minimum of one anchor bolt located in the center third of the plate section and shall be attached to adjacent braced wall panels as specified in Figure R602.10.5 at the corners.
  3. Walls 12 inches (305 mm) in total length or shorter connecting offset braced wall panels shall be permitted to be connected to the footing or foundation without anchor bolts. The wall shall be attached to adjacent braced wall panels as specified in Figure R602.10.5 at the corners.

**R403.1.6.1 Foundation anchorage in Seismic Design Categories C, D<sub>0</sub>, D<sub>1</sub> and D<sub>2</sub>.** In addition to the requirements of Section R403.1.6, the following requirements shall apply to wood light-frame structures in Seismic Design Categories D<sub>0</sub>, D<sub>1</sub> and D<sub>2</sub> and wood light-frame townhouses in Seismic Design Category C.

1. Bearing walls and interior braced wall sill plates shall be anchored to footings or foundations with anchor bolts spaced at not more than 6 feet (1829 mm) on center and located within 12 inches (305 mm) from the ends of each plate section when supported on a continuous foundation.

2. The maximum anchor bolt spacing shall be 4 feet (1219 mm) for buildings over two stories in height.

3. Plate washers complying with Section R602.11.1 shall be provided for all anchor bolts over the full length of required braced wall lines. Properly sized cut washers shall be permitted for anchor bolts in wall lines not containing braced wall panels or in braced wall lines.

4. Stepped cripple walls shall conform to Section R602.11.3.

5. Where wood foundations in accordance with Sections R402.1 and R404.2 are used, the force transfer shall have a capacity equal to or greater than the connections required by Section R602.11.1 or the braced wall panel shall be connected to the wood foundations in accordance with the braced wall panel-to-floor fastening requirements of Table 602.3(1).

**WSR 07-17-098**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**

[Order 07-185—Filed August 16, 2007, 2:44 p.m., effective August 17, 2007]

Effective Date of Rule: August 17, 2007.

Purpose: Amend personal use fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 232-28-62000J; and amending WAC 232-28-620.

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: Sufficient salmon remain on the quotas to allow liberalization to seven days per week providing additional recreational fishing opportunity in Marine Areas 2, 3, and 4. 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: August 16, 2007.

Phil Anderson  
for Jeff Koenings  
Director

**NEW SECTION**

**WAC 232-28-62000K Coastal salmon seasons.** Notwithstanding the provisions of WAC 232-28-620, effective August 17, 2007, until further notice, it is unlawful to fish for salmon in coastal waters except as provided for in this section, provided that unless otherwise amended, all permanent rules remain in effect:

**(1) Area 1** - Open until further notice, daily limit 2 salmon, not more than 1 of which may be a Chinook, except release wild coho.

**(2) Areas 2, 2-1, and 2-2:**

(a) Area 2 - Open through September 16, 2007, daily limit 2 salmon, not more than 1 of which may be a Chinook, except release wild coho.

(b) Area 2-1 - Open until further notice, daily limit 6 salmon, not more than three of which may be adult salmon, of which only 2 may be Chinook. Release chum.

(c) Area 2-2 west of the Buoy 13 line - Closed until further notice.

(d) Those waters within a line from the lighthouse 1 mile south of the south jetty to Buoy No. 2, then to Buoy No. 3, then to the tip of the north jetty, then to the exposed end of the south jetty, are closed until further notice.

**(3) Area 3** - Open through September 15, 2007, daily limit 2 salmon, not more than one of which may be a Chinook, except release wild coho, daily limit may include 1 additional pink.

**(4) Area 4:**

(a) Open through September 15, 2007, with the following area rules, limits, and species restrictions: open seven days per week, daily limit 2 salmon, not more than one of which may be a Chinook, except release chum and wild coho, daily limit may include 1 additional pink. Release Chinook east of the Bonilla-Tatoosh Line.

**REPEALER**

The following section of the Washington Administrative Code is repealed effective August 17, 2007:

WAC 232-28-62000J	Coastal salmon seasons— 2007 North of Falcon. (07-67)
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**WSR 07-17-099**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**

[Order 07-184—Filed August 16, 2007, 2:47 p.m., effective August 16, 2007, 2:47 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 220-33-01000L; and amending WAC 220-33-010.

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

Other Authority: *United States v. Oregon*, Civil No. 68-513-KI (D. Or.), Order Adopting 2005-2007 Interim Management Agreement For Upriver Chinook, Sockeye, Steelhead, Coho & White Sturgeon (May 11, 2005) (Doc. No. 2407); *Northwest Gillnetters Ass'n v. Sandison*, 95 Wn.2d 638, 628 P.2d 800 (1981); Washington fish and wildlife commission policies concerning Columbia River fisheries; 40 Stat. 515 (Columbia River compact).

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

Reasons for this Finding: Sets the late August fall commercial fishing period. The season is consistent with the 2005-2007 interim management agreement, the 2007 non-Indian salmon allocation agreement adopted for 2007. Regulation is consistent with compact action of August 15, 2007. There is insufficient time to promulgate permanent rules.

Washington and Oregon jointly regulate Columbia River fisheries under the congressionally ratified Columbia River compact. Four Indian tribes have treaty fishing rights in the Columbia River. The treaties preempt state regulations that fail to allow the tribes an opportunity to take a fair share of the available fish, and the states must manage other fisheries accordingly. *Sohappy v. Smith*, 302 F. Supp. 899 (D. Or. 1969). A federal court order sets the current parameters for sharing between treaty Indians and others. *United States v. Oregon*, Civil No. 680-513-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.

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: August 16, 2007.

