

WSR 08-08-023
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 08-50—Filed March 21, 2008, 8:49 a.m., effective March 21, 2008,
8:49 a.m.]

Effective Date of Rule: Immediately.

Purpose: Amend fishing 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: The closure date for retention of sturgeon was adopted because Washington and Oregon fish managers estimate that the harvest guideline of one hundred sixty-five fish will be caught by March 25, 2008. 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Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 1, Amended 0, Repealed 1.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.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: March 21, 2008.

Phil Anderson
for Jeff Koenings
Director

NEW SECTION

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

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

(2) Effective 12:01 a.m. March 26, 2008, until further notice, it is unlawful to retain sturgeon caught in those waters of the Columbia River and tributaries from John Day Dam to McNary Dam.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 232-28-61900J	Exceptions to statewide rules—Columbia River sturgeon. (08-48)
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WSR 08-08-025
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 08-51—Filed March 21, 2008, 11:29 a.m., effective March 23, 2008]

Effective Date of Rule: March 23, 2008.

Purpose: Amend commercial fishing rules.

Citation of Existing Rules Affected by this Order:
Repealing WAC 220-52-07100N; and amending WAC 220-52-071.

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: Harvestable amounts of sea cucumbers are available in the sea cucumber districts listed. Prohibition of all diving from licensed sea cucumber harvest vessels within one day of scheduled openings discourages the practice of fishing on closed days and hiding the unlawful catch underwater until the legal opening. 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: March 21, 2008.

Phil Anderson
for Jeff Koenings
Director

NEW SECTION

WAC 220-52-07100P Sea cucumbers. Notwithstanding the provisions of WAC 220-52-071, effective March 23,

2008 until further notice, it is unlawful to take or possess sea cucumbers taken for commercial purposes except as provided for in this section:

(1) Sea cucumber harvest using shellfish diver gear is allowed in Districts 1 and 5 on Sunday through Friday of each week.

(2) Sea cucumber harvest using shellfish diver gear is allowed in Sea Cucumber District 2 on Monday March 24, 2008 only. On March 24, 2008, the maximum daily landing of sea cucumbers from Sea Cucumber District 2 is 650 pounds per valid commercial sea cucumber harvest license.

(3) It is unlawful to dive for any purpose from a commercially licensed sea cucumber fishing vessel on Saturday of each week, except by written permission from the Director.

REPEALER

The following section of the Washington Administrative Code is repealed effective March 23, 2008:

WAC 220-52-07100N Sea cucumbers. (08-47)

WSR 08-08-036
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 08-45—Filed March 25, 2008, 3:20 p.m., effective April 10, 2008, 12:01 a.m.]

Effective Date of Rule: April 10, 2008, 12:01 a.m.

Purpose: Amend 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 is necessary to assure a safe and successful fishing kids event. Trout will be stocked two days prior to the event to acclimate them. Closing the pond prior to the event will ensure there are fish for participants to catch. On the day of the event preregistered kids will be allowed to fish in these netted 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: March 25, 2008.

J. P. Koenings
Director

NEW SECTION

WAC 232-28-61900H Exceptions to statewide rules—Klineline Pond (Clark Co.) Notwithstanding the provisions of WAC 232-28-619, effective 12:01 a.m. April 10, 2008 through 6:00 p.m. April 12, 2008, it is unlawful to fish in those waters of Klineline Pond, except open to fishing 8:00 a.m. to 3:00 p.m. April 12, 2008 in the netted area to juvenile anglers participating in the Fishing Kids event.

REPEALER

The following section of the Washington Administrative Code is repealed effective 6:00 p.m. April 12, 2008:

WAC 232-28-61900H Exceptions to statewide rules—Klineline Pond (Clark Co.)

WSR 08-08-037
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 08-46—Filed March 25, 2008, 3:24 p.m., effective April 25, 2008, 12:01 a.m.]

Effective Date of Rule: April 25, 2008, 12:01 a.m.

Purpose: Amend fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 232-28-61900I; 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 rule change is necessary to assure a safe and successful fishing kids event. The fish will be planted one day prior to the event to better acclimate them before the event. Several thousand fish will be placed into netted areas along shoreline. On the day of the event, preregistered kids will be allowed to fish within these netted 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: March 25, 2008.

