

**WSR 08-18-006**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**

[Order 08-214—Filed August 21, 2008, 4:47 p.m., effective August 25, 2008, 12:01 a.m.]

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

Purpose: The purpose of this rule making is to allow nontreaty recreational fishing opportunity in the Columbia River while protecting fish 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 232-28-619.

Statutory Authority for Adoption: RCW 77.04.130, 77.12.045, and 77.12.047.

Other Authority: *United States v. Oregon*, Civil No. 68-513-KI (D. Or.), Order Adopting 2008-2017 *United States v. Oregon Management Agreement* (Aug. 12, 2008) (Doc. No. 2546); *Northwest Gillnetters Ass'n v. Sandison*, 95 Wn.2d 638, 628 P.2d 800 (1981); Washington fish and wildlife commission policies concerning Columbia River fisheries; 40 Stat. 515 (Columbia River compact).

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

Reasons for this Finding: Washington and Oregon jointly regulate Columbia River fisheries under the congressionally ratified Columbia River compact. Four Indian tribes have treaty fishing rights in the Columbia River. The treaties preempt state regulations that fail to allow the tribes an opportunity to take a fair share of the available fish, and the states must manage other fisheries accordingly. *Sohappy v. Smith*, 302 F. Supp. 899 (D. Or. 1969). A federal court order sets the current parameters for sharing between treaty Indians and others. *United States v. Oregon*, Civil No. 68-513-KI (D. Or.), Order Adopting 2008-2017 *United States v. Oregon Management Agreement* (Aug. 12, 2008) (Doc. No. 2546).

Some Columbia River Basin salmon and steelhead stocks are listed as threatened or endangered under the federal Endangered Species Act. On May 5, 2008, the National Marine Fisheries Service issued a biological opinion under 16 U.S.C. § 1536 that allows for some incidental take of these species in treaty and nontreaty Columbia River fisheries governed by the 2008-2017 *U.S. v. Oregon* management agreement. The Washington and Oregon fish and wildlife commissions have developed policies to guide the implementation of such biological opinions in the states' regulation of nontreaty fisheries.

Columbia River nontreaty fisheries are monitored very closely to ensure compliance with federal court orders, the Endangered Species Act, and commission guidelines. Because conditions change rapidly, the fisheries are managed almost exclusively by emergency rule. Representatives from the Washington (WDFW) and Oregon (ODFW) departments of fish and wildlife convene public hearings and take public testimony when considering proposals for new emergency rules. WDFW and ODFW then adopt regulations reflecting agreements reached.

The Buoy 10 fishery is expected to achieve the catch and/or Upriver Bright allocation by Sunday, August 24. There is insufficient time to promulgate permanent regulations.

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

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

Number of Sections Adopted on the Agency's Own Initiative: New 1, Amended 0, Repealed 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 21, 2008.

Phil Anderson  
for Jeff Koenings  
Director

NEW SECTION

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

**Columbia River - Buoy 10 Fishery:**

1) From Buoy 10 upstream to the Rocky Point/Tongue Point line (except for those waters closed under permanent regulations): Effective August 25, 2008 until further notice, release all Chinook.

**WSR 08-18-015**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**

[Order 08-212—Filed August 22, 2008, 3:58 p.m., effective August 24, 2008, 12:01 a.m.]

Effective Date of Rule: August 24, 2008, 12:01 a.m.

Purpose: Amend fishing rules.

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

Statutory Authority for Adoption: RCW 77.12.047.

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

Reasons for this Finding: This rule conforms to federal action taken by Pacific Fisheries Management Council. There is sufficient recreational quota to provide for this fishing day. There is insufficient time to promulgate permanent rules.

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

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

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

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

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

Date Adopted: August 22, 2008.

Phil Anderson  
for Jeff Koenings  
Director

#### NEW SECTION

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

(a) Catch Record Area 1 - Open 12:01 a.m. through 11:59 p.m. August 29, 2008. It is unlawful during any vessel trip to bring into port or land bottomfish except sablefish or Pacific Cod if the vessel has brought halibut into port or landed halibut during that trip.

(b) Catch Record Card Area 2 - Closed - except waters from 47°25.00'N. latitude (Queets River) south to 46°58.00'N latitude and east of 124°30.00'W longitude, open until further notice, 12:01 a.m. through 11:59 p.m., Fridays and Saturdays.

(c) Catch Record Card Areas 3 and 4 - Open only 12:01 a.m. through 11:59 p.m. August 29, 2008, shoreward of a line approximating 30 fathoms from the Bonilla-Tatoosh line, south to the Queets River as described by the following coordinates and all of Area 4 East of the Bonilla-Tatoosh Line.

48°24.79'N.lat.;124°44.07'W.long.;

48°24.80'N.lat.;124°44.74'W.long.;

48°23.94'N.lat.;124°44.70'W.long.;

48°23.51'N.lat.;124°45.01'W.long.;

48°22.59'N.lat.;124°44.97'W.long.;

48°21.75'N.lat.;124°45.26'W.long.;

48°21.23'N.lat.;124°47.78'W.long.;

48°20.32'N.lat.;124°49.53'W.long.;

48°16.72'N.lat.;124°51.58'W.long.;

48°10.00'N.lat.;124°52.58'W.long.;

48°05.63'N.lat.;124°52.91'W.long.;

47°56.25'N.lat.;124°52.57'W.long.;

47°40.28'N.lat.;124°40.07'W.long.;

47°31.70'N.lat.;124°37.03'W.long.;

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

#### REPEALER

The following section of the Washington Administrative Code is repealed effective 12:01 a.m. August 24, 2008:

WAC 220-56-25500L Halibut—Seasons—Daily and possession limits. (08-199)

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

WAC 220-56-25500M Halibut—Seasons—Daily and possession limits.

### **WSR 08-18-017 EMERGENCY RULES DEPARTMENT OF FISH AND WILDLIFE**

[Order 08-213—Filed August 25, 2008, 9:13 a.m., effective August 24, 2008, 11:00 p.m.]

Effective Date of Rule: August 24, 2008, 11:00 p.m.

