

WSR 08-19-010
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 08-222—Filed September 4, 2008, 3:53 p.m., effective September 4, 2008, 3:53 p.m.]

Effective Date of Rule: Immediately.

Purpose: Amend commercial fishing rules.

Citation of Existing Rules Affected by this Order:

Repealing WAC 220-52-05100F; 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 Areas 23A-S/23D 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Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 1, Amended 0, Repealed 1.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.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: September 4, 2008.

J. P. Koenings
Director

NEW SECTION

WAC 220-52-05100G 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 6:00 p.m. September 5, 2008, until further notice, Catch Area 23A-S/23D is closed to the harvest of spot shrimp.

(iv) Effective 6:00 p.m. September 7, 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 6:00 p.m. September 5, 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 Areas 23A-S/23D.

(d) Effective immediately, until 6:00 p.m. September 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 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 9, 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 220-52-05100F Puget Sound shrimp pot and beam trawl fishery. (08-217)

WSR 08-19-014
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 08-225—Filed September 5, 2008, 9:06 a.m., effective September 9, 2008, 6:00 a.m.]

Effective Date of Rule: September 9, 2008, 6:00 a.m.

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

Citation of Existing Rules Affected by this Order: Repealing WAC 220-32-05100A; and amending WAC 220-32-051.

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

Other Authority: *United States v. Oregon*, Civil No. 68-513-KI (D. Or.), Order Adopting 2008-2017 *United States v. Oregon Management Agreement* (Aug. 12, 2008) (Doc. No. 2546); *Puget Sound Gillnetters Ass'n v. Moos*, 92 Wn.2d 939, 603 P.2d 819 (1979); *State v. James*, 72 Wn.2d 746, 435 P.2d 521 (1967); 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 an additional week of commercial gillnet fishing for treaty tribes. Continues to allow the sale of fish harvested during Yakama Nation fisher-

ies. Harvestable numbers of fish are available under ESA guidelines. Harvest is expected to remain within the allocation and guidelines of the 2008-2017 management agreement. Rule is consistent with action of the Columbia River compacts on July 24 and September 4, 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: September 5, 2008.

J. P. Koenings
Director

NEW SECTION

WAC 220-32-05100B 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. Mainstem Columbia River

- a) SEASON: 6:00 a.m. September 9 to 6:00 p.m. September 12, 2008.
- b) AREA: Zone 6 (SMCRA 1F, 1G, 1H).
- c) GEAR: 8-inch minimum mesh-size restriction on gill-nets.

2. Mainstem Columbia River

- a) SEASON: Immediately until further notice.
- b) AREA: Zone 6 (SMCRA 1F, 1G, 1H).
- c) GEAR: Hoop nets, dip bag nets, and rod and reel with hook-and-line.

3. Columbia River Tributaries above Bonneville Dam

- a) SEASON: 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).
- b) AREA: White Salmon, and Klickitat rivers.
- c) GEAR: Hoop nets, dip bag nets, and rod and reel with hook-and-line.

4. Mainstem Columbia River below Bonneville Dam

- a) SEASON: Immediately until further notice and only 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." and only for enrolled Yakama Nation members, and have either commercial gillnet openings or allow platform gear in Zone 6 (SMCRA 1F, 1G, 1H).
 - b) AREA: (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).
 - c) GEAR: hoop nets, dip bag nets, and rod and reel with hook-and-line, consistent with Yakama Nation regulations.
5. SANCTUARIES: Standard Spring Creek sanctuary.
6. ALLOWABLE SALES: Chinook, coho, sockeye, 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. EXCEPT Sturgeon below Bonneville Dam many NOT be retained for subsistence purposes and may NOT be sold.

7. ADDITIONAL REGULATIONS: **24 hour** quick reporting required for Washington wholesale dealers, WAC 220-69-240.

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. September 9, 2008:

WAC 220-32-0510A Columbia River salmon seasons above Bonneville Dam. (08-206)

Reviser's note: The repealer appears above as filed by the agency pursuant to RCW 34.08.040; however, the reference to WAC 220-32-0510A is probably intended to be WAC 220-32-05100A.

**WSR 08-19-015
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE**

[Order 08-226—Filed September 5, 2008, 9:30 a.m., effective September 7, 2008, 7:00 a.m.]

Effective Date of Rule: September 7, 2008, 7:00 a.m.
Purpose: Amend commercial fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-47-41100W; and amending WAC 220-47-411.

Statutory Authority for Adoption: RCW 77.12.047.

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

Reasons for this Finding: A harvestable surplus of salmon remains in Bellingham Bay and indicates that days of commercial gill net fishing are warranted and will still meet conservation goals for all areas listed in this finding. 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: September 5, 2008.

J. P. Koenings
Director

NEW SECTION

WAC 220-47-41100W Gill net—Open periods. Notwithstanding the provisions of WAC 220-47-411, effective 7:00 a.m. September 7 through 7:00 a.m. September 19, 2008, it is unlawful to take, fish for or possess salmon taken for commercial purposes in Puget Sound Salmon Management and Catch Reporting Areas 7B except in accordance with the open periods, mesh size, areas, species restrictions, notification, and landing requirements set forth in this chapter, provided that unless otherwise amended, all permanent rules for all other catch reporting areas remain in effect:

Area	Open	Minimum Mesh
7B	7:00 a.m. September 7 through 7:00 a.m. September 8	5"
	7:00 a.m. September 9 through 7:00 a.m. September 10	5"
	7:00 a.m. September 11 through 7:00 a.m. September 12	5"
	7:00 a.m. September 14 through 7:00 a.m. September 15	5"
	7:00 a.m. September 16 through 7:00 a.m. September 17	5"
	7:00 a.m. September 18 through 7:00 a.m. September 19	5"

REPEALER

The following section of the Washington Administrative Code is repealed effective 7:00 a.m. September 19, 2008:

WAC 220-47-41100W Gill net—Open periods.

