

WSR 09-07-005
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 09-30—Filed March 4, 2009, 4:25 p.m., effective March 4, 2009,
4:25 p.m.]

Effective Date of Rule: Immediately.

Purpose: Amend personal-use fishing rules.

Citation of Existing Rules Affected by this Order:
Repealing WAC 232-28-61900N; 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 Colville Tribe has requested these Okanogan River closures to help protect returning steelhead to some of the tributaries. The overall fishery can remain open to reduce the proportion of hatchery-origin steelhead on the spawning grounds, to minimize the impact to wild steelhead, and thus to increase natural production. There is insufficient time to adopt permanent rules.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 1, Amended 0, Repealed 1.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: March 4, 2009.

Philip Anderson
Director

NEW SECTION

WAC 232-28-61900C Exceptions to statewide rules—Columbia, Methow, Okanogan and Similkameen rivers. Notwithstanding the provisions of WAC 232-28-619, it is unlawful to violate the following provisions in the following waters:

(1) For purposes of this section, "adipose fin-clipped steelhead" means steelhead with an adipose fin clip and a healed scar at the site of the fin clip, whether or not any other fins are clipped or a healed scar is present at any other fin position.

(2) Columbia River:

(a) From Wells Dam to 400 feet below Chief Joseph Dam: Open until further notice. Selective gear rules, except

bait and motorized vessels allowed. Night closure in effect. Daily limit may contain up to two adipose fin clipped steelhead. Release steelhead with anchor (floy) tag attached.

(b) From Rocky Reach Dam upriver to 400 feet below Wells Dam: Open until further notice. Daily limit may contain up to two adipose fin-clipped steelhead. Selective gear rules apply, except bait and motorized vessels allowed. Night closure in effect. Release steelhead with anchor (floy) tag attached.

(3) Methow River—Open until further notice: From the Hwy. 97 Bridge in Pateros upstream to the second powerline crossing, and from the first Hwy. 153 Bridge north of Pateros to the confluence with the Chewuch River. Closed waters from second powerline crossing to the first Hwy. 153 Bridge. Selective gear rules apply; except it is permissible to fish from motorized vessels. Night closure in effect. All species: Release all fish, except up to two adipose fin-clipped steelhead per day may be retained. Whitefish may be retained. Release steelhead with anchor (floy) tag attached. Whitefish gear rules do not apply.

(4) Okanogan River—Open until further notice: From mouth upstream, except closed from Lake Osoyoos Control Dam (Zosel Dam) downstream to first Highway 97 Bridge. Selective gear rules, except motorized vessels allowed. Night closure in effect. Daily limit may contain up to two adipose fin-clipped steelhead. Release steelhead with anchor (floy) tag attached.

a. Closed effective March 15, 2009: Okanogan River from 100' below the Highway 155 Bridge to the mouth of Omak Creek.

b. Closed effective March 15, 2009: Okanogan River from the mouth of Bonaparte Creek to 100' below the mouth of Bonaparte Creek.

(5) Similkameen River - Mouth to 400 feet below Enloe Dam: Open until further notice. Selective gear rules. Night closure in effect. All species: Release all fish, except up to two adipose fin-clipped steelhead per day may be retained. Whitefish may be retained. Release steelhead with anchor (floy) tag attached. Whitefish gear rules do not apply.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 232-28-61900N	Exceptions to statewide rules—Columbia, Methow, Okanogan, and Similkameen rivers. (08-283)
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WSR 09-07-006
EMERGENCY RULES
DEPARTMENT OF PERSONNEL

[Filed March 5, 2009, 10:59 a.m., effective March 5, 2009, 10:59 a.m.]

Effective Date of Rule: Immediately.

Purpose: The purpose of these rule changes is to clarify layoff rights of Washington general service and Washington management service (WMS) employees. The rule changes

are in regards to: Layoff list eligibility, general government transition pool program eligibility, calculation of part-time employees' seniority dates, WMS rehire from layoff lists, and WMS review periods. In addition, these proposed changes will eliminate any reference to the term "occupational category" in Title 357 WAC and replace it with "class series."

Citation of Existing Rules Affected by this Order: Repealing WAC 357-01-215; and amending WAC 357-46-070, 357-46-080, 357-01-080, 357-01-135, 357-16-155, 357-16-157, 357-46-035, 357-46-135, 357-46-055, 357-46-095, 357-46-058, 357-58-305, and 357-58-310.

Statutory Authority for Adoption: Chapter 41.06 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.