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

Citation of Existing Rules Affected by this Order: Repealing WAC 220-33-01000N; and amending WAC 220-33-010.

Statutory Authority for Adoption: RCW 77.04.130, 77.12.045, and 77.12.047.

Other Authority: *United States v. Oregon*, Civil No. 68-513-KI (D. Or.), Order Adopting 2008-2017 *United States v. Oregon Management Agreement* (Aug. 12, 2008) (Doc. No. 2546); *Northwest Gillnetters Ass'n v. Sandison*, 95 Wn.2d 638, 628 P.2d 800 (1981); Washington fish and wildlife com-

mission policies concerning Columbia River fisheries; 40 Stat. 515 (Columbia River compact).

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

Reasons for this Finding: Sets additional mainstem commercial fishing periods for the early fall season, as available salmon remain on the guideline for this 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 and August 21, 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 2008-2017 *United States v. Oregon Management Agreement* (Aug. 12, 2008) (Doc. No. 2546).

Some Columbia River Basin salmon and steelhead stocks are listed as threatened or endangered under the federal Endangered Species Act. On May 5, 2008, the National Marine Fisheries Service issued a biological opinion under 16 U.S.C. § 1536 that allows for some incidental take of these species in treaty and nontreaty Columbia River fisheries governed by the 2008-2017 *U.S. v. Oregon Management Agreement*. The Washington and Oregon fish and wildlife commissions have developed policies to guide the implementation of such 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 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: August 22, 2008.

Phil Anderson  
for Jeff Koenings  
Director

## NEW SECTION

**WAC 220-33-01000P 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. Mainstem Columbia River**

a. SEASON: 11:00 p.m. August 24 to 5:00 a.m. August 25, 2008; 11:00 p.m. August 26 to 5:00 a.m. August 27, 2008.

b. AREA: SMCRA 1D, 1E (Zones 4-5)

c. GEAR: 9-inch minimum mesh size. Drift gillnets only. Monofilament gear is allowed.

d. SANCTUARIES: Lewis-B, Washougal and Sandy Rivers.

e. ALLOWABLE SALES: 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 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.

f. OTHER: 12 hour Quick reporting required for Washington wholesale dealers, WAC 220-69-240. When quick reporting is required, Columbia River reports must be submitted within 12 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 Oregon shore. An area closure of about a 100-foot radius at the

mouth of Big Creek defined by markers. All waters in Knappa Slough are under concurrent jurisdiction.

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.

d. 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 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 11:00 p.m. August 24, 2008:

WAC 220-33-01000N Columbia River season  
below Bonneville. (08-204)

**WSR 08-18-020  
EMERGENCY RULES  
DEPARTMENT OF  
FISH AND WILDLIFE**

[Order 08-215—Filed August 25, 2008, 4:23 p.m., effective August 26,  
2008, 12:01 a.m.]

Effective Date of Rule: August 26, 2008, 12:01 a.m.

Purpose: Amend personal use fishing rules.

Citation of Existing Rules Affected by this Order:  
Repealing WAC 232-28-62000Q; and amending WAC 232-28-620.

Statutory Authority for Adoption: RCW 77.12.047.

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

Reasons for this Finding: Harvestable fish remain in the ocean quota for Marine Areas 2, 3 and Washington state waters in Marine Area 4. There is insufficient time to promulgate permanent rules.

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

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

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

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

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

Date Adopted: August 25, 2008.

J. P. Koenings  
Director

### NEW SECTION

**WAC 232-28-62000R Coastal salmon seasons.** Notwithstanding the provisions of WAC 232-28-620, effective 12:01 a.m. August 26, 2008, until further notice, it is unlawful to fish for salmon in coastal waters except as provided for in this section, provided that unless otherwise amended, all permanent rules remain in effect:

(1) **Area 1:** Closed.

(2) **Areas 2, 2-1, and 2-2:**

(a) Area 2:

(i) Open until further notice: Open seven days a week, daily limit 2 salmon, except release wild coho.

(b) Area 2-1:

(i) Open until further notice: Open seven days a week, daily limit 6 salmon, not more than three of which may be adult salmon, and of which only 2 may be Chinook.

(c) Area 2-2 west of the Buoy 13 line: closed.

(d) Those waters within a line from the lighthouse 1 mile south of the south jetty to Buoy No. 2, then to Buoy No. 3, then to the tip of the north jetty, and then to the exposed end of the south jetty, are closed until further notice.

(3) **Area 3:**

(a) Open until further notice: Open seven days a week, daily limit 2 salmon, except release wild coho.

(4) **Area 4 West of the Bonilla-Tatoosh Line:** Closed.

(5) **Area 4 East of the Bonilla-Tatoosh Line:**

(a) Open until further notice; open seven days a week, daily limit 2 salmon.

(i) Release Chinook, chum and wild coho.

### REPEALER

The following section of the Washington Administrative Code is repealed, effective 12:01 a.m. August 26, 2008:

WAC 232-28-62000Q Coastal salmon seasons—  
2008 North of Falcon. (08-  
205)

**WSR 08-18-024**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**

[Order 08-216—Filed August 26, 2008, 4:19 p.m., effective August 26,  
2008, 4:19 p.m.]

Effective Date of Rule: Immediately.

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

wildlife commission policy guidance for Columbia River fisheries.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-33-01000P; and amending WAC 220-33-010.

Statutory Authority for Adoption: RCW 77.04.130, 77.12.045, and 77.12.047.

Other Authority: *United States v. Oregon*, Civil No. 68-513-KI (D. Or.), Order Adopting 2008-2017 *United States v. Oregon Management Agreement* (Aug. 12, 2008) (Doc. No. 2546); *Northwest Gillnetters Ass'n v. Sandison*, 95 Wn.2d 638, 628 P.2d 800 (1981); Washington fish and wildlife commission policies concerning Columbia River fisheries; 40 Stat. 515 (Columbia River compact).

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

Reasons for this Finding: Rescinds the mainstem commercial fishery scheduled for the evening of August 26. The chinook allocation guideline for August mainstem commercial fisheries has been met. Modifies the allowable maximum mesh size in the Blind Slough/Knappa Slough area to allow for chinook harvest. Harvestable fish are available in the select areas. 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 and August 26, 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 2008-2017 *United States v. Oregon Management Agreement* (Aug. 12, 2008) (Doc. No. 2546).