**WSR 08-19-033
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE**

[Order 08-228—Filed September 9, 2008, 2:56 p.m., effective September 9, 2008, 2:56 p.m.]

Effective Date of Rule: Immediately.
Purpose: Amend commercial fishing rules.
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 authority to keep incidental interceptions of Atlantic salmon raised for aquaculture purposes. The recent escape of 30,000 Atlantic salmon from a B.C. aquaculture facility creates a biological concern of having an invasive species compete for spawning habitat for native species of salmon. There is insufficient time to promulgate permanent rules.

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

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

Number of Sections Adopted on the Agency's Own Initiative: New 1, Amended 0, Repealed 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: September 9, 2008.

Joe Stohr
for Jeff Koenings
Director

NEW SECTION

WAC 220-47-50100L Puget Sound all-citizen commercial salmon fishery—Open periods. Notwithstanding the provisions of Chapter 220-47 WAC, effective immediately until further notice, during any lawful open period in all Puget Sound Salmon Management and Catch Reporting Areas, as defined in WAC 220-22-030, it is legal to retain any Atlantic salmon taken with lawful commercial salmon gear.

WSR 08-19-034
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 08-229—Filed September 9, 2008, 2:59 p.m., effective September 9, 2008, 2:59 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 Wash-

ington'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 220-33-01000Q; 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: Changes the mesh restriction for the Blind Slough/Knappa Slough area to a 9 3/4 inch maximum mesh. The escapement goal for fall chinook into Big Creek Hatchery is projected to be achieved and surplus fall chinook are available for harvest. Rescinds commercial sale of sturgeon in all SAFE areas - the guideline for sturgeon in SAFE areas has been exceeded, although the overall commercial guideline for sturgeon has not been achieved. These modifications are consistent with the 2008-2017 interim management agreement and the 2008 non-Indian salmon allocation agreement. The regulation is consistent with compact action of September 8, 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 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: September 9, 2008.

Joe Stohr
for Jeff Koenings
Director

NEW SECTION

WAC 220-33-0100R 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/Knappa Slough Select Area.

a. SEASON: Tuesday, Wednesday, and Thursday nights immediately through September 12, 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. through September 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: 9 3/4"-inch maximum mesh size. 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.

2. Tongue Point/South Channel Select Area.

a. SEASON: Tuesday, Wednesday, and Thursday nights immediately through September 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 immediately through October 31, 2008. Open hours are 7 p.m. to 7 a.m. through September 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. White sturgeon retention and sales are prohibited effective 12:00 p.m. (noon) Wednesday, September 10, 2008. 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.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 220-33-01000Q Columbia River season below Bonneville. (08-216)

WSR 08-19-035
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 08-230—Filed September 9, 2008, 3:00 p.m., effective September 9, 2008, 3:00 p.m.]

Effective Date of Rule: Immediately.

Purpose: Amend commercial fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-52-05100G; 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 reopens the pot fishery season for spot shrimp for thirty-six hours with catch limits in several catch areas to harvest the relatively small amounts of spot shrimp quota remaining in those areas. There is insufficient time to promulgate permanent rules.

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

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

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

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

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

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

Date Adopted: September 9, 2008.

Joe Stohr
for Jeff Koenings
Director

NEW SECTION

WAC 220-52-05100H 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 Shrimp Management Area 1A, Catch Areas 23A-E, 23A-C, 23A-W and the Discovery Bay Shrimp District are closed, except as provided for in this section:

a. Effective 6:00 a.m. September 10, 2008 through 6:00 p.m. September 11, 2008, Shrimp Management Area 1A, Catch Areas 23A-E and 23A-C are open to the harvest of all shrimp species.

(ii) All waters of Shrimp Management Areas 1B, 1C, 2E, 2W and Catch Areas 23A-S/23D, 23B, 25A and 26D are closed to the harvest of spot shrimp, except as provided for in this section:

a. Effective 6:00 a.m. September 10, 2008 through 6:00 p.m. September 11 2008, Shrimp Management Areas 1B, 2E and Catch Areas 23A-S/23D are open to the harvest of all spot shrimp.

(iii) Effective immediately, until 6:00 p.m. September 11, 2008, Catch Area 23C is open to the harvest of spot shrimp.

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

(c) Effective immediately, until 6:00 p.m. September 11, 2008, it is unlawful for the combined total harvest of spot shrimp by a fisher and/or the fisher's alternate operator to exceed 390 pounds in Catch Areas 23C.

(d) Effective 6:00 a.m. September 10, 2008, until 6:00 p.m. September 11, 2008, it is unlawful for the combined total harvest of spot shrimp by a fisher and/or the fisher's alternate operator to exceed 350 pounds in Shrimp Management Area 1A, 320 pounds in Shrimp Management Area 1B, 210 pounds in Shrimp Management Area 2E, 320 pounds in Catch Area 23A-E, 320 pounds in Catch Area 23A-E, 340 pounds in Catch Area 23A-C and 210 pounds in Catch Area 23A-S/23D.

(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 9, 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.

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

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 220-52-05100G Puget Sound shrimp pot and beam trawl fishery. (08-222)

WSR 08-19-041 EMERGENCY RULES DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Health and Recovery Services Administration)

[Filed September 11, 2008, 9:45 a.m., effective September 12, 2008]

Effective Date of Rule: September 12, 2008.