Reasons for this Finding: Considering the reality of the state's budget situation, it is likely that many state employers are in the process of or will be implementing layoffs in the near future. The proposed changes to the layoff rules are necessary to clarify the rules and to help ensure that state employees will receive their proper layoff rights. The public is best served when its employees are assured of a fair and orderly layoff procedure, which in the current fiscal climate must be put into place without delay. Accordingly, the immediate adoption of the proposed rules is necessary to preserve the general welfare. In these circumstances, it would be contrary to the public interest to observe the time requirements of notice and for the adoption of 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 1, Amended 13, Repealed 1.

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 1, Amended 13, Repealed 1.

Date Adopted: March 5, 2009.

Eva N. Santos
Director

AMENDATORY SECTION (Amending WSR 04-18-114, filed 9/1/04, effective 7/1/05)

WAC 357-46-070 Which employees are eligible to have their name placed on an employer's internal layoff list? (1) Permanent employees of the employer who satisfy the following criteria must have their name placed on the employer's internal layoff list if the employee exercises this option within the two-year eligibility period:

(a) **Employees who are laid off or have been notified in writing by the employer that they are scheduled to be laid off** are eligible to be on the internal layoff list for classes in which they held permanent status during the current period of unbroken service at the same or lower salary range and lower classes in the same (~~((occupational category/class series))~~) class series. Permanent status is not required for the lower classes in the (~~((occupational category/class series))~~) class series. For purposes of this subsection "employees" includes Washington management service (WMS) employees who are laid off or have been notified by the employer that they are scheduled to be laid off and who have held permanent status in Washington general service during the current period of unbroken service. WMS employees only have layoff list rights to classes which the highest step of the salary range is equal to or below the WMS salary at the time of lay-off or notification of layoff.

(b) **Employees who accept a voluntary demotion in lieu of layoff** are eligible to be on the internal layoff list for the class from which they demoted and classes at that salary range and lower salary ranges in which the employee held permanent status during the current period of unbroken service and lower classes in the same (~~((occupational category))~~) class series. Permanent status is not required for the lower classes in the (~~((occupational category))~~) class series. Washington management service (WMS) employees who accept a voluntary demotion in lieu of layoff are eligible to be on the internal layoff list for classes in which they held permanent status during the current period of unbroken service. WMS employees only have layoff list rights to classes which the highest step of the salary range is equal to or below the WMS salary at the time of the demotion.

(c) **Employees who accepted less than comparable positions** as defined by the employer's layoff procedure are eligible to be on the internal layoff list for classes in which they held permanent status at the same or lower salary range and lower classes in the same (~~((occupational category))~~) class series. Permanent status is not required for the lower classes in the (~~((occupational category))~~) class series.

(d) **Employees who have not successfully completed a trial service period and are placed in a nonpermanent position following reversion** are eligible to be on the internal layoff list for classes in which the employee previously held permanent status during the current period of unbroken service.

(e) **Employees who remain in a position reallocated to a lower salary range** are eligible to be on the internal layoff list for the class the employee held permanent status in prior to the reallocation.

(2) Employees who have been demoted for cause from a class are **not** eligible to be on the internal layoff list for that class.

AMENDATORY SECTION (Amending WSR 04-18-114, filed 9/1/04, effective 7/1/05)

WAC 357-46-080 Which employees are eligible to have their name placed on an employer's statewide layoff list? (1) Permanent employees who satisfy the following criteria must have their name placed on the statewide layoff list

for other employers if the employee exercises this option within the two-year eligibility period:

(a) Employees who are laid off or notified in writing by the employer that they are scheduled to be laid off are eligible to be on the statewide layoff list for classes in which they held permanent status during the current period of unbroken service at the same or lower salary range and lower classes in the same (~~((occupational category/class series))~~) class series. Permanent status is not required in the lower classes in the (~~((occupational category/class series))~~) class series. For purposes of this subsection "employees" includes Washington management service (WMS) employees who are laid off or have been notified by the employer that they are scheduled to be laid off and who have held permanent status in Washington general service during the current period of unbroken service. WMS employees only have layoff list rights to classes which the highest step of the salary range is equal to or below the WMS salary at the time of layoff or notification of layoff.