Some Columbia River Basin salmon and steelhead stocks are listed as threatened or endangered under the federal Endangered Species Act. On May 5, 2008, the National Marine Fisheries Service issued a biological opinion under 16 U.S.C. § 1536 that allows for some incidental take of these species in treaty and nontreaty Columbia River fisheries governed by the 2008-2017 *U.S. v. Oregon Management Agreement*. The Washington and Oregon fish and wildlife commissions have developed policies to guide the implementation of such 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 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: August 26, 2008.

J. P. Koenings  
Director

## NEW SECTION

**WAC 220-33-01000Q 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. Blind Slough/Knapka 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 Knapka Slough fishing area includes all waters bounded by a line from the north marker at the mouth of Blind Slough, westerly to a marker on Karlson Island, downstream to boundary lines defined by markers on the west end of Minaker Island, to markers on Karlson Island and the Oregon shore. An area closure of about a 100-foot radius at the mouth of Big Creek defined by markers. All waters in Knapka Slough are under concurrent jurisdiction.

c. GEAR: 9 3/4"-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 addi-

tional weights or anchors attached directly to the lead line is allowed.

### 2. 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.

### 3. 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.

4. ALLOWABLE SALES: Applies to all seasons stated in items 1-3 (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 stur-

geon taken in excess of any commercial catch or possession limits prescribed by department rule.

### REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 220-33-01000P Columbia River season below Bonneville. (08-213)

**WSR 08-18-025**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**SOCIAL AND HEALTH SERVICES**  
(Economic Services Administration)

[Filed August 27, 2008, 9:22 a.m., effective August 27, 2008, 9:22 a.m.]

Effective Date of Rule: Immediately.

Purpose: The department is amending via an emergency rule WAC 388-450-0015 and 388-470-0045 to exclude economic stimulus payments, authorized by HR 5140, as income in the month of receipt and to exclude the payments as a resource for an additional two months. This change is necessary in order to apply the federal policy to general assistance program.

Citation of Existing Rules Affected by this Order: Amending WAC 388-450-0015 and 388-470-0045.

Statutory Authority for Adoption: RCW 74.04.005, 74.04.050, 74.04.055, 74.04.057, 74.04.510, and 74.08.090.

Other Authority: HR 5140.

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 rule change is necessary to allow the department to apply the federal policy regarding the economic stimulus rebates equally to all programs. Federal economic stimulus payments were sent out beginning in May 2008. The department filed an emergency rule on April 30, 2008, as WSR 08-10-040. A CR-101 was also filed on April 21, 2008, as WSR 08-09-112. The permanent rule language is currently posted for review.

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

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

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

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

Date Adopted: August 21, 2008.

Stephanie E. Schiller  
Rules Coordinator

AMENDATORY SECTION (Amending WSR 06-07-078, filed 3/13/06, effective 5/1/06)

**WAC 388-450-0015 What types of income does the department not use to figure out my benefits?** This section applies to cash assistance, children's, family, or pregnancy medical, and basic food benefits.

(1) There are some types of income we do not count to figure out if you can get benefits and the amount you can get. Some examples of income we do not count are:

(a) Bona fide loans as defined in WAC 388-470-0045, except certain student loans as specified under WAC 388-450-0035;

(b) Federal earned income tax credit (EITC) payments;

(c) Federal economic stimulus payments authorized under legislative action of the House of Representatives bill H.R. 5140;

(d) Title IV-E and state foster care maintenance payments if you choose not to include the foster child in your assistance unit;

~~((+))~~ (e) Energy assistance payments;

~~((+))~~ (f) Educational assistance we do not count under WAC 388-450-0035;

~~((+))~~ (g) Native American benefits and payments we do not count under WAC 388-450-0040;

~~((+))~~ (h) Income from employment and training programs we do not count under WAC 388-450-0045;

~~((+))~~ (i) Money withheld from a benefit to repay an overpayment from the same income source. For Basic Food, we **do not** exclude money that is withheld because you were overpaid for purposely not meeting requirements of a federal, state, or local means tested program such as TANF/SFA, GA, and SSI;

~~((+))~~ (j) Legally obligated child support payments received by someone who gets TANF/SFA benefits;

~~((+))~~ (k) One-time payments issued under the Department of State or Department of Justice Reception and Replacement Programs, such as Voluntary Agency (VOLAG) payments; and

~~((+))~~ (l) Payments we are directly told to exclude as income under state or federal law.

~~((+))~~ (m) **For cash and Basic Food:** Payments made to someone outside of the household for the benefits of the assistance unit using funds that are not owed to the household; and

~~((+))~~ (n) **For medical assistance:** Only the portion of income used to repay the cost of obtaining that income source.

(2) For children's, family, or pregnancy medical, we also do not count any insurance proceeds or other income you have recovered as a result of being a Holocaust survivor.

AMENDATORY SECTION (Amending WSR 03-05-015, filed 2/7/03, effective 3/1/03)

**WAC 388-470-0045 How do my resources count toward the resource limits for cash assistance and family medical programs?** (1) We count the following resources toward your assistance unit's resource limits for cash assistance and family medical programs to decide if you are eligible for benefits under WAC 388-470-0005:

(a) Liquid resources not specifically excluded in subsection (2) below. These are resources that are easily changed into cash. Some examples of liquid resources are:

- (i) Cash on hand;
- (ii) Money in checking or savings accounts;
- (iii) Money market accounts or certificates of deposit (CDs) less any withdrawal penalty;
- (iv) Available retirement funds or pension benefits, less any withdrawal penalty;
- (v) Stocks, bonds, annuities, or mutual funds less any early withdrawal penalty;
- (vi) Available trusts or trust accounts; or
- (vii) Lump sum payments as described in chapter 388-455 WAC.

(b) The cash surrender value (CSV) of whole life insurance policies.

(c) The CSV over fifteen hundred dollars of revocable burial insurance policies or funeral agreements.