Purpose: The department recently reorganized and updated chapter 388-544 WAC, Vision care. The permanent rule was filed on June 24, 2008, under WSR 08-14-052. In the newly revised rule, a new section (WAC 388-544-0575 Noncovered vision) was created to replace the repealed WAC 388-544-0475 Noncovered vision. When the permanent rule was filed, the department inadvertently missed listing WAC 388-544-0475 as repealed. This emergency is necessary so that two duplicate noncovered sections do not exist.

Citation of Existing Rules Affected by this Order: Amending WAC 388-544-0475.

Statutory Authority for Adoption: RCW 74.08.090.

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 bring the department into compliance with state law (Administrative Procedure Act). This emergency continues the emergency rule that is currently in effect under WSR 08-11-048 while the department completes the permanent rule process to repeal this section. The department held a public hearing for the proposed permanent repeal of the rule (WSR 08-15-086) on August 26, 2008, and is preparing to immediately file the permanent rule adoption order.

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

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

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

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 1.

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 1.

Date Adopted: September 3, 2008.

Stephanie E. Schiller
Rules Coordinator

AMENDATORY SECTION (Amending WSR 05-13-038, filed 6/6/05, effective 7/7/05)

WAC 388-544-0475 Vision care—Noncovered services, eyeglasses, and contact lenses. (~~The medical assistance administration (MAA) does not cover the following:~~

- (1) Executive style eyeglass lenses;
 (2) Bifocal contact lenses;
 (3) Daily and two week disposable contact lenses;
 (4) Extended wear soft contact lenses, except when used as therapeutic contact bandage lenses or for aphakic clients;
 (5) Services for cosmetic purposes only;
 (6) Glass lenses including those that darken when exposed to light;
 (7) Group vision screening for eyeglasses;
 (8) Nonglare or anti-reflective lenses;
 (9) Orthoptics and visual training therapy;
 (10) Progressive lenses;
 (11) Refractive surgery of any type that changes the eye's refractive error. The intent of the refractive surgery procedure is to reduce or eliminate the need for eyeglass or contact lens corrections. This does not include intraocular lens implantation following cataract surgery.
 (12) Sunglasses and accessories that function as sunglasses (e.g., "clip-ons");
 (13) Upgrades at private expense to avoid MAA's contract limitations (e.g., frames that are not available through MAA's contract or noncontract frames or lenses for which the client or other person pays the difference between MAA's payment and the total cost))) Reserved.

WSR 08-19-049
EMERGENCY RULES
SUPERINTENDENT OF
PUBLIC INSTRUCTION

[Filed September 11, 2008, 11:54 a.m., effective September 11, 2008, 11:54 a.m.]

Effective Date of Rule: Immediately.

Purpose: Repeal and modify sections of chapter 392-340 WAC to comply with 2008 legislation. The legislation made several changes to the chapter:

- Changed the process for selecting regional committee members from an election process to an appointment by the educational service district board.
- Modified the process for school district boundary changes that are initiated by school districts.

Because of the large amount of repealed and amended sections, we are utilizing the emergency rule process to make the changes quickly so we can provide accurate and updated WACs in a timely manner.

Citation of Existing Rules Affected by this Order: [Amending WAC 392-340-003, 392-340-007, 392-340-00701, 392-340-207, 392-340-209, 392-340-210 and 392-340-225; and repealing WAC 392-340-009, 392-340-105, 392-340-110, 392-340-115, 392-340-120, 392-340-125, 392-340-130, 392-340-135, 392-340-140, 392-340-145, 392-340-150, 392-340-155, 392-340-160, 392-340-165, 392-340-170, 392-340-175, 392-340-180, 392-340-185, 392-340-190, 392-340-205, and 392-340-335.]

Statutory Authority for Adoption: RCW 28A.315.005.

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: 2008 legislation required extensive changes to the WAC chapter. Most of the changes are in the process of electing committee members to an appointment process. We needed to get rules in place because ESDs are having to appoint members very soon.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 1, Amended 6, Repealed 21.

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

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

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

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

Date Adopted: September 11, 2008.

Terry Bergeson
 Superintendent of
 Public Instruction

AMENDATORY SECTION (Amending WSR 06-17-038, filed 8/8/06, effective 9/8/06)

WAC 392-340-003 Authority. The general authority for this chapter is RCW ((28A.305.130(10))) 28A.315.005, 28A.315.015 (2)(e), 28A.315.175, 28A.315.195(4), and 28A.315.205(3).

AMENDATORY SECTION (Amending WSR 06-17-038, filed 8/8/06, effective 9/8/06)

WAC 392-340-007 Purpose and policy of chapter. ((+)) The purpose of this chapter is the same as set forth under RCW 28A.315.015((+)).

((2) It is the policy of the state that decisions on changes in school district boundaries should be made by the affected districts whenever possible. When this is not possible the decision shall be made by the appropriate regional committee on school district organization consistent with the following policies:

(a) A balance of local petition requests and the needs of the statewide community at large in a manner that advances the best interest of public education (see RCW 28A.315.015 (2)(a) for full text);

(b) Contributing to logical service boundaries (see RCW 28A.315.015 (2)(b) for full text);

(c) Enhancing the educational opportunities of pupils (see RCW 28A.315.015 (2)(c) for full text); and

(d) Promoting a wiser use of public funds (see RCW 28A.315.015 (2)(d) for full text).)

