

**WSR 08-23-005**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**

[Order 08-286—Filed November 5, 2008, 4:38 p.m., effective November 5, 2008, 4:38 p.m.]

Effective Date of Rule: Immediately.

Purpose: Amend commercial fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-47-31100V and 220-47-41100A; and amending WAC 220-47-311 and 220-47-411.

Statutory Authority for Adoption: RCW 77.12.047.

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

Reasons for this Finding: The Skagit chum harvestable surplus has been exceeded in Salmon Management and Catch Reporting Area 8. There is insufficient time to promulgate permanent rules.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 2, Amended 0, Repealed 2.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: November 5, 2008.

J. P. Koenings  
 Director

NEW SECTION

**WAC 220-47-31100V Puget Sound purse seine fishery.** Notwithstanding the provisions of WAC 220-47-311, effective immediately until further notice, it is unlawful to fish in Salmon Management and Catch Reporting Area 8 for commercial purposes with purse seine gear.

NEW SECTION

**WAC 220-47-41100A Puget Sound gill net fishery.** Notwithstanding the provisions of WAC 220-47-411, effective immediately until further notice, it is unlawful to fish in Salmon Management and Catch Reporting Area 8 for commercial purposes with gill net gear.

REPEALER

The following section of the Washington Administrative Code is repealed effective November 26, 2008:

WAC 220-47-3100V Puget Sound purse seine fishery.

The following section of the Washington Administrative Code is repealed effective November 29, 2008:

WAC 220-47-41100A Puget Sound gill net fishery.

**WSR 08-23-008**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**

[Order 08-285—Filed November 6, 2008, 8:59 a.m., effective November 10, 2008]

Effective Date of Rule: November 10, 2008.

Purpose: Amend commercial fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-52-07300X; and amending WAC 220-52-073.

Statutory Authority for Adoption: RCW 77.12.047.

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

Reasons for this Finding: Harvestable amounts of red and green sea urchins exist in the areas described. Prohibition of all diving from licensed sea urchin harvest vessels within two days of scheduled sea urchin openings discourages the practice of fishing on closed days and hiding the unlawful catch underwater until the legal opening. Limiting harvest per vessel allows for extension of the harvest period and increases harvest opportunity. 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: November 6, 2008.

J. P. Koenings  
 Director

NEW SECTION

**WAC 220-52-07300Y Sea urchins.** Notwithstanding the provisions of WAC 220-52-073, effective November 10, 2008 until further notice, it is unlawful to take or possess sea urchins taken for commercial purposes except as provided for in this section:

(1) Green sea urchins: Sea Urchin Districts 1 and 2 are open on Monday and Tuesday of each week. The maximum daily landing of green sea urchins allowed in Sea Urchin Districts 1 and 2 is 1,000 pounds per valid designated sea urchin harvest vessel.

(2) Green sea urchins: Sea Urchin Districts 3, 4, 6 and 7 are open only on Monday and Tuesday of each week.

(3) Red sea urchins: Sea Urchin Districts 1 and 2 are open only on Monday through Friday of each week.

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

REPEALER

The following section of the Washington Administrative Code is repealed effective November 10, 2008:

WAC 220-52-07300X Sea urchins. (08-255)

**WSR 08-23-009****EMERGENCY RULES****DEPARTMENT OF****SOCIAL AND HEALTH SERVICES**

(Management Services Administration)

[Filed November 6, 2008, 2:17 p.m., effective November 8, 2008]

Effective Date of Rule: November 8, 2008.

Purpose: The purpose of the emergency filing of new rules of chapter 388-06 WAC, Background checks, is to comply with a new statute, chapter 387, Laws of 2007 (ESSB 5774), relating to DSHS employee background check rules. Chapter 387, Laws of 2007 (ESSB 5774) repeals the department of personnel (DOP) statute that requires DOP to adopt DSHS employee background check rules. DOP repealed DSHS employee rules effective July 22, 2007. This filing includes new WAC 388-06-0600, 388-06-0605, 388-06-0610, 388-06-0615, 388-06-0620, 388-06-0625, 388-06-0630, 388-06-0635, and 388-06-0640, and amending WAC 388-06-0010.

Citation of Existing Rules Affected by this Order: Amending WAC 388-06-0010.

Statutory Authority for Adoption: RCW 43.43.832, chapter 387, Laws of 2007 (ESSB 5774).

Other Authority: RCW 43.20A.710, 43.43.830, 43.43.-842.

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: Amendments to chapter 388-06 WAC, Background checks, are needed due to changes in statute. Permanent rule making could not be completed in time to ensure that DSHS employee background checks are conducted by July 22, 2007. A notice to adopt permanent rules on this subject has been filed as WSR 07-11-097. The department has filed a CR-102 as WSR 08-22-039 and will hold a public hearing on December 9, 2008. This filing extends the emergency rule filed as WSR 08-15-047.

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 9, Amended 1, Repealed 0.

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

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

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

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 9, Amended 1, Repealed 0.

Date Adopted: October 30, 2008.

Stephanie E. Schiller  
Rules Coordinator

AMENDATORY SECTION (Amending WSR 01-18-025, filed 8/27/01, effective 10/1/01)

**WAC 388-06-0010 What is the purpose of this chapter?** (1) The purpose of this chapter is to establish rules for background checks conducted by children's administration (CA), and the division of developmental disabilities (DDD) at the department of social and health services (DSHS). The department does background checks on individuals who are licensed, certified, contracted, or authorized to care for or have unsupervised access to children and to individuals with a developmental disability. Background checks are conducted to find and evaluate any history of criminal convictions and child abuse or neglect.

(2) This chapter also defines when the one hundred twenty-day provisional hire is allowed by DSHS. WAC 388-06-0500 through 388-06-0540 apply to all DSHS administrations

(3) This chapter includes the background check requirements for DSHS employees and applicants seeking, working or serving in a covered position.

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

NEW SECTION

**WAC 388-06-0600 Must the DSHS secretary or designee conduct background checks on all employees in cov-**

**ered positions and applicants under consideration for a covered position?** (1) The secretary of the department of social and health services (DSHS) or designee must conduct a background check, which may include fingerprinting as authorized by statute, on all employees in covered positions and applicants under final consideration for a covered position.

(2) The requirement to conduct a background check must include the following:

(a) Any employee seeking a covered position because of a layoff, reallocation, transfer, promotion or demotion or otherwise requesting a move to a covered position.

(b) Any applicant prior to appointment to a covered position, except when appointment is made on a conditional basis in accordance with agency procedures authorized by WAC 388-06-0635.

(3) Applicant means any person who has applied for work or serves in a covered position, including current employees requesting transfer, promotion, demotion, or otherwise requesting a move to a covered position.

#### NEW SECTION

**WAC 388-06-0605 What is a covered position?** A covered position is one in which a person will or may have unsupervised access to vulnerable adults, juveniles or children.