(b) Employees who accept a voluntary demotion in-lieu of layoff are eligible to be on the statewide layoff list for the class from which they demoted and classes at that salary range and lower salary ranges in which the employees held permanent status and lower classes in the same (~~((occupational category/class series))~~) class series. Permanent status is not required for the lower classes in the (~~((occupational category/class series))~~) class series. Washington management service (WMS) employees who accept a voluntary demotion in lieu of layoff are eligible to be on the internal layoff list for classes in which they held permanent status during the current period of unbroken service. WMS employees only have layoff list rights to classes which the highest step of the salary range is equal to or below the WMS salary at the time of the demotion.

(c) Employees who accepted less-than-comparable positions at the time of layoff are eligible to be on the statewide layoff list for classes in which they held permanent status at the current or lower salary range and lower classes in the same (~~((occupational category/class series))~~) class series. Permanent status is not required for the lower classes in the (~~((occupational category/class series))~~) class series.

(2) Employees who have been demoted for cause from a class are **not** eligible to be on the statewide layoff list for that class.

AMENDATORY SECTION (Amending WSR 05-01-204, filed 12/21/04, effective 7/1/05)

WAC 357-01-080 (~~((Class series/occupational category-))~~) Class series. A grouping of job functions having similar purpose and knowledge requirements(-), but different levels of difficulty and responsibility.

AMENDATORY SECTION (Amending WSR 05-01-204, filed 12/21/04, effective 7/1/05)

WAC 357-01-135 Elevation. An employer-initiated action that moves an employee to a position in either:

(1) A higher class in which the employee held permanent status prior to a demotion; or

(2) A class in the same (~~((class series/occupational category))~~) class series which is between the current class and the class from which the employee demoted.

AMENDATORY SECTION (Amending WSR 05-01-200, filed 12/21/04, effective 7/1/05)

WAC 357-16-155 Can an eligible's name be removed from an applicant or candidate pool for a class or all classes in ((an occupational category/class series)) a class series? An employer or the department may disqualify an individual by removing the individual's name from an applicant and/or candidate pool for a class or all classes in (~~((an occupational category/class series))~~) a class series at anytime for good and sufficient reason.

AMENDATORY SECTION (Amending WSR 06-03-071, filed 1/12/06, effective 2/13/06)

WAC 357-16-157 Is an eligible's name removed from applicant and/or candidate pools when he/she is appointed to a position? An eligible's name is removed from the applicant and/or candidate pool for the class to which he/she is appointed and all lower classes in the same (~~((class series/occupational category))~~) class series.

AMENDATORY SECTION (Amending WSR 04-18-114, filed 9/1/04, effective 7/1/05)

WAC 357-46-035 Layoff option. (1) What option does a permanent employee have to take a position when the employee is scheduled for layoff?

Within the layoff unit, a permanent employee scheduled for layoff must be offered the option to take a position, if available, that meets the following criteria:

(a) The position is allocated to the class in which the employee holds permanent status at the time of the layoff. If no option to a position in the current class is available, the employee's option is to a position in a class in which the employee has held permanent status that is at the same salary range. If the employee has no option to take a position at the same salary range, the employee must be given an opportunity to take a position in a lower class in (~~((an occupational category/class series))~~) a class series in which the employee has held permanent status, in descending salary order. The employee does not have to have held permanent status in the lower class in order to be offered the option to take a position in the class.

(b) The position is comparable to the employee's current position as defined by the employer's layoff procedure.

(c) The employee satisfies the competencies and other position requirements.

(d) The position is funded and vacant, or if no vacant funded position is available, the position is occupied by the employee with the lowest employment retention rating.

(2) What if the employee has no option under subsection 1?

(a) If a permanent employee has no option available under subsection (1) of this section, the employer must determine if there is an available position in the layoff unit to offer

the employee in lieu of separation that meets the following criteria:

- (i) The position is at the same or lower salary range maximum as the position from which the employee is being laid off (~~from~~);
- (ii) The position is vacant and less than comparable or held by a probationary employee or an employee in a nonpermanent appointment; and
- (iii) The position is one for which the employee meets the competencies and other position requirements.

(b) If more than one qualifying position is available, the position with the highest salary range maximum is the one that must be offered.

(3) What happens when a class in which the employee previously held permanent status has been revised or abolished?

If a class in which an employee has previously held permanent status has been revised or abolished, the employer shall determine the closest matching class to offer as a layoff option. The closest matching class must be at the same or lower salary range maximum as the class from which the employee is being laid off.

AMENDATORY SECTION (Amending WSR 06-15-064, filed 7/13/06, effective 8/14/06)

WAC 357-46-135 What causes an individual's name to be removed from a layoff list? (1) An individual's name **must** be removed from an internal layoff list or statewide layoff list at the request of the individual or upon an employee's retirement, resignation, expiration of eligibility or dismissal from the employer.