AMENDATORY SECTION (Amending WSR 06-17-038, filed 8/8/06, effective 9/8/06)

WAC 392-340-00701 Regional committee (~~decision-making criteria~~) decision making. (1) The regional committee shall give consideration to all of the (~~following~~) criteria in RCW 28A.315.015 (2)(a) through (d) and 28A.315.205 (4)(a) through (e) when reviewing the proposed transfer of territory:

~~((a) Student educational opportunities (see RCW 28A.315.205 (4)(a) for full text);~~

~~(b) Safety and welfare of pupils (see RCW 28A.315.205 (4)(b) for full text);~~

~~(c) History and relationship of the property affected to the students and communities affected (see RCW 28A.315.205 (4)(c) for full text). "Communities affected" includes all citizens living within the territory proposed to be transferred, all other citizens residing within the school district from which the proposed territory will be transferred, all citizens living within the immediate locale/neighborhood of which the proposed territory will become part, and all citizens residing within the school district to which the proposed territory will be transferred;~~

~~(d) Geographic accessibility (see RCW 28A.315.205 (4)(d) for full text);~~

~~(e) Disparities in per pupil valuation, economies of operation and transportation costs (see RCW 28A.315.205 (4)(e) for full text); and~~

~~(f) Other criteria or considerations as may be established in rule by the superintendent of public instruction. (RCW 28A.315.015 (2)(e).))~~

(2) The boundaries of the school districts affected by a proposed change in school district organization shall be contiguous to one another.

(3) When considering student educational opportunities under RCW 28A.315.205 (4)(a), the regional committee shall not consider one set of test scores alone as a sufficient basis to make a judgment about student educational opportunities. Test scores in the district affected by the proposed transfer of territory shall be looked at in context, including over time and by disaggregating the scores by student subgroups.

(4) "Communities affected" under RCW 28A.315.205 (4)(c), include all citizens living within the territory proposed to be transferred, all other citizens residing within the school district from which the proposed territory will be transferred, all citizens residing within the school district to which the proposed territory will be transferred.

(5) When considering "geographic accessibility" under RCW 28A.315.205 (4)(d), ("geographic accessibility" includes, but is not limited to, consideration of) the regional committee shall consider, but is not limited to the following factors:

(a) Mountains, hills, valleys, wasteland, and related geographic and man-made features, which either enhance or impede travel.

(b) Rivers, lakes, canals, and other natural or man-made waterways and bodies of water, which either enhance or impede travel.

(c) The extent and nature of roads, highways, ferries, and traffic patterns.

(d) Climatic conditions.

(e) Time required to travel to and from school.

~~((4) In considering student educational opportunities under subsection (1)(a) of this section, the regional committee shall not consider one set of test scores, alone, as a sufficient basis to make a judgment about student educational opportunities. Test scores in the districts affected by the proposed transfer of territory shall be looked at in context, including over time and by disaggregating the scores by student subgroups.~~

~~(5) In)) (6) After considering ((geographic accessibility under subsection (1)(d) of this section)) all factors, the regional committee shall make one judgment on geographic accessibility, regardless of how many individual components may apply to the particular transfer of territory petition.~~

~~((6)) (7) Each regional committee shall use the same criterion checklist included in the ((Lay Person's)) Guide to Changing School District Boundaries and published on the superintendent of public instruction web site.~~

~~((7)) (8) If a regional committee needs to continue a public hearing or schedule more than one additional hearing on a proposed transfer of territory, each such hearing is subject to public notice requirements.~~

~~((8)) (9) Regional committees shall use the decision format (motion) included in the ((Lay Person's)) Guide to Changing School District Boundaries and published on the superintendent of public instruction web site.~~

AMENDATORY SECTION (Amending WSR 06-17-038, filed 8/8/06, effective 9/8/06)

WAC 392-340-207 Transfer of territory—Other district requirements. (1) At least one member of each school board whose district is affected by a proposed transfer of territory must be part of the respective district's negotiating team.

(2)(a) Upon reaching a decision recommendation through the district-to-district negotiation process on a proposed transfer of territory, the negotiating parties shall produce, at a minimum, a written summary of the recommendation, including rationale for the recommendation, and submit to the respective affected school district boards of directors.

(b) Each school board of directors shall adopt at a public meeting of the board a written resolution indicating whether the board approves or disapproves the recommendation on the proposed transfer of territory. The resolution format included in the ((Lay Person's)) Guide to Changing School District Boundaries and published on the superintendent of public instruction web site shall be used.

AMENDATORY SECTION (Amending WSR 06-17-038, filed 8/8/06, effective 9/8/06)

WAC 392-340-209 Transfer of territory—Sufficiency of written record for appeal to the superintendent of public instruction—Referral of case back to regional committee. (1) For purposes of review by the superintendent of public instruction, the record of regional committee proceedings must be sufficient to allow the superintendent of public instruction to determine what facts the regional committee relied on in applying the required statutory and regulatory criteria. Evidence of facts relied on may be contained in

the written findings required in RCW 28A.315.205(2) or in a written verbatim transcript of the proceedings, or elsewhere in the record.

(2) When referring a transfer of territory case back to the originating regional committee, the superintendent of public instruction will make every effort to submit the written referral ~~((within fourteen days of a decision))~~ as expeditiously as possible.

AMENDATORY SECTION (Amending WSR 06-17-038, filed 8/8/06, effective 9/8/06)

WAC 392-340-210 Adjustment of assets and liabilities—Time considerations. ~~((1) In determining an equitable adjustment of assets and liabilities, the negotiating school districts and the regional committees shall consider the factors under RCW 28A.315.245.~~

~~(2))~~ A regional committee is authorized to phase in the adjustment of assets and liabilities over a period not less than two years nor more than eight years. This authorization is subject to the annual March 1 deadline for taxing districts to establish the taxing boundaries and rates for the ensuing tax collection year.