#### NEW SECTION

**WAC 388-06-0610 Who are vulnerable adults, juveniles or children?** (1) Vulnerable adult means a person who is a client of DSHS and/or is:

(a) Sixty years of age or older who has the functional, mental, or physical inability to care for himself or herself;

(b) Found incapacitated under chapter 11.88 RCW;

(c) Developmental disabled as defined under RCW 71A.10.020;

(d) Admitted to any facility that is operated by DSHS;

(e) Receiving services from a DSHS contracted, authorized, certified, licensed or individual provider, including those certified under chapter 70.96A RCW;

(f) Receiving services through home health, hospice, or home care agencies required to be licensed under chapter 70.127 RCW; or

(g) Admitted to detoxification in a certified chemical dependency treatment facility in accordance with chapter 70.96A RCW.

(2) Juvenile means a person under the age of twenty-one under the juvenile rehabilitation administration's (JRA) jurisdiction, or under the department of corrections's jurisdiction while placed in a JRA facility.

(3) Child or children means any person under eighteen years of age.

#### NEW SECTION

**WAC 388-06-0615 What is unsupervised access?** Unsupervised access means a DSHS employee, volunteer or student intern who:

(1) Works or serves in a setting, such as an institution, that provides residential services to vulnerable adults, juveniles and children;

(2) Works or serves in a position where, during the course of his or her employment, the employee may transport, or visit the residence of, a vulnerable adult, juvenile or child; or

(3) Works or serves in a position, other than one described in (1) and (2) above, where the employee may be left alone with a vulnerable adult, juvenile or child. "Left alone" does not include the possibility of a public encounter, or public interaction.

#### NEW SECTION

**WAC 388-06-0620 What information is considered in a background check conducted by DSHS and what are the results of the background check used for?** (1) The background check information considered by the DSHS secretary will include but is not limited to conviction records, pending charges, and civil adjudications as defined in RCW 43.43.830.

(2) The background information must be used by DSHS to determine the character, competence, and suitability of the applicant and/or employee to have unsupervised access to vulnerable adults, juveniles and children.

#### NEW SECTION

**WAC 388-06-0625 Must an employee and/or applicant authorize the secretary of the department of social and health services or designee to conduct a background check and what happens if the employee or applicant does not provide authorization?** (1) An employee and/or applicant applying for or being considered for retention in a covered position must authorize the secretary of DSHS or designee to conduct a background check which may include fingerprinting.

(2) Failure to authorize the DSHS secretary or designee to conduct a background check disqualifies an employee or applicant from consideration for any covered position including their current covered position.

#### NEW SECTION

**WAC 388-06-0630 What happens when a permanent DSHS employee is disqualified because of a background check or failure to authorize a background check?** (1) A permanent employee with a background check disqualification or who fails to authorize a background check may be subject to any of the following actions in no specific order:

(a) Demotion;

(b) Job restructuring;

(c) Job reassignment;

(d) Non-disciplinary separation for non-represented employees;

(e) Disciplinary action in accordance with Just Cause for represented employees; or

(f) The employee may voluntarily resign.

(2) An appointing authority may use the following interim measures while deciding which action to take (not to

exceed thirty calendar days except in cases where there are investigations of pending charges):

(a) Voluntary use of accrued vacation, exchange, and/or compensatory time;

(b) Authorized leave without pay, if there is no paid leave available, or if the employee chooses not to use paid leave; and/or

(c) Reassignment to another work location to present unsupervised access.

(d) When considering the above actions, the agency will consider the least restrictive means necessary to prevent unsupervised access.

(3) Before a permanent employee may be separated or discharged due to a background check disqualification, the search for a non-covered position will occur over a period of thirty calendar days.

#### NEW SECTION

**WAC 388-06-0635 What are the DSHS secretary's responsibilities in carrying out the requirements to conduct background checks?** (1) The DSHS secretary or designee will:

(a) Notify employees and applicants that a background check is required for covered positions;

(b) Develop procedures specifying when employees and applicants may be hired on a conditional basis pending the results of a background check; and

(c) Develop policies and procedures pertaining to background checks.

(d) Use information contained in a background check for the purpose of determining the character, competence, and suitability of the applicant and/or employee to have unsupervised access to vulnerable adults, juveniles and children.

(2) The DSHS secretary or designee will not further disseminate background check information unless authorized or required by law to do so. In addition, results of a background check may be discoverable pursuant to the rules of civil discovery, or subject to disclosure pursuant to a public records request.

#### NEW SECTION

**WAC 388-06-0640 Does a DSHS permanent employee who is disqualified from a covered position as a result of a background check have the right to request a review of the disqualification?** A DSHS permanent employee who is disqualified from a covered position as a result of a background check has the right to present the DSHS secretary or designee evidence that may mitigate the disqualifying background information identified by the department. The permanent employee may present additional information for consideration that includes, but is not limited to:

(1) The employee's background check authorization and disclosure form;

(2) The employee's age at the time of conviction, charge, or disciplinary board final decision;

(3) The nature and severity of the conviction, charge, or disciplinary board final decision;

(4) The length of time since the conviction, charge, or disciplinary board final decision;

(5) The nature and number of previous offenses;

(6) Vulnerability of the child, vulnerable adult, or individual with mental illness or developmental disabilities to which the employee will or may have unsupervised access; and

(7) The relationship between the potentially disqualifying event and the duties of the employee.

#### **WSR 08-23-010**

#### **EMERGENCY RULES**

#### **DEPARTMENT OF**

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

(Management Services Administration)

[Filed November 6, 2008, 2:18 p.m., effective November 8, 2008]

Effective Date of Rule: November 8, 2008.

Purpose: The purpose of the emergency filing of amended chapter 388-06 WAC, Background checks, is to comply with new statutes, chapter 387, Laws of 2007 (ESSB 5774) and chapter 410, Laws of 2007 (SHB 1333), impacting background check requirements for certain child care providers and children returning to their home; and to comply with the federal Adam Walsh Act of 2006.

Citation of Existing Rules Affected by this Order: Amending WAC 388-06-0110, 388-06-0150, and 388-06-0160.

Statutory Authority for Adoption: RCW 43.43.832, 26.33.190, 26.44.030, 74.15.030.

Other Authority: Chapter 387, Laws of 2007; Adam Walsh Act of 2006.

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: Amendments to chapter 388-06 WAC, Background checks, are needed due to changes in federal and state statutes. Permanent rule making could not be completed by the effective date of the federal requirements, July 1, 2007. A CR-101 on this subject was filed as WSR 07-11-097. DSHS submitted proposed rules to internal and external stakeholders for informal review in September 2008, intending to file the CR-102 in early October 2008. The informal review identified unanticipated but necessary changes were needed. DSHS staff is working with the assistant attorney general to make the needed changes to ensure compliance with state and federal statutes. This filing extends the emergency rule filed as WSR 08-15-046.