J. P. Koenings
Director

NEW SECTION

WAC 232-28-619001 Exceptions to statewide rules—Lake Sacajawea (Cowlitz Co.) Notwithstanding the provisions of WAC 232-28-619, effective 12:01 a.m. April 25, 2008, through 6:00 p.m. April 26, 2008, it is unlawful to fish from Martin's Dock or within 600 feet on either side of the dock, except that this area is open to participants in the Fishing Kid's event, effective 8:00 a.m. to 3:00 p.m. on April 26, 2008.

REPEALER

The following section of the Washington Administrative Code is repealed effective 6:00 p.m. April 26, 2008:

WAC 232-28-619001 Exceptions to statewide rules—Lake Sacajawea (Cowlitz Co.)

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: Chapter 283, Laws of 2007 (2SSB 5467) directs the department to create the individual and family services programs for persons with developmental disabilities by July 1, 2007. DDD must incorporate rules for the algorithm used to determine a personal award amount into chapter 388-828 WAC. DDD is also amending WAC 388-828-5360 to correct the backup caregiver availability table, which is part of the individual and family services algorithm.

An initial public notice was filed June 29, 2007, as WSR 07-14-081. Stakeholder work is being completed and the rules are expected to be formally proposed in April 2008. This emergency rule replaces the emergency rule filed November 28, 2008 [2007] as WSR 07-24-029.

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 7, 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 7, Amended 1, Repealed 0.

Date Adopted: March 20, 2008.

Stephanie E. Schiller
Rules Coordinator

Reviser's note: The material contained in this filing exceeded the page-count limitations of WAC 1-21-040 for appearance in this issue of the Register. It will appear in the 08-09 issue of the Register.

WSR 08-08-039

EMERGENCY RULES DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Aging and Disability Services Administration)

[Filed March 26, 2008, 10:03 a.m., effective March 26, 2008, 10:03 a.m.]

Effective Date of Rule: Immediately.

Purpose: The department is creating WAC 388-828-9000, 388-828-9020, 388-828-9040, 388-828-9060, 388-828-9080, 388-828-9100, 388-828-9120, and 388-828-9140 to combine three family support programs into one individual and family services program as directed by the legislature and amending WAC 388-828-5360.

Citation of Existing Rules Affected by this Order: Amending WAC 388-838-5360.

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

Other Authority: Title 71A RCW.

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

WSR 08-08-042

EMERGENCY RULES DEPARTMENT OF FISH AND WILDLIFE

[Order 08-52—Filed March 26, 2008, 2:39 p.m., effective March 29, 2008]

Effective Date of Rule: March 29, 2008.

Purpose: Amend 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: This emergency regulation is needed to allow additional fishing opportunity for juveniles, seniors, and holders of a department of fish and wildlife disability license. Vance Creek Pond #1 is an "opening day" lake with juvenile, senior, and disabled regulations, and will reopen April 26. 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: March 26, 2008.

Phil Anderson
for Jeff Koenings
Director

NEW SECTION

WAC 232-28-61900L Exceptions to statewide rules—Vance Creek Pond #1 (Grays Harbor Co.) Notwithstanding the provisions of WAC 232-28-619, effective March 29 through April 6, 2008, juveniles, holders of a senior license and holders of a Department of Fish and Wildlife disability license may fish in those waters of Vance Creek Pond #1.

REPEALER

The following section of the Washington Administrative Code is repealed effective April 7, 2008:

WAC 232-28-61900L Exceptions to statewide rules—Vance Creek Pond #1 (Grays Harbor Co.)

**WSR 08-08-052
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE**

[Order 08-54—Filed March 27, 2008, 11:10 a.m., effective April 3, 2008]

Effective Date of Rule: April 3, 2008.

Purpose: Amend fishing rules.

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

Statutory Authority for Adoption: RCW 77.12.047.

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

Reasons for this Finding: In order to meet the wild steelhead escapement goal for the Hoh River (2,400), the state's sport fishery must close earlier than expected. The entire Hoh and South Fork Hoh will be closed to all sport fishing to avoid incidental impacts to wild steelhead. There is insufficient time to promulgate permanent rules.

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

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

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

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

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

Date Adopted: March 27, 2008.