Phil Anderson  
for Jeff Koenings  
Director

#### NEW SECTION

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

1. AREA: SMCRA 1D AND 1E
2. SEASON:
  - a. 8:00 p.m. August 23 to 7:00 a.m. August 24, 2007
3. GEAR: Drift gill nets only; 9-inch minimum mesh and 9-3/4 inch maximum mesh
  - a. In the Columbia River downstream of Bonneville Dam and in the Select Areas (described in WAC 220-22-010(9)), a person may have onboard a commercial fishing vessel more than one licensed net, as long as the net or nets are of legal size for the fishery, or the net has a minimum mesh size of 9 inches, and the length of any one net does not exceed 1,500 feet in length.
4. ALLOWABLE SALE: Salmon and white sturgeon.
  - a. A maximum of three white sturgeon may be possessed or sold by each participating vessel during each calendar week (Sunday through Saturday) that the fishery is open.
  - b. The sturgeon possession/sales limit includes only mainstem fisheries.
  - c. Green sturgeon retention is prohibited.
  - d. It is unlawful to fail to return immediately to the water any sturgeon taken in excess of any commercial catch or possession limits prescribed by the department rule
5. SANCTUARIES: Lewis-A, Washougal, and Sandy Rivers.
6. OTHER: Quick reporting required for Washington wholesale dealers, WAC 220-69-240. When quick reporting is required, Columbia River reports must be submitted within 8 hours of closure of the designated fishery.

#### REPEALER

The following section of the Washington Administrative Code is repealed, effective 7:01 a.m. August 24, 2007:

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

**WSR 07-17-100  
EMERGENCY RULES  
DEPARTMENT OF  
FISH AND WILDLIFE**

[Order 07-186—Filed August 16, 2007, 2:50 p.m., effective August 16, 2007, 2:50 p.m.]

Effective Date of Rule: Immediately.

Purpose: Amend commercial rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-24-04000H; and amending WAC 220-24-040.

Statutory Authority for Adoption: RCW 77.12.047.

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

Reasons for this Finding: A harvestable quota of salmon is available for the troll fleet. These rules are adopted at the recommendation of the Pacific Fisheries Management Council, in accordance with preseason fishing plans. There is insufficient time to promulgate permanent rules.

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

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

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

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

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

Date Adopted: August 16, 2007.

Phil Anderson  
for Jeff Koenings  
Director

## NEW SECTION

**WAC 220-24-04000I All-citizen commercial salmon troll.** Notwithstanding the provisions of WAC 220-24-040, effective immediately until further notice, it is unlawful to fish for salmon with troll gear or to land salmon taken with troll gear into a Washington port except during the seasons provided for in this section:

(1) Salmon Management and Catch Reporting Areas 1, 2, 3, and that portion of Area 4 west of 125°05'00" W longitude and south of 48°23'00" N latitude, open:

August 18 through August 21, 2007;

August 25 through August 28, 2007;

September 1 through September 4, 2007;

September 8 through September 11, 2007;

September 15 through September 16, 2007.

(2) The Cape Flattery and Columbia River Control Zones are closed. Mandatory Yelloweye Rockfish Conservation Area is closed.

(3) Landing and possession limit of 20 Chinook and 140 coho per boat per entire open period for openings through September 16 for catch areas 1, 2, 3, and 4.

(4) Minimum size for Chinook salmon is 28 inches in length. No minimum size for pink, sockeye or chum salmon. Minimum size for coho salmon is 16 inches in length. It is unlawful to possess coho salmon that do not have a healed adipose fin clip.

(5) Lawful troll gear is restricted to all legal troll gear with single point, single shank barbless hooks.

(6) Fishers must land and deliver their catch within 24 hours of any closure of a fishery provided for in this section, and vessels fishing north of Leadbetter Point must land and deliver their fish within the area and North of Leadbetter point. Vessels fishing south of Leadbetter Point must land and deliver their fish within the area and south of Leadbetter Point.

(7) The Cape Flattery Control Zone is defined as the area from Cape Flattery (48°23'00" N latitude) to the northern boundary of the U.S. Exclusive Economic Zone (EEZ); and the area from Cape Flattery south to Cape Alava, 48°10'00" N latitude and west of 125°05'00" W. longitude.

(8) Columbia Control Zone - An area at the Columbia River mouth, bounded on the west by a line running north-east/southwest between the red lighted Buoy #4 (46°13'35" N. Lat., 124°06'50" W. long.) and the green lighted Buoy #7 (46°15'09" N. lat., 124°06'16" W. long.); on the east, by the Buoy #10 line which bears north/south at 357° true from the south jetty at 46°14'00" N. lat., 124°03'07" W. long, to its intersection with the north jetty; on the north, by a line running northeast/southwest between the green lighted Buoy #7 to the tip of the north jetty (46°14'48" N. lat., 124°05'20" W. long.), and then along the north jetty to the point of intersection with the Buoy #10 line; and, on the south, by a line running northeast/southwest between the red lighted Buoy #4 and tip of the south jetty (46°14'03" N. lat., 124°04'05" W. long.), and then along the south jetty to the point of intersection with the Buoy #10 line.

(9) Mandatory Yelloweye Rockfish Conservation Area - The area is closed in Washington Marine Catch Area 3 from 48°00.00' N latitude; 125°14.00' W longitude to 48°02.00' N latitude; 125°14.00' W longitude to 48°02.00' N latitude; 125°16.50' W longitude to 48°00.00' N latitude; 125°16.50' W longitude and connecting back to 48°00.00' N latitude; 125°14.00' W longitude.

(10) It is unlawful to fish in Salmon Management and Catch Reporting Areas 1, 2, 3 or 4 with fish on board taken south of Cape Falcon, Oregon; and all fish taken from Salmon Management and Catch Reporting Areas 1, 2, 3, and 4 must be landed before fishing south of Cape Falcon, Oregon.