AMENDATORY SECTION (Amending WSR 06-17-038, filed 8/8/06, effective 9/8/06)

WAC 392-340-225 Frequency of petitions—Limitation. ~~((1) The authority for this section is RCW 28A.315.195(4) which authorizes the superintendent of public instruction to establish rules limiting the frequency of petitions that may be filed pertaining to territory included in whole or in part in a previous petition.~~

~~(2))~~ An educational service district superintendent may not accept a petition to transfer territory if any portion of such territory was included in a previous petition brought before the regional committee, unless five years have expired since the date of final disposition of the previous petition.

NEW SECTION

WAC 392-340-336 Regional committee members—Position numbers—Appointments—Terms of office. (1) Regional committee members shall be appointed by the educational service district boards of directors in accordance with RCW 28A.315.105.

(2) Regional committee member position numbers shall be assigned by the educational service district superintendent. Regional committee member positions one, three, seven, and nine shall serve terms staggered with positions two, four, six, and eight. Each position shall correspond to an educational service district director districts determined pursuant to chapter 28A.310 RCW.

(3) Regular appointments of regional committee members shall be made in even-numbered years for four-year terms.

(4) Appointments to fill vacancies occurring during a term shall be made as soon as possible and shall be for the remainder of the original term.

(5) Each committee member must reside in the director district for which the appointment is made.

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 392-340-009	Constitutional and statutory framework.
WAC 392-340-105	Election of regional committee members—Applicable provisions.
WAC 392-340-110	Election of regional committee members—Election officer.
WAC 392-340-115	Election of regional committee members—Dissolution—Position numbers—Initial elections—Regular elections—Terms of office.
WAC 392-340-120	Election of regional committee members—Tentative certification of electors.
WAC 392-340-125	Election of regional committee members—Call for election—Regional committee members.
WAC 392-340-130	Election of regional committee members—Candidates—Eligibility—Filing.
WAC 392-340-135	Election of regional committee members—Declaration and affidavit of candidacy form.
WAC 392-340-140	Election of regional committee members—Biographical data form.
WAC 392-340-145	Election of regional committee members—Withdrawal of candidacy.
WAC 392-340-150	Election of regional committee members—Ballots—Contents.
WAC 392-340-155	Election of regional committee members—Ballots and envelopes—Mailing to voters.
WAC 392-340-160	Election of regional committee members—Voting—Marking and return of ballots.
WAC 392-340-165	Election of regional committee members—Election board—Appointment and composition.

WAC 392-340-170	Election of regional committee members—Receipt of ballots and count of votes.
WAC 392-340-175	Election of regional committee members—Ineligible votes.
WAC 392-340-180	Election of regional committee members—Recount of votes cast—Automatic or by request.
WAC 392-340-185	Election of regional committee members—Certification of election.
WAC 392-340-190	Election of regional committee members—Run-off elections.
WAC 392-340-205	Transfer of territory—Procedures and timelines.
WAC 392-340-335	Election of regional committee members—Certification of electors.

WSR 08-19-059**EMERGENCY RULES****DEPARTMENT OF LICENSING**

[Filed September 12, 2008, 4:05 p.m., effective September 12, 2008, 4:05 p.m.]

Effective Date of Rule: Immediately.

Purpose: Occupational/temporary restricted driver's license—Person eligible. Amends the minimum portions of the periods of driver's license suspension, revocation, or denial that are imposed administratively based on a law enforcement officer's report of an arrest for an alcohol-related traffic violation after which a person may apply for an occupational/temporary restricted driver's license.

Citation of Existing Rules Affected by this Order: Amending WAC 308-104-100.

Statutory Authority for Adoption: RCW 46.01.110 and 46.20.391.

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: RCW 46.20.391 (1)(c) requires that the department provide by rule the minimum portions of the periods of suspension, revocation, or denial set forth in RCW 46.20.3101 after which a person may apply for a temporary restricted driver's license. In establishing the minimum portions of these periods, the department is required to consider the requirements of federal law regarding state eligibility to obtain incentive grants. 23 C.F.R. 1313.6, the federal rule establishing eligibility, has recently

been amended to reduce the minimum portions of the periods of suspension, revocation, or denial when the temporary restricted license permits the operation of only vehicles equipped with an ignition interlock device (IID). RCW 46.20.391 complies with the IID requirement. The department finds that adoption of this amendment will encourage the lawful operation of vehicles so equipped, and accordingly adopts this rule for the preservation of the public health and safety.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 1, 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: September 10, 2008.

Doron Maniece
for Becky Loomis
Assistant Director

AMENDATORY SECTION (Amending WSR 04-18-059, filed 8/27/04, effective 9/27/04)

WAC 308-104-100 Occupational/temporary restricted driver's license—Person eligible. (1) Upon proper application, the department shall issue an occupational/temporary restricted driver's license to any person who has had his or her driver's license suspended or revoked who meets the requirements of RCW 46.20.380 and 46.20.391, provided that on the date of conviction for the offense on which the suspension or revocation is based or, if the suspension or revocation is based on an administrative action, on the date the suspension or revocation became effective, or, if there are multiple suspensions or revocations in effect, on the date of conviction for the offense on which the first suspension or revocation is based or on the date the first suspension or revocation based on an administrative action became effective:

(a) The person had an unexpired driver's license;

(b) The person did not have his or her resident driver's license or nonresident driving privilege suspended or revoked for any reason; and

(c) The person had not been required to surrender his or her Washington driver's license to the department for failure to maintain proof of financial responsibility for the future.