J. P. Koenings
Director

NEW SECTION

WAC 232-28-61900M Exceptions to statewide rules—Hoh River (Jefferson Co.) Notwithstanding the provisions of WAC 232-28-619, effective April 3, 2008 until further notice, it is unlawful to fish in those waters of the Hoh River from the mouth to the Olympic National Park boundary below the mouth of the South Fork Hoh and the South Fork Hoh River from its mouth to Olympic National Park boundary.

**WSR 08-08-057
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE**

[Order 08-53—Filed March 27, 2008, 4:30 p.m., effective March 27, 2008, 4:30 p.m.]

Effective Date of Rule: Immediately.

Purpose: Amend ballast water rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-77-09000D and 220-77-09500B; and 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. These rules are interim while permanent rules are developed.

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 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: March 27, 2008.

Phil Anderson
for Jeff Koenings
Director

NEW SECTION

WAC 220-77-09500C 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.

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 220-77-09000D Ballast water management and control—Reporting and sampling requirements. (07-287)

WAC 220-77-09500B Interim ballast water discharge standard approval process. (07-287)

NEW SECTION

WAC 220-77-09000E 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 department 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.

WSR 08-08-061
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 08-56—Filed March 28, 2008, 4:01 p.m., effective March 28, 2008, 4:01 p.m.]

Effective Date of Rule: Immediately.

Purpose: Amend hunting rules.

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

Statutory Authority for Adoption: RCW 77.12.047, 77.12.020.

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

Reasons for this Finding: This change is necessary to address emerging black bear tree damage on "Green Crow" lands. There is insufficient time to promulgate rules outside of the emergency rule 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 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: March 28, 2008.

Phil Anderson
for Jeff Koenings
Director

NEW SECTION

WAC 232-28-28600A 2007, 2008, and 2009 Spring black bear seasons and regulations Notwithstanding the provisions of WAC 232-28-286, effective immediately, change the hunt area description for "Monroe" to add "Green Crow" lands. The new hunt area description should read, "That portion of GMU 448 that is designated as the hunt area by DNR, Green Crow, and Longview Timber Lands."

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

WSR 08-08-067
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 08-55—Filed March 31, 2008, 11:41 a.m., effective April 1, 2008]

Effective Date of Rule: April 1, 2008.

Purpose: Amend fishing rules.

Citation of Existing Rules Affected by this Order:
Amending WAC 220-56-156.

Statutory Authority for Adoption: RCW 77.12.047.

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

Reasons for this Finding: This emergency rule is needed to be consistent with Canadian possession and delivery regulations for Canadian caught halibut. There is insufficient time to promulgate permanent rules.

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

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

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

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

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

Date Adopted: March 31, 2008.

Phil Anderson
for Jeff Koenings
Director

NEW SECTION

WAC 220-56-15600B Possession and delivery of Canadian-origin food fish and shellfish. Notwithstanding

the provisions of WAC 220-56-156, effective immediately until further notice, it is unlawful to possess or land halibut, taken in Canadian waters, in excess of the Canadian daily limit for the time and area fished. The possession limit of halibut is two regardless of catch origin.

WSR 08-08-074
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 08-58—Filed March 31, 2008, 4:49 p.m., effective April 1, 2008,
1:00 p.m.]

Effective Date of Rule: April 1, 2008, 1:00 p.m.

Purpose: The purpose of this rule making is to allow fishing opportunity in the Columbia River while protecting salmon listed as threatened or endangered under the Endangered Species Act. This rule making implements federal court orders governing Washington's relationship with treaty Indian tribes, federal law governing Washington's relationship with Oregon, and Washington fish and wildlife commission policy guidance for Columbia River fisheries.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-33-01000C; 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 first fishing period for the 2008 winter commercial salmon season. Impacts to ESA-listed stocks in these fisheries are covered under the biological opinion for the 2005-2007 interim management agreement. Season is consistent with Washington fish and wildlife commission guidance for 2006-2008 sturgeon fishery management. This rule is consistent with actions of the Columbia River compact hearings of January 24, February 15, and March 31, 2008. This rule conforms Washington and Oregon state rules. There is insufficient time to promulgate permanent rules.

Washington and Oregon jointly regulate Columbia River fisheries under the congressionally ratified Columbia River compact. Four Indian tribes have treaty fishing rights in the Columbia River. The treaties preempt state regulations that fail to allow the tribes an opportunity to take a fair share of the available fish, and the states must manage other fisheries accordingly. *Sohappy v. Smith*, 302 F. Supp. 899 (D. Or.

