

WSR 08-15-115
EMERGENCY RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
 (Aging and Disability Services Administration)
 [Filed July 21, 2008, 8:22 a.m., effective July 21, 2008]

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 7, Amended 0, Repealed 0.
 Date Adopted: July 9, 2008.

Stephanie E. Schiller
 Rules Coordinator

Effective Date of Rule: Immediately.

Purpose: The department is creating WAC 388-828-9000, 388-828-9020, 388-828-9040, 388-828-9060, 388-828-9100, 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.

Statutory Authority for Adoption: RCW 71A.12.030.

Other Authority: Chapter 283, Laws of 2007 (SSSB [2SSB] 5467).

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: Chapter 283, Laws of 2007 (SSSB [2SSB] 5467), as amended by the house, directs the department to create the individual and family services program for persons with developmental disabilities by July 1, 2007. The department of developmental disabilities (DDD) must incorporate rules for the algorithm used to determine a personal award amount into chapter 388-828 WAC. An initial public notice was filed June 29, 2007, as WSR 07-14-081. This emergency rule extends the emergency rule filed March 26, 2008, as WSR 08-08-039. These rules have been proposed for permanent adoption as WSR 08-11-095 but the rules will not become permanent prior to the expiration of the current emergency rules as the public hearing is scheduled for July 22, 2008.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 7, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Chapter 388-828 WAC

INDIVIDUAL AND FAMILY SERVICES ASSESSMENT

NEW SECTION

WAC 388-828-9000 What is the individual and family services assessment? The individual and family services assessment is an algorithm in the DDD assessment that determines an award amount that you may receive if DDD has authorized you to receive individual and family services per chapter 388-832 WAC.

NEW SECTION

WAC 388-828-9020 What is the purpose of the individual and family services assessment? The purpose of the individual and family services assessment is to determine your individual and family services level and score using your assessed support levels from:

- (1) The DDD protective supervision acuity scale (See WAC 388-828-5000 to WAC 388-828-5100);
- (2) The DDD caregiver status acuity scale (See WAC 388-828-5120 to WAC 388-828-5360);
- (3) The DDD behavioral acuity scale; (See WAC 388-828-5500 to WAC 388-828-5640)
- (4) The DDD medical acuity scale; (See WAC 388-828-5660 to WAC 388-828-5700); and
- (5) The DDD activities of daily living (ADL) acuity scale (See WAC 388-828-5380 to WAC 388-828-5480)

NEW SECTION

WAC 388-828-9040 How does DDD determine your individual and family services level? (1) DDD determines your individual and family services level using the following table:

If your protective supervision support level is:	And your primary caregiver risk level is:	And your backup caregiver risk score is:	And your behavioral acuity level is:	Then your individual and family services level is:
0	None	1	None	1
0	None	1	Low	1
0	None	1	Medium	1
0	None	1	High	2
0	None	2 or 3	None	1
0	None	2 or 3	Low	1
0	None	2 or 3	Medium	2
0	None	2 or 3	High	2

If your protective supervision support level is:	And your primary caregiver risk level is:	And your backup caregiver risk score is:	And your behavioral acuity level is:	Then your individual and family services level is:
0	Low	1	None	1
0	Low	1	Low	1
0	Low	1	Medium	1
0	Low	1	High	2
0	Low	2 or 3	None	1
0	Low	2 or 3	Low	1
0	Low	2 or 3	Medium	2
0	Low	2 or 3	High	2
0	Medium	1	None	1
0	Medium	1	Low	1
0	Medium	1	Medium	1
0	Medium	1	High	2
0	Medium	2 or 3	None	1
0	Medium	2 or 3	Low	1
0	Medium	2 or 3	Medium	2
0	Medium	2 or 3	High	2
0	High	1	None	1
0	High	1	Low	1
0	High	1	Medium	2
0	High	1	High	2
0	High	2 or 3	None	2
0	High	2 or 3	Low	2
0	High	2 or 3	Medium	2
0	High	2 or 3	High	3
0	Immediate	1	None	1
0	Immediate	1	Low	1
0	Immediate	1	Medium	2
0	Immediate	1	High	2
0	Immediate	2 or 3	None	2
0	Immediate	2 or 3	Low	2
0	Immediate	2 or 3	Medium	2
0	Immediate	2 or 3	High	3
1	None	1	None	1
1	None	1	Low	1
1	None	1	Medium	1
1	None	1	High	2
1	None	2 or 3	None	1
1	None	2 or 3	Low	1
1	None	2 or 3	Medium	2
1	None	2 or 3	High	3
1	Low	1	None	1
1	Low	1	Low	1
1	Low	1	Medium	1
1	Low	1	High	2
1	Low	2 or 3	None	1

If your protective supervision support level is:	And your primary caregiver risk level is:	And your backup caregiver risk score is:	And your behavioral acuity level is:	Then your individual and family services level is:
1	Low	2 or 3	Low	1
1	Low	2 or 3	Medium	2
1	Low	2 or 3	High	3
1	Medium	1	None	1
1	Medium	1	Low	1
1	Medium	1	Medium	2
1	Medium	1	High	3
1	Medium	2 or 3	None	1
1	Medium	2 or 3	Low	2
1	Medium	2 or 3	Medium	2
1	Medium	2 or 3	High	3
1	High	1	None	2
1	High	1	Low	2
1	High	1	Medium	2
1	High	1	High	3
1	High	2 or 3	None	2
1	High	2 or 3	Low	2
1	High	2 or 3	Medium	3
1	High	2 or 3	High	4
1	Immediate	1	None	2
1	Immediate	1	Low	2
1	Immediate	1	Medium	2
1	Immediate	1	High	3
1	Immediate	2 or 3	None	2
1	Immediate	2 or 3	Low	2
1	Immediate	2 or 3	Medium	3
1	Immediate	2 or 3	High	4
2 or 3	None	1	None	1
2 or 3	None	1	Low	1
2 or 3	None	1	Medium	2
2 or 3	None	1	High	3
2 or 3	None	2 or 3	None	2
2 or 3	None	2 or 3	Low	2
2 or 3	None	2 or 3	Medium	2
2 or 3	None	2 or 3	High	4
2 or 3	Low	1	None	1
2 or 3	Low	1	Low	1
2 or 3	Low	1	Medium	2
2 or 3	Low	1	High	3
2 or 3	Low	2 or 3	None	2
2 or 3	Low	2 or 3	Low	2
2 or 3	Low	2 or 3	Medium	2
2 or 3	Low	2 or 3	High	4
2 or 3	Medium	1	None	2
2 or 3	Medium	1	Low	2

If your protective supervision support level is:	And your primary caregiver risk level is:	And your backup caregiver risk score is:	And your behavioral acuity level is:	Then your individual and family services level is:
2 or 3	Medium	1	Medium	2
2 or 3	Medium	1	High	3
2 or 3	Medium	2 or 3	None	2
2 or 3	Medium	2 or 3	Low	2
2 or 3	Medium	2 or 3	Medium	3
2 or 3	Medium	2 or 3	High	4
2 or 3	High	1	None	2
2 or 3	High	1	Low	2
2 or 3	High	1	Medium	2
2 or 3	High	1	High	3
2 or 3	High	2 or 3	None	2
2 or 3	High	2 or 3	Low	2
2 or 3	High	2 or 3	Medium	3
2 or 3	High	2 or 3	High	4
2 or 3	Immediate	1	None	2
2 or 3	Immediate	1	Low	2
2 or 3	Immediate	1	Medium	2
2 or 3	Immediate	1	High	3
2 or 3	Immediate	2 or 3	None	2
2 or 3	Immediate	2 or 3	Low	2
2 or 3	Immediate	2 or 3	Medium	3
2 or 3	Immediate	2 or 3	High	4
4	None	1	None	2
4	None	1	Low	2
4	None	1	Medium	2
4	None	1	High	3
4	None	2 or 3	None	2
4	None	2 or 3	Low	2
4	None	2 or 3	Medium	3
4	None	2 or 3	High	4
4	Low	1	None	2
4	Low	1	Low	2
4	Low	1	Medium	2
4	Low	1	High	3
4	Low	2 or 3	None	2
4	Low	2 or 3	Low	2
4	Low	2 or 3	Medium	3
4	Low	2 or 3	High	4
4	Medium	1	None	2
4	Medium	1		2
4	Medium	1	Medium	3
4	Medium	1	High	3
4	Medium	2 or 3	None	2
4	Medium	2 or 3	Low	3
4	Medium	2 or 3	Medium	3

If your protective supervision support level is:	And your primary caregiver risk level is:	And your backup caregiver risk score is:	And your behavioral acuity level is:	Then your individual and family services level is:
4	Medium	2 or 3	High	4
4	High	1	None	2
4	High	1	Low	2
4	High	1	Medium	3
4	High	1	High	3
4	High	2 or 3	None	2
4	High	2 or 3	Low	3
4	High	2 or 3	Medium	4
4	High	2 or 3	High	4
4	Immediate	1	None	2
4	Immediate	1	Low	2
4	Immediate	1	Medium	3
4	Immediate	1	High	3
4	Immediate	2 or 3	None	2
4	Immediate	2 or 3	Low	3
4	Immediate	2 or 3	Medium	4
4	Immediate	2 or 3	High	4
5	None	1	None	2
5	None	1	Low	2
5	None	1	Medium	3
5	None	1	High	4
5	None	2 or 3	None	3
5	None	2 or 3	Low	3
5	None	2 or 3	Medium	4
5	None	2 or 3	High	5
5	Low	1	None	2
5	Low	1	Low	2
5	Low	1	Medium	3
5	Low	1	High	4
5	Low	2 or 3	None	3
5	Low	2 or 3	Low	3
5	Low	2 or 3	Medium	4
5	Low	2 or 3	High	5
5	Medium	1	None	2
5	Medium	1	Low	2
5	Medium	1	Medium	3
5	Medium	1	High	4
5	Medium	2 or 3	None	3
5	Medium	2 or 3	Low	3
5	Medium	2 or 3	Medium	4
5	Medium	2 or 3	High	5
5	High	1	None	2
5	High	1	Low	2
5	High	1	Medium	3
5	High	1	High	4