(2) An individual's name **may** be removed from the internal and/or statewide layoff list for a class when:

- (a) The individual is appointed to a permanent position in the class. The individual may also be removed from the internal and/or statewide layoff list for any classes with a lower salary range maximum in that (~~(class series/occupational category)~~) class series.
- (b) The individual is appointed to a permanent position in a class with a higher salary range maximum in a different (~~(class series/occupational category)~~) class series.
- (c) The individual has been certified from the layoff list and waives consideration for a position in the class three times.
- (d) The employer determines good and sufficient reason exists.

AMENDATORY SECTION (Amending WSR 05-08-135, filed 4/6/05, effective 7/1/05)

WAC 357-46-055 How is a general government employee's seniority date determined? (1) For a full-time general government employee, the seniority date is the employee's most recent date of hire into state service as adjusted for any period of leave without pay which exceeds fifteen consecutive calendar days except when the leave without pay is taken for:

- (a) Military leave as provided in WAC 357-31-370;
- (b) Compensable work-related injury or illness leave;

(c) Government service leave not to exceed two years and one month;

(d) Educational leave, contingent upon successful completion of the coursework; and/or

(e) Reducing the effects of layoff.

(f) When an employee is on leave without pay for more than fifteen consecutive calendar days and the absence is not due to one of the reasons listed above, the employee's seniority date must be moved forward in an amount equal to the number of calendar days on leave without pay.

(2) For a part-time general government employee, the seniority date is calculated by determining the number of actual hours worked and/or in paid status((-)), excluding compensatory time off. Actual hours worked includes overtime hours regardless of whether or not the employee receives monetary payment or compensatory time for the hours worked. Time spent in leave without pay status is not credited unless the leave without pay is taken for:

(a) Military leave as provided in WAC 357-31-370;

(b) Compensable work-related injury or illness leave;

(c) Government service leave not to exceed two years and one month;

(d) Educational leave, contingent upon successful completion of the coursework; and/or

(e) Reducing the effects of layoff.

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

AMENDATORY SECTION (Amending WSR 05-21-058, filed 10/13/05, effective 11/15/05)

WAC 357-46-095 Who is eligible for the general government transition pool program? The following individuals are eligible to participate in the general government transition pool program:

(1) All general government permanent employees separated by layoff or notified by their employer that they are at risk of layoff(±). This includes Washington management service permanent employees who are separated by layoff or notified by their employer that they are at risk of layoff.

(2) All general government permanent employees who are reverted and not returned to a permanent position in the class in which the employee last held permanent status;

(3) Employees who are eligible to participate in the return-to-work initiative program in accordance with chapter 357-19 WAC;

(4) Permanent Washington management service employees who accept a position in Washington general service and are being voluntarily or involuntarily reverted during the trial service period;

(5) Former permanent classified general government employees who have submitted a written request for reemployment within two (2) years of disability separation and who have met the reemployment requirements of WAC 357-19-475;

(6) General government employee business unit members whose contract has expired or been terminated; and

(7) Permanent Washington management service employees who accept acting appointments and who do not

return on the agreed upon date in accordance with WAC 357-58-275.

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

AMENDATORY SECTION (Amending WSR 05-12-073, filed 5/27/05, effective 7/1/05)

WAC 357-46-058 Is an employee who is rehired following layoff considered to have had a break in state service? (1) An employee laid off in accordance with the provisions of WAC 357-46-010 or WAC 357-58-445 is not considered to have had a break in continuous state service if within two years of separation the employee is appointed to a position:

(a) From a layoff list or the general government transition pool; or

(b) As a promotional candidate in accordance with the employer's promotional policy.

(2) Upon appointment, the employee is reinstated with the seniority and unbroken service the employee had at the time of layoff. For a general government employee, the time spent off the payroll due to layoff is treated like leave without pay and seniority and unbroken service dates must be adjusted in accordance with WAC 357-31-345 and 357-46-055 respectively.

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

NEW SECTION

WAC 357-58-477 Is a WMS employee who is rehired following layoff considered to have had a break in service? (1) An employee laid off in accordance with the provisions of WAC 357-58-445 is not considered to have had a break in continuous state service if within two years of separation the employee is appointed to a position:

(a) From the general government transition pool; or

(b) As a promotional candidate in accordance with the employer's promotional policy.