1969). A federal court order sets the current parameters for sharing between treaty Indians and others. *United States v. Oregon*, Civil No. 68-513-KI (D. Or.), Order Adopting 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 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: March 31, 2008.

J. P. Koenings
Director

NEW SECTION

WAC 220-33-01000D Columbia River seasons below Bonneville. Notwithstanding the provisions of WAC 220-33-010, WAC 220-33-020, and WAC 220-33-030, it is unlawful for a person to take or possess salmon, sturgeon, and shad for commercial purposes from Columbia River Salmon Management and Catch Reporting Areas 1A, 1B, 1C, 1D, and 1E, except during the times and conditions listed:

1. Area: SMCRA 1C, and 1E only in the area from the west powerlines on Hayden Island upstream to Beacon Rock (Zone 5 upper boundary).

a) Season: 1:00 p.m. to 11:00 p.m. Tuesday April 1, 2008 (10 hours).

b) Gear: Drift gill nets only, 4-1/4 inch maximum mesh. Mesh size is determined by placing three consecutive meshes under hand tension and taking the measurement from the inside of one vertical knot to the outside of the opposite vertical knot of the center mesh. Hand tension means sufficient linear tension to draw opposing knots of meshes into contact. Monofilament gill nets are not allowed for the 4-1/4 inch mesh. Gill nets that are fished at any time between official sunset and official sunrise must have lighted buoys on both ends of the net unless the net is attached to the boat. If the net is attached to the boat, then one lighted buoy on the opposite end of the net from the boat is required.

There are no restrictions on the use of slackers or stringers to slacken the net vertically. There are no restrictions on the hang ratio. The hang ratio is used to horizontally add slack to the net. The hang ratio is determined by the length of the web per length of the corkline.

Net length not to exceed 150 fathoms, except under the following conditions: An optional use of a steelhead excluder panel of mesh may be hung between the corkline and the 4-1/4 inch maximum mesh size tangle net. The excluder panel web must be a minimum mesh size of 12 inches when stretched taut under hand tension. Monofilament mesh is allowed for the excluder panel. The excluder panel must be a minimum of 5 feet in depth and must not exceed 10 feet in depth as measured from the corkline to the upper margin of the tangle net mesh as the net hangs naturally from a taut corkline. Weedlines or droppers (bobber type) may be used in place of the steelhead excluder panel. A weedline-type excluder means the net is suspended below the corkline by lines of no less than five feet in length between the corkline and the upper margin of the tangle net. A dropper-type excluder means the entire net is suspended below the surface of the water by lines of no less than five feet in length extending from individual surface floats to a submerged corkline. The corkline cannot be capable of floating the net in its entirety (including the leadline) independent of the attached floats. Weedlines or droppers, must extend a minimum of 5 feet above the 4 1/4-inch maximum mesh size tangle net. Tangle nets constructed with a steelhead excluder panel, weedlines, or droppers, may extend to a maximum length of 175 fathoms. Tangle nets constructed with a steelhead excluder panel, weedlines, or droppers must have two red corks at each end of the net, as well as the red corks under miscellaneous regulations.

i. In the Columbia River downstream of Bonneville Dam and in the Select Areas (described in WAC 220-22-010(9)), it shall be lawful to have onboard a commercial fishing vessel more than one licensed net in excess of the lawful size or length prescribed for a single 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.

ii. Nets not lawful for use at that time and area may be onboard the boat if properly stored. A "properly stored" net is defined as a net on a drum that is fully covered by tarp (canvas or plastic) and bound with a minimum of ten revolutions of rope with a diameter of 3/8 (0.375) inches or greater.

c) Allowable Sale: Adipose fin-clipped salmon, white sturgeon, and shad. An adipose fin-clipped salmon is defined

as a hatchery salmon with a clipped adipose fin and having a healed scar at the location of the fin. Green sturgeon retention is prohibited.

d) Sanctuaries: Washougal and Sandy rivers

e) Miscellaneous Regulations:

i. At least one fisher on each boat must have tangle net certification.

ii. Soak times, defined as the time elapsed from when the first of the gill net web is deployed into the water until the gill net web is fully retrieved from the water, must not exceed 45 minutes.

iii. Red corks are required at 25 fathom intervals, and red corks must be in contrast to the corks used in the remainder of the net.

iv. Each boat will be required to have two operable recovery boxes or one box with two chambers, on board. Each box and chamber shall be operating during any time that the net is being retrieved or picked. The flow in the recovery box will be a minimum of 16 gallons per minute in each chamber of the box, not to exceed 20 gallons per minute. Each chamber of the recovery box must meet the following dimensions as measured from within the box; the inside length measurement must be at or within 39 1/2 inches to 48 inches, the inside width measurements must be at or within 8 to 10 inches, and the inside height measurement must be at or within 14 to 16 inches.