If your protective supervision support level is:	And your primary caregiver risk level is:	And your backup caregiver risk score is:	And your behavioral acuity level is:	Then your individual and family services level is:
5	High	2 or 3	None	3
5	High	2 or 3	Low	3
5	High	2 or 3	Medium	4
5	High	2 or 3	High	5
5	Immediate	1	None	2
5	Immediate	1	Low	2
5	Immediate	1	Medium	3
5	Immediate	1	High	4
5	Immediate	2 or 3	None	3
5	Immediate	2 or 3	Low	3
5	Immediate	2 or 3	Medium	4
5	Immediate	2 or 3	High	5
6	None	1	None	2
6	None	1	Low	3
6	None	1	Medium	3
6	None	1	High	4
6	None	2 or 3	None	3
6	None	2 or 3	Low	3
6	None	2 or 3	Medium	4
6	None	2 or 3	High	5
6	Low	1	None	2
6	Low	1	Low	3
6	Low	1	Medium	3
6	Low	1	High	4
6	Low	2 or 3	None	3
6	Low	2 or 3	Low	3
6	Low	2 or 3	Medium	4
6	Low	2 or 3	High	5
6	Medium	1	None	3
6	Medium	1	Low	3
6	Medium	1	Medium	3
6	Medium	1	High	4
6	Medium	2 or 3	None	3
6	Medium	2 or 3	Low	4
6	Medium	2 or 3	Medium	4
6	Medium	2 or 3	High	5
6	High	1	None	3
6	High	1	Low	3
6	High	1	Medium	4
6	High	1	High	4
6	High	2 or 3	None	4
6	High	2 or 3	Low	4
6	High	2 or 3	Medium	5
6	High	2 or 3	High	5
6	Immediate	1	None	3

If your protective supervision support level is:	And your primary caregiver risk level is:	And your backup caregiver risk score is:	And your behavioral acuity level is:	Then your individual and family services level is:
6	Immediate	1	Low	3
6	Immediate	1	Medium	4
6	Immediate	1	High	4
6	Immediate	2 or 3	None	4
6	Immediate	2 or 3	Low	4
6	Immediate	2 or 3	Medium	5
6	Immediate	2 or 3	High	5

(2) DDD adds one level to your individual and family services level when your individual and family services level is determined to be:

(a) Level one, two, three, or four; and

(b) You have a score of four for question two "Other caregiving for persons who are disabled, seriously ill, or under five" in the DDD caregiver status acuity scale. See WAC 388-828-5260.

If your individual and family services level is:	Then your individual and family services support rating is:
1	0
2	240
3	336
4	432
5	528

NEW SECTION

WAC 388-828-9060 How does DDD determine your individual and family services rating? (1) Your individual and family services rating is determined by using the following table:

NEW SECTION

WAC 388-828-9100 How does DDD determine the number to use in the adjustment of your individual and family services support rating? DDD determines the amount of the adjustment for your individual and family services support rating using the following tables:

(1)

If your individual and family services level is 1, 2, 3, 4, or 5 and you are not eligible for Medicaid personal care		And your ADL support needs level for the SIS per WAC 388-828-5480			
		None	Low	Medium	High
And your medical acuity level per WAC 388-828-5700	None	57	57	76	85
	Low	57	57	76	85
	Medium	57	88	122	145
	High	57	145	245	287

(2)

If your individual and family services level is 1, 2, 3, 4, or 5 and you are eligible for Medicaid personal care per chapter 388-106 WAC		And your ADL support needs level for the SIS per WAC 388-828-5480			
		None	Low	Medium	High
And your medical acuity level per WAC 388-828-5700	None	0	0	0	0
	Low	0	0	0	0
	Medium	0	0	0	0
	High	0	0	0	0

Example: If your individual and family service level is 3 and you are not eligible for Medicaid personal care services and your ADL support needs level is "low" and your medical acuity level is "medium," the amount of your adjustment is 88.

NEW SECTION

WAC 388-828-9120 How does DDD determine your individual and family services score? DDD adds your individual and family support rating from WAC 388-828-9060 to

the adjustment amount in WAC 388-828-9100 to determine your individual and family services score.

Example: If you are not eligible for medicaid personal care services and your individual and family services support rating is 336 and the amount of your adjustment is 122, your individual and family services score is 458.

NEW SECTION

WAC 388-828-9140 How does DDD determine the amount of your individual and family service award? DDD uses the following table to determine the amount of your individual and family services award:

If your individual and family services score is:	Then the amount of your award is up to:
0 to 60	No Award
61 to 240	\$2000
241 to 336	\$3000
337 to 527	\$4000
528 or more	\$6000

**WSR 08-16-001
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE**

[Order 08-179—Filed July 23, 2008, 1:20 p.m., effective July 23, 2008, 1:20 p.m.]

Effective Date of Rule: Immediately.

Purpose: Amend commercial fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-52-05100Y; 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 2008 state/tribal shrimp harvest management plans for the Strait of Juan de Fuca and north Puget Sound require adoption of harvest seasons and the prohibition on night time fishing contained in this emergency rule. This emergency rule closes the pot fishery season for spot shrimp in Shrimp Management Area 1C because the spot shrimp quota have been harvested in that 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: July 23, 2008.

Loreva M. Preuss
for Jeff Koenings
Director

NEW SECTION

WAC 220-52-05100Z 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 1A, 1C, 2E, 2W, 3, 4, and 6 are open to the harvest of all shrimp species effective immediately, until further notice, except as provided for in this section:

(i) All waters of Shrimp Management Area 23AE and the Discovery Bay Shrimp District are closed.

(ii) All waters of Shrimp Management Area 2E are closed to the harvest of spot shrimp.

(iii) Effective 6:00 p.m., July 23, 2008, all waters of Shrimp Management Area 2W are closed to the harvest of spot shrimp.

(iv) Effective 6:00 p.m., July 24, 2008, all waters of Shrimp Management Area 1C are closed to the harvest of spot shrimp.

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

(c) Effective immediately, it is unlawful for the combined total harvest of spot shrimp by a fisher and/or the fisher's alternate operator to exceed 200 pounds in Shrimp Management Area 2W or to exceed 300 pounds in Shrimp Management Area 1C.

(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 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.

(f) 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 shellfish pots may be set in a new fishing area subsequent to making a report as indicated in Section 1(e) above.

(2) Shrimp beam trawl gear:

(a) 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.

(b) That portion of Catch Area 22A within Shrimp Management Area 1B is open immediately, until further notice.

(c) That portion of Catch Area 21A within Shrimp Management Area 1B is 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 220-52-05100Y Puget Sound shrimp pot and beam trawl fishery. (08-174)

**WSR 08-16-010
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE**

[Order 08-181—Filed July 24, 2008, 3:50 p.m., effective July 24, 2008, 3:50 p.m.]

Effective Date of Rule: Immediately.

Purpose: Amend commercial fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-47-50100I.

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 for Pacific Salmon Commission authorized sockeye-targeted fisheries in Areas 7 and 7A. These emergency rules are necessary to initiate fisheries that are not expected to exceed chi-

nook by-catch levels modeled during the preseason process. 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: July 24, 2008.

J. P. Koenings
Director

NEW SECTION

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

Areas 7 and 7A:

(1) **Purse Seines** - Open to purse seine gear according to the times, dates, and conditions as prescribed and listed here:

Hours	Dates
7 a.m. through 7 p.m.	July 25

(a) It is unlawful to retain Chinook, coho, and chum salmon.

(b) It is unlawful 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 WAC 220-47-325, prior to the seine net being removed from the water. All salmon must be immediately sorted, and those required to be released must be placed in an operating recovery box or released into the water before the next brail may be brought on the deck. However, small numbers of fish may be brought on board the vessel by pulling the net in without mechanical or hydraulic assistance.

(c) It is unlawful to fish for salmon with purse seine 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.

(2) **Gill Nets** - Open to gill net gear with 5 inch minimum and 5 1/2 inch maximum mesh size according to the times, dates, and conditions as prescribed and listed here:

Hours	Dates
8 a.m. through 8 p.m.	July 25

(a) 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.

(3) **Reef Nets** - Open to reef net gear according to the times, dates, and conditions as prescribed and listed here:

Hours	Dates
6 a.m. through 6 p.m.	July 28

It is unlawful to retain unmarked Chinook salmon at all times, and it is unlawful to retain chum and wild coho salmon prior to October 1. It is unlawful to fish for salmon with reef 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.

"Quick Reporting Fisheries":

All fisheries opened under this section, and any fishery opening under authority of the Fraser Panel for sockeye or pink salmon in Puget Sound Salmon Management and Catch Reporting Areas (WAC 220-22-030) are designated as "Quick Reporting Required" per WAC 220-47-001.

REPEALER

The following section of the Washington Administrative Code is repealed effective 6:01 p.m. July 28, 2008:

WAC 220-47-50100I Puget Sound all-citizen commercial salmon fishery—
Open periods.

**WSR 08-16-011
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE**

[Order 08-180—Filed July 24, 2008, 3:52 p.m., effective August 3, 2008, 7:00 p.m.]

Effective Date of Rule: August 3, 2008, 7:00 p.m.

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

Citation of Existing Rules Affected by this Order: 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 mainstem commercial fishing periods for the early August season and sets select area fishing periods for the fall season. The season is consistent with the 2008-2017 interim management agreement and the 2008 non-Indian salmon allocation agreement. The regulation is consistent with compact action of July 22, 2008. 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 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: July 24, 2008.

J. P. Koenings
Director

NEW SECTION

WAC 220-33-01000W 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 (SMCRA) 1A, 1B, 1C, 1D, and 1E, except as provided in the following subsections.

1. SEASON: Sunday, Tuesday and Thursday nights during August 3-13, 2008. Open hours are 7:00 p.m. to 7:00 a.m.

a. AREA: SMCRA 1A, 1B, 1C, 1D, 1E (Zones 1-5)

b. GEAR: 9-inch minimum mesh size. Drift gillnets only. Monofilament gear is allowed. Nets not specifically authorized for use in this fishery may be onboard the vessel if properly stored. A properly stored net is defined as a net on a drum that is fully covered by a 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. SANCTUARIES: Elochomin-A, Abernathy, Cowlitz, Kalama-A, Lewis-B, Washougal and Sandy Rivers.

d. ALLOWABLE SALE: Salmon and white sturgeon. A maximum of ten (10) white sturgeon may be possessed or sold by each participating vessel during each calendar week (Sunday through Saturday) that the fishery is open. The sturgeon possession/sales limit applies only to mainstem fisheries. 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 department rule.

e. OTHER: 24 hour 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 each fishing period.

2. **Blind Slough/Knappa Slough Select Area.**

a. SEASON: Tuesday, Wednesday, and Thursday nights from September 2-16, 2008. AND Monday, Tuesday, Wednesday, and Thursday nights from September 15 through October 31, 2008. . Open hours are 7:00 p.m. to 7:00 a.m. from September 2-19, and 6 p.m. to 8 a.m. thereafter.