(11) It is unlawful for wholesale dealers and trollers retailing their fish to fail to report their landing by 10:00 a.m. the day following landing. Ticket information can be telephoned in by calling 1-866-791-1279, faxing the information to (360) 902-2949, or e-mailing to trollfishtickets@dfw.wa.gov. Report the dealer name, the purchasing location, the date of purchase, the fish ticket numbers, the gear used, the catch area, the species, the total number for each species, and the total weight for each species, including halibut.

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

### REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 220-24-04000H All-citizen commercial salmon troll. (07-157)

**WSR 07-17-101**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**

[Order 07-183—Filed August 16, 2007, 2:50 p.m., effective August 16, 2007, 2:50 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:** Repealing WAC 220-32-05100J; and amending WAC 220-32-051.

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

**Other Authority:** *United States v. Oregon*, Civil No. 68-513-KI (D. Or.), Order Adopting 2005-2007 Interim Management Agreement For Upriver Chinook, Sockeye, Steelhead, 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:** Sets the initial three weeks of treaty fishery for fall season. An estimated 60,580 chinook are available for treaty harvest based on the preseason forecast of 347,500 fall chinook. Allows the sale of fish caught in platform and hook and line fishery in Zone 6. Also allows the sale of fish caught in Yakama Nation tributary fisheries to be sold when those tributaries are open under Yakama Nation rules, and a commercial season in the mainstem is open concurrently. Harvestable numbers of salmon and steelhead are available under the ESA guideline. The fishery catches are expected to remain within the allocation and guidelines of the 2005-2007 management agreement. Rule is consistent with action of the Columbia River compact on August 15, 2007. Conforms state rules with tribal rules. There is insufficient time to promulgate permanent regulations.

The Yakama, Warm Springs, Umatilla, and Nez Perce Indian tribes have treaty fishing rights in the Columbia River and inherent sovereign authority to regulate their fisheries. Washington and Oregon also have some authority to regulate fishing by treaty Indians in the Columbia River, authority that the states exercise jointly under the congressionally ratified Columbia River compact. *Sohappy v. Smith*, 302 F. Supp. 899 (D. Or. 1969). The tribes and the states adopt parallel regulations for treaty Indian fisheries under the supervision of the federal courts. A court order sets the current parameters. *United States v. Oregon*, Civil No. 68-513-KI (D. Or.), Order Adopting 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.

**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:** August 16, 2007.

Phil Anderson  
for Jeff Koenings  
Director

### NEW SECTION

**WAC 220-32-05100K Columbia River salmon seasons above Bonneville Dam.** Notwithstanding the provisions of WAC 220-32-050, WAC 220-32-051, WAC 220-32-052, and WAC 220-32-058, effective immediately until further notice, it is unlawful for a person to take or possess salmon, steelhead, shad, carp, or sturgeon for commercial purposes in Columbia River Salmon Management Catch

Reporting Areas (SMCRA) 1F, 1G, and 1H and in the White Salmon River and Klickitat River, except that those individuals possessing treaty fishing rights under the Yakama, Warm Springs, Umatilla, and Nez Perce treaties may fish for salmon, shad, carp, or sturgeon under the following provisions, pursuant to lawfully enacted tribal rules:

1. Open Periods: 6:00 a.m. August 22 until 6:00 p.m. August 24, 2007

6:00 a.m. August 28 until 6:00 p.m. August 31, 2007

6:00 a.m. September 4 until 6:00 p.m. September 8, 2007

a) Open Areas: SMCRA 1F, 1G, 1H

b) Gear: Gillnets; no minimum mesh size restriction through August 31, but 8-inch minimum mesh size restriction thereafter.

2. Open Periods: Immediately 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.

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

a) Open Areas: White Salmon and Klickitat rivers

b) Gear: hoop nets, dip bag nets, and rod and reel with hook-and-line.

4. Allowable sale includes: Chinook, coho, steelhead, walleye, shad and carp.

Sockeye may be retained but not sold. Sturgeon between 45 inches and 60 inches in length may be retained in the Bonneville Pool (SMCRA 1F) for subsistence purposes only. Sturgeon between 4 feet and 5 feet in length may be retained in The Dalles and John Day pools (SMCRA 1G, 1H) for subsistence purposes only.

5. Twenty-four (24) hour quick reporting will be in effect for Washington buyers pursuant to WAC 220-69-240.

6. Notwithstanding the provisions of WAC 220-32-058, the closed area at the mouth of:

a) Spring Creek are those waters of the Columbia River extending to midstream at right angles to the thread of the Columbia River between points one-half mile upstream from the eastern shoreline to one- and one-half miles downstream from the western shoreline of the mouth of Spring Creek. This area is closed from August 1 to November 1 of each year.

b) Hood River are those waters along the Oregon side of the Columbia River, and they extend to mid-stream at right angles to the thread of the Columbia River between markers located approximately 0.85 miles downriver from the west bank at the end of the break wall at the west end of the port of Hood River, and 1/2-mile upriver from the east bank.

c) Herman Creek are those waters upstream from a line between deadline markers near the mouth. One marker is located on the east bank piling, and the other is located on the west bank to the north of the boat ramp.

d) Deschutes River are those waters of the Columbia River extending to midstream at right angles to the thread of the Columbia River between points 1/2-mile upstream from the eastern shoreline to one mile downstream from the western shoreline.

e) Umatilla River are those waters of the Columbia River extending to midstream at right angles to the thread of the Columbia River between points 1/2-mile upstream from the eastern shoreline to one mile downstream from the western shoreline.

f) Big White Salmon River are those waters of the Columbia River extending to midstream at right angles to the thread of the Columbia River between a marker located 1/2-mile downstream from the west bank, upstream to Light "35."

g) Wind River are those waters of the Columbia River extending to midstream at right angles to the thread of the Columbia River between markers located 1-1/4 miles downstream from the west bank and 1/2-mile upstream from the east bank.

h) Klickitat River are those waters of the Columbia River extending to midstream at right angles to the thread of the Columbia River between the downstream margin of Lyle Landing, downstream to a marker located near the railroad tunnel approximately 1/8-miles downstream from the west bank.

i) Little White Salmon River are those waters of the Columbia River extending to midstream at right angles to the thread of the Columbia River between Light "27," upstream to a marker located approximately 1/2-mile upstream from the eastern shoreline.