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 3, Repealed 0.

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

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

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

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 3, Repealed 0.

Date Adopted: October 30, 2008.

Stephanie E. Schiller  
Rules Coordinator

AMENDATORY SECTION (Amending WSR 01-18-025, filed 8/27/01, effective 10/1/01)

**WAC 388-06-0110 Who must have background checks?** The department requires background checks on individuals who will have unsupervised access to children or to individuals with a developmental disability in homes, facilities, or operations licensed, relicensed, or contracted by the department to provide care as required under chapter 74.15 RCW. The department requires background checks on the following people:

(1) A person licensed, certified, or contracted by us to care for children (chapter 74.15 RCW and RCW 43.43.832);

(2) A prospective or current employee for a licensed care provider or a person or entity contracting with us;

(3) A volunteer or intern with regular or unsupervised access to children who is in a home or facility that offers licensed care to children;

(4) A person who is at least sixteen years old, is residing in a foster home, relatives home, or child care home and is not a foster child;

(5) A person not related to the child who the court has approved placement as allowed in RCW 13.34.130;

(6) A relative other than a parent who may be caring for a child or an individual with a developmental disability;

~~((6))~~ (7) A person who regularly has unsupervised access to a child or an individual with a developmental disability;

~~((7))~~ (8) A provider who has unsupervised access to a child or individual with a developmental disability in the home of the child or individual with a developmental disability; and

~~((8))~~ (9) Prospective adoptive parents as defined in RCW 26.33.020.

AMENDATORY SECTION (Amending WSR 01-18-025, filed 8/27/01, effective 10/1/01)

**WAC 388-06-0150 What does the background check cover?** (1) The department must review the following records:

(a) Criminal convictions and pending charges based on identifying information provided by you. However, if you have lived in Washington State for less than three years prior to the check, the department must conduct a fingerprint based background check for you to have unsupervised access to children or to individuals with developmental disabilities.

(b) ~~((For children's administration, child protective service case file information (CAMIS) for founded reports of child abuse or neglect; and))~~ If the background check is being conducted for Children's Administration, it must also include:

(i) A review of child protective services case files information (CAMIS) or other applicable information system.

(ii) Administrative hearing decisions related to any DRL license that has been revoked, suspended, or denied.

(c) ~~((For children's administration, administrative hearing decisions related to any DLR license that has been revoked, suspended or denied))~~ If the background check is being conducted by Children's Administration for placement of a child in out-of-home care, including foster homes, adoptive homes, relative placements, and placement with other suitable persons under chapter 13.34 RCW, the department must check the following in addition to the requirements above for each person over eighteen years of age residing in the home:

(i) Child abuse and neglect registries in each state a person has lived in the five years prior to conducting the background check.

(ii) Washington state patrol (WSP) and federal bureau of investigation (FBI) fingerprint based background checks regardless of how long you have resided in Washington.

(2) The department may also review:

(a) Any civil judgment, determination or disciplinary board final decisions of child abuse or neglect.

(b) Law enforcement records of convictions and pending charges in other states or locations if:

(i) You have lived in another state.

(ii) Reports from other credible sources indicating a need to investigate another state's records.

~~((3) The department may review law enforcement records of convictions and pending charges in other states or locations if:~~

~~(a) You have lived in another state; and~~

~~(b) Reports from credible community sources indicate a need to investigate another state's records.~~

~~(4) If you have lived in Washington state less than three years immediately prior to your application to have unsupervised access to children or to individuals with a developmental disability, the department requires that you be fingerprinted for a background check with the Washington state patrol (WSP) and the Federal Bureau of Investigation (FBI), as mandated by chapter 74.15 RCW.)~~

AMENDATORY SECTION (Amending WSR 01-18-025, filed 8/27/01, effective 10/1/01)

**WAC 388-06-0160 Who pays for the background check?** (1) Children's administration (CA) pays ~~((for))~~ the DSHS general administrative costs for background checks

for foster home applicants, CA relative and other suitable caregivers, and CA adoptive home applicants.

(2) Children's administration pays ~~((for fingerprinting expenses))~~ the WSP and FBI-fingerprint processing fees for ~~((those))~~ foster home applicants ~~((and relatives))~~, CA relative and other suitable caregivers, CA adoptive home applicants, and other adults in the home who require fingerprinting under chapter 13.34 RCW.

(3) Children's administration does not pay ~~((for))~~ fingerprinting fees or expenses for employees, contractors, or volunteers associated with any other type of home or facility.

(4) The division of developmental disabilities pays for background checks for individuals seeking authorization to provide services to their clients.

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: November 6, 2008.

Jay J. Manning  
Director

### Chapter 173-539A WAC

#### UPPER KITTITAS EMERGENCY GROUND WATER RULE

##### NEW SECTION

**WAC 173-539A-010 Purpose.** (1) This chapter implements the exempt well management measures identified in the memorandum of agreement between Kittitas County and the department of ecology (ecology) by creating a partial withdrawal of ground water within upper Kittitas County that limits the use of the ground water exemption (RCW 90.44.-050) for residential purposes. This chapter also requires measuring of new uses for residential purposes of ground water under the exemption within all of Kittitas County.

(2) Ecology designed the partial withdrawal and related requirements to minimize the adverse effects on flows in the Yakima River and its tributaries, while minimizing adverse effects on the local economy.

(3) Based on technical research, Kittitas County may consider the potential for impairment of existing water rights, along with any other environmental impacts, during review of certain land use applications. The county may require mitigation or other ways to manage risks to reduce or eliminate impacts.

(4) The requirements in this chapter do not apply to areas outside of Kittitas County.

##### NEW SECTION

**WAC 173-539A-020 Authority.** RCW 90.54.050 provides that when lacking enough information to support sound decisions, ecology may withdraw waters of the state from new appropriations until sufficient information is available. Before withdrawing waters of the state, ecology must consult with standing committees of the legislature on water management. Further, RCW 90.44.050 authorizes ecology to establish metering requirements for exempt wells where needed.

In 2007, ecology received a petition seeking unconditional withdrawal of all unappropriated ground water in Kittitas County until enough is known about potential effects from new exempt wells on senior water rights and stream flows. Ecology consulted with standing committees of the Washington state legislature on the petition and proposed withdrawal. Ecology then rejected the proposed unconditional withdrawal, and instead signed a memorandum of

### WSR 08-23-012

#### EMERGENCY RULES

#### DEPARTMENT OF ECOLOGY

[Order 08-11—Filed November 6, 2008, 2:42 p.m., effective November 6, 2008, 2:42 p.m.]

Effective Date of Rule: Immediately.