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

gon shore. An area closure of about a 100-foot radius at the mouth of Big Creek defined by markers. All waters in Knappa Slough are under concurrent jurisdiction.

c. GEAR: 8-inch maximum mesh size through September 5 and a 6-inch maximum mesh size thereafter. Gillnet. Monofilament gear is allowed. . Maximum net length of 100 fathoms. No weight restriction on lead line. Use of additional weights or anchors attached directly to the lead line is allowed.

3. **Tongue Point/South Channel Select Area.**

a. SEASON: Tuesday, Wednesday, and Thursday nights from September 2-12, 2008. AND Monday, Tuesday, Wednesday, and Thursday nights from September 15 through October 26, 2008. Open hours are 7 p.m. to 7 a.m. from September 2-19 and 4:00 p.m. to 8:00 a.m. thereafter.

b. AREA: Tongue Point fishing area includes all waters bounded by a line from a marker midway between the red USCG navigation light #2 at the tip of Tongue Point and the downstream (northern most) pier (#8) at the Tongue Point Job Corps facility, to the flashing green USCG navigation light #3 on the rock jetty at the west end of Mott Island, a line from a marker at the southeast end of Mott Island northeasterly to a marker on the northwest tip of Lois Island, and a line from a marker on the southwest end of Lois Island westerly to a marker on the Oregon shore. All waters are under concurrent jurisdiction. South Channel area includes all waters bounded by a line from a marker on John Day Point through the green USCG buoy #7 to a marker on the southwest end of Lois Island upstream to an upper boundary line from a marker on Settler Point northwesterly to the flashing red USCG marker #10, northwesterly to a marker on Burnside Island defining the upstream terminus of South Channel. All waters are under concurrent jurisdiction.

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

4. **Deep River Select Area.**

a. SEASON: Monday, Tuesday, Wednesday, and Thursday nights from September 1 through October 31, 2008. Open hours are 7 p.m. to 7 a.m. from September 1-19, and 4:00 p.m. to 8:00 a.m. thereafter.

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

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

5. ALLOWABLE SALES: Applies to all seasons stated in items 2-4 (Select Areas): Salmon and White sturgeon. A maximum of three (3) white sturgeon may be possessed or sold by each participating vessel during each calendar week (Sunday through Saturday) that the fishery is open. The sturgeon possession/sales limit applies only to SAFE fisheries. 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 department rule.

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.

WSR 08-16-012
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 08-182—Filed July 24, 2008, 3:57 p.m., effective August 1, 2008, 12:01 a.m.]

Effective Date of Rule: August 1, 2008, 12:01 a.m.

Purpose: Amend commercial rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-44-05000W; 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: July 24, 2008.

J. P. Koenings
Director

NEW SECTION

WAC 220-44-05000X Coastal bottomfish catch limits. Notwithstanding the provisions of WAC 220-44-050, effective 12:01 a.m. August 1, 2008 until further notice:

(1) It is unlawful to possess, transport through the waters of the state, or land into any Washington port, bottomfish 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 73, Number 143, published on July 24, 2008. 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 effective 12:01 a.m. August 1, 2008:

WAC 220-44-05000W Coastal bottomfish catch limits. (08-82)

WSR 08-16-013
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 08-183—Filed July 24, 2008, 4:22 p.m., effective July 28, 2008, 6:00 a.m.]

Effective Date of Rule: July 28, 2008, 6:00 a.m.

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 220-32-05100Y; 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 one additional week of commercial fishing for treaty tribes. The escapement goals for both summer chinook and sockeye will be achieved. Harvestable numbers of fish are available under the ESA guideline. The fishery catches are expected to remain within the allocation and guidelines of the 2008-2017 management agreement. Rule is consistent with action of the Columbia River compact on July 24, 2008. Conforms state rules with tribal rules. There is insufficient time to promulgate permanent regulations.

New regulations for 2008 include fisheries that are described in the MOA between Washington state and Yakama Nation. Yakama Nation tribal members will be

allowed to fish for subsistence purposes within a specific area of the Washington shoreline below Bonneville Dam when open for enrolled Yakama Nation members under lawfully enacted Yakama Nation tribal subsistence fisheries. Sales will be allowed when the open fishery is concurrent with either commercial gillnet openings or platform gear in Zone 6 (SMCRA 1F, 1G, 1H). Sales of fish caught in this fishery are consistent with mainstem Zone 6 (SMCRA 1F, 1G, 1H) allowable sales, with the exception of sturgeon (which may not be sold or kept for subsistence purposes).

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. Some salmon and steelhead stocks in the Columbia River are listed as threatened or endangered under the federal Endangered Species Act.

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

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

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

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

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

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

Date Adopted: July 24, 2008.

J. P. Koenings
Director

NEW SECTION

WAC 220-32-05100Z 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, walleye or sturgeon for commercial purposes in Columbia River Salmon Management Catch Reporting Areas (SMCRA) 1E, 1F, 1G, and 1H, (except as provided in the following subsections) and the Wind River, White Salmon River, Klickitat River, and Drano Lake, except that individuals possessing treaty fishing rights under the Yakima, 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. Monday July 28 to 6:00 p.m. Thursday, July 31, 2008.

Open Areas: Zone 6 (SMCRA 1F, 1G, 1H).

a) Gear: No minimum mesh-size restriction.

2. Open Periods: Immediately until further notice.

a) Open Areas: Zone 6 (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 the tributaries listed below are open under lawfully enacted Yakama Nation tribal subsistence fishery regulations for enrolled Yakama Nation members, and have either commercial gillnet openings or allow platform gear in Zone 6. (SMCRA 1F, 1G, 1H).

a) Open Areas: Wind, White Salmon, and Klickitat rivers.

b) Gear: hoop nets, dip bag nets, and rod and reel with hook-and-line.

4. Open Periods: Immediately until further notice, and only under lawfully enacted Yakama Nation tribal subsistence fisheries regulations and under the conditions in the Memo of Agreement (MOA) titled "2007 Memorandum of Agreement Between the Yakama Nation and Washington Department of Fish and Wildlife Regarding Tribal Fishing Below Bonneville Dam." Is open for enrolled Yakama Nation members under lawfully enacted Yakama Nation tribal subsistence fisheries and only when it's concurrent with either commercial gillnet openings or platform gear fisheries in Zone 6 (SMCRA 1F, 1G, 1H).

a) Open Areas: (SMCRA) 1E On the Washington shoreline from 600 feet below the fish ladder at the Bonneville Dam North shore powerhouse, downstream to Beacon Rock (bank fishing only).

b) Gear: hoop nets, dip bag nets, and rod and reel with hook-and-line, consistent with Yakama Nation regulations.

5. Allowable sale includes: Chinook, sockeye, coho, steelhead, walleye, shad, and carp. Sturgeon may not be sold. Sturgeon between 42 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. Sturgeon below Bonneville Dam many not be retained.

6. **24 hour** quick reporting required for Washington wholesale dealers, WAC 220-69-240.

7. There will be no sanctuary in effect at Spring Creek National Fish Hatchery.

8. Notwithstanding the provisions of WAC 220-32-058, the closed area at the mouth of:

a) **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.

b) **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.

c) **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.

d) **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.

e) **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."

f) **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.

g) **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.

h) **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.

9. 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 errors in the above section occurred in the copy filed by the agency and appear in the Register pursuant to the requirements of RCW 34.08.040.

REPEALER

The following section of the Washington Administrative Code is repealed effective 6:00 a.m. July 28, 2008:

WAC 220-32-05100Y Columbia River salmon seasons above Bonneville Dam. (08-164)

**WSR 08-16-015
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE**

[Order 08-177—Filed July 25, 2008, 8:41 a.m., effective July 25, 2008, 8:41 a.m.]

Effective Date of Rule: Immediately.

Purpose: Amend fishing rules.

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

Statutory Authority for Adoption: RCW 77.12.047.

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

Reasons for this Finding: The 13,143 fish guideline is expected to be reached on Saturday, July 26. The previously adopted season extended through Sunday, July 27. There is insufficient time to promulgate permanent rules.

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

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

Number of Sections Adopted on the Agency's Own Initiative: New 1, Amended 0, Repealed 2.

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

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

Date Adopted: July 25, 2008.

J. P. Koenings
Director

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 232-28-61900D Exceptions to statewide rules—Columbia River sturgeon. (08-81)

The following section of the Washington Administrative Code is repealed effective 12:01 a.m. July 27, 2008:

WAC 232-28-61900L Exceptions to statewide rules—Columbia River sturgeon. (08-163)

**WSR 08-16-018
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE**

[Order 08-178—Filed July 25, 2008, 1:05 p.m., effective August 1, 2008]

Effective Date of Rule: August 1, 2008.

Purpose: Amend personal use fishing rules.

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

Statutory Authority for Adoption: RCW 77.12.047.

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

Reasons for this Finding: This regulation is needed to increase the area open to summer chinook angling in the Columbia River drainage. Summer chinook salmon returning to the Entiat River are not listed under the ESA. The 2008 return ensures that natural spawning escapement needs are satisfied; no salmon are needed to meet hatchery broodstock objectives. 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: July 25, 2008.

J. P. Koenings
Director

NEW SECTION

WAC 232-28-61900P Exceptions to statewide rules—Entiat River. Notwithstanding the provisions of WAC 232-28-619, effective August 1, through August 31, 2008, a person may fish for salmon in waters of the Entiat River from the Alternate Highway 97 Bridge, upstream to the posted sign marking the Entiat City limits. Daily limit six salmon, minimum size 12 inches, no more than two may be adults. Bull trout, coho and steelhead must be released. Non-buoyant lure restriction and night closure in effect.

REPEALER

The following section of the Washington Administrative Code is repealed effective September 1, 2008:

WAC 232-28-61900P Exceptions to statewide rules—Entiat River.

**WSR 08-16-029
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE**

[Order 08-187—Filed July 28, 2008, 4:50 p.m., effective July 28, 2008, 6:01 p.m.]

Effective Date of Rule: July 28, 2008, 6:01 p.m.

Purpose: Adopt rules for commercial salmon fishing in Puget Sound.

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

Statutory Authority for Adoption: RCW 77.12.047 and 77.04.020.

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

Reasons for this Finding: This regulation provides for Pacific Salmon Commission authorized fisheries in Areas 7 and 7A. 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: July 28, 2008.

Phil Anderson
for Jeff Koenings
Director

NEW SECTION

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

Areas 7 and 7A:

(1) **Purse Seines** - Open to purse seine gear according to the times, dates, and conditions as prescribed and listed here:

Hours	Dates
5 a.m. through 9 p.m.	July 29

(a) It is unlawful to retain Chinook, coho, and chum salmon.