7. Notwithstanding the provisions of WAC 220-22-010, during the open periods described above:

a. Area 1F (Bonneville Pool) includes those waters of the Columbia River upstream from the Bridge of the Gods, and downstream from the west end of the 3 Mile Rapids located approximately 1.8 miles below the Dalles Dam.

b. Area 1G includes those waters of the Columbia River upstream from a line drawn between a deadline marker on the Oregon shore located approximately 3/4 miles above The Dalles Dam fishway exit, thence at a right angle to the thread of the river to a point in mid-river, then downstream to Light "1" on the Washington shore, and downstream from Preacher's Eddy Light below John Day Dam.

c. Area 1H includes those waters of the Columbia River upstream from a fishing boundary marker approximately 1/2-mile above the John Day River, Oregon, extending at a right angle across the thread of the river to a point in mid-river, then downstream to a fishing boundary marker on the Washington shore approximately opposite the mouth of the John Day River, and downstream from a line at a right angle across the thread of the river one mile downstream from McNary Dam.

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

### REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 220-32-05100J	Columbia River salmon seasons above Bonneville Dam. (07-124)
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**WSR 07-17-102**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**

[Order 07-179—Filed August 16, 2007, 3:28 p.m., effective August 18, 2007]

Effective Date of Rule: August 18, 2007.

Purpose: Amend personal use fishing rules.

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

Statutory Authority for Adoption: RCW 77.12.047.

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 provides additional opportunity for sturgeon retention in the Columbia River and tributaries above the Wauna power lines. Significant numbers of harvestable sturgeon remain on the guideline for this area. Regulation is consistent with results of an August 15, 2007, joint state hearing on this issue and conforms Washington and Oregon rules. 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: August 16, 2007.

Phil Anderson  
for Jeff Koenings  
Director

**NEW SECTION**

**WAC 232-28-61900N Exceptions to statewide rules—Columbia River sturgeon.** Notwithstanding the provisions of WAC 232-28-619, effective 12:01 a.m. August 18, 2007 through September 30, 2007, in those waters of the Columbia River and tributaries from the Wauna power lines upstream to Bonneville Dam, it shall be lawful to retain white sturgeon 7 days per week.

**REPEALER**

The following section of the Washington Administrative Code is repealed, effective 12:01 a.m. August 18, 2007:

WAC 232-28-61900H Exceptions to statewide rules—Columbia River sturgeon (07-149)

**WSR 07-17-103**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**

[Order 07-176—Filed August 17, 2007, 9:02 a.m., effective August 17, 2007, 9:02 a.m.]

Effective Date of Rule: Immediately.

Purpose: Amend commercial fishing rules.

Citation of Existing Rules Affected by this Order: Amending 220-47-001, 220-47-302, 220-47-310, 220-47-311, 220-47-325, 220-47-401, and 220-47-411.

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 is in the process of adopting permanent rules, and these emergency rules are interim until permanent rules take effect. Rules for Areas 10 and 11 have been removed due to an objection to expedited rule making for those areas.

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 7, 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: August 16, 2007.

Phil Anderson  
for Jeff Koenings  
Director

**NEW SECTION**

**WAC 220-47-00100A Puget Sound salmon—Quick reporting.** All Puget Sound salmon fisheries are designated as "quick reporting required" fisheries, and commercial pur-

chasers and receivers must comply with the provisions of WAC 220-69-2406(12).

**NEW SECTION**

**WAC 220-47-30200B Puget Sound—Lawful gear—**

**Gill net.** (1) It is unlawful to use drift gill net salmon gear in Puget Sound that exceeds 1,800 feet in length or contains meshes of a size less than 5 inches, except in Area 9A, where gill nets may not exceed 600 feet in length, or be more than 60 mesh deep, or contain mesh size less than 5 inches.

(2) It is unlawful to use skiff gill net salmon nets in Puget Sound that exceed 300 feet in length or 90 meshes in depth, or that contain meshes of a size less than 5 inches, except in Area 9A, where gill nets may not exceed 600 feet in length, or be more than 60 meshes deep, or contain mesh size less than 5 inches. It is unlawful to retrieve skiff gill nets by any means except by hand (no hydraulics may be used). It is unlawful to fail to attend to skiff gill nets at all times.

(3) Drift gill nets and skiff gill nets shall be operated substantially in a straight line. It is unlawful to set such nets in a circle or to set them in other than a substantially straight line.

(4) It is unlawful to take or fish for salmon with gill net gear in Areas 7 or 7A sockeye or pink salmon fisheries unless said gill net gear is constructed so that the first 20 meshes below the cork line are composed of five-inch mesh, white opaque, minimum 210/30d (#12) diameter, nylon twine.

(5) It is unlawful to take or fish for salmon with gill net gear in Areas 7 or 7A between the dates of September 30 and October 20 unless the gill net vessel has aboard and uses operable recovery boxes as described in this subsection.

(a) Dimensions and capacities of required recovery boxes:

(i) Recovery boxes must have two chambers, if one box, or one chamber in each box, if two boxes.