Purpose: This second emergency rule establishes a partial withdrawal of ground water within a portion of WRIA 39 in Kittitas County, Washington for the purpose of implementing a memorandum of agreement (MOA) entered into with Kittitas County on April 7, 2008. The partial withdrawal and restrictions are designed to minimize the potential for a new use of water that negatively affect flows in the Yakima River and its tributaries and does this in a way that minimizes effects on economic development.

Statutory Authority for Adoption: RCW 90.54.050.

Other Authority: Chapter 43.27A RCW.

Under RCW 34.05.350 the agency for good cause finds that immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest; 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: The Yakima Basin is one of the state's most water-short areas. Water rights with priority dates as old as 1905 were shut off during the 2001 and 2005 droughts, including the town of Roslyn's municipal supply. Water supply in the Yakima Basin is limited and over-appropriated. Western portions of Kittitas County are experiencing rapid growth and this growth is being largely served by exempt wells. Exempt wells in this area may negatively affect the flow of the Yakima River or its tributaries.

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.

agreement (MOA) with Kittitas County, which this chapter implements by establishing a partial withdrawal and other requirements.

#### NEW SECTION

**WAC 173-539A-030 Definitions.** The definitions provided below are intended to be used only for this chapter.

**"Adjacent"** means all parcels that either:

- Have any common boundary;
- Are separated only by roads, easements, or parcels in common ownership; or
- Are within five hundred feet at the nearest point.

**"Application"** as used in WAC 173-539A-050 and 173-539A-055 means a land use application to Kittitas County requesting:

- A subdivision;
- Short subdivision;
- Large lot subdivision;
- Administrative or exempt segregation;
- Binding site plan; or
- Performance based cluster plat.

**"Common ownership"** means any type of ownership interest held by an applicant including an oral or written contract for joint development between the applicant and any owner of adjacent lands. A contract for joint development includes, but is not limited to, contracts providing for shared use of services for permitting, engineering, architecture, environmental review, clearing or preparing land, or building roads, structures, or common water or sewer infrastructure.

**"Ecology"** means the department of ecology.

**"Exemption"** or **"ground water exemption"** means the exemption from the permit requirement for a withdrawal of ground water provided under RCW 90.44.050.

**"Group use"** means use of the ground water exemption for two or more parcels. A group use includes use of the exemption for all parcels of a proposed development and all parcels that are adjacent and held in common ownership with the proposed new residential development where use of the exemption commenced or will commence within five years of the date the current application was filed.

**"Hydrogeologic assessment"** means the report prepared by a licensed hydrogeologist addressing the elements identified in WAC 173-539A-060.

**"Lands"** refers to both singular "land" and plural "lands."

**"MOA"** or **"Memorandum of Agreement"** means the "Memorandum of Agreement between Kittitas County and the State of Washington, Department of Ecology Regarding Management of Exempt Ground Water Wells in Kittitas County" of April 7, 2008.

**"New residential development"** means any division of land involving an application that vested after July 8, 2008.

**"New use of the ground water exemption"** means a use begun on or after July 8, 2008.

**"New use for residential purposes"** means any new use of the ground water exemption for a new or additional residential purpose associated with an existing or new structure.

**"Parcel"** means any parcel, land, tract or other unit of land.

**"Residential purposes"** means all domestic use and/or lawn and noncommercial garden use of water on the parcel(s) in question under the ground water exemption. A dwelling unit is not required for a residential purpose to be present. Domestic use is a separate and distinct purpose of use from lawn and noncommercial garden use. Each use may have a different commencement date under the exemption. For purposes of this chapter all use limits refer to combined domestic and lawn and noncommercial garden use. All use of the lawn and noncommercial garden use may not exceed a one-half acre as required in RCW 90.44.050 for either a group domestic use or a single domestic use.

**"Total water supply available"** means the amount of water available in any year from natural flow of the Yakima River, and its tributaries, from storage in the various government reservoirs on the Yakima watershed and from other sources, to supply the contract obligations of the United States to deliver water and to supply claimed rights to the use of water on the Yakima River, and its tributaries, heretofore recognized by the United States.

**"Upper Kittitas County"** is the area of Kittitas County delineated in WAC 173-539A-990.

**"Vested"** means that under the applicable land use laws an application is considered complete such that the application shall generally be reviewed under laws existing at the time of vesting, unless a special exception may apply. All applications for plat approvals including preliminary plat approvals which were approved by Kittitas County prior to July 8, 2008, are considered to be vested.

#### NEW SECTION

**WAC 173-539A-050 New use of the exemption for new residential developments in upper Kittitas County.**

(1) This section applies only to applications for residential developments that vest or vested on or after July 8, 2008.

(2) Any new residential development within upper Kittitas County must not use more than 5,000 gallons per day (gpd) from the ground water exemption for residential purposes. When filing an application for a new residential development, the applicant must file a sworn statement to this effect with ecology and Kittitas County, to be recorded against the parcels in question. The residential development includes all parcels that are part of the proposed development or a larger group use.

(3) For use of the 5,000 gpd exemption limit for a new residential development, ecology and the county will assume each parcel will use 1,250 gpd for residential purposes, unless a condition is recorded as a covenant to use a lesser amount. If no exempt lawn or noncommercial garden watering will occur, and a covenant so restricting such use is placed on the parcel, ecology and the county will assume each parcel will use a maximum of 350 gpd.

#### NEW SECTION

**WAC 173-539A-055 New uses of the exemption for residential purposes in upper Kittitas County.** (1) New

**uses for residential purposes on parcels created after March 28, 2002, in upper Kittitas County:**

(a) Parcels **less than ten acres** created after March 28, 2002, may use water under the ground water exemption for residential purposes in an amount that does not exceed the lowest amount below:

- (i) The amount stated in conditions or covenants on water use placed on the plat that created the parcel;
- (ii) The amount stated in conditions on water use specified in the permit/approval of the public water system that is intended to serve the parcel; or
- (iii) 1,250 gpd.

(b) Parcels **ten acres and greater** created after March 28, 2002, may use water under the ground water exemption for residential purposes in an amount that does not exceed the lowest amount below:

- (i) The amount stated in conditions or covenants on water use placed on the plat that created the parcel;
- (ii) The amount stated in conditions on water use specified in the permit/approval of the public water system that is intended to serve the parcel; or
- (iii) An average rate of use of 125 gpd per acre up to a maximum of 5,000 gpd.

(c) This section does not restrict an owner from using more water through other legal permitted water rights.

**(2) New uses for residential purposes on parcels created on or before March 28, 2002, in upper Kittitas County:**

- (a) Parcels created on or before March 28, 2002, must use no more than 5,000 gpd for all residential purposes.
- (b) Such use may be further restricted by covenants or conditions on water use placed on the plat or in a land use approval, conditions on a public water system approval, or if a legal restriction applies to such use.