(2) Upon appointment, the employee is reinstated with the seniority and unbroken service the employee had at the time of layoff. Time spent off the payroll due to layoff is treated like leave without pay and seniority and unbroken service dates must be adjusted in accordance with WAC 357-31-345 and 357-46-055 respectively.

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

AMENDATORY SECTION (Amending WSR 05-12-070, filed 5/27/05, effective 7/1/05)

WAC 357-58-305 When does a WMS employee attain permanent status? Upon successful completion of the review period, the employee will attain permanent status in the position. If the employer does not require a review period the employee will attain permanent status upon appointment.

AMENDATORY SECTION (Amending WSR 05-12-070, filed 5/27/05, effective 7/1/05)

WAC 357-58-310 When may a WMS employee (~~who transfers or voluntarily demotes~~) be required to serve a WMS review period? An appointing authority may require an employee who transfers, ~~((or))~~ voluntarily demotes, or accepts a layoff option to another WMS position to serve a review period.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 357-01-215

Occupational category/class series.

WSR 09-07-012 EMERGENCY RULES DEPARTMENT OF FISH AND WILDLIFE

[Order 09-31—Filed March 5, 2009, 4:17 p.m., effective March 6, 2009, 6:00 p.m.]

Effective Date of Rule: March 6, 2009, 6:00 p.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 220-32-05100K and 220-32-05100L; 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: 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. A court order sets the current parameters. *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 salmon and steelhead stocks in the Columbia River 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 allow for some incidental take of these species in the fisheries as described in the 2008-2017 *U.S. v. Oregon Management Agreement*.

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.

Closes the treaty Indian winter gillnet season in SMCRA 1G and 1H. Prohibits the sale of fish caught in SMCRA 1F, 1G and 1H from ongoing platform and hook and line fisheries. Fisheries are consistent with the 2008-2017 interim management agreement and the biological opinion. Rule is consistent with action of the Columbia River compact on March 4, 2009. Conforms state rules with tribal rules. There is insufficient time to adopt permanent regulations.

Number of Sections Adopted in Order to Comply with Federal Statute: New 1, Amended 0, Repealed 2; Federal Rules or Standards: New 1, Amended 0, Repealed 2; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

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

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

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

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

Date Adopted: March 5, 2009.

Loreva M. Preuss
for Philip Anderson
Director

NEW SECTION

WAC 220-32-05100L Columbia River salmon seasons above Bonneville Dam. Notwithstanding the provisions of WAC 220-32-050, WAC 220-32-051, WAC 220-32-052, WAC 220-22-010 and WAC 220-32-058, effective immediately until further notice, it is unlawful for a person to

take or possess salmon, shad, or sturgeon for commercial purposes in Columbia River Salmon Management and Catch Reporting Areas 1F, 1G, and 1H; except that those individuals possessing treaty fishing rights under the Yakima, Warm Springs, Umatilla, and Nez Perce treaties may fish for salmon, steelhead, walleye, shad, carp, or sturgeon under the following provisions:

1. Open Areas: SMCRA 1F, 1G, 1H:

a. Season: Open immediately through 6:00 p.m. March 21, 2009.

b. Gear: Hoop nets, dip bag nets, and rod and reel with hook and line.

c. Allowable sale: Sturgeon, steelhead, walleye, shad, carp, walleye, bass, and yellow perch. Sturgeon between 43-54 inches in fork length in The Dalles (1G) and John Day pools (1H) may be sold or retained for subsistence purposes. In the Bonneville Pool (1F), sturgeon may only be retained for subsistence purposes and must be between 38-54 inches in fork length. Live release of all oversize and under-size sturgeon is required. Salmon may **not** be sold, but may be retained for ceremonial and subsistence purposes.

2. Open Area: 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), for enrolled Yakama Nation members. Consistent with the 2007 MOA between Washington and Yakama Nation.

a. Season: immediately through 6:00 p.m. March 21, 2009

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

c. Allowable Sales: Steelhead, walleye, carp, shad, catfish, bass and yellow perch. Chinook may not be sold, but may be retained for Ceremonial and Subsistence (C&S) purposes. **Sturgeon retention is prohibited**, and may not be sold nor retained for ceremonial & subsistence purposes. Sales may not occur on USACE property.

3. 24-hour quick reporting required for Washington wholesale dealers, WAC 220-69-240, for all areas.