(ii) Each recovery box chamber must have an inside length measurement of 48 inches, an inside width measurement of 10 inches, and an inside height measurement of 16 inches.

(iii) Each chamber of the recovery box must have an inlet hole measuring between 3/4 inch and 1 inch in diameter. The inlet hole must be centered horizontally across the door or wall of the chamber, and the bottom of the hole must be located 1-3/4 inches above the floor of the chamber.

(iv) Each chamber of the recovery box must include a water outlet hole on the opposite wall from the inlet hole, and the outlet hole must be at least 1-1/2 inches in diameter, with the bottom of the outlet hole located 12 inches above the floor of the chamber.

(v) Flow of water through each chamber of the recovery boxes must be not less than 16 gallons per minute, nor more than 20 gallons per minute.

(b) Each box and chamber must be operating during any time that the net is being retrieved or picked.

(c) The vessel operator must demonstrate to department employees, upon request, that the pumping system is delivering the proper volume of fresh seawater into each chamber.

(d) All salmon not to be retained must be released immediately with care and with the least possible injury to the fish, or placed into the operating recovery box.

(e) Any fish that is bleeding or lethargic must be placed in the recovery box prior to being released.

(f) All fish placed in the recovery boxes must be released within the same catch area as the area of capture, and the release must occur prior to landing or docking.

(6) It is unlawful to fish for salmon with gill net gear in Areas 7 and 7A unless the vessel operator has attended a "Fish Friendly" best fishing practices workshop and is in possession of a department-issued certification card.

**NEW SECTION**

**WAC 220-47-31000A Puget Sound net seasons—**

**Time.** During the openings provided for in this chapter, all times stated are Pacific Standard Time from January 1 through the second Saturday in March and from the first Sunday in November through December 31; and all times stated are Pacific Daylight Time from the second Sunday in March to the first Saturday in November.

**NEW SECTION**

**WAC 220-47-31100M Purse seine—Open periods.**

It is unlawful to take, fish for, or possess salmon taken with purse seine gear for commercial purposes from Puget Sound, except in the following designated Puget Sound Salmon Management and Catch Reporting Areas and during the periods provided for in each respective Management and Catch Reporting Area:

AREA	TIME	DATE	
7, 7A:	7AM - 7PM with use of recovery box; 7AM - 4:00PM without use of recovery box	10/12	
	7AM - 6PM with use of recovery box; 7AM - 3:15PM without use of recovery box	10/17, 10/18, 10/19, 10/22, 10/23, 10/24, 10/25, 10/26, 10/29, 10/30, 10/31, 11/1, 11/2	
	7AM - 5PM with use of recovery box; 7AM - 2:30PM without use of recovery box	11/5, 11/6, 11/7, 11/8, 11/9, 11/12, 11/13, 11/14, 11/15, 11/16	
	7B, 7C:	6AM - 8PM	8/22, 8/29, 9/5
	7B:	7AM - 8PM	- 9/12
		7AM - 7PM	- 9/17, 9/18, 9/19
7AM 9/23		- 6PM 11/3	
7AM 11/5		- 4PM 11/9	
7AM 11/12		- 4PM 11/16	
7AM 11/19		- 4PM 11/23	
7AM 11/26		- 4PM 11/30	
	8AM 12/3	- 4PM 12/7	
Note: That portion of Area 7B east of a line from Post Point to the flashing red light at the west entrance to Squalicum Harbor is open to purse seines beginning at 12:01 a.m. on the last Monday in October and until 4:00 p.m. on the first Friday in December.			
8:	7AM - 5PM	11/6	
	7AM - 5PM	11/13	
	7AM - 5PM	11/20	
	7AM - 4PM	11/27	

AREA	TIME	DATE
8A:	7AM - 7PM	Limited participation - two boats (10/1, 10/8).
	7AM - 6PM	10/15, 10/22, 10/30, 11/1
	7AM - 5PM	11/7, 11/12, 11/14, 11/20
	7AM - 4PM	11/26, 11/28
8D:	7AM - 7PM	9/24, 10/1, 10/8
	7AM - 6PM	10/15, 10/22, 10/30, 11/1
	7AM - 5PM	11/7, 11/12, 11/14, 11/20
	7AM - 4PM	11/26, 11/28
12, 12B:	7AM - 6PM	10/22, 10/29, 10/31
	7AM - 5PM	11/5, 11/12, 11/19
12C:	7AM - 5PM	11/13, 11/20
	7AM - 4PM	11/27

It is unlawful to retain the following salmon species taken with purse seine gear within the following areas during the following periods:

Chinook salmon - at all times in Areas 7, 7A, 8, 8A, 8D, 10, 11, 12, 12B, and 12C, and after October 27 in Area 7B.

Coho salmon - at all times in Areas 7, 7A, 10, and 11, and prior to September 9 in Area 7B.

Chum salmon - prior to September 30 in Areas 7 and 7A.  
All other saltwater and freshwater areas - closed.

**NEW SECTION**

**WAC 220-47-32500B Purse seine—Release of incidentally caught fish.** (1) It is unlawful for any purse seine vessel operator landing salmon to do so directly into the hold. All salmon must be landed onto the deck or sorting tray or table of the harvesting vessel, with the hold hatch cover(s) closed, until the release of salmon that may not be retained is complete; and additionally:

(2) In Areas 7 and 7A and prior to September 16 in Areas 7B and 7C, it is unlawful for any purse seine vessel operator to bring salmon aboard a vessel unless all salmon captured in the seine net are removed from the seine net using a brailer or dip net meeting the specifications in this section prior to the seine net being removed from the water, unless otherwise provided for in this section.