(d) The amount of a child's irrevocable educational trust fund that is over four thousand dollars per child.

(e) Funds withdrawn from an individual development account (IDA) if they were removed for a purpose other than those specified in RCW 74.08A.220.

(f) Any real property like a home, land or buildings not specifically excluded in subsection (3) below.

(g) The equity value of vehicles as described in WAC 388-470-0070.

(h) Personal property that is not:

- (i) A household good;
  - (ii) Needed for self-employment; or
  - (iii) Of "great sentimental value," due to personal attachment or hobby interest.
- (i) Resources of a sponsor as described in WAC 388-470-0060.

(j) For cash assistance only, sales contracts.

(2) The following types of liquid resources do not count when we determine your eligibility:

- (a) Bona fide loans, including student loans;
- (b) Basic Food benefits;
- (c) Income tax refunds in the month of receipt;
- (d) Earned income tax credit (EITC) in the month received and the following month;
- (e) Advance earned income tax credit payments;
- (f) Federal economic stimulus payments authorized under legislative action of the House of Representatives bill H.R. 5140 in the month received and the following two months;

(g) Individual development accounts (IDAs) established under RCW 74.08A.220;

~~((g))~~ (h) Retroactive cash benefits or TANF/SFA benefits resulting from a court order modifying a decision of the department;

~~((h))~~ (i) Underpayments received under chapter 388-410 WAC;

~~((i))~~ (j) Educational benefits that are excluded as income under WAC 388-450-0035;

~~((j))~~ (k) The income and resources of an SSI recipient;

~~((k))~~ (l) A bank account jointly owned with an SSI recipient if SSA already counted the money for SSI purposes;

~~((l))~~ (m) Foster care payments provided under Title IV-E and/or state foster care maintenance payments;

~~((m))~~ (n) Adoption support payments;

~~((n))~~ (o) Self-employment accounts receivable that the client has billed to the customer but has been unable to collect; and

~~((o))~~ (p) Resources specifically excluded by federal law.

(3) The following types of real property do not count when we determine your eligibility:

(a) Your home and the surrounding property that you, your spouse, or your dependents live in;

(b) A house you do not live in, if you plan on returning to the home and you are out of the home because of:

- (i) Employment;
  - (ii) Training for future employment;
  - (iii) Illness; or
  - (iv) Natural disaster or casualty.
- (c) Property that:
- (i) You are making a good faith effort to sell;
  - (ii) You intend to build a home on, if you do not already own a home;

(iii) Produces income consistent with its fair market value, even if used only on a seasonal basis; or

(iv) A household member needs for employment or self-employment. Property excluded under this section and used by a self-employed farmer or fisher retains its exclusion for one year after the household member stops farming or fishing.

(d) Indian lands held jointly with the Tribe, or land that can be sold only with the approval of the Bureau of Indian Affairs.

(4) If you deposit excluded liquid resources into a bank account with countable liquid resources, we do not count the excluded liquid resources for six months from the date of deposit.

(5) If you sell your home, you have ninety days to reinvest the proceeds from the sale of a home into an exempt resource.

(a) If you do not reinvest within ninety days, we will determine whether there is good cause to allow more time. Some examples of good cause are:

- (i) Closing on your new home is taking longer than anticipated;
- (ii) You are unable to find a new home that you can afford;
- (iii) Someone in your household is receiving emergent medical care; or
- (iv) Your children are in school and moving would require them to change schools.

(b) If you have good cause, we will give you more time based on your circumstances.



(c) If you do not have good cause, we count the money you got from the sale as a resource.

**WSR 08-18-030**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**

[Order 08-209—Filed August 27, 2008, 2:48 p.m., effective August 27, 2008, 2:48 p.m.]

Effective Date of Rule: Immediately.

Purpose: Amend hunting rules.

Citation of Existing Rules Affected by this Order: Amending WAC 232-28-335.

Statutory Authority for Adoption: RCW 77.12.047, 77.12.020, 77.12.570, 77.12.210.

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 is to correct an error. The old boundary language had some overlap between two game management units (GMUs) and had a portion of land that was not encompassed by either GMU.

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

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

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

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

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

Date Adopted: August 27, 2008.

J. P. Koenings  
Director

**NEW SECTION**

**WAC 232-28-33500A Game management units (GMUs) boundary descriptions—Region five.** Notwithstanding the provisions of WAC 232-28-335, effective immediately, change the following Game Management Unit boundary to the read as followed:

GMU 506-WILLAPA HILLS (Wahkiakum, Pacific and Lewis counties): Beginning at SR 6 and 3rd St South at the town of Pe Ell; S on 3rd St South to Muller Rd; S on Muller Rd to Weyerhaeuser 1000 line; S on Weyerhaeuser 1000 line to Weyerhaeuser 1800 line; S on Weyerhaeuser 1800 line to Weyerhaeuser 500 line; SE on Weyerhaeuser 500 line to SR

407 (Elochoman Valley Rd) at Camp 2; S on SR 407 (Elochoman Valley Rd) to the Elochoman River; down the Elochoman River to Foster Rd; N on Foster Rd to Risk Rd; W and N along Risk Rd to SR 4; W on SR 4 to Skamokawa Creek; SW down Skamokawa Creek to the Columbia River; W along Columbia River to the mouth of the Deep River (including all islands in the Columbia River which are both north of the Washington state line and between Skamokawa Creek and Deep River); N along the Deep River to SR 4; NW on SR 4 to the Salmon Creek Rd; NE on Salmon Creek Rd to Weyerhaeuser 5000 line; N on Weyerhaeuser 5000 line to Weyerhaeuser 5800 line; NE on Weyerhaeuser 5800 line to power transmission line (Section 21, T11N, R8W); E, NE, and then N on the power transmission line to the Trap Creek A Line; E and N on the Trap Creek A Line to SR 6; E on SR 6 to the town of Pe Ell and the point of beginning.

**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 08-18-031**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**

[Order 08-210—Filed August 27, 2008, 2:49 p.m., effective August 27, 2008, 2:49 p.m.]

Effective Date of Rule: Immediately.

Purpose: Amend hunting rules.