Each chamber of the recovery box must include a water inlet hole between 3/4 inch and 1 inch in diameter, centered horizontally across the door or wall of the chamber and 1 3/4 inches from the floor of the chamber. Each chamber of the recovery box must include a water outlet hole opposite the inflow that is a least 1 1/2 inches in diameter. The center of the outlet hole must be located a minimum of 12 inches above the floor of the box or chamber. The fisher must demonstrate to WDFW and ODFW employees, fish and wildlife enforcement officers, or other peace officers, upon request, that the pumping system is delivering the proper volume of fresh river water into each chamber.

v. All non-legal sturgeon, non-adipose fin-clipped salmon, and steelhead must be released immediately to the river with care and with the least possible injury to the fish, or placed into an operating recovery box.

vi. Any fish that is bleeding or lethargic must be placed in the recovery box prior to being released.

vii. All fish placed in recovery boxes must be released to the river prior to landing or docking.

viii. 24-hour Quick reporting is required for Washington wholesale dealers, WAC 220-69-240.

ix. As a condition of fishing, owners or operators of commercial fishing vessels must cooperate with department observers or observers collecting data for the department, when notified by the observer of his or her intent to board the commercial vessel for observation and sampling during an open fishery.

x. Columbia River tangle net certification: This is any individual meeting the qualifications of RCW 77.65.040(2) and who obtained a tangle net certificate by attending and completing a WDFW/ODFW sponsored workshop concerning live captive commercial fishing techniques.

xi. Nothing in this section sets any precedent for any fishery after this spring Chinook fishery. The fact that an individual received a Columbia River tangle net certificate does not entitle the certificate holder to participate in any other fishery. If the department authorizes a tangle net fishery in any other time, WDFW may establish qualifications and requirements that are different from those established for this season. In particular, the department may consider an individual's compliance with these rules in determining that individual's eligibility to participate in any future tangle net fisheries.

2. **Blind Slough** Select Area

a) Area: Blind Slough and Knappa Slough areas. From May 1 through June 13, the lower boundary of the Knappa Slough fishing area is extended downstream to boundary lines defined by markers on the west end of Minaker Island to markers on Karlson Island and the Oregon shore (fall boundary). Concurrent Washington/Oregon waters extend downstream of the railroad bridge.

b) Dates: 7:00 p.m. Mondays to 7:00 a.m. Tuesdays, and 7:00 p.m. Thursdays to 7:00 a.m. Fridays from April 17 through June 13, 2008

c) Gear: 8-inch maximum mesh. Nets are restricted to 100 fathoms in length, with no weight restriction on leadline. Use of additional weights or anchors attached directly to the leadline is allowed.

d) Allowable sales: salmon, white sturgeon, and shad.

3. **Deep River** Select Area

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

b) Dates: Monday and Thursday nights from April 17 through June 13, 2008. 7:00 p.m. Mondays to 7:00 a.m. Tuesdays, and 7:00 p.m. Thursdays to 7:00 a.m. Fridays.

c) Gear: 8-inch maximum. Nets are restricted to a maximum length of 100 fathoms with no weight restriction on leadline. Use of additional weights or anchors attached directly to the leadline is allowed. Nets cannot be tied off of any stationary structures. Nets may not fully cross the navigation channel.

d) Allowable sales: salmon, white sturgeon, and shad.

e) Miscellaneous: Transportation or possession of fish outside the fishing area (except to the sampling station) is unlawful until department staff has biologically sampled individual catches. After sampling, fishers will be issued a transportation permit by agency staff.

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

REPEALER

The following section of the Washington Administrative Code is repealed effective 12:59 p.m. April 1, 2008:

WAC 220-33-01000C Columbia River seasons below Bonneville. (08-30)

The following section of the Washington Administrative Code is repealed effective June 14, 2008:

WAC 220-33-01000D Columbia River seasons below Bonneville.