NEW SECTION

**WAC 173-539A-060 Hydrogeologic assessment.** (1) If Kittitas County requires a hydrogeologic assessment, the hydrogeologic assessment must be:

- (a) Submitted to Kittitas County and ecology in the form of a written report, signed by a licensed hydrogeologist; and
- (b) Available as part of the project review under the State Environmental Policy Act.

(2) The hydrogeologic assessment may be based on available existing information or other new information as required by Kittitas County.

(3) The required elements of the report are as follows:

- (a) Scope of the proposal including all of the following:
  - The location;
  - Proposed water source(s);
  - Water use amounts; and
  - The timing of the proposed use.
- (b) General description including all of the following:
  - The local geologic, hydrogeologic, and hydrologic setting;
  - Identification of surface water and ground water features;
  - Water sources;
  - Recharge/discharge characteristics; and

- Surface water and ground water interactions.
- (c) Site-specific description.
- (d) Inventory and description of all of the following:
  - All state issued surface water and ground water rights;
  - All state issued surface water and ground water claims;
- and
  - Exempt wells located within a one-year and five-year area of pumping influence.
- (e) Identification and description of existing surface water or ground water rights that may be adversely affected by the proposed use of the ground water exemption.
- (f) The licensed hydrogeologist's written professional opinion on the potential of the proposal to cause impacts to the natural and built environment including surface water flows.
- (g) A statement of the report's limitations regarding its intended use, including scope, extent, and available data.

NEW SECTION

**WAC 173-539A-070 Measuring and reporting water use.** (1) For all uses of the ground water exemption for residential purposes within upper Kittitas County that commence after July 8, 2008, or within the remainder of Kittitas County that commence after the effective date of this rule, a source meter must be installed at the point of withdrawal, in compliance with such requirements as prescribed by Kittitas County and WAC 173-173-100.

(2) Metering data must be collected daily and reported within thirty days of the end of the recording period to Kittitas County and ecology. The following table shows the recording periods and the due dates for each metering report:

Recording Period	Report Due No Later Than:
October 1 - March 31	April 30
April 1 - June 30	July 30
July 1 - July 31	August 30
August 1 - August 31	September 30
September 1 - September 30	October 30

NEW SECTION

**WAC 173-539A-080 Expedited processing of trust water applications and new water right applications associated with trust water rights.** (1) RCW 90.38.040 authorizes ecology to use the trust water right program for water banking purposes within the Yakima River Basin.

(2) Ecology may expedite the processing of an application for a new surface water right or a ground water right hydraulically related to the Yakima River, under Water Resources Program Procedures PRO-1000, Chapter One, including any amendments thereof, if the following requirements are met:

- (a) The application must identify an existing trust water right or pending application to place a water right in trust, if that such trust water right would have an equal or greater contribution to flow during the irrigation season, as measured on the Yakima River at Parker that would serve to mitigate the



proposed use. This trust water right must have priority earlier than May 10, 1905, and be eligible to be used for instream flow protection and mitigation of out-of-priority uses.

(b) The proposed use on the new application must be for domestic, group domestic, lawn or noncommercial garden, and/or municipal water supply purposes of use within the Yakima River Basin. The proposed use must be consistent with any agreement governing the use of the trust water rights.

(3) If an application for a new water right is eligible for expedited processing under subsection (2) of this section and is based upon one or more pending applications to place one or more water rights in trust, processing of the pending trust water right application(s) shall also be expedited.

(4) Upon determining that the application is eligible for expedited processing ecology will do the following:

(a) Review the application to withdraw ground water to ensure that ground water is available from the aquifer without detriment or injury to existing rights, considering the mitigation offered.

(b) Condition the permit to ensure that existing water rights, including instream flow water rights, are not impaired if the trust water right is from a different source or located downstream of the proposed diversion or withdrawal. The applicant also has the option to change their application to prevent the impairment. If impairment cannot be prevented, ecology must deny the permit.

(c) Condition each permit to ensure that the tie to the trust water right is clear, and that any constraints in the trust water right are accurately reflected.

(d) Condition or otherwise require that the trust water right will serve as mitigation for impacts to "total water supply available."

#### NEW SECTION

**WAC 173-539A-090 Educational information, technical assistance and enforcement.** (1) To help the public comply with this chapter, ecology and Kittitas County may prepare and distribute technical and educational information on the scope and requirements of this chapter.

(2) When ecology finds that a violation of this rule has occurred, we shall first attempt to achieve voluntary compliance. One approach is to offer information and technical assistance to the person, in writing, identifying one or more means to legally carry out the person's purposes.

(3) To obtain compliance and enforce this chapter, ecology may impose such sanctions as suitable, including, but not limited to, issuing regulatory orders under RCW 43.27A.190 and imposing civil penalties under RCW 90.03.600.

#### NEW SECTION

**WAC 173-539A-100 Appeals.** All of ecology's final written decisions pertaining to permits, regulatory orders, and other related decisions made under this chapter are subject to review by the pollution control hearings board in accordance with chapter 43.21B RCW.

#### NEW SECTION

**WAC 173-539A-110 Regulation review.** (1) The exempt well management requirements in this chapter will be reviewed and may be revised as part of a long-term management program. Ecology and Kittitas County intend to develop the long-term management program after they have completed a ground water study that focuses on portions of Kittitas County not fully addressed by the current USGS ground water study of the Yakima River Basin.

(2) Ecology may review this chapter whenever:

(a) New information is available;

(b) A change of condition occurs;