Citation of Existing Rules Affected by this Order: Amending WAC 232-28-336.

Statutory Authority for Adoption: RCW 77.12.047, 77.12.020, 77.12.570, 77.12.210.

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 is to correct an error. The old boundary language had some overlap between two game management units (GMUs) and had a portion of land that was not encompassed by either GMU.

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

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

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

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

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

Date Adopted: August 27, 2008.

J. P. Koenings  
Director

NEW SECTION

**WAC 232-28-33600A Game management units (GMUs) boundary descriptions—Region six.** Notwithstanding the provisions of WAC 232-28-336, effective immediately, change the following Game Management Unit boundary to the read as followed:

GMU 673-WILLIAMS CREEK (Pacific County):

Beginning at US Hwy 101 bridge crossing the Willapa River at the town of Raymond; S on US Hwy 101 to SR 6; SE on SR 6 to the Trap Creek A line; S and W on the Trap Creek A line to power transmission lines; S, and SW, and then W on the power transmission lines to the second crossing of the Weyerhaeuser 5800 line (Section 21 22, T11N, R8W); SW along the Weyerhaeuser 5800 line to Weyerhaeuser 5000 line (Deep River main line); SW on the Weyerhaeuser 5000 line (Deep River main line) to the Salmon Creek Rd; SW along the Salmon Creek Rd to SR 4; W on SR 4 to US Hwy 101 at Johnson's Landing; W on US Hwy 101 to the Naselle River bridge; W down the Naselle River to Willapa Bay; N along the east shore of Willapa Bay to the Willapa River; SE and NE up the Willapa River to the US Hwy 101 bridge and the point of beginning.

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

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

**WSR 08-18-032**

**EMERGENCY RULES**

**DEPARTMENT OF**

**FISH AND WILDLIFE**

[Order 08-217—Filed August 27, 2008, 3:10 p.m., effective August 27, 2008, 3:10 p.m.]

Effective Date of Rule: Immediately.

Purpose: Amend commercial fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-52-05100E; 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 nighttime fishing contained in this emergency rule. This emergency rule closes the pot fishery season for shrimp in Catch Area 23C because the spot shrimp quota

will be harvested in that area, and reopens Catch Areas 23A-E, 23B and 25A to beam trawl fishing for one week. 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 27, 2008.

J. P. Koenings  
Director

NEW SECTION

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

(1) Shrimp pot gear:

(a) All waters of Shrimp Management Areas 1B, 1C, 2E, 2W, 3 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 Catch Areas 23A-E, 23A-C, 23A-W and the Discovery Bay Shrimp District are closed.

(ii) All waters of Shrimp Management Areas 1B, 1C, 2E, 2W and Catch Areas 23B, 25A and 26D are closed to the harvest of spot shrimp.

(iii) Effective 9:00 p.m. August 31, 2008, until further notice, Catch Area 23C is closed to the harvest of spot shrimp.

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

(c) Effective immediately, until further notice, it is unlawful for the combined total harvest of spot shrimp by a fisher and/or the fisher's alternate operator to exceed 300 pounds in Catch Areas 23A-S/23D.

(d) Effective immediately, until 9:00 p.m. August 31, 2008, it is unlawful for the combined total harvest of spot shrimp by a fisher and/or the fisher's alternate operator to exceed 300 pounds in Catch Area 23C.

(e) Effective immediately, until further notice, it is unlawful for the combined total harvest of spot shrimp by a fisher and/or the fisher's alternate operator to exceed 600 pounds per week, except that any fisher whose weekly shrimp harvest activity is exclusively limited to Marine Fish-Shellfish Catch and Reporting Area 29 shall not be subject to

the weekly spot shrimp trip limit for that week. It is unlawful to fish for any shrimp while in possession, on board the fishing vessel, of any spot shrimp from any previous accounting week.

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

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

(g) It is unlawful to set or pull shellfish pots in one Marine Fish-Shellfish Management and Catch Reporting Area while in possession of shrimp harvested from another Marine Fish-Shellfish Management and Catch Reporting Area, except 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 is open immediately, until further notice, except as provided for in this section.

(i) Catch Area 23D Sequim Bay and the Discovery Bay shrimp district are closed.

(ii) Effective 12:00 p.m. September 2, 2008, Catch Areas 23A-E, 23B and 25A are closed.

(b) That portion of Catch Areas 21A and 22A within Shrimp Management Area 1B is open immediately, until further notice.

(c) Catch Area 20A 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 220-52-05100E Puget Sound shrimp pot and beam trawl fishery. (08-211)

**WSR 08-18-034  
EMERGENCY RULES  
DEPARTMENT OF  
FISH AND WILDLIFE**

[Order 08-218—Filed August 27, 2008, 4:27 p.m., effective August 27, 2008, 4:27 p.m.]

Effective Date of Rule: Immediately.

Purpose: Amend personal use fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-56-10500D, 220-56-11600F, 220-56-12400H, 232-28-61900X, and 232-28-61900Y.

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 department and are now permanent rules. Emergency rules are no longer needed.

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

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

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 0, Repealed 5.

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 27, 2008.

J. P. Koenings  
Director

**REPEALER**

The following sections of the Washington Administrative code are repealed:

WAC 220-56-10500D	River mouth definitions—2008 North of Falcon. (08-91)
WAC 220-56-11600F	Statewide saltwater hook rules—2008 North of Falcon. (08-91)
WAC 220-56-12400H	Unlawful provisions—Hood-sport Hatchery. (08-91)
WAC 232-28-61900X	Exceptions to statewide rules—White Salmon River. (08-129)
WAC 232-28-61900Y	Exceptions to statewide rules—2008 North of Falcon. (08-131)

**WSR 08-18-042**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**

[Order 08-219—Filed August 28, 2008, 4:59 p.m., effective August 31, 2008, 12:01 a.m.]

Effective Date of Rule: August 31, 2008, 12:01 a.m.

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

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

Statutory Authority for Adoption: RCW 77.04.130, 77.12.045, and 77.12.047.