(b) It is unlawful 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 WAC 220-47-325, prior to the seine net being removed from the water. All salmon must be immediately sorted, and those required to be released must be placed in an operating recovery box or released into the water before the next brail may be brought on the deck. Operators of purse seine gear must have an operational recovery box in compliance with WAC 220-47-301 (7)(a) through (f) on board to participate. However, small numbers of fish may be brought on board the vessel by pulling the net in without mechanical or hydraulic assistance.

(c) It is unlawful to fish for salmon with purse seine gear in Areas 7 and 7A unless the vessel operator has attended a "Fish Friendly" best fishing practices workshop and is in immediate possession of a department-issued certification card.

(2) **Gill Nets** - Open to gill net gear with 5-inch minimum and 5-1/2 inch maximum mesh size according to the times, dates, and conditions as prescribed and listed here:

Hours	Dates
8 a.m. through Midnight	July 29

(a) 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 immediate possession of a department-issued certification card.

(3) **Reef Nets** - Open to reef net gear according to the times, dates, and conditions as prescribed and listed here:

Hours	Dates
5 a.m. through 9 p.m.	July 29

(a) It is unlawful to retain unmarked Chinook salmon at all times, and it is unlawful to retain chum and wild coho salmon prior to October 1, 2008.

(b) It is unlawful to retain marked Chinook unless the reef net operator is in immediate possession of a Puget Sound Reef Net Logbook.

(c) It is unlawful to fish for salmon with reef net gear in Areas 7 and 7A unless the vessel operator has attended a "Fish Friendly" best fishing practices workshop and is in immediate possession of a department-issued certification card.

"Quick Reporting Fisheries":

All fisheries opened under this section, and any fishery opening under authority of the Fraser Panel for sockeye or pink salmon in Puget Sound Salmon Management and Catch Reporting Areas (WAC 220-22-030), are designated as "Quick Reporting Required" per WAC 220-47-001.

REPEALER

The following section of the Washington Administrative Code is repealed effective 12:01 a.m. July 30, 2008:

WAC 220-47-50100J Puget Sound all-citizen commercial salmon fishery—
Open periods.

**WSR 08-16-039
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE**

[Order 08-186—Filed July 29, 2008, 2:02 p.m., effective July 29, 2008, 2:02 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: 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 being 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 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: July 29, 2008.

Loreva M. Preuss
for Jeff Koenings
Director

NEW SECTION

WAC 220-77-09000F 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 to the department 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 to the department in electronic format (preferred) to ballastwater@dfw.wa.gov, or by fax to 360-902-2845.

Vessel owners and operators who rely on a third party to collect and forward ballast water reporting forms are responsible for ensuring that the department receives the ballast water management information as required in this subsection.

(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 state ANS coordinator at Department of Fish and Wildlife, 600 Capitol Way No., Olympia, WA 98501-1091. The signed letter must include the following information:

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

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

(iii) 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 and are not covered under the requirements of (a) of this subsection, must file a

ballast water reporting form as described in subsection (1) of this 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, examine ballast water management records, and 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 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 interim 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 in implementing 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.

NEW SECTION

WAC 220-77-09500D 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's 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 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 verifying 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 08-16-046

EMERGENCY RULES

DEPARTMENT OF REVENUE

[Filed July 29, 2008, 3:27 p.m., effective July 29, 2008, 3:27 p.m.]

Effective Date of Rule: Immediately.

Other Findings Required by Other Provisions of Law as Prerequisite to Adoption or Effectiveness of Rule: Emergency rule findings are required; see below.

Purpose: WAC 458-20-102 Resale certificates (Rule 102), currently explains that a resale certificate provided for multiple purchases over a period must be renewed every four years. The department is amending Rule 102 to recognize that the requirement to renew a resale certificate every four years no longer applies. As of July 1, 2008, a resale certificate continues as long as the buyer has a "recurring business relationship" with the seller, which is defined by law as making at least one purchase from the seller within a period of twelve consecutive months.

While there is no longer a requirement to renew a resale certificate if the seller can substantiate that a recurring business relationship exists, the rule also explains that it will accept a resale certificate as evidence for wholesale sales that occur within four years of the certificate's effective date without evidence of sales transactions being made once every twelve months. Some language in the existing rule has been relocated within the rule to provide the information in a more

useful manner, or eliminated as unnecessary. The sample resale certificate has been eliminated and the reader is referred to telephone information center and mailing address for a certificate to be completed.

The department is amending Rule 102 on an emergency basis at this time because the law change became effective July 1. The department has also proposed an amendment to the permanent Rule 102, filed as WSR 08-16-040.

Citation of Existing Rules Affected by this Order: Amending WAC 458-20-102 Resale certificates.

Statutory Authority for Adoption: RCW 82.32.300, 82.32.291, and 82.01.060(2).

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: An emergency adoption of Rule 102 is necessary because a permanent rule can not be adopted at this time. This rule action will provide needed instructions on resale certificates that became effective July 1, 2008, to taxpayers and department staff.

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 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 1, Repealed 0.

Date Adopted: July 29, 2008.

Alan R. Lynn
Rules Coordinator

AMENDATORY SECTION (Amending WSR 04-17-024, filed 8/9/04, effective 9/9/04)

WAC 458-20-102 Resale certificates. (1) Introduction. This (~~rule~~) section explains the conditions under which a buyer may furnish a resale certificate to a seller, and explains the information and language required on the resale certificate. This (~~rule~~) section also provides tax reporting information to persons who purchase articles or services for dual purposes (i.e., for both resale and consumption).

(a) Legislation passed in 2003. In 2003, the legislature enacted legislation conforming state law to portions of the national Streamlined Sales and Use Tax Agreement (chapter 168, Laws of 2003), which eliminates the good faith requirement when the seller takes from the buyer a resale certificate and also eliminates signature requirements for certificates

provided in a format other than paper. These changes apply to resale certificates taken on and after July 1, 2004.

(b) Legislation passed in 2007. Additional Streamlined Sales and Use Tax Agreement legislation was enacted in 2007 (chapter 6, Laws of 2007). It eliminates the provision that resale certificates are only valid for four years from the date they are issued to the seller, as long as there is a recurring business relationship between the buyer and seller. This change is effective on July 1, 2008.

(2) What is a resale certificate? The resale certificate is a document or combination of documents that substantiates the wholesale nature of a sale. The resale certificate cannot be used for purchases that are not purchases at wholesale, or where a more specific certificate, affidavit, or other documentary evidence is required by statute or other section of chapter 458-20 WAC. While the resale certificate may come in different forms, all resale certificates must satisfy the language and information requirements of RCW 82.04.470.

(a) What is the scope of a resale certificate? Depending on the statements made on the resale certificate, the resale certificate may authorize the buyer to purchase at wholesale all products or services being purchased from a particular seller, or may authorize only selected products or services to be purchased at wholesale. The provisions of the resale certificate may be limited to a single sales transaction, or may apply to all sales transactions ~~((for a period not to exceed four years from the effective date))~~ as long as the seller has a recurring business relationship with the buyer. A "recurring business relationship" means at least one sale transaction within a period of twelve consecutive months. Whatever its form and/or purpose, the resale certificate must be completed in its entirety and signed by a person who is authorized to make such a representation on behalf of the buyer.

(b) Who may issue and sign certificates? The buyer may authorize any person in its employ to issue and sign resale certificates on the buyer's behalf. The buyer is, however, responsible for the information contained on the resale certificate. A resale certificate is not required to be completed by every person ordering or making the actual purchase of articles or services on behalf of the buyer. For example, a construction company that authorizes only its bookkeeper to issue resale certificates on its behalf may authorize both the bookkeeper and a job foreman to purchase items under the provisions of the resale certificate. The construction company is not required to provide, nor is the seller required to obtain, a resale certificate signed by each person making purchases on behalf of the construction company.

The buyer is responsible for educating all persons authorized to issue and/or use the resale certificate on the proper use of the buyer's resale certificate privileges.

(3) Resale certificate renewal. Prior to July 1, 2008, resale certificates must be renewed at least every four years. ((In addition:)) As of July 1, 2008, the requirement to renew resale certificates at least every four years has been eliminated. The buyer must renew its resale certificate whenever a change in the ownership of the buyer's business requires a new tax registration. (See WAC 458-20-101 Tax registration and tax reporting.) The buyer may not make purchases under the authority of a resale certificate bearing a tax registration

number that has been cancelled or revoked by the department of revenue (department).

(4) Sales at wholesale. All sales are treated as retail sales unless the seller takes from the buyer a properly executed resale certificate. Resale certificates may only be used for sales at wholesale and may not be used as proof of entitlement to retail sales tax exemptions otherwise provided by law.

(a) When may a buyer issue a resale certificate? The buyer may issue a resale certificate only when the property or services purchased are:

(i) For resale in the regular course of the buyer's business without intervening use by the buyer;

(ii) To be used as an ingredient or component part of a new article of tangible personal property to be produced for sale;

(iii) A chemical to be used in processing an article to be produced for sale (see WAC 458-20-113 on chemicals used in processing);

(iv) To be used in processing ferrosilicon that is subsequently used in producing magnesium for sale;

(v) Provided to consumers as a part of competitive telephone service, as defined in RCW 82.04.065;

(vi) Feed, seed, seedlings, fertilizer, spray materials, or agents for enhanced pollination including insects such as bees for use in the federal conservation reserve program or its successor administered by the United States Department of Agriculture; or

(vii) Feed, seed, seedlings, fertilizer, spray materials, or agents for enhanced pollination including insects such as bees for use by a farmer for producing for sale any agricultural product. (See WAC 458-20-210 on sales to and by farmers.)

(b) Required information. All resale certificates, whether paper or nonpaper format, must contain the following information:

(i) The name and address of the buyer;

(ii) The uniform business identifier or tax registration number of the buyer, if the buyer is required to be registered with the department;

(iii) The type of business;

(iv) The categories of items or services to be purchased at wholesale, unless the buyer is in a business classification that may present a blanket resale certificate as provided by the department by rule;

(v) The date on which the certificate was provided;

(vi) A statement that the items or services purchased either are purchased for resale in the regular course of business or are otherwise purchased at wholesale; and

(vii) A statement that the buyer acknowledges that the buyer is solely responsible for purchasing within the categories specified on the certificate and that misuse of the resale certificate subjects the buyer to a penalty of fifty percent of the tax due, in addition to the tax, interest, and any other penalties imposed by law.