(3) The brailer shall be constructed in the following manner and with the following specifications:

AREA	TIME	DATE(S)	MINIMUM MESH
6D: Skiff gill net only.	7 AM - 7 PM	9/24, 9/25, 9/26, 9/27, 9/28, 10/1, 10/2, 10/3, 10/4, 10/5, 10/8, 10/9, 10/10, 10/11, 10/12, 10/15, 10/16, 10/17, 10/18, 10/19, 10/22, 10/23, 10/24, 10/25, 10/26	5"
Note: In Area 6D, it is unlawful to use other than 5-inch minimum and 5 1/2-inch maximum mesh in the skiff gill net fishery. It is unlawful to retain Chinook taken in Area 6D at any time, or any chum salmon taken in Area 6D prior to October 16. In Area 6D, any Chinook or chum salmon required to be released must be removed from the net by cutting the meshes ensnaring the fish.			
7, 7A:	Noon - Midnight; Use of recovery box required	10/12, 10/17, 10/18, 10/19	6 1/4"
	Noon - Midnight	10/22, 10/23, 10/24, 10/25, 10/26, 10/29, 10/30, 10/31, 11/1, 11/2, 11/5, 11/6, 11/7, 11/8, 11/9, 11/12, 11/13, 11/14, 11/15, 11/16	6 1/4"
Note: In Areas 7 and 7A after September 30 but prior to October 20, coho and Chinook salmon must be released, and it is unlawful to use a net soak time of more than 45 minutes. Net soak time is defined as the time elapsed from when the first of the gill net web enters the water, until the gill net is fully retrieved from the water. Fishers must also use a recovery box in compliance with WAC 220-47-302 (5)(a) through (f).			
7B/7C:	7PM - 7AM	NIGHTLY 8/20, 8/26, 8/28, 8/30, 9/3, 9/4, 9/6	7"
	7PM - 8AM	NIGHTLY 9/9, 9/11, 9/13	5"

(a) A bag of web hung on a rigid hoop attached to a handle;

(b) The bag shall be opened by releasing a line running through rings attached to the bottom of the bag; and

(c) The web shall be of soft knotless construction, and the mesh size may not exceed 57 mm (2.25 inches) measured along two contiguous sides of a single mesh.

(4) Hand-held dip nets shall be constructed of a shallow bag of soft, knotless web attached to a handle.

(5) Fish may be brought on board without using a brailer or dip net as specified in this section if the number of fish in the net is small enough that the crew can hand-pull the bunt onto the vessel without the use of hydraulic or mechanical assistance.

(6) Fishers using a recovery box must have and operate the box in compliance with the provisions of WAC 220-47-302 (5)(a) through (f), and it is unlawful to fail to do so.

**NEW SECTION**

**WAC 220-47-40100B Reef net open periods.** (1) It is unlawful to take, fish for, or possess salmon taken with reef net gear for commercial purposes in Puget Sound, except in the following designated Puget Sound Salmon Management and Catch Reporting Areas, during the periods provided for in each respective area:

AREA	TIME	DATE(S)
7, 7A	7AM - 7PM Daily	9/16 - 11/17

(2) It is unlawful to retain Chinook salmon taken with reef net gear at all times, and it is unlawful to retain chum or wild coho salmon taken with reef net gear prior to September 30.

(3) All other saltwater and freshwater areas - closed.

**NEW SECTION**

**WAC 220-47-41100N Gill net—Open periods.** It is unlawful to take, fish for, or possess salmon taken with gill net gear for commercial purposes from Puget Sound, except in the following designated Puget Sound Salmon Management and Catch Reporting Areas, during the seasons provided for in each respective fishing area:

AREA	TIME	DATE(S)	MINIMUM MESH
7B:	6PM - 8AM	NIGHTLY 9/16, 9/18, 9/21	5"
	7AM 9/23 - 8PM 10/27		5"
	7AM 10/28 - 8PM 11/3		6 1/4"
	7AM 11/5 - 4PM 11/9		6 1/4"
	7AM 11/12 - 4PM 11/16		6 1/4"
	7AM 11/19 - 4PM 11/23		6 1/4"
	7AM 11/26 - 4PM 11/30		6 1/4"
	8AM 12/3 - 4PM 12/7		6 1/4"

Note: That portion of Area 7B east of a line from Post Point to the flashing red light at the west entrance to Squalicum Harbor is open to gill nets using 6 1/4-inch minimum mesh beginning 12:01 AM on the last day in October and until 6:00 PM on the first Friday in December.

8:	7AM - 7PM	11/5, 11/7, 11/9, 11/12, 11/14, 11/16, 11/19, 11/21, 11/23	6 1/4"
	7AM - 6PM	11/26, 11/28, 11/30	6 1/4"
8A:	6PM - 8AM	NIGHTLY 10/9	5"
	7AM - 8PM	10/16, 10/18, 10/19	5"
	8AM - 8PM	10/23, 10/25, 10/26, 10/29, 10/31, 11/2	6 1/4"
	7AM - 7PM	11/6, 11/8, 11/9, 11/13, 11/15, 11/16, 11/21, 11/22, 11/23	6 1/4"
	7AM - 6PM	11/27, 11/29, 11/30	6 1/4"
	8D:	6PM - 8AM	NIGHTLY 9/23, 9/25, 9/27, 9/30, 10/2, 10/4, 10/7, 10/9, 10/11
	7AM - 8PM	10/18, 10/19	5"
	8AM - 8PM	10/25, 10/26, 11/1, 11/2	5"
	7AM - 7PM	11/8, 11/9	5"
	7AM - 7PM	11/15, 11/16, 11/21, 11/23	6 1/4"
	7AM - 6PM	11/29, 11/30	6 1/4"
9A:	7PM - 7AM	NIGHTLY 8/28, 8/30	5"
	6AM 9/26 - 7PM 11/3		5"

Note: It is unlawful to retain chum salmon taken in Area 9A prior to October 1, and it is unlawful to retain Chinook salmon at any time. Any salmon required to be released must be removed from the net by cutting the meshes ensnaring the fish.