(2) No person may petition for, and the department shall not issue, an occupational/temporary restricted driver's license that is effective during:

(a) The first (~~thirty~~) fifteen days of any suspension, revocation, or denial imposed under RCW 46.20.3101 (1)(a), (2)(a), or (3)(a); or

(b) The first (~~ninety~~) forty-five days of any revocation or denial imposed under ~~(RCW 46.20.3101 (1)(a); or~~

~~(c) The first year of any revocation or denial imposed under~~) RCW 46.20.3101 (1)(b), (2)(b), or (3)(b).

(3) Notwithstanding the provisions of this section, an occupational/temporary restricted driver's license shall not be issued for the operation of a commercial motor vehicle when the commercial driver has had his or her license suspended, revoked, or denied, or has been disqualified from operating a commercial motor vehicle.

WSR 08-19-060

EMERGENCY RULES

DEPARTMENT OF

FISH AND WILDLIFE

[Order 08-232—Filed September 12, 2008, 4:38 p.m., effective September 14, 2008]

Effective Date of Rule: September 14, 2008.

Purpose: Amend personal use fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 232-28-61900Z; 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: Fall chinook returns to Cowlitz Salmon Hatchery to date are looking positive although it's still early in the run. Through September 11, a total of 800 adult fall chinook had returned to the hatchery. Preseason, only 1,800 fish were expected to return. The hatchery escapement goal is 2,600 fish which is expected to be met based on the early returns and historic run patterns. 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: September 12, 2008.

J. P. Koenings

Director

NEW SECTION

WAC 232-28-61900Z Exceptions to statewide rules—Cowlitz River. Notwithstanding the provisions of WAC 232-28-619, effective September 14 through December 31, 2008, in those waters from boundary markers at the mouth to 400 feet below Mayfield Dam, special daily limit of six adult salmon of which one may be an adult Chinook. Except, effective October 1 through December 31 release adult Chinook in those waters from Blue Creek to Mill Creek.

REPEALER

The following section of the Washington Administrative Code is repealed effective 12:01 a.m. January 1, 2009:

WAC 232-28-61900Z Exceptions to statewide rules—Cowlitz River.

WSR 08-19-062

EMERGENCY RULES

DEPARTMENT OF

FISH AND WILDLIFE

[Order 08-231—Filed September 15, 2008, 11:06 a.m., effective September 16, 2008, 6:00 a.m.]

Effective Date of Rule: September 16, 2008, 6:00 a.m.

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

Citation of Existing Rules Affected by this Order: Repealing WAC 220-32-05100B; and amending WAC 220-32-051.

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

Other Authority: *United States v. Oregon*, Civil No. 68-513-KI (D. Or.), Order Adopting 2008-2017 *United States v. Oregon Management Agreement* (Aug. 12, 2008) (Doc. No. 2546); *Puget Sound Gillnetters Ass'n v. Moos*, 92 Wn.2d 939, 603 P.2d 819 (1979); *State v. James*, 72 Wn.2d 746, 435 P.2d 521 (1967); 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: Continues the commercial gillnet fishery for treaty tribes. Harvestable numbers of salmon and steelhead are available under ESA guidelines. Continues to allow the sale of fish harvested during Yakama Nation fisheries. Harvest is expected to remain within the allocation and guidelines of the 2008-2017 management agreement, with ESA impacts on Snake River wild fall chinook at 22.4% compared to the 23% guideline and 12.8% harvest rate on B-Index steelhead compared to the guideline of 15%. Rule is consistent with action of the Columbia River compacts on July 24 and September 11, 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: September 15, 2008.

J. P. Koenings
Director

NEW SECTION

WAC 220-32-05100C 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. Mainstem Columbia River

- a) SEASON: 6:00 a.m. September 16 to 6:00 p.m. September 18, 2008.
- b) AREA: Zone 6 (SMCRA 1F, 1G, 1H).
- c) GEAR: 8-inch minimum mesh-size restriction on gill-nets.

2. Mainstem Columbia River

- a) SEASON: Immediately until further notice.
- b) AREA: Zone 6 (SMCRA 1F, 1G, 1H).
- c) GEAR: Hoop nets, dip bag nets, and rod and reel with hook-and-line.

3. Columbia River Tributaries above Bonneville Dam

- a) SEASON: 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).
- b) AREA: White Salmon, and Klickitat rivers.
- c) GEAR: Hoop nets, dip bag nets, and rod and reel with hook-and-line.

4. Mainstem Columbia River below Bonneville Dam

- a) SEASON: Immediately until further notice and only 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." and only for enrolled Yakama Nation members, and have either commercial gillnet openings or allow platform gear in Zone 6 (SMCRA 1F, 1G, 1H).
- b) AREA: (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).

c) **GEAR:** hoop nets, dip bag nets, and rod and reel with hook-and-line, consistent with Yakama Nation regulations.

5. **SANCTUARIES:** Standard Spring Creek sanctuary.

6. **ALLOWABLE SALES:** Chinook, coho, sockeye, 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. **EXCEPT** Sturgeon below Bonneville Dam many **NOT** be retained for subsistence purposes and may **NOT** be sold.

7. **ADDITIONAL REGULATIONS:** **24 hour** quick reporting required for Washington wholesale dealers, WAC 220-69-240.

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. September 16, 2008:

WAC 220-32-05100B	Columbia River salmon seasons above Bonneville Dam. (08-225)
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WSR 08-19-066
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 08-235—Filed September 15, 2008, 2:59 p.m., effective September 15, 2008, 2:59 p.m.]

Effective Date of Rule: Immediately.