(c) Additional requirements for paper certificates. In addition to the requirements stated in **(b) of this subsection** ~~((4)(b) of this rule)),~~ paper certificates must contain the following:

- (i) The name of the individual authorized to sign the certificate, printed in a legible fashion;
- (ii) The signature of the authorized individual; and
- (iii) The name of the seller. RCW 82.04.470.

(5) **Seller's responsibilities** ~~((for acceptance of resale certificates))~~. When a seller receives and accepts from the buyer a resale certificate at the time of the sale, or has a resale certificate on file at the time of the sale, or obtains a resale certificate from the buyer within ~~((a reasonable time))~~ one hundred twenty days after the sale, the seller is relieved of liability for retail sales tax with respect to the sale covered by the resale certificate. The seller may accept a legible fax, a duplicate copy of an original resale certificate, or a certificate in a format other than paper. ~~((The resale certificate will be considered to be obtained within a reasonable time of the sale if it is received within one hundred twenty days of the sale or sales in question.))~~

(a) If the seller has not obtained an appropriate resale certificate or other acceptable documentary evidence (see subsection (8) of this section), the seller is personally liable for the tax due unless it can sustain the burden of proving through facts and circumstances that the property was sold for one of the purposes set forth in subsection (4)(a) of this section. The department will consider all evidence presented by the seller, including the circumstances of the sales transaction itself, when determining whether the seller has met its burden of proof. It is the seller's responsibility to provide the information necessary to evaluate the facts and circumstances of all sales transactions for which resale certificates are not obtained. Facts and circumstances that should be considered include, but are not necessarily limited to, the following:

(i) The nature of the buyer's business. The items being purchased at wholesale must be consistent with the buyer's business. For example, a buyer having a business name of "Ace Used Cars" would generally not be expected to be in the business of selling furniture;

(ii) The nature of the items sold. The items sold must be of a type that would normally be purchased at wholesale by the buyer; and

(iii) Additional documentation. Other available documents, such as purchase orders and shipping instructions, should be considered in determining whether they support a finding that the sales are sales at wholesale.

(b) If the seller is required to make payment to the department, and later is able to present the department with proper documentation or prove by facts and circumstances that the sales in question are wholesale sales, the seller may in writing request a refund of the taxes paid along with the applicable interest. Both the request and the documentation or proof that the sales in question are wholesale sales must be submitted to the department within the statutory time limitations provided by RCW 82.32.060. (See WAC 458-20-229 Refunds.) However, refer to ~~((e))~~ (f) of this subsection in event of an audit situation.

~~((a))~~ (c) Timing requirements for single orders with multiple billings. If a single order or contract will result in multiple billings to the buyer, and the appropriate resale certificate was not obtained or on file at the time the order was placed or the contract entered, the resale certificate must be received by the seller within one hundred twenty days after

the first billing ~~((to be considered obtained within a reasonable time of the sale))~~. For example, a subcontractor entering into a construction contract for which it has not received a resale certificate must obtain the certificate within one hundred twenty days of the initial construction draw request ~~((to consider the resale certificate obtained in a reasonable time after the sale))~~, even though the construction project may not be completed at that time and additional draw requests will follow.

~~((b))~~ (d) Requirements for resale certificates obtained after ((reasonable time has)) one hundred twenty days have passed. If the resale certificate is obtained more than one hundred twenty days after the sale or sales in question, the resale certificate must be specific to the sale or sales. The certificate must specifically identify the sales in question on its face, or be accompanied by other documentation signed by the buyer specifically identifying the sales in question and stating that the provisions of the accompanying resale certificate apply. A nonspecific resale certificate that is not obtained within ~~((a reasonable period of time))~~ one hundred twenty days is generally not, in and of itself, acceptable proof of the wholesale nature of the sales in question. The resale certificate and/or required documentation must be obtained within the statutory time limitations provided by RCW 82.32.050.

~~((e))~~ (e) Examples. The following examples explain the seller's documentary requirements in typical situations when obtaining a resale certificate more than one hundred twenty days after the sale. These examples should be used only as a general guide. The tax results of other situations must be determined after a review of all of the facts and circumstances.

(i) Beginning in January of year 1, MN Company regularly makes sales to ABC Inc. In June of the same year, MN discovers ABC has not provided a resale certificate. MN requests a resale certificate from ABC and, as the resale certificate will not be received within one hundred twenty days of many of the past sales transactions, requests that the resale certificate specifically identify those past sales subject to the provisions of the certificate. MN receives a legible fax copy of an original resale certificate from ABC on July 1st of that year. Accompanying the resale certificate is a memo providing a list of the invoice numbers for all past sales transactions through May 15th of that year. This memo also states that the provisions of the resale certificate apply to all past and future sales, including those listed. MN Company has satisfied the requirement that it obtain a resale certificate specific to the sales in question. ~~((As the provisions of this resale certificate apply to both past and future sales transactions, the certificate must be renewed no later than December 31st four years from the date the resale certificate became effective.))~~

(ii) XYZ Company makes three sales to MP Inc. in October of year 1 and does not charge retail sales tax. In the review of its resale certificate file in April of the following year, XYZ discovers it has not received a resale certificate from MP Inc. and immediately requests a certificate. As the resale certificate will not be received within one hundred twenty days of the sales in question, XYZ requests that MP provide a resale certificate identifying the sales in question. MP provides XYZ with a resale certificate that does not iden-

tify the sales in question, but simply states "applies to all past purchases." XYZ Company has not satisfied its responsibility to obtain an appropriate resale certificate. As XYZ failed to secure a resale certificate within a reasonable period of time, XYZ must obtain a certificate specifically identifying the sales in question or prove through other facts and circumstances that these sales are wholesale sales. (Refer to ~~((d))~~ (a) of this subsection for information on how a seller can prove through other facts and circumstances that a sale is a wholesale sale.) It remains the seller's burden to prove the wholesale nature of the sales made to a buyer if the seller has not obtained a valid resale certificate within one hundred twenty days of the sale.

~~((d))~~ **Seller's liability.** If the seller has not obtained an appropriate resale certificate or other acceptable documentary evidence (see subsection (8) of this rule), the seller is personally liable for the tax due unless it can sustain the burden of proving through facts and circumstances that the property was sold for one of the purposes set forth in subsection (4)(a) of this rule. The department will consider all evidence presented by the seller, including the circumstances of the sales transaction itself, when determining whether the seller has met its burden of proof. This evidence must be presented within the statutory time limitations provided by RCW 82.32.060. It is the seller's responsibility to provide the information necessary to evaluate the facts and circumstances of all sales transactions for which resale certificates are not obtained. Facts and circumstances that should be considered include, but are not necessarily limited to, the following:

(i) ~~The nature of the buyer's business. The items being purchased at wholesale must be consistent with the buyer's business. For example, a buyer having a business name of "Ace Used Cars" would generally not be expected to be in the business of selling furniture;~~

(ii) ~~The nature of the items sold. The items sold must be of a type that would normally be purchased at wholesale by the buyer;~~

(iii) ~~The quantity and frequency of items sold. The number of items sold and the frequency of sales must indicate that the buyer is purchasing such items at wholesale; and~~

(iv) ~~Additional documentation. Other available documents, such as purchase orders and shipping instructions, should be considered in determining whether they support a finding that the sales are sales at wholesale.~~

~~(e))~~ (f) Additional time to secure documentation (after) in audit situation. If in event of an audit the department discovers that the seller has not secured, as described in this subsection (5), the necessary resale certificates and/or documentation, the seller will generally be allowed ~~((thirty))~~ one hundred twenty days in which to obtain and present appropriate resale certificates and/or documentation, or prove by facts and circumstances the sales in question are wholesale sales. The time allotted to the seller shall commence from the date the auditor initially provides the seller with the results of the auditor's wholesale sales review. The processing of the audit report will not be delayed as a result of the seller's failure within the allotted time to secure and present appropriate documentation, or its inability to prove by facts and circumstances that the sales in question were wholesale sales. ~~((The audit report will also not be delayed because the~~

~~time allotted to the seller expires prior to one hundred twenty days from the date of the sale or sales in question.~~

~~(f) Seller's personal liability.~~ If the seller is unable to provide proper documentation, or unable to prove by facts and circumstances that the sales in question are wholesale sales, the seller becomes personally liable for the taxes in question. If the seller is required to make payment to the department, and later is able to present the department with proper documentation or prove by facts and circumstances that the sales in question are wholesale sales, the seller may in writing request a refund of the taxes paid along with the applicable interest. Both the request and the documentation or proof that the sales in question are wholesale sales must be submitted to the department within the statutory time limitations provided by RCW 82.32.060. ~~(See WAC 458-20-229.))~~

(6) **Penalty for improper use.** Any buyer who uses a resale certificate to purchase items or services without payment of sales tax and who is not entitled to use the certificate for the purchase will be assessed a penalty of fifty percent of the tax due on the improperly purchased item or service. This penalty is in addition to all other taxes, penalties, and interest due, and can be imposed even if there was no intent to evade the payment of retail sales tax. The penalty will be assessed by the department and applies only to the buyer. However, see subsection (12) of this ~~((rule))~~ section for situations in which the department may waive the penalty.

Persons who purchase articles or services for dual purposes (i.e., some for their own consumption and some for resale) should refer to subsection (11) of this ~~((rule))~~ section to determine whether they may give a resale certificate to the seller.

(7) **Resale certificate - suggested form.** While there may be different forms of the resale certificate, all resale certificates must satisfy the language and information requirements provided by RCW 82.04.470. The resale certificate ~~((may be in the suggested form shown below, which))~~ is available on the department's ~~((home page))~~ internet site at <http://dor.wa.gov>, or can be obtained by calling the department's telephone information center at 1-800-647-7706 or by writing:

Taxpayer Services
Department of Revenue
P.O. Box 47478
Olympia, WA 98504-7478

A resale certificate may be in any other form that contains substantially the ((following)) same information and language, except that certificates provided in a format other than paper are not required to include the printed name of the person authorized to sign the certificate, the signature of the authorized individual, or the name of the seller((:)).

~~((The undersigned buyer hereby certifies that the tangible personal property or services specified below will be purchased for: (a) Resale in the regular course of business without intervening use by the buyer, (b) use as an ingredient or component part of a new article of tangible personal property to be produced for sale, (c) use as a chemical to be used in processing a new article of tangible personal prop-~~

erty to be produced for sale, or (d) use as feed, seed, fertilizer, or spray materials in its capacity as a farmer as defined in chapter 82.04 RCW. This certificate shall be considered a part of each order that I may give to you on or after the effective date of this certificate, unless otherwise specified, and is valid until revoked by me in writing. This certificate is given with full knowledge that the buyer is solely responsible for purchasing within the categories specified on the certificate, and that misuse of the resale privilege claimed on the certificate is subject to the legally prescribed penalty of fifty percent of the tax due, in addition to the tax, interest, and any other penalties imposed by law.