Other Authority: *United States v. Oregon*, Civil No. 68-513-KI (D. Or.), Order Adopting 2008-2017 *United States v. Oregon Management Agreement* (Aug. 12, 2008) (Doc. No. 2546); *Northwest Gillnetters Ass'n v. Sandison*, 95 Wn.2d 638, 628 P.2d 800 (1981); Washington fish and wildlife commission policies concerning Columbia River fisheries; 40 Stat. 515 (Columbia River compact).

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

Reasons for this Finding: Washington and Oregon jointly regulate Columbia River fisheries under the congressionally ratified Columbia River compact. Four Indian tribes have treaty fishing rights in the Columbia River. The treaties preempt state regulations that fail to allow the tribes an opportunity to take a fair share of the available fish, and the states must manage other fisheries accordingly. *Sohappy v. Smith*, 302 F. Supp. 899 (D. Or. 1969). A federal court order sets the current parameters for sharing between treaty Indians and others. *United States v. Oregon*, Civil No. 68-513-KI (D. Or.), Order Adopting 2008-2017 *United States v. Oregon Management Agreement* (Aug. 12, 2008) (Doc. No. 2546).

Some Columbia River Basin salmon and steelhead stocks are listed as threatened or endangered under the federal Endangered Species Act. On May 5, 2008, the National Marine Fisheries Service issued a biological opinion under 16 U.S.C. § 1536 that allows for some incidental take of these species in treaty and nontreaty Columbia River fisheries governed by the 2008-2017 *U.S. v. Oregon Management Agreement*. The Washington and Oregon fish and wildlife commissions have developed policies to guide the implementation of such 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.

Catch rates for coho in the Buoy 10 fishery increased significantly this week and the preseason catch guideline (4,000) has been exceeded. This emergency regulation is necessary to contain fishery impacts to ESA-listed coho for combined ocean and Columbia River fisheries within the 8% exploitation rate guideline. Immediate announcement of this closure date provides reasonable accommodation of public notice to ensure compliance and prevent undue disruption of the fishery. There is insufficient time to promulgate permanent regulations.

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: August 28, 2008.

Phil Anderson  
for Jeff Koenings  
Director

NEW SECTION

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

**Columbia River - Buoy 10 Fishery:**

1) From Buoy 10 upstream to the Rocky Point/Tongue Point line (except for those waters closed under permanent regulations): Effective August 31, 2008 until further notice, closed to all salmon and steelhead fishing.

REPEALER

The following section of the Washington Administrative Code is repealed effective 12:01 a.m. August 31, 2008:

WAC 232-28-61900U Exceptions to statewide rules—Columbia River. (08-214)

**WSR 08-18-053**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**

[Order 08-221—Filed August 29, 2008, 3:34 p.m., effective August 29, 2008, 3:34 p.m.]

Effective Date of Rule: Immediately.

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: These lakes are scheduled for rehabilitation utilizing rotenone. 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 29, 2008.

J. P. Koenings  
Director

NEW SECTION

**WAC 232-28-61900X Washington game fish—Freshwater exceptions to statewide rules.** Notwithstanding the provisions of WAC 232-28-619:

(1) **Aztec Lake (Grant Co.)** Effective immediately through September 14, 2008, a person may fish in Aztec Lake. Size and daily limit for game fish: none. Effective September 15, 2008, until further notice - closed to fishing.

(2) **Beda Lake Grant Co.)** Effective immediately through September 14, 2008, a person may fish in Beda Lake. Size and daily limit for game fish: none. Statewide gear rules are in effect. Fishing from a floating device equipped with a motor allowed. Effective September 15, 2008 until further notice - closed to fishing.

(3) **Brookies Lake (Grant Co.)** Effective immediately through September 14, 2008, a person may fish in Brookies Lake. Size and daily limit for game fish: none. Statewide gear rules are in effect. Fishing from a floating device equipped with a motor allowed. Effective September 15, 2008 until further notice - closed to fishing.

(4) **Desert Lake (Grant Co.)** Effective immediately through September 14, 2008, a person may fish in Desert Lake. Size and daily limit for game fish: none. Effective September 15, 2008, until further notice - closed to fishing.

(5) **North Desert Lake (Grant Co.)** Effective immediately through September 14, 2008, a person may fish in North Desert Lake. Size and daily limit for game fish: none. Effective September 15, 2008, until further notice - closed to fishing.

(6) **Desert Wildlife Area Ponds (Grant Co.)** Effective immediately through September 14, 2008, a person may fish in Desert Wildlife Area Ponds. Size and daily limit for game fish: none. Effective September 15, 2008, until further notice - closed to fishing.

(7) **Dune Lake (Grant Co.)** Effective immediately through September 14, 2008, a person may fish in Dune Lake. Size and daily limit for game fish: none. Effective September 15, 2008, until further notice - closed to fishing.

(8) **Harris Lake (Grant Co.)** Effective immediately through September 14, 2008, a person may fish in Harris Lake. Size and daily limit for game fish: none. Effective September 15, 2008, until further notice - closed to fishing.

(9) **Lizard Lake (Grant Co.)** Effective immediately through September 14, 2008, a person may fish in Lizard Lake. Size and daily limit for game fish: none. Effective September 15, 2008, until further notice - closed to fishing.

(10) **Meadowlark Lake (Grant Co.)** Effective immediately through September 14, 2008, a person may fish in Meadowlark Lake. Size and daily limit for game fish: none. Effective September 15, 2008, until further notice - closed to fishing.

(11) **Sedge Lake (Grant Co.)** Effective immediately through September 14, 2008, a person may fish in Sedge Lake. Size and daily limit for game fish: none. Effective September 15, 2008, until further notice - closed to fishing.

(12) **Tern Lake (Grant Co.)** Effective immediately through September 14, 2008, a person may fish in Tern Lake. Size and daily limit for game fish: none. Effective September 15, 2008, until further notice - closed to fishing.

(13) **Big Buck Lake (Okanogan Co.)** Effective immediately through October 12, 2008, a person may fish in Big Buck Lake. Size and daily limit for game fish: none. Effective October 13, 2008, until further notice - closed to fishing.