Purpose: Amend hunting rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 232-28-35300E; 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: As a result of a programming error in the special permit selection computer system, a small number of applicants who applied as group members, and whose groups were selected for special permits, did not

receive a special permit as they should have. To treat all applicants fairly and to address the public welfare aspect of this computer error, these successful applicants should be awarded their special permits through emergency action. To facilitate the award of these special permits, the available special permit quota will have to be increased for those specific hunts.

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: September 15, 2008.

J. P. Koenings
Director

NEW SECTION

WAC 232-28-35300E 2008 Deer special permits. Notwithstanding the provisions of WAC 232-28-353, effective immediately, change the number of permits to 203 on the Roosevelt modern firearm antlerless permit hunt, valid for dates October 11 - 19, 2008, for antlerless, in GMU 133.

REPEALER

The following section of the Washington Administrative Code is repealed effective 11:59 p.m. October 19, 2008:

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

**WSR 08-19-067
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE**

[Order 08-236—Filed September 15, 2008, 3:00 p.m., effective September 15, 2008, 3:00 p.m.]

Effective Date of Rule: Immediately.

Purpose: Amend hunting rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 232-28-35400K; 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: As a result of a programming error in the special permit selection computer system, a small number of applicants who applied as group members, and whose groups were selected for special permits, did not receive a special permit as they should have. To treat all applicants fairly and to address the public welfare aspect of this computer error, these successful applicants should be awarded their special permits through emergency action. To facilitate the award of these special permits, the available special permit quota will have to be increased for those specific hunts.

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: September 15, 2008.

J. P. Koenings
Director

NEW SECTION

WAC 232-28-35400K 2008 Elk special permits. Notwithstanding the provisions of WAC 232-28-354, effective immediately, change the number of permits to 90 on the Goose Prairie A modern firearm bull permit hunt, valid for dates October 20 through November 2, 2008, for any bull, in GMUs 352 and 356.

REPEALER

The following section of the Washington Administrative Code is repealed effective 11:59 p.m. November 2, 2008:

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

**WSR 08-19-081
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE**

[Order 08-238—Filed September 16, 2008, 12:54 p.m., effective September 16, 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 220-52-05100H; 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 Puget Sound to protect egg bearing females as per the Puget Sound shrimp management plans. There is insufficient time to promulgate permanent rules.

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

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

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

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

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

Date Adopted: September 16, 2008.

Phil Anderson
for Jeff Koenings
Director

NEW SECTION

WAC 220-52-05100I 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, excluding spot shrimp, until further notice, except as provided for in this section.

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

b. (ii) All spot shrimp caught must be immediately returned to the water unharmed.

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

(c) 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.

(d) 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(c) 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 Areas 23A-E, 23B, 23D, 25A, Sequim Bay, and the Discovery Bay shrimp district 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 220-52-05100H Puget Sound shrimp pot and beam trawl fishery. (08-230)

WSR 08-19-082 EMERGENCY RULES DEPARTMENT OF FISH AND WILDLIFE

[Order 08-239—Filed September 16, 2008, 12:56 p.m., effective September 16, 2008, 12:56 p.m.]

Effective Date of Rule: Immediately.

Purpose: Amend personal use rules.

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

Statutory Authority for Adoption: RCW 77.12.047.

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

general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.

Reasons for this Finding: The spot shrimp fishery will be closed on September 16 in areas closed by this rule, to protect spot shrimp during the onset of the egg-bearing period. 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: September 16, 2008.

Phil Anderson
for Jeff Koenings
Director

NEW SECTION

WAC 220-56-32500J Shrimp—Areas and seasons. Notwithstanding the provisions of WAC 220-56-325:

1) Effective immediately until further notice, it is unlawful to fish for or possess shrimp taken for personal use in all waters of Marine Area 7, except as provided for in this section.

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

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

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

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

3) Effective immediately until further notice, it is unlawful to fish for or possess shrimp taken for personal use in all waters of Marine Area 4 east of the Bonilla-Tatoosh line. Marine Areas 5, 6 and 13 (excluding the Discovery Bay Shrimp District) are open daily to the harvest of all shrimp species, except spot shrimp. It is unlawful to possess spot shrimp, and all spot shrimp must immediately be

a) returned to the water unharmed.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 220-56-32500I Shrimp—Areas and seasons
(08-145)

**WSR 08-19-088
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE**

[Order 08-233—Filed September 16, 2008, 2:28 p.m., effective October 1, 2008, 8:00 a.m.]

Effective Date of Rule: October 1, 2008, 8:00 a.m.

Purpose: Amend commercial fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-52-04000Y, 220-52-04600W, 220-52-04000A and 220-69-24000M; and amending WAC 220-52-040, 220-52-046, and 220-69-240.

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 state may not authorize commercial shellfish harvests absent agreed planning or compliance with a process. The provisions of this rule are in conformity with agreed plans with applicable tribes, which have been entered as required by court order. 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 3, Amended 0, Repealed 4.

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 16, 2008.

J. P. Koenings
Director

NEW SECTION

WAC 220-52-04000A Commercial crab fishery—Lawful and unlawful gear, methods, and other unlawful acts. Notwithstanding the provisions of WAC 220-52-040:

(1) Dungeness crab pots may be deployed between 8:00 a.m. October 1, 2008 and 7:59 a.m. October 3, 2008 in Puget Sound waters from a vessel not designated on a person's Puget Sound crab license, provided that the primary or alternate operator designated on the license is on board the non-designated vessel ("barge" vessel), and provided prior notice has been given as indicated below.

(2) The license owner must leave a telephone message at the LaConner district office, (360) 466-4345, extension 245, with the following information:

- a) Name and license number of license owner.
- b) Name of designated primary operator if different from license owner.
- c) Name of alternate operator if used to deploy pots from a non-designated vessel.
- d) Buoy brand number and number of pots to be deployed from a non-designated vessel.
- e) Name and identification numbers (WN and/or Coast Guard) of the non-designated vessel.