(c) Statutory changes warrant the review; or

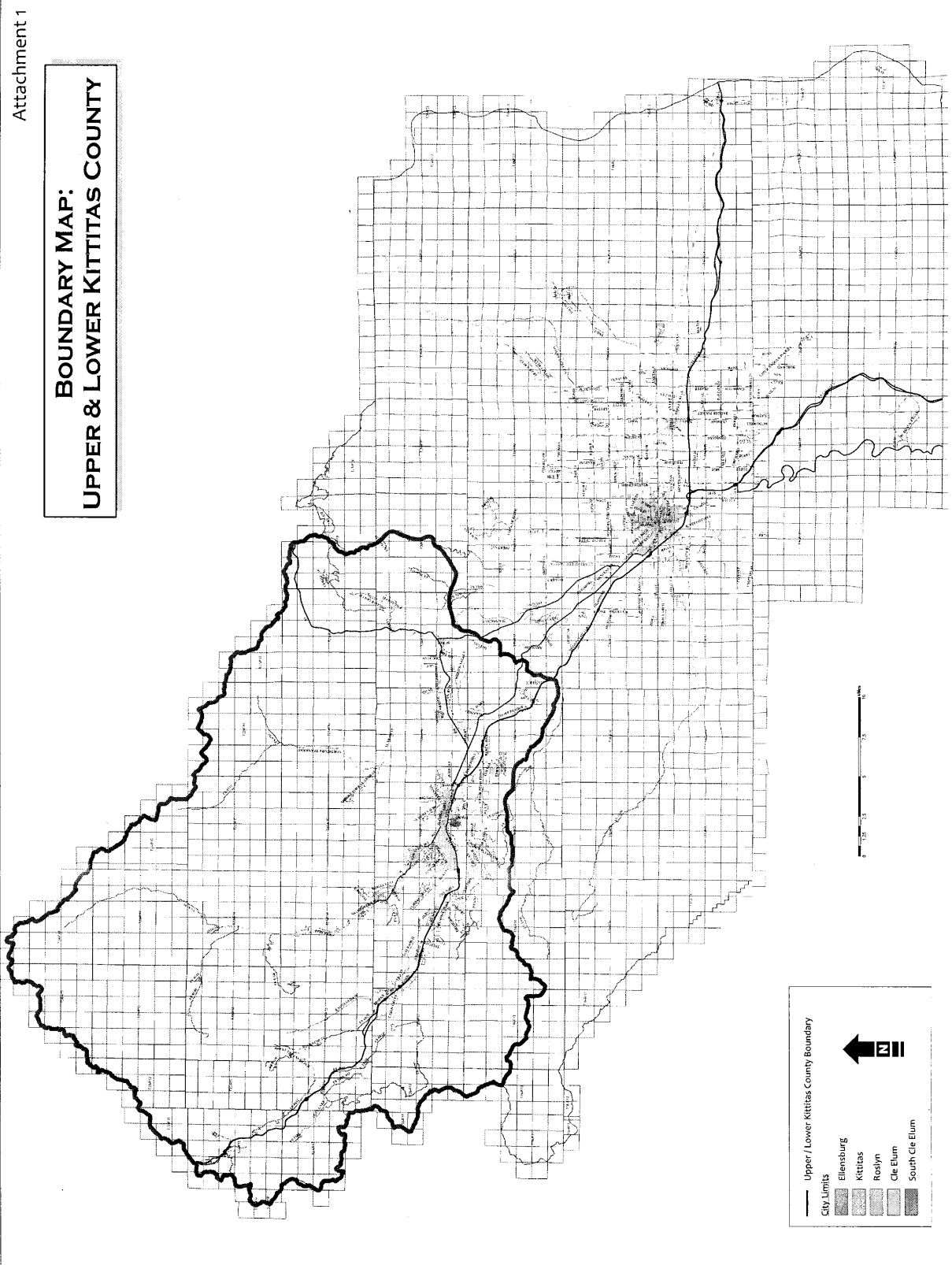
(d) Reviews described in WAC 173-539A-060 show changes are necessary.

(3) Kittitas County, or interested citizens may request that ecology exercise its discretion to review this chapter at any time.

(4) If ecology begins a review of this chapter, it will consult with Kittitas County.

NEW SECTION

WAC 173-539A-990 Appendix 1—Map of upper Kittitas County boundaries.



**WSR 08-23-013**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**

[Order 08-289—Filed November 6, 2008, 3:40 p.m., effective November 10, 2008, 7:00 p.m.]

Effective Date of Rule: November 10, 2008, 7:00 p.m.

Purpose: Amend commercial fishing rules.

Citation of Existing Rules Affected by this Order:

Repealing WAC 220-52-04600X and 220-52-04600Y; and amending WAC 220-52-046.

Statutory Authority for Adoption: RCW 77.12.047.

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

Reasons for this Finding: This closure complies with state/treaty management agreements for harvest allocation. Gear retrieval period is to allow for inclement weather conditions. There is insufficient time to promulgate permanent rules.

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

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

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

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

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

Date Adopted: November 6, 2008.

J. P. Koenings  
Director

NEW SECTION

**WAC 220-52-04600Y Puget Sound crab fishery—Seasons and areas.** Notwithstanding the provisions of WAC 220-52-046:

1) Effective 7:00 p.m. November 10, 2008, until 7:00 a.m. November 17, 2008, it will be unlawful to fish for Dungeness Crab for commercial purposes in those waters of Crab Management Regions 1 and 2 East (Marine Fish Shellfish Catch Reporting Areas 20A, 20B, 21A, 21B, 22A, 22B, 24A, 24B, 24C, 24D, and 26A-East.

2) Effective 7:00 p.m. November 10, 2008, until 7:00 p.m. November 11, 2008, it will be permissible for crab fishers to remove their gear from those waters of Crab Management Regions 1 and 2 East (Marine Fish Shellfish Catch Reporting Areas 20A, 20B, 21A, 21B, 22A, 22B, 24A, 24B, 24C, 24D, and 26A-East. No crab may be retained, landed

from, or possessed from these areas after 7:00 p.m. November 10, 2008.

REPEALER

The following section of the Washington Administrative Code is repealed effective 7:00 p.m. November 10, 2008:

WAC 220-52-04600X Puget Sound crab fishery—Seasons and areas. (08-233)

The following section of the Washington Administrative Code is repealed effective 7:01 a.m. November 17, 2008:

WAC 220-52-04600Y Puget Sound crab fishery—Seasons and areas.

**WSR 08-23-020**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**

[Order 08-288—Filed November 6, 2008, 4:29 p.m., effective November 10, 2008, 6:00 p.m.]

Effective Date of Rule: November 10, 2008, 6:00 p.m.

Purpose: Amend commercial rules.

Citation of Existing Rules Affected by this Order:

Repealing WAC 220-40-02700J; 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: The depth restriction was changed by agreement during preseason North of Falcon negotiations and was 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: November 6, 2008.

J. P. Koenings  
Director

NEW SECTION

**WAC 220-40-02700J Salmon—Willapa Bay fall fishery.** Notwithstanding the provisions of WAC 220-40-027, 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) Immediately through November 30, 2008: 9-inch minimum mesh; except 6:00 p.m. November 10 through 6:00 p.m. November 14, 2008 (coho directed), use either 6-inch maximum mesh or 9-inch maximum mesh. Only one net of either 6-inch or 9-inch configuration not to exceed 1,500 feet may be on board the vessel when in the act of fishing.

REPEALER

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

WAC 220-40-02700J Salmon—Willapa Bay fall fishery.

**WSR 08-23-021****EMERGENCY RULES****DEPARTMENT OF****FISH AND WILDLIFE**

[Order 08-287—Filed November 6, 2008, 4:32 p.m., effective November 10, 2008]

Effective Date of Rule: November 10, 2008.

Purpose: Amend personal use fishing rules.

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

Statutory Authority for Adoption: RCW 77.12.047.

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

Reasons for this Finding: In-season run size estimates indicate that the abundance is less than needed to meet the spawning goal. 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: November 6, 2008.

J. P. Koenings  
Director

NEW SECTION

**WAC 232-28-61900P Exceptions to statewide rules—Skagit River.** Notwithstanding the provisions of WAC 232-28-619, effective November 10, 2008, through December 31, 2008, it is unlawful to violate the following provisions, provided that unless otherwise amended, all permanent rules remain in effect:

From the mouth to the Cascade River - Release chum salmon.