12A: Skiff gill net only.	7AM - 7PM	9/4, 9/11, 9/18, 9/25, 10/2	5"
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Note: In Area 12A, it is unlawful to use other than 5-inch minimum and 5 1/2-inch maximum mesh in the skiff gill net fishery. It is unlawful to retain Chinook or chum salmon taken in Area 12A at any time, and any salmon required to be released must be removed from the net by cutting the meshes ensnaring the fish.

12, 12B:	8AM - 8PM	10/24, 10/25, 10/30, 11/1, 11/2	6 1/4"
	7AM - 7PM	11/7, 11/8, 11/14, 11/15, 11/20	6 1/4"
12C:	7AM - 7PM	11/13, 11/15, 11/20, 11/22	6 1/4"
	7AM - 6PM	11/26, 11/27	6 1/4"

All other saltwater and freshwater areas - closed.

Nightly openings refer to the start date.

Within an area or areas, a mesh size restriction remains in effect from the first date indicated until a mesh size change is shown, and the new mesh size restriction remains in effect until changed.

**WSR 07-17-114**  
**EMERGENCY RULES**  
**SUPERINTENDENT OF**  
**PUBLIC INSTRUCTION**

[Filed August 17, 2007, 11:41 a.m., effective August 17, 2007, 11:41 a.m.]

Effective Date of Rule: Immediately.

Purpose: The combined transportation route needs to be revised to clarify the method of determining the number of basic students allowed on a combined transportation route.

Citation of Existing Rules Affected by this Order:  
 Amending WAC 392-141-152.

Statutory Authority for Adoption: RCW 28A.150.290.

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

Reasons for this Finding: To meet the time frame established by RCW 28A.160.150 for the annual student ridership reporting requirements.

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 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: August 20 [17], 2007.

Dr. Terry Bergeson  
State Superintendent

AMENDATORY SECTION (Amending Order 98-08, filed 8/7/98, effective 9/7/98)

**WAC 392-141-152 Definition—Combined transportation route.** As used in this chapter, "combined transportation route" means a special transportation route as defined in WAC 392-141-148 on which a student or students, who would otherwise qualify for basic transportation as defined in WAC 392-141-146, are allowed to ride. The number of basic transportation students allowed on a designated combined route shall not exceed ~~((thirty percent of the actual number of seating positions on a type A school bus, twenty percent of the actual number of seating positions on a type B school bus, or ten percent of the actual number of seating positions on a type C or D school bus used on the combined route. If the total number of seating positions multiplied by the appropriate percentage results in a fractional number of students, the result shall be rounded to the next highest whole number))~~ ten students.

**WSR 07-17-135  
EMERGENCY RULES  
DEPARTMENT OF  
FISH AND WILDLIFE**

[Order 07-178—Filed August 20, 2007, 3:22 p.m., effective September 1, 2007]

Effective Date of Rule: September 1, 2007.

Purpose: Amend personal use fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 232-28-61900M; 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: Low numbers of fall chinook are expected to return to the Yakima River in 2007. Fall chinook are attracted to the discharge at the Chandler Powerhouse allowing anglers to harvest a higher proportion of the return than allocated for the fishery. In addition, this is a

known location for illegal snagging despite a nonbuoyant lure restriction/night closure by permanent rule during the lower Yakima River fall salmon season. 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: August 20, 2007.

Loreva M. Preuss  
for Jeff Koenings  
Director

NEW SECTION

**WAC 232-28-61900M Exceptions to statewide rules—Yakima River.** Notwithstanding the provisions of WAC 232-28-619, effective 12:01 a.m. September 1 through October 22, 2007, it is unlawful to fish in those waters of the Yakima River within 400 feet of the Chandler Power Plant.

REPEALER

The following section of the Washington Administrative Code is repealed effective 12:01 a.m. October 23, 2007:

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

**WSR 07-17-136  
EMERGENCY RULES  
DEPARTMENT OF  
FISH AND WILDLIFE**

[Order 07-188—Filed August 20, 2007, 4:03 p.m., effective August 20, 2007, 4:03 p.m.]

Effective Date of Rule: Immediately.

Purpose: To remove the requirement for licenses and tags for kill permits and landowner damage access permits in WAC 232-12-025.

Citation of Existing Rules Affected by this Order: Amending WAC 232-12-025.

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: WAC 232-12-025 was amended by the fish and wildlife commission on April 13, 2007. The amendment mistakenly required licenses and tags for kill permits and landowner preference permits. This emergency rule removes those requirements, which in turn compensates landowners for damage caused by wildlife and creates a cooperative relationship between the landowners and the department.

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: August 20, 2007.

Loreva M. Preuss  
for Jeff Koenings  
Director

#### NEW SECTION

**WAC 232-12-02500A Hunts authorized pursuant to RCW 77.12.240.** Notwithstanding the provisions of WAC 232-12-025, effective immediately, anyone participating in a director-authorized hunt must conduct themselves in accordance with the following rules:

(1) Black bear

(a) No dogs are permitted out of the vehicle, including on a strikeboard, outside of the designated hunting area. If the bear is started inside a permit area, it may be pursued and killed outside the permit boundaries.

(b) When a bear is taken, the permittee shall skin the entire bear, including the head, leaving the claws attached. The permittee must then deliver the hide, together with the first tooth behind the canine tooth on the lower jaw, to the regional office. All bear hides taken pursuant to a black bear damage-control permit shall be disposed of as prescribed in RCW 77.12.240.