Name of Seller..... Effective Date.....
Name of Buyer.....
Address.....
UBI/ Tax Registration #.....
Type of Business.....
Items or item categories purchased at wholesale.....
Authorized agent for buyer (printed).....
Authorized Signature.....
Title.....))

Effective July 1, 2008, buyers also have the option of using a Streamlined Sales and Use Tax Agreement Certificate of Exemption, which has been modified for Washington state laws. It can also be found on the department's internet site at http://dor.wa.gov.

(a) Buyer's responsibility to specify products or services purchased at wholesale. RCW 82.04.470 requires the buyer making purchases at wholesale to specify the kinds of products or services subject to the provisions of the resale certificate. A buyer who will purchase some of the items at wholesale, and consume and pay tax on some other items being purchased from the same seller, must use terms specific enough to clearly indicate to the seller what kinds of products or services the buyer is authorized to purchase at wholesale.

(i) The buyer may list the particular products or services to be purchased at wholesale, or provide general category descriptions of these products or services. The terms used to describe these categories must be descriptive enough to restrict the application of the resale certificate provisions to those products or services that the buyer is authorized to purchase at wholesale. The following are examples of terms used to describe categories of products purchased at wholesale, and businesses that may be eligible to use such terms on their resale certificates:

- (A) "Hardware" for use by a general merchandise or building material supply store, "computer hardware" for use by a computer retailer;
(B) "Paint" or "painting supplies" for use by a general merchandise or paint retailer, "automotive paint" for use by an automotive repair shop; and
(C) "Building materials" or "subcontract work" for use by prime contractors performing residential home construc-

tion, "wiring" or "lighting fixtures" for use by an electrical contractor.

(ii) The buyer must remit retail sales tax on any taxable product or service not listed on the resale certificate provided to the seller. If the buyer gave a resale certificate to the seller and later used an item listed on the certificate, or if the seller failed to collect the sales tax on items not listed on the certificate, the buyer must remit the deferred sales or use tax due directly to the department.

(iii) RCW 82.08.050 provides that each seller shall collect from the buyer the full amount of retail sales tax due on each retail sale. If the department finds that the seller has engaged in a consistent pattern of failing to properly charge sales tax on items not purchased at wholesale (i.e., not listed on the resale certificate), it may hold the seller liable for the uncollected sales tax.

(iv) Persons having specific questions regarding the use of terms to describe products or services purchased at wholesale may submit their questions to the department for ruling. The department may be contacted on the internet at http://dor.wa.gov/ or by writing:

Taxpayer Services
Department of Revenue
((Taxpayer Services))
P.O. Box 47478
Olympia, WA 98504-7478

(b) Blanket resale certificates. A buyer who will purchase at wholesale all of the products or services being purchased from a particular seller will not be required to specifically describe the items or item categories on the resale certificate. If the certificate form provides for a description of the products or services being purchased at wholesale ((as does the suggested form provided in this rule.)) the buyer may specify "all products and/or services" (or make a similar designation). A resale certificate completed in this manner is often described as a blanket resale certificate.

(i) The resale certificate used by the buyer must, in all cases, be completed in its entirety. A resale certificate in which the section for the description of the items being purchased at wholesale is left blank by the buyer will not be considered a properly executed resale certificate.

(ii) As of July 1, 2008, renewal or updating of blanket resale certificates is not required as long as the seller has a recurring business relationship with the buyer. A "recurring business relationship" means at least one sale transaction within a period of twelve consecutive months.

To effectively administer this provision during an audit, the department will accept a resale certificate as evidence for wholesale sales that occur within four years of the certificate's effective date without evidence of sales transactions being made once every twelve months. For sales transactions made more than four years after the date of the properly completed resale certificate, the seller must substantiate that a recurring business relationship with the buyer has occurred for any sales outside the period of more than four years after the effective date of the resale certificate.

(c) Resale certificates for single transactions. If the resale certificate is used for a single transaction, the language and information required of a resale certificate may be writ-

ten or stamped upon a purchase order or invoice. The language contained in a "single use" resale certificate should be modified to delete any reference to subsequent orders or purchases.

(d) **Examples.** The following examples explain the proper use of types of resale certificates in typical situations. These examples should be used only as a general guide. The tax status of other situations must be determined after a review of all of the facts and circumstances.

(i) ABC is an automobile repair shop purchasing automobile parts for resale and tools for its own use from DE Supply. ABC must provide DE Supply with a resale certificate limiting the certificate's application to automobile part purchases. However, should ABC withdraw parts from inventory to install in its own tow truck, deferred retail sales tax or use tax must be remitted directly to the department. The buyer has the responsibility to report deferred retail sales tax or use tax upon any item put to its own use, including items for which it gave a resale certificate and later used for its own use.

(ii) X Company is a retailer selling lumber, hardware, tools, automotive parts, and household appliances. X Company regularly purchases lumber, hardware, and tools from Z Distributing. While these products are generally purchased for resale, X Company occasionally withdraws some of these products from inventory for its own use. X Company may provide Z Distributing with a resale certificate specifying "all products purchased" are purchased at wholesale. However, whenever X Company removes any product from inventory to put to its own use, deferred retail sales tax or use tax must be remitted to the department.

(iii) TM Company is a manufacturer of electric motors. When making purchases from its suppliers, TM issues a paper purchase order. This purchase order contains the information required of a resale certificate and a signature of the person ordering the items on behalf of TM. This purchase order includes a box that, if marked, indicates to the supplier that all or certain designated items purchased are being purchased at wholesale.

When the box indicating the purchases are being made at wholesale is marked, the purchase order can be accepted as a resale certificate. As TM Company's purchase orders are being accepted as resale certificates, they must be retained by the seller for at least five years. (See WAC 458-20-254 Recordkeeping.)

(8) **Other documentary evidence.** Other documentary evidence may be used by the seller and buyer in lieu of the resale certificate form described in this ((rule)) section. However, this documentary evidence must collectively contain the information and language generally required of a resale certificate. The conditions and restrictions applicable to the use of resale certificates apply equally to other documentary evidence used in lieu of the resale certificate form in this ((rule)) section. The following are examples of documentary evidence that will be accepted to show that sales were at wholesale:

(a) **Combination of documentary evidence.** A combination of documentation kept on file, such as a membership card or application, and a sales invoice or "certificate" taken at the point of sale with the purchases listed, provided:

(i) The documentation kept on file contains all information required on a resale certificate, including, for paper certificates, the names and signatures of all persons authorized to make purchases at wholesale; and

(ii) The sales invoice or "certificate" taken at the point of sale must contain the following:

(A) Language certifying the purchase is made at wholesale, with acknowledgement of the penalties for the misuse of resale certificate privileges, as generally required of a resale certificate; and

(B) The name and registration number of the buyer/business, and, if a paper certificate, an authorized signature.

(b) **Contracts of sale.** A contract of sale that within the body of the contract provides the language and information generally required of a resale certificate. The contract of sale must specify the products or services subject to the resale certificate privileges.

(c) **Other preapproved documentary evidence.** Any other documentary evidence that has been approved in advance and in writing by the department.

(9) **Sales to nonresident buyers.** If the buyer is a nonresident who is not engaged in business in this state, but buys articles here for the purpose of resale in the regular course of business outside this state, the seller must take from the buyer a resale certificate as described in this ((rule)) section. The seller may accept a resale certificate from an unregistered nonresident buyer with the registration number information omitted, provided the balance of the resale certificate is completed in its entirety. The resale certificate should contain a statement that the items are being purchased for resale outside Washington.

(10) **Sales to farmers.** Farmers selling agricultural products only at wholesale are not required to register with the department. (See WAC 458-20-101 Tax registration and tax reporting.) When making wholesale sales to farmers (including farmers operating in other states), the seller must take from the farmer a resale certificate as described in this ((rule)) section. Farmers not required to be registered with the department may provide, and the seller may accept, resale certificates with the registration number information omitted, provided the balance of the certificates are completed in full. Persons making sales to farmers should also refer to WAC 458-20-210 (Sales of tangible personal property for farming—Sales of agricultural products by farmers).

(11) **Purchases for dual purposes.** A buyer normally engaged in both consuming and reselling certain types of tangible personal property, and not able to determine at the time of purchase whether the particular property purchased will be consumed or resold, must purchase according to the general nature of his or her business. RCW 82.08.130. If the buyer principally consumes the articles in question, the buyer should not give a resale certificate for any part of the purchase. If the buyer principally resells the articles, the buyer may issue a resale certificate for the entire purchase. For the purposes of this subsection, the term "principally" means greater than fifty percent.

(a) **Deferred sales tax liability.** If the buyer gives a resale certificate for all purchases and thereafter consumes some of the articles purchased, the buyer must set up in his or her books of account the value of the article used and remit to

the department the applicable deferred sales tax. The deferred sales tax liability should be reported under the use tax classification on the buyer's excise tax return.

(i) Buyers making purchases for dual purposes under the provisions of a resale certificate must remit deferred sales tax on all products or services they consume. If the buyer fails to make a good faith effort to remit this tax liability, the penalty for the misuse of resale certificate privileges may be assessed. This penalty will apply to the unremitted portion of the deferred sales tax liability.

A buyer will generally be considered to be making a good faith effort to report its deferred sales tax liability if the buyer discovers a minimum of eighty percent of the tax liability within one hundred twenty days of purchase, and remits the full amount of the discovered tax liability upon the next excise tax return. However, if the buyer does not satisfy this eighty percent threshold and can show by other facts and circumstances that it made a good faith effort to report the tax liability, the penalty will not be assessed. Likewise, if the department can show by other facts and circumstances that the buyer did not make a good faith effort in remitting its tax liability the penalty will be assessed, even if the eighty percent threshold is satisfied.

(ii) The following example illustrates the use of a resale certificate for dual-use purchases. This example should be used only as a general guide. The tax status of other situations must be determined after a review of all of the facts and circumstances. BC Contracting operates both as a prime contractor and speculative builder of residential homes. BC Contracting purchases building materials from Seller D that are principally incorporated into projects upon which BC acts as a prime contractor. BC provides Seller D with a resale certificate and purchases all building materials at wholesale. BC must remit deferred sales tax upon all building materials incorporated into the speculative projects to be considered to be properly using its resale certificate privileges. The failure to make a good faith effort to identify and remit this tax liability may result in the assessment of the fifty percent penalty for the misuse of resale certificate privileges.