(3) Additional area gear limits. The following Marine Fish-Shellfish Management and Catch Reporting Areas are restricted in the number of pots fished, operated, or used by a person or vessel, and it is unlawful for any person to use, maintain, operate, or control pots in excess of the following limits:

(a) 20 pots per vessel in Marine Fish-Shellfish Management and Catch Reporting Area 25E.

(b) 20 pots per vessel in all waters of Marine Fish-Shellfish Management and Catch Reporting Area 25A south of a line projected true west from Travis Spit on Miller Peninsula.

NEW SECTION

WAC 220-52-04600X Puget Sound crab fishery—Seasons and areas. Notwithstanding the provisions of WAC 220-52-046, effective 8:00 a.m. October 1, 2008 until further notice:

(1) It is permissible to fish for Dungeness crab for commercial purposes in the following areas:

(a) Port Gardner: That portion of Marine Fish/Shellfish Catch Area 26A east of a line projected from the outermost tip of the ferry dock at Mukilteo, projected to the green #3 buoy at the mouth of the Snohomish River, and west of a line projected from that #3 buoy southward to the oil boom pier on the shoreline.

(b) Possession Point to Glendale: That portion of Marine Fish/Shellfish Catch Area 26A east of a line that extends true north from the green #1 buoy at Possession Point to Possession Point, and west of a line from the green #1 buoy at Possession Point extending northward along the 200-foot depth contour to the Glendale dock.

(c) Langley: That portion of Marine Fish/Shellfish Catch Area 24C shoreward of the 400-foot depth contour within an area described by two lines projected northeasterly from Sandy Point and the entrance to the marina at Langley.

(2) The following area is closed to commercial crab fishing:

(a) That portion of Marine Fish/Shellfish Catch Area 25A west of the 123°7.0' longitude line projected from the

new Dungeness light due south to the shore of Dungeness Bay.

(b) That portion of Marine Fish/Shellfish Catch Area 23D west of a line from the eastern tip of Ediz Hook to the ITT Rayonier Dock.

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 8:00 a.m. October 3, 2008:

WAC 220-52-04000A	Commercial crab fishery— Lawful and unlawful gear, methods, and other unlawful acts.
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The following sections of the Washington Administrative Code are repealed:

WAC 220-52-04000Y	Commercial crab fishery— Exceptions to permanent rules for pot limits. (08-144)
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WAC 220-52-04600W	Crab fishery—Seasons and areas. (08-144)
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NEW SECTION

WAC 220-69-24000N Duties of commercial purchasers and receivers. Notwithstanding the provisions of WAC 220-69-240, effective October 1, 2008, until further notice, it is unlawful for any wholesale dealer acting in the capacity of an original receiver of Dungeness crab taken by non-treaty fishers from Puget Sound, to fail to report to the department the previous day's purchases by 10:00 a.m. the following business day. Reports must be made to the Point Whitney Shellfish Laboratory by fax at 360-586-8408 or by phone at 1-866-859-8439, option 5, and must specify the dealer name, dealer phone number, date of delivery of crab to the original receiver, and the total number of pounds of crab caught by non-treaty fishers, by Crab Management Region or by Marine Fish-Shellfish Management and Catch Reporting Area.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 220-69-24000M	Duties of commercial purchasers and receivers. (08-144)
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WSR 08-19-094
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 08-240—Filed September 16, 2008, 3:57 p.m., effective September 18, 2008]

Effective Date of Rule: September 18, 2008.

Purpose: Amend personal use fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 232-28-61900A; 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 maximum number of steelhead encounters, which are set by Washington department of fish and wildlife's permit with NOAA fisheries, have been reached. The increasing presence of steelhead in the last week, coupled with increasing angler efforts on the Methow River, increased the number of steelhead encounters and thus necessitated early closure to remain within incidental take limits set by NOAA 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: September 16, 2008.

J. P. Koenings
 Director

NEW SECTION

WAC 232-28-61900A Exceptions to statewide rules—Methow River. Notwithstanding the provisions of WAC 232-28-619, effective September 18 through September 30, 2008, it is unlawful to fish in those waters of the Methow River from the Lower Burma Bridge to Foghorn Dam (one mile upstream of Winthrop).

REPEALER

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

WAC 232-28-61900A Exceptions to statewide rules—Methow River.

WSR 08-19-110
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 08-234—Filed September 17, 2008, 9:07 a.m., effective September 17, 2008, 9:07 a.m.]

Effective Date of Rule: Immediately.

Purpose: Amend commercial rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-40-02700I; and amending WAC 220-40-027.

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 dates were changed by agreement during preseason North of Falcon negotiations and were omitted from the permanent rules. There is insufficient time to promulgate permanent rules.

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

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

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

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

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

Date Adopted: September 17, 2008.

J. P. Koenings
 Director

NEW SECTION

WAC 220-40-02700I Willapa Bay fall fishery. Notwithstanding the provisions of WAC 220-20-027, it is unlawful to violate the following provisions, provided that unless otherwise amended, all permanent rules remain in effect:

(1) Gill net gear restrictions: - All areas

(a) Drift gill net gear only. It is unlawful to use set net gear.

(b) Immediately through September 26, 2008: 6-inch maximum mesh, no more than 55 meshes deep. Net must hang straight from top to bottom. Strings may only be used to secure breakaway panels.

(c) September 28 through October 31, 2008: 6 1/2-inch maximum mesh.

REPEALER

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

WAC 220-40-02700I Willapa Bay fall fishery.