(c) Within 5 days after expiration of a black bear damage-control permit, the permittee shall deliver to the respective regional office a bear hunting report and his or her windshield identification cards. Failure to comply with this provision constitutes ineligibility for the next year's black bear damage-control permit drawings.

(d) The permittee shall abide by all conditions as set forth on the black bear damage-control permit. Failure to comply with these hunting conditions constitutes a violation of RCW 77.15.245(2), Unlawful practices - Black bear bait-

ing - Exceptions - Illegal hunting - Use of dogs - Exceptions - Penalties.

(2) Deer and elk.

(a) Deer and elk damage-control hunts will be antlerless only, unless the damage-control permit specifies either sex.

(b) Only persons with a hot-spot hunt permit may hunt and possess one deer and/or one elk as designated on the permit

(c) Hunters must have valid, unused general deer/elk tags to hunt and possess a legal animal during the prescribed hot-spot hunt. In contrast, kill permits and landowner preference permits require a permit, but not a license or tag.

(d) The April 1 to June 30 time period will be excluded from damage-control hunts.

(e) Permittees may hunt only within the prescribed area and season dates as specified on their permit. If a deer or elk is wounded inside the damage-control hunt area, it may be pursued and taken outside permit boundaries.

(f) Reporting requirements for landowner preference permits: Landowners will complete the *Landowner Damage Hunt Report* and submit it to the issuing WDFW employee within 10 days of the ending date of the hunt. Failure to comply with this provision may constitute ineligibility for issuance of future landowner preference permits.

(g) Reporting requirement for hot-spot hunts: A WDFW employee will manage and coordinate hot-spot hunts with respective landowners. Within three working days of the ending of the hunt, the WDFW employee will submit a report, showing results of the hot-spot hunt, through the appropriate chain of command.

#### **WSR 07-17-147**

#### **EMERGENCY RULES**

#### **DEPARTMENT OF**

#### **SOCIAL AND HEALTH SERVICES**

(Aging and Disability Services Administration)

[Filed August 21, 2007, 8:35 a.m., effective August 21, 2007, 8:35 a.m.]

Effective Date of Rule: Immediately.

Purpose: The department is amending WAC 388-106-0225 How do I pay for MPC?, to increase the personal needs allowance 3.3%. This change is due to the Washington state 2007-09 operating budget (SHB 1128).

Citation of Existing Rules Affected by this Order: Amending WAC 388-106-0225.

Statutory Authority for Adoption: RCW 74.08.090, 74.09.520.

Other Authority: Washington state 2007-09 operating budget (SHB 1128).

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

Reasons for this Finding: The Washington state 2007-09 operating budget (SHB 1128) increases the personal needs allowance (PNA) 3.3% effective July 1, 2007. A CR-101 has been filed as WSR 07-12-066 and an emergency rule is necessary while the department completes adoption of perma-

ment rules. This CR-103 corrects a mathematical error the department made in calculating the personal needs allowance and replaces the rule filed as WSR 07-14-075.

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 1, Repealed 0.

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

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

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

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

Date Adopted: August 16, 2007.

Stephanie E. Schiller  
Rules Coordinator

AMENDATORY SECTION (Amending WSR 05-11-082, filed 5/17/05, effective 6/17/05)

**WAC 388-106-0225 How do I pay for MPC?** (1) If you live in your own home, you do not participate toward the cost of your personal care services.

(2) If you live in a residential facility and are:

(a) An SSI beneficiary who receives only SSI income, you only pay for board and room. You are allowed to keep a personal needs allowance of ~~((at least thirty-eight))~~ forty dollars and ~~((eighty-four))~~ twelve cents per month;

(b) An SSI beneficiary who receives SSI and SSA benefits, you only pay for board and room. You are allowed to keep a personal needs allowance of ~~((at least fifty-eight dollars and eighty-four cents per month))~~ forty dollars and twelve cents. You keep an additional twenty dollar disregard from non-SSI income;

(c) An SSI-related person under WAC 388-511-1105, you may be required to participate towards the cost of your personal care services in addition to your board and room if your financial eligibility is based on the facility's state contracted rate described in WAC 388-513-1305. You ~~((will receive))~~ are allowed to keep a personal needs allowance of ~~((fifty-eight))~~ forty dollars and ~~((eighty-four))~~ twelve cents. You keep an additional twenty dollar disregard from non-SSI income; or

(d) A GA-X client in a residential care facility, you are allowed to keep a personal allowance of only thirty-eight dollars and eighty-four cents per month. The remainder of your grant must be paid to the facility.

(3) The department pays the residential care facility from the first day of service through the:

(a) Last day of service when the Medicaid resident dies in the facility; or

(b) Day of service before the day the Medicaid resident is discharged.

**WSR 07-17-160**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**

[Order 07-189—Filed August 21, 2007, 3:44 p.m., effective August 21, 2007, 3:44 p.m.]

Effective Date of Rule: Immediately.

Purpose: Amend personal use fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-56-25500X; 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: This rule conforms to federal action taken by Pacific Fisheries Management Council. There is sufficient recreational halibut quota to provide for additional fishing in Marine Area 1. 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: August 21, 2007.

Loreva M. Preuss  
for Jeff Koenings  
Director

NEW SECTION

**WAC 220-56-25500Y Halibut—Seasons—Daily and possession limits.** 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 12:01 a.m. August 24 through 11:59 p.m. August 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 - Closed.

(i) Effective immediately until further notice, on days when halibut fishing is closed in Catch Record Card Areas 3,

and 4, unless otherwise provided, it is unlawful to fish for or possess bottomfish 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 13 - Closed.

(e) Catch Record Card Area 5 - Closed.

(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 section of the Washington Administrative code is repealed:

WAC 220-56-25500X      Halibut—Seasons—Daily  
and possession limits. (07-  
169)