REPEALER

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

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

**WSR 08-23-025****EMERGENCY RULES****EMPLOYMENT SECURITY DEPARTMENT**

[Filed November 7, 2008, 12:03 p.m., effective November 7, 2008, 12:03 p.m.]

Effective Date of Rule: Immediately.

Purpose: On June 19, 2008, the supreme court of Washington overturned the court of appeals, holding that the list of good cause reasons for voluntarily leaving work in RCW 50.20.050 (2)(b) is not exclusive. Instead, the department has the authority to consider whether other reasons constitute good cause for leaving work under RCW 50.20.050 (2)(a) for the purpose of eligibility for unemployment benefits. The emergency rule is intended to implement the court's decision.

Citation of Existing Rules Affected by this Order: Repealing WAC 192-16-009.

Statutory Authority for Adoption: RCW 50.12.010, 50.12.040, 50.20.010.

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 court's ruling was effective immediately. The department's existing regulations were adopted with the understanding that the eleven reasons for quitting work enumerated in RCW 50.20.050 (2)(b) was an exclusive list. An emergency rule was filed in July to implement the court's decision; a second emergency rule is needed pending adoption of the final rule. A proposed rule making

(CR-102) order has been filed as required by RCW 34.05.350 (2).

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

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

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

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

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

Date Adopted: November 2, 2008.

Paul Trause  
Deputy Commissioner

#### NEW SECTION

**WAC 192-150-170 Meaning of good cause—RCW 50.20.050(2).** (1) **General.** RCW 50.20.050(2) provides that you will not be disqualified from receiving unemployment benefits when you voluntarily leave work for good cause. The Washington Supreme Court in *Spain v. Employment Security Department* held that the factors listed in RCW 50.20.050 (2)(b) are not the only circumstances in which an individual has good cause for voluntarily leaving work. While these are considered *per se* or stand alone good cause reasons, the court held that the department is required under RCW 50.20.050 (2)(a) to consider whether other circumstances constitute good cause for voluntarily leaving work.

(2) **Other factors constituting good cause—RCW 50.20.050 (2)(a).** The department may determine that you had good cause to leave work voluntarily for reasons other than those listed in RCW 50.20.050 (2)(b).

(i) For separations under subsection (3) below, all of the following conditions must be met to establish good cause for voluntarily leaving work:

(A) You left work primarily for reasons connected with your employment; and

(B) These work-connected reasons were of such a compelling nature they would have caused a reasonably prudent person to leave work; and

(C) You first exhausted all reasonable alternatives before you quit work, unless you are able to show that pursuing reasonable alternatives would have been futile.

(ii) **Substantial involuntary deterioration of the work.** As determined by the legislature, RCW 50.20.050 (2)(b), subsections (v) through (x), represent changes to employment that constitute a substantial involuntary deterioration of the work.

(3) **Unreasonable hardship.** In addition to the good cause reasons listed in RCW 50.20.050 (2)(b), other work-connected circumstances may constitute good cause if you can show that continuing in your employment would work an

unreasonable hardship on you. "Unreasonable hardship" means a result not due to your voluntary action that would cause a reasonable person to leave that employment. The circumstances must be based on existing facts, not conjecture, and the reasons for leaving work must be significant.

Examples of work-connected unreasonable hardship circumstances that may constitute good cause include, but are not limited to, those where:

(A) Repeated behavior by your employer or co-worker(s) creates an abusive working environment.

(B) You show that your health or physical condition or the requirements of the job have changed so that your health would be adversely affected by continuing in that employment.

(3) **Commissioner Approved Training.** After you have been approved by the department for Commissioner Approved Training, you may leave a temporary job you have taken during training breaks or terms, or outside scheduled training hours, or pending the start date of training, if you can show that continuing with the work will interfere with your approved training.

**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 192-16-009

Disqualification for leaving work voluntarily—Meaning of good cause for claims with an effective date prior to January 4, 2004—RCW 50.20.-050(1).

#### **WSR 08-23-027**

#### **EMERGENCY RULES**

#### **DEPARTMENT OF**

#### **FISH AND WILDLIFE**

[Order 08-290—Filed November 7, 2008, 1:39 p.m., effective November 7, 2008, 1:39 p.m.]

Effective Date of Rule: Immediately.

Purpose: Amend commercial fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-47-31100W and 220-47-41100B; and amending WAC 220-47-311 and 220-47-411.

Statutory Authority for Adoption: RCW 77.12.047.

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

Reasons for this Finding: Per our in-season agreement with the tribes we have agreed to close Salmon Management and Catch Reporting Area 12C. There is insufficient time to promulgate permanent rules.

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

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

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

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

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

Date Adopted: November 7, 2008.

J. P. Koenings  
Director

#### NEW SECTION

**WAC 220-47-31100W Puget Sound purse seine fishery.** Notwithstanding the provisions of WAC 220-47-311, effective immediately until further notice, it is unlawful to fish in Salmon Management and Catch Reporting Area 12C for commercial purposes with purse seine gear.

#### NEW SECTION

**WAC 220-47-41100B Puget Sound gill net fishery.** Notwithstanding the provisions of WAC 220-47-411, effective immediately until further notice, it is unlawful to fish in Salmon Management and Catch Reporting Area 12C for commercial purposes with gill net gear.

#### REPEALER

The following section of the Washington Administrative Code is repealed effective November 25, 2008:

WAC 220-47-31100W Puget Sound purse seine fishery.

The following section of the Washington Administrative Code is repealed effective November 28, 2008:

WAC 220-47-41100B Puget Sound gill net fishery.

**WSR 08-23-035**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**

[Order 08-291—Filed November 10, 2008, 1:57 p.m., effective November 13, 2008, 12:01 p.m.]

Effective Date of Rule: November 13, 2008, 12:01 p.m.  
Purpose: Amend personal use fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-56-36000P; and amending WAC 220-56-360.

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: Survey results show that adequate clams are available for harvest in Razor Clam Areas 1, 2 and those portions of Razor Clam Area 3 opened for harvest. Washington department of health has certified clams from these beaches to be safe for human consumption. 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: November 10, 2008.

J. P. Koenings  
Director

#### NEW SECTION

**WAC 220-56-36000P Razor clams—Areas and seasons.** Notwithstanding the provisions of WAC 220-56-360, it is unlawful to dig for or possess razor clams taken for personal use from any beach in Razor Clam Areas 1, 2, or 3, except as provided for in this section:

1. Effective 12:01 p.m. November 13 through 11:59 p.m. November 16, 2008, razor clam digging is allowed in that portion of Razor Clam Area 3 that is between the Grays Harbor North Jetty and the southern boundary of the Quinault Indian Nation (Grays Harbor County). Digging is allowed from 12:01 p.m. to 11:59 p.m. each day only.