(14) **Starzman Lakes (Okanogan Co.)** Effective immediately through October 12, 2008, a person may fish in Starzman Lakes. Size and daily limit for game fish: none. Effective October 13, 2008, until further notice - closed to fishing.

(15) **Ellen Lake (Ferry Co.)** Effective immediately through October 5, 2008, a person may fish in Ellen Lake. Size and daily limit for game fish: none. Effective October 6, 2008, until further notice - closed to fishing.

(16) **Cee Cee Ah Creek (Pend Oreille Co.)** Effective immediately through September 7, 2008, a person may fish in Cee Cee Ah Creek. Size and daily limit for game fish: none. Effective September 8, 2008, until further notice - closed to fishing.

(17) **Frater Lake (Pend Oreille Co.)** Effective immediately through October 5, 2008, a person may fish in Frater Lake. Size and daily limit for game fish: none. Effective October 6, 2008, until further notice - closed to fishing.

(18) **Hatch Lake (Stevens Co.)** Effective immediately through October 5, 2008, a person may fish in Hatch Lake. Size and daily limit for game fish: none. Effective October 6, 2008, until further notice - closed to fishing.

(19) **Little Hatch Lake (Stevens Co.)** Effective immediately through October 5, 2008, a person may fish in Little Hatch Lake. Size and daily limit for game fish: none. Effective October 6, 2008, until further notice - closed to fishing.

(20) **Williams Lake (Stevens Co.)** Effective immediately through October 5, 2008, a person may fish in Williams Lake. Size and daily limit for game fish: none. Effective October 6, 2008, until further notice - closed to fishing.

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

**WSR 08-18-054**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**

[Order 08-220—Filed August 29, 2008, 4:51 p.m., effective September 1, 2008]

Effective Date of Rule: September 1, 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: Under the recently developed conservation and sustainable fishery management plan, fall chinook will no longer be released into the Elochoman as a measure to provide a sanctuary for wild fish. In addition, fewer fall chinook will be released into the Toutle system. Returning chinook to both tributaries are available for harvest this fall. 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 29, 2008.

J. P. Koenings  
Director

NEW SECTION

**WAC 232-28-61900Y Exceptions to statewide rules—Elochoman and Toutle rivers.** Notwithstanding the provisions of WAC 232-28-619:

(1) Effective September 1, 2008, until further notice, a person may fish for salmon in those waters of the Elochoman River from the mouth to the West Fork. Special daily limit of six salmon of which 4 may be adults, except two of the adults may be Chinook. Release wild Chinook jacks. Release wild coho and all other salmon. Beginning October 1, release adult Chinook from the Hwy. 4 Bridge upstream.

(2) Effective September 1 through November 30, 2008, a person may fish in those waters of the Green River from the mouth to the 2800 Bridge. Special daily limit of six salmon of which 4 may be adults, except one of the adults may be Chinook. Release wild Chinook jacks. Release wild coho and all other salmon. Beginning October 1, release adult Chinook.

(3) Effective September 1 through November 30, 2008, a person may fish in those waters of the North Fork Toutle River from the mouth to deadline downstream of the fish collection facility. Special daily limit of six salmon of which 4 may be adults, except one of the adults may be Chinook. Release wild Chinook jacks. Release wild coho and all other salmon. Beginning October 1, release adult Chinook from Kidd Valley Bridge near Hwy. 504 upstream.

(4) Effective September 1 through November 30, 2008, a person may fish in those waters of the Toutle River from the mouth to the forks. Special daily limit of six salmon of which 4 may be adults, except one of the adults may be Chinook. Release wild Chinook jacks. Release wild coho and all other salmon.

**WSR 08-18-073**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**

[Order 08-223—Filed September 2, 2008, 3:13 p.m., effective September 2, 2008, 3:13 p.m.]

Effective Date of Rule: Immediately.

Purpose: Amend hunting rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 232-28-35300C; and amending WAC 232-28-353.

Statutory Authority for Adoption: RCW 77.12.047, 77.12.020, 77.12.570, 77.12.210.

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 Yakima Training Center's training schedule has changed and will not allow the department to conduct any public hunts on their facility for this year's hunting season. The department is in the process of making this change permanent and anticipates adoption at the September 5-6, 2008, fish and wildlife commission meeting. Therefore, continuation of this emergency is needed in the interim.

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

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

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 1, Repealed 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: September 2, 2008.

J. P. Koenings  
Director

NEW SECTION

**WAC 232-28-35300D 2008 Deer special permits.** Notwithstanding the provisions of WAC 232-28-353, effective immediately, the following deer special permit hunts have been cancelled:

Alkali A	Nov.15-23	Any buck	GMU 371	53 permits
Alkali B	Nov.15-23	Antlerless	GMU 371	35 permits
Alkali C	Nov. 29- Dec. 6	Any buck	GMU 371	8 permits
Alkali D	Nov. 29- Dec. 6	Antlerless	GMU 371	10 permits
Alkali E	Dec. 7-25	Any deer	GMU 371	46 permits

REPEALER

The following section of the Washington Administrative Code is repealed effective immediately:

WAC 232-28-35300C 2008 Deer special permits.

**WSR 08-18-074**

**EMERGENCY RULES**

**DEPARTMENT OF**

**FISH AND WILDLIFE**

[Order 08-224—Filed September 2, 2008, 3:15 p.m., effective September 2, 2008, 3:15 p.m.]

Effective Date of Rule: Immediately.

Purpose: Amend hunting rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 232-28-35400I; and amending WAC 232-28-354.

Statutory Authority for Adoption: RCW 77.12.047, 77.12.020, 77.12.570, 77.12.210.

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 Yakima Training Center's training schedule has changed and will not allow the department to conduct any public hunts on their facility for this year's hunting season. The department is in the process of making this change permanent and anticipates adoption at the September 5-6, 2008, fish and wildlife commission meeting. Therefore, continuation of this emergency is needed in the interim.

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

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

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 1, Repealed 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: September 2, 2008.