(b) **Tax paid at source deduction.** If the buyer has not given a resale certificate, but has paid retail sales tax on all articles of tangible personal property and subsequently resells a portion of the articles, the buyer must collect the retail sales tax from its retail customers as provided by law. When reporting these sales on the excise tax return, the buyer may then claim a deduction in the amount the buyer paid for the property resold.

(i) This deduction may be claimed under the retail sales tax classification only. It must be identified as a "taxable amount for tax paid at source" deduction on the deduction detail worksheet, which must be filed with the excise tax return. Failure to properly identify the deduction may result in the disallowance of the deduction. When completing the local sales tax portion of the tax return, the deduction must be computed at the local sales tax rate paid to the seller, and credited to the seller's tax location code.

(ii) The following example illustrates the tax paid at source deduction on or after July 1, 2008. This example should be used only as a general guide. The tax status of other situations must be determined after a review of all of the facts

and circumstances. Seller A is located in Spokane, Washington and purchases equipment parts for dual purposes from a supplier located in Seattle, Washington. The supplier ships the parts to Spokane. Seller A does not issue a resale certificate for the purchase, and remits retail sales tax to the supplier at the ((~~Seattle~~)) Spokane tax rate. A portion of these parts are sold and shipped to Customer B in Kennewick, with retail sales tax collected at the ((~~Spokane~~)) Kennewick tax rate. Seller A must report the amount of the sale to Customer B on its excise tax return, compute the local sales tax liability at the ((~~Spokane~~)) Kennewick rate, and code this liability to the location code for ((~~Spokane (3210)~~)) Kennewick (0302). Seller A would claim the tax paid at source deduction for the cost of the parts resold to Customer B, compute the local sales tax credit at the ((~~Seattle~~)) Spokane rate, and code this deduction amount to the location code for ((~~Seattle (1726)~~)) Spokane (3210).

(ii) Claim for deduction will be allowed only if the taxpayer keeps and preserves records in support of the deduction that show the names of the persons from whom such articles were purchased, the date of the purchase, the type of articles, the amount of the purchase and the amount of tax that was paid.

(iv) Should the buyer resell the articles at wholesale, or under other situations where retail sales tax is not to be collected, the claim for the tax paid at source deduction on a particular excise tax return may result in a credit. In such cases, the department will issue a credit notice that may be used against future tax liabilities. However, a taxpayer may request in writing a refund from the department.

(12) **Waiver of penalty for resale certificate misuse.** The department may waive the penalty imposed for resale certificate misuse upon finding that the use of the certificate to purchase items or services by a person not entitled to use the certificate for that purpose was due to circumstances beyond the control of the buyer. However, the use of a resale certificate to purchase items or services for personal use outside of the business does not qualify for the waiver or cancellation of the penalty. The penalty will not be waived merely because the buyer was not aware of either the proper use of the resale certificate or the penalty. In all cases the burden of proving the facts is upon the buyer.

(a) **Considerations for waiver.** Situations under which a waiver of the penalty will be considered by the department include, but are not necessarily limited to, the following:

(i) The resale certificate was properly used to purchase products or services for dual purposes; or the buyer was eligible to issue the resale certificate; and the buyer made a good faith effort to discover all of its deferred sales tax liability within one hundred twenty days of purchase; and the buyer remitted the discovered tax liability upon the next excise tax return. (Refer to subsection (11)(a)(i) of this ((~~rule~~)) section for an explanation of what constitutes "good faith effort.")

(ii) The certificate was issued and/or purchases were made without the knowledge of the buyer, and had no connection with the buyer's business activities. However, the penalty for the misuse of resale certificate privileges may be applied to the person actually issuing and/or using the resale certificate without knowledge of the buyer.

(b) **One-time waiver of penalty for inadvertent or unintentional resale certificate misuse.** The penalty prescribed for the misuse of the resale certificate may be waived or cancelled on a one time only basis if such misuse was inadvertent or unintentional, and the item was purchased for use within the business. If the department does grant a one time waiver of the penalty, the buyer will be provided written notification at that time.

(c) **Examples.** The following are examples of typical situations where the fifty percent penalty for the misuse of resale privileges will or will not be assessed. These examples should be used only as a general guide. The tax status of other situations must be determined after a review of all of the facts and circumstances.

(i) ABC Manufacturing purchases electrical wiring and tools from X Supply. The electrical wiring is purchased for dual purposes, i.e., for resale and for consumption, with more than fifty percent of the wiring purchases becoming a component of items that ABC manufactures for sale. ABC Manufacturing issues a resale certificate to X Supply specifying "electrical wiring" as the category of items purchased for resale. ABC regularly reviews its purchases and remits deferred sales tax upon the wiring it uses as a consumer.

ABC is subsequently audited by the department and it is discovered that ABC Manufacturing failed to remit deferred sales tax upon three purchases of wiring for consumption. The unreported tax liability attributable to these three purchases is less than five percent of the total deferred sales tax liability for wiring purchases made from X Supply. It is also determined that the failure to remit deferred sales tax upon these purchases was merely an oversight. The fifty percent penalty for the misuse of resale certificate privileges does not apply, even though ABC failed to remit deferred sales tax on these purchases. The resale certificate was properly issued, and ABC remitted to the department more than eighty percent of the deferred sales tax liability for wiring purchases from X Supply.

(ii) During a routine audit examination of a jewelry store, the department discovers that a dentist has provided a resale certificate for the purchase of a necklace. This resale certificate indicates that in addition to operating a dentistry practice, the dentist also sells jewelry. The resale certificate contains the information required under RCW 82.04.470.

Upon further investigation, the department finds that the dentist is not engaged in selling jewelry. The department will look to the dentist for payment of the applicable retail sales tax. In addition, the dentist will be assessed the fifty percent penalty for the misuse of resale certificate privileges. The penalty will not be waived or cancelled as the dentist misused the resale certificate privileges to purchase a necklace for personal use.

(iii) During a routine audit examination of a computer dealer, it is discovered that a resale certificate was obtained from a bookkeeping service. The resale certificate was completed in its entirety and accepted by the dealer. Upon further investigation it is discovered that the bookkeeping service had no knowledge of the resale certificate, and had made no payment to the computer dealer. The employee who signed the resale certificate had purchased the computer for personal

use, and had personally made payment to the computer dealer.

The fifty percent penalty for the misuse of the resale certificate privileges will be waived for the bookkeeping service. The bookkeeping service had no knowledge of the purchase or unauthorized use of the resale certificate. However, the department will look to the employee for payment of the taxes and the fifty percent penalty for the misuse of resale certificate privileges.

(iv) During an audit examination it is discovered that XYZ Corporation, a duplicating company, purchased copying equipment for its own use. XYZ Corporation issued a resale certificate to the seller despite the fact that XYZ does not sell copying equipment. XYZ also failed to remit either the deferred sales or use tax to the department. As a result of a previous investigation by the department, XYZ had been informed in writing that retail sales and/or use tax applied to all such purchases. The fifty percent penalty for the misuse of resale certificate privileges will be assessed. XYZ was not eligible to provide a resale certificate for the purchase of copying equipment, and had previously been so informed. The penalty will apply to the unremitted deferred sales tax liability.

(v) AZ Construction issued a resale certificate to a building material supplier for the purchase of "pins" and "loads." The "pins" are fasteners that become a component part of the finished structure. The "load" is a powder charge that is used to drive the "pin" into the materials being fastened together. AZ Construction is informed during the course of an audit examination that it is considered the consumer of the "loads" and may not issue a resale certificate for its purchase thereof. AZ Construction indicates that it was unaware that a resale certificate could not be issued for the purchase of "loads," and there is no indication that AZ Construction had previously been so informed.

The failure to be aware of the proper use of the resale certificate is not generally grounds for waiving the fifty percent penalty for the misuse of resale certificate privileges. However, AZ Construction does qualify for the "one time only" waiver of the penalty as the misuse of the resale certificate privilege was unintentional and the "loads" were purchased for use within the business.

WSR 08-16-047
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 08-189—Filed July 29, 2008, 4:19 p.m., effective July 30, 2008, 12:01 a.m.]

Effective Date of Rule: July 30, 2008, 12:01 a.m.

Purpose: Amend commercial fishing rules.

Citation of Existing Rules Affected by this Order:
Repealing WAC 220-47-50100K.

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 for Pacific Salmon Commission authorized sockeye-targeted fisheries in Areas 7 and 7A. 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: July 29, 2008.

J. P. Koenings
Director

NEW SECTION

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

Areas 7 and 7A:

(1) **Purse Seines** - Open to purse seine gear according to the times, dates, and conditions as prescribed and listed here:

Hours	Dates
5 a.m. through 9 p.m.	July 30
5 a.m. through 9 p.m.	July 31

(a) It is unlawful to retain Chinook, coho, and chum salmon.

(b) It is unlawful 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 WAC 220-47-325, prior to the seine net being removed from the water. All salmon must be immediately sorted, and those required to be released must be placed in an operating recovery box or released into the water before the next brail may be brought on the deck. Operators of purse seine gear must have an operational recovery box in compliance with WAC 220-47-301 (7)(a) through (f) on board to participate. However, small numbers of fish may be brought on board the

vessel by pulling the net in without mechanical or hydraulic assistance.

(c) It is unlawful to fish for salmon with purse seine gear in Areas 7 and 7A unless the vessel operator has attended a "Fish Friendly" best fishing practices workshop and is in immediate possession of a department-issued certification card.

(2) **Gill Nets** - Open to gill net gear with 5-inch minimum and 5-1/2 inch maximum mesh size according to the times, dates, and conditions as prescribed and listed here:

Hours	Dates
8 a.m. through 11:59 p.m.	July 30
8 a.m. through 11:59 p.m.	July 31

(a) 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 immediate possession of a department-issued certification card.

(3) **Reef Nets** - Open to reef net gear according to the times, dates, and conditions as prescribed and listed here:

Hours	Dates
5 a.m. through 9 p.m.	July 30
5 a.m. through 9 p.m.	July 31

(a) It is unlawful to retain unmarked Chinook salmon at all times, and it is unlawful to retain chum and wild coho salmon prior to October 1, 2008.

(b) It is unlawful to retain marked Chinook unless the reef net operator is in immediate possession of a Puget Sound Reef Net Logbook.