2. Effective 12:01 p.m. November 14 through 11:59 p.m. November 16, 2008, razor clam digging is allowed in Razor Clam Area 1 and Razor Clam Area 2. Digging is allowed from 12:01 p.m. to 11:59 p.m. each day only.

3. It is unlawful to dig for razor clams at any time in Long Beach, Twin Harbors Beach or Copalis Beach Clam sanctuaries defined in WAC 220-56-372.

REPEALER

The following section of the Washington Administrative Code is repealed effective 12:01 a.m. November 17, 2008:

WAC 220-56-36000P      Razor clams—Areas and seasons.

**WSR 08-23-036**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**

[Order 08-292—Filed November 10, 2008, 3:58 p.m., effective November 10, 2008, 3:58 p.m.]

Effective Date of Rule: Immediately.

Purpose: The purpose of this rule making is to provide for treaty Indian fishing opportunity in the Columbia 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 220-32-05100H; 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: Closes the mainstem platform and hook and line fisheries for sales. Allows Yakama Nation members to continue to sell fish caught in the Klickitat and White Salmon rivers to be sold. Requires a transfer permit from the Yakama Nation for fish to be sold outside a one-mile radius of the Klickitat Falls. Rule is consistent with action of the Columbia River compact on November 10, 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: November 10, 2008.

J. P. Koenings  
Director

NEW SECTION

**WAC 220-32-05100I 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: Immediately through 6:00 p.m. November 12, 2008.

b) AREA: Zone 6 (SMCRA 1F, 1G, 1H).

c) GEAR: Hoop nets, dip bag nets, and rod and reel with hook-and-line.

**2. 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.

b) AREA: White Salmon, and Klickitat rivers.

c) GEAR: Hoop nets, dip bag nets, and rod and reel with hook-and-line.

d) Effective 6:00 p.m. November 12, 2008, Chinook and coho that are sold outside a one-mile radius from the Klickitat Falls may be sold by Yakama Nation Transfer Permit only. Transfer Permits may be obtained from the Yakama Nation Tribal Council. Pursuant to Section 32.18.07 of the Yakama Law and Order Code, steelhead may not be sold.

**3. Mainstem Columbia River below Bonneville Dam**

a) SEASON: Immediately through 6:00 p.m. November 12, 2008, 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." is only for enrolled Yakama Nation members.

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.

4. ALLOWABLE SALES: Chinook, coho, sockeye, steelhead, walleye, shad, and carp may be sold if caught in mainstem platform/hook and line fishery or Yakama Nation tributary fisheries prior to 6 p.m. November 12, 2008. Sturgeon may not be sold. Sturgeon between 42 inches and 60 inches in length may be retained in the Bonneville Pool (SMCRA 1F) for subsistence purposes only. Sturgeon between 4 feet and 5 feet in length may be retained in The Dalles and John Day pools (SMCRA 1G, 1H) for subsistence purposes only. Sturgeon below Bonneville Dam may NOT be retained for subsistence purposes and may NOT be sold. Effective 6:00 p.m. November 12, 2008, only fish caught in the Klickitat or White Salmon rivers by Yakama Nation members may be sold (see Section 2.d).

5. 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.

6. 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** (The Dalles Pool) 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** (John Day Pool) includes those waters of the Columbia River upstream from a fishing boundary marker approximately 1/2-mile above the John Day River, Oregon, extending at a right angle across the thread of the river to a point in mid-river, then downstream to a fishing boundary marker on the Washington shore approximately opposite the mouth of the John Day River, and downstream from a line at a right angle across the thread of the river one mile downstream from McNary Dam.



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

### REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 220-32-05100H Columbia River salmon seasons above Bonneville Dam. (08-273)

**WSR 08-23-060**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**

[Order 08-293—Filed November 14, 2008, 3:51 p.m., effective November 14, 2008, 3:51 p.m.]

Effective Date of Rule: Immediately.

Purpose: Amend commercial fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-47-31100X and 220-47-41100C; and amending WAC 220-47-311 and 220-47-411.

Statutory Authority for Adoption: RCW 77.12.047.

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

Reasons for this Finding: Harvestable shares remain in Salmon Management and Catch Reporting Areas 8D, 12 and 12B. Schedules have been adjusted to accommodate tribal fisheries and attain shares. The allowable harvest limits in Salmon Management and Catch Reporting Areas 8A, 10 and 11 have been reached. There is insufficient time to promulgate permanent rules.

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

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

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

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

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

Date Adopted: November 14, 2008.

J. P. Koenings  
Director

### NEW SECTION

**WAC 220-47-31100X Puget Sound purse seine fishery.** Notwithstanding the provisions of WAC 220-47-311:

(1) Effective immediately until further notice, it is unlawful to fish in Salmon Management and Catch Reporting Areas 8A, 10 and 11 for commercial purposes.

(2) Effective November 17, 2008, it is unlawful to fish in Salmon Management and Catch Reporting Areas 12 and 12B.

(3) It is permissible to take, fish for, or possess salmon taken for commercial purposes in Puget Sound Management and Catch Reporting Areas 12 and 12B, 7:00 a.m. to 5:00 p.m. November 19, 2008.

(4) Effective November 19, 2008, it is unlawful to fish in Salmon Management and Catch Reporting Area 8D.

(5) It is permissible to take, fish for, or possess salmon taken for commercial purposes in Puget Sound Management and Catch Reporting Area 8D, 7:00 a.m. to 5:00 p.m. November 17, 2008.

(6) Unless otherwise amended, all permanent rules remain in effect.

### NEW SECTION

**WAC 220-47-41100C Puget Sound gill net fishery.** Notwithstanding the provisions of WAC 220-47-411:

(1) Effective immediately until further notice, it is unlawful to fish in Salmon Management and Catch Reporting Areas 8A, 10 and 11 for commercial purposes.

(2) It is permissible to take, fish for, or possess salmon taken for commercial purposes in Puget Sound Management and Catch Reporting Areas 12 and 12B, 7:00 a.m. to 7:00 p.m. November 18, 2008.

(3) Effective November 19, 2008, it is unlawful to fish in Salmon Management and Catch Reporting Areas 12 and 12B.

(4) Effective November 19, 2008, it is unlawful to fish in Salmon Management and Catch Reporting Area 8D.

(5) It is permissible to take, fish for, or possess salmon taken for commercial purposes in Puget Sound Management and Catch Reporting Area 8D, 7:00 a.m. to 7:00 p.m. November 18 and 20, 2008.

(6) Unless otherwise amended, all permanent rules remain in effect.

### REPEALER

The following section of the Washington Administrative Code is repealed effective November 27, 2008:

WAC 220-47-31100X Puget Sound purse seine fishery.

The following section of the Washington Administrative Code is repealed effective November 29, 2008:

WAC 220-47-41100C Puget Sound gill net fishery.