J. P. Koenings  
Director

NEW SECTION

**WAC 232-28-35400J 2008 Elk special permits.** Notwithstanding the provisions of WAC 232-28-354, effective immediately, the following elk special permit hunts have been cancelled:

Alkali A	Oct. 18- Nov. 2	Any elk	EF	GMU 371	20 permits
Alkali B	Oct. 1-15	Any elk	EM	GMU 371	10 permits
Alkali C	Oct. 18- Nov. 2	Any elk	EF	GMU 371	5 permits

REPEALER

The following section of the Washington Administrative Code is repealed effective immediately:

WAC 232-28-35400I 2008 Elk special permits.

**WSR 08-18-076**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**SOCIAL AND HEALTH SERVICES**

(Health and Recovery Services Administration)

[Filed September 3, 2008, 6:07 a.m., effective September 4, 2008]

Effective Date of Rule: September 4, 2008.

Purpose: The health and recovery services administration (HRSA) is creating new WAC 388-505-0230 Family-related institutional medical, to codify institutional medical eligibility for clients who are categorically related to the temporary assistance for needy families (TANF) program. This rule-making action will bring the state into compliance with federal regulations. This rule will also clarify program rules for children admitted to medical facilities and psychiatric inpatient treatment.

Statutory Authority for Adoption: RCW 74.04.055, 74.04.057, 74.08.090, and 74.09.530.

Other Authority: 42 C.F.R. 441.151.

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: This rule will bring the state into compliance with federal regulations while the permanent rule-making process, initiated under WSR 07-12-031, is completed. This continues the emergency rule that is currently in effect under WSR 08-10-092 while the department completes the permanent rule-making process. Since the filing of WSR 08-10-092, HRSA staff has received several questions from providers regarding the policy in this WAC. HRSA is in the process of researching these questions in order to provide responses that reflect clear and accurate policy. This has caused a delay in the permanent rule-making process. HRSA will be sending draft language for stakeholder review in the near future.

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

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

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Mak-

ing: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 1, Amended 0, Repealed 0.

Date Adopted: August 18, 2008.

Stephanie E. Schiller  
Rules Coordinator

NEW SECTION

**WAC 388-505-0230 Family related institutional medical.** This section describes how the department determines eligibility for institutional medical benefits for temporary assistance for needy families (TANF)-related clients and children under the age of twenty-one who reside in a medical institution or a psychiatric or chemical dependency facility.

(1) An individual over the age of twenty-one is eligible for categorically needy (CN) family-related institutional medical assistance when the individual:

(a) Meets U.S. citizenship or immigrant status as described in WAC 388-424-0010 (1) or (2);

(b) Meets the state residency requirement as described in chapter 388-468 WAC;

(c) Provides a valid social security number as described in chapter 388-476 WAC;

(d) Meets TANF eligibility requirements as described in WAC 388-400-0005, except for the requirement to participate in the Workfirst program under chapter 388-310 WAC;

(e) Has countable income below the applicable TANF payment standard based upon household size to include the institutionalized individual;

(f) Meets institutional status as described in WAC 388-513-1320 and resides in a medical institution, intermediate care facility for mentally retarded (ICF/MR), hospice care center, state veteran's facility, or nursing home; and

(g) Participates available income towards the cost of care as described in WAC 388-513-1380.

(2) An individual over the age of twenty-one is not eligible for family-related institutional medical assistance when the individual resides in a psychiatric facility, unless the individual is:

(a) A Medicaid recipient or has submitted an application for medical benefits prior to the individual's twenty-first birthday; and

(b) Receiving active psychiatric treatment and the treatment extends beyond the twenty-first birth date but the individual has not yet reached the age of twenty-two. (Eligibility in this circumstance terminates when the individual discharges from the facility or on the individual's twenty-second birthday, whichever happens first.)

(3) An individual over the age of twenty-one with income in excess of the TANF payment standard is not eligible for medically needy (MN) family-related institutional medical assistance.

(4) An individual aged nineteen through twenty-one is eligible for CN medical assistance under the family-related institutional medical program when the individual:

(a) Meets the requirements in subsection (1)(a),(b), and (c);

(b) Resides in a medical facility as described in subsection (1)(f), a psychiatric facility (IMD) or a chemical dependency facility;



(c) Has countable income below the one-person TANF standard; and

(d) Participates toward the cost of their care as described in WAC 388-513-1380.

(5) An individual aged eighteen through twenty-one with countable income below the payment standard described in WAC 388-478-0040 may be eligible for general assistance cash assistance for the individual's personal needs allowance.

(6) An individual under the age of nineteen is eligible for CN medical assistance under the family-related institutional medical program when the individual:

(a) Meets the requirements in subsection (1)(a), (b), and (c);

(b) Resides in a medical facility as described in subsection (1)(f), a psychiatric facility (IMD) or a chemical dependency facility;

(c) Has countable income below the applicable standard described in WAC 388-505-0210; and

(d) Participates toward the cost of their care as described in WAC 388-513-1380.

(7) When an individual under the age of twenty-one resides or is expected to reside thirty days or longer in a medical institution, intermediate care facility for the mentally retarded (ICF/MR), hospice care center or nursing facility, only the parental income the parent chooses to contribute is considered available.

(8) When an individual resides in a psychiatric facility or chemical dependency facility, parental income is considered as follows:

(a) It is available to an individual seventeen years of age or younger unless:

(i) The individual is expected to reside outside of the home for ninety days or longer; or

(ii) The individual is in court-ordered, out-of-home care in accordance with chapter 13.34 RCW; or

(iii) The department determines the parents are not exercising responsibility for the care and control of the individual.

(b) Parental income is considered available only as contributed to an individual over seventeen years of age but under nineteen who resides or is expected to reside in a psychiatric facility for thirty days or longer; and

(c) Parental income is not considered available to an individual between nineteen and twenty-one years of age who resides or is expected to reside in a psychiatric facility or chemical dependency facility for thirty days or longer.

(9) An individual under the age of twenty-one is considered for medically needy (MN) family-related institutional medical when the individual's countable income exceeds the standards in WAC 388-505-0210.

(10) A TANF-related individual who is not expected to reside in a medical facility for thirty days or longer is not eligible for family-related institutional medical. The individual's eligibility will be considered for a non-institutional medical program as described in WAC 388-505-0210, 388-505-0211, or 388-505-0220.