(c) It is unlawful to fish for salmon with reef net gear in Areas 7 and 7A unless the vessel operator has attended a "Fish Friendly" best fishing practices workshop and is in immediate possession of a department-issued certification card.

"Quick Reporting Fisheries":

All fisheries opened under this section, and any fishery opening under authority of the Fraser Panel for sockeye or pink salmon in Puget Sound Salmon Management and Catch Reporting Areas (WAC 220-22-030), are designated as "Quick Reporting Required" per WAC 220-47-001.

REPEALER

The following section of the Washington Administrative Code is repealed effective 12:01 a.m. August 1, 2008:

WAC 220-47-50100K	Puget Sound all-citizen commercial salmon fishery—Open periods.
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**WSR 08-16-050
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE**

[Order 08-185—Filed July 30, 2008, 9:41 a.m., effective August 1, 2008]

Effective Date of Rule: August 1, 2008.

Purpose: Amend fishing rules.

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

Statutory Authority for Adoption: RCW 77.12.047.

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

Reasons for this Finding: Significant numbers of harvestable white sturgeon remain on the guideline for the Columbia River above the Wauna power lines, providing for additional opportunity for white sturgeon retention 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: July 30, 2008.

J. P. Koenings
Director

NEW SECTION

WAC 232-28-61900R Exceptions to statewide rules—Columbia River sturgeon. Notwithstanding the provisions of WAC 232-28-619, effective August 1 through September 30, 2008, it is unlawful to retain sturgeon caught in those waters of the Columbia River and tributaries from the Wauna powerlines upstream to Bonneville Dam, and all adjacent Washington tributaries, except that a person may fish for and retain white sturgeon on Thursdays, Fridays, Saturdays and Sundays.

REPEALER

The following section of the Washington Administrative Code is repealed effective 12:01 a.m. October 1, 2008:

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

**WSR 08-16-069
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE**

[Order 08-188—Filed July 31, 2008, 11:29 a.m., effective July 31, 2008, 11:29 a.m.]

Effective Date of Rule: Immediately.

Purpose: Amend commercial fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-24-04000L and 220-24-04000M; 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: Harvestable salmon remain of the North of Falcon quota 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 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: July 31, 2008.

Phil Anderson
for Jeff Koenings
Director

NEW SECTION

WAC 220-24-04000M 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 2 through August 5, 2008;

August 9 through August 12, 2008;

August 16 through August 19, 2008;

August 23 through August 26, 2008;

August 30 through September 2, 2008;

September 6 through September 9, 2008;

September 13 through September 16, 2008.

(2) The Cape Flattery and Columbia River Control Zones are closed. Mandatory Yelloweye Rockfish Conservation Area is closed.

(3) Landing and possession limit of 50 Chinook per boat per entire open period for openings through September 16 for catch areas 1, 2, 3, and 4.

(4) Landing and possession limit of 25 Coho per boat per entire open period for openings from through September 16 for catch area 1, 2, 3, and 4.

(5) 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. No chum retention north of Cape Flattery in August and September.

(6) Lawful troll gear is restricted to 6 inch plugs or longer with single point, single shank barbless hooks only.

(7) Fishers must land and deliver their catch within 24 hours of any fishery closure provided for in this section, and vessels fishing or in possession of salmon while fishing north of Leadbetter Point must land and deliver their fish within the area and North of Leadbetter point. Vessels fishing or in possession of salmon while fishing south of Leadbetter Point must land and deliver their fish within the area and south of Leadbetter Point.

(8) 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.

(9) Columbia Control Zone - An area at the Columbia River mouth, bounded on the west by a line running northeast/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.

(10) Mandatory Yelloweye Rockfish Conservation Area - The area is closed in Washington in 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.

(11) 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.

(12) 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 errors in the above section occurred in the copy filed by the agency and appear in the Register pursuant to the requirements of RCW 34.08.040.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 220-24-04000L All-citizen commercial salmon troll. (08-152)

The following section of the Washington Administrative Code is repealed, effective 12:01 a.m. September 18, 2008:

WAC 220-24-04000M All-citizen commercial salmon troll.

WSR 08-16-070

EMERGENCY RULES

DEPARTMENT OF

FISH AND WILDLIFE

[Order 08-184—Filed July 31, 2008, 12:54 p.m., effective July 31, 2008, 12:54 p.m.]

Effective Date of Rule: Immediately.

Purpose: Amend commercial fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-52-05100Z; 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 2008 state/tribal shrimp harvest management plans for the Strait of Juan de Fuca and north Puget Sound require adoption of harvest seasons and the prohibition on night time fishing contained in this emergency rule. This emergency rule closes the pot fishery season for shrimp in Shrimp Management Area 1A, 1C, 2W and Catch Area 26B-1 because the spot shrimp quotas have been harvested in those areas, then opens the shrimp fishery in 1B for four days with one hundred fifty pound limit. 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: July 31, 2008.

J. P. Koenings
Director

NEW SECTION

WAC 220-52-05100A 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 1A, 1C, 2E, 2W, 3, 4, and 6 are open to the harvest of all shrimp species effective immediately, until further notice, except as provided for in this section:

(i) All waters of Shrimp Management Area 23AE and the Discovery Bay Shrimp District are closed.

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

(iii) Effective 1:00 p.m. August 1, 2008, all waters of Catch Area 26B-1 are closed to the harvest of all shrimp species.

(iv) Effective 9:00 p.m., August 3, 2008, all waters of Shrimp Management Area 1A are closed to the harvest of all shrimp species.

(v) Effective 5:00 a.m., August 4, 2008 until 6:00 p.m., August 7, 2008, all waters of Shrimp Management Area 1B are open to the harvest of all Shrimp species.

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

(c) Effective 5:00 a.m., August 4, 2008 until 6:00 p.m., August 7, 2008, it is unlawful for the combined total harvest

of spot shrimp by a fisher and/or the fisher's alternate operator to exceed 150 pounds in Shrimp Management Area 1B.

(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 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.

(f) 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 shellfish pots may be set in a new fishing area subsequent to making a report as indicated in Section 1(e) above.

(2) Shrimp beam trawl gear:

(a) 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.

(b) That portion of Catch Area 22A within Shrimp Management Area 1B is open immediately, until further notice.

(c) That portion of Catch Area 21A within Shrimp Management Area 1B is 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 220-52-05100Z Puget Sound shrimp pot and beam trawl fishery. (08-179)

WSR 08-16-083
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 08-190—Filed August 1, 2008, 1:39 p.m., effective August 2, 2008]

Effective Date of Rule: August 2, 2008.

Purpose: Amend personal use fishing rules.

Citation of Existing Rules Affected by this Order:

Repealing WAC 232-28-61900S; and amending WAC 232-28-619.

Statutory Authority for Adoption: RCW 77.12.047.

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

Reasons for this Finding: The upper Columbia River summer chinook and sockeye returns at Wells Dam are 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 1, 2008.

Loreva M. Preuss
for Jeff Koenings
Director

NEW SECTION

WAC 232-28-61900S Exceptions to statewide rules—Okanogan and Similkameen rivers. Notwithstanding the provisions of WAC 232-28-619, effective August 2 through September 15, 2008, 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 at Oroville. Daily limit of six salmon, minimum size 12 inches, no more than two adults. Bull trout, steelhead and coho must be released. Night closure and non-buoyant lure restriction in effect. Effective September 1 through September 15, 2008, in those waters upstream of the highway bridge in Malott, statewide gamefish rules are in effect, except release all trout.

(2) Similkameen River (Okanogan Co.) Those waters from the mouth upstream to the Highway 7 Bridge at Oroville. Daily limit of six salmon, minimum size 12 inches, no more than two adults. Bull trout, steelhead and coho must be released. Night closure and non-buoyant lure restriction in effect.

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 12:01 a.m. September 16, 2008:

WAC 232-28-61900S	Exceptions to statewide rules—Okanogan and Similkameen rivers
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WSR 08-16-116
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 08-191—Filed August 5, 2008, 2:15 p.m., effective August 6, 2008]

Effective Date of Rule: August 6, 2008.

Purpose: Amend personal use 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: To date, more than 24,000 fish have been counted at Tumwater Dam on the Wenatchee River. At least 1,000 fish are available above the natural spawning escapement goal of 23,000 fish. 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: August 5, 2008.

Phil Anderson
for Jeff Koenings
Director

NEW SECTION

WAC 232-28-61900T Exceptions to statewide rules—Lake Wenatchee. Notwithstanding the provisions of WAC 232-28-619, effective August 6, 2008 until further notice, a person may fish for salmon in Lake Wenatchee. Daily limit two sockeye, minimum size 12 inches in length. Selective Gear Rules in effect for all species, except fishing from a boat equipped with a motor allowed. Colored tagged sockeye, bull trout, steelhead and Chinook must be released. Night closure in effect.

**WSR 08-16-130
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE**

[Order 08-192—Filed August 6, 2008, 9:02 a.m., effective August 6, 2008, 9:02 a.m.]

Effective Date of Rule: Immediately.

Purpose: Amend commercial fishing rules.

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

Statutory Authority for Adoption: RCW 77.12.047.

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

Reasons for this Finding: The 2008 state/tribal shrimp harvest management plans for the Strait of Juan de Fuca and north Puget Sound require adoption of harvest seasons and the prohibition on night time fishing contained in this emergency rule. This emergency rule closes the pot fishery season for shrimp in Catch Area 26A-W because the spot shrimp quota has been harvested in that 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 Mak-

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

Date Adopted: August 6, 2008.

Phil Anderson
for Jeff Koenings
Director

NEW SECTION

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

(1) Shrimp pot gear:

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

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

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

(iii) Effective 12:00 p.m. August 6, 2008, all waters of Catch Area 23A-W are closed to the harvest of all shrimp species.

(iv) Effective immediately, until 6:00 p.m., August 7, 2008, all waters of Shrimp Management Area 1B are open to the harvest of all Shrimp species.

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

(c) Effective immediately, until 6:00 p.m., August 7, 2008, it is unlawful for the combined total harvest of spot shrimp by a fisher and/or the fisher's alternate operator to exceed 150 pounds in Shrimp Management Area 1B.

(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 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.

(f) 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 shellfish pots may be set in a new fishing area subsequent to making a report as indicated in Section 1(e) above.

(2) Shrimp beam trawl gear:

(a) 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.

(b) That portion of Catch Area 22A within Shrimp Management Area 1B is open immediately, until further notice.

(c) That portion of Catch Area 21A within Shrimp Management Area 1B is 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 220-52-05100A Puget Sound shrimp pot and beam trawl fishery. (08-184)