REPEALER

The following section of the Washington Administrative Code is repealed effective 6:00 p.m. March 6, 2009:

WAC 220-32-05100K	Columbia River salmon seasons above Bonneville Dam. (09-22)
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The following section of the Washington Administrative Code is repealed effective 6:01 p.m. March 21, 2009:

WAC 220-32-05100L	Columbia River salmon seasons above Bonneville Dam.
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WSR 09-07-016
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 09-32—Filed March 6, 2009, 10:01 a.m., effective March 6, 2009,
 10:01 a.m.]

Effective Date of Rule: Immediately.

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

Citation of Existing Rules Affected by this Order: Repealing WAC 220-33-01000Y and 220-33-01000Z; 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: 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.

Adjusts the 2009 winter select area fishing season in Deep River consistent with compact action of March 4, 2009. This action allows for an increased opportunity to harvest hatchery fish. The fishery is consistent with the *U.S. v. Oregon Management Agreement* and the associated biological opinion. Conforms Washington state rules with Oregon state rules. There is insufficient time to adopt permanent rules.

Number of Sections Adopted in Order to Comply with Federal Statute: New 1, Amended 0, Repealed 2; Federal Rules or Standards: New 1, Amended 0, Repealed 2; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

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

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

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

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

Date Adopted: March 6, 2009.

Loreva M. Preuss
 for Philip Anderson
 Director

NEW SECTION

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

1. Blind Slough Select Area

a) Area: Only Blind Slough area open during winter season (see dates below), and both Blind Slough and Knappa Slough areas open during spring season (see dates below).

b) Dates: Winter Season: 7:00 p.m. Wednesdays to 7:00 a.m. Thursdays, **and** 7:00 p.m. Sunday to 7:00 a.m. Monday, immediately through March 29, 2009; **and** 7:00 p.m. Sunday, April 5, to 7:00 a.m. Monday, April 6, 2009.

Spring Season: 7:00 p.m. Mondays to 7:00 a.m. Tuesdays, and 7:00 p.m. Thursdays to 7:00 a.m. Fridays from April 16 through April 28.

c) Gear: Nets are restricted to 100 fathoms in length, with no weight restriction on headline. Use of additional

weights or anchors attached directly to the leadline is allowed. Winter season: 7-inch minimum mesh. Spring Season: 8-inch maximum mesh.

d) Allowable sales: salmon, shad, and white sturgeon (43-54 inch fork length). A maximum of five white sturgeon may be possessed or sold by each participating vessel during each calendar week (Sunday through Saturday) that the fishery is open.

e) 24-hour quick reporting in effect for Washington buyers.

2. Deep River Select Area

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

b) Dates: Winter Season: 7:00 p.m. Mondays to 7:00 a.m. Tuesdays immediately through March 31. Spring Season: 7:00 p.m. Sundays to 7:00 a.m. Mondays, and 7:00 p.m. Wednesdays to 7:00 a.m. Thursdays, from April 15 through April 30, 2009.

c) Gear: Nets are restricted to a maximum length of 100 fathoms with no weight restriction on leadline. Use of additional weights or anchors attached directly to the leadline is allowed. Nets cannot be tied off to any stationary structures. Nets may not fully cross the navigation channel. Winter season: 7-inch minimum mesh. Spring season: 8-inch maximum mesh.

d) Allowable sale: salmon, shad, and white sturgeon (43-54 inch fork length). A maximum of five white sturgeon may be possessed or sold by each participating vessel during each calendar week (Sunday through Saturday) that the fishery is open.

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

f) 24-hour quick reporting in effect for Washington buyers.

3. Tongue Point

a) Area: Tongue Point fishing area includes all waters bounded by a line extended from the upstream (southern most) pier (#1) at the Tongue Point Job Corps facility, through navigation marker #6 to Mott Island, (new spring lower deadline); 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. The 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, and northwesterly to a marker on Burnside Island defining the upstream terminus of South Channel.

b) Dates: 7:00 p.m. Mondays through 7:00 a.m. Tuesdays and 7:00 p.m. Thursdays through 7:00 a.m. Fridays from April 20 through April 28, 2009.

c) Gear: In the Tongue Point fishing area, gear restricted to 8-inch maximum mesh size, maximum net length of 250 fathoms, and weight not to exceed two pounds on any one fathom. In the South Channel fishing area, gear restricted to

8-inch maximum mesh size, maximum net length of 100 fathoms, no weight restriction on leadline, and use of additional weights or anchors attached directly to the leadline is allowed.

d) Allowable sale: salmon, shad, and white sturgeon (43-54 inch fork length). A maximum of five white sturgeon may be possessed or sold by each participating vessel during each calendar week (Sunday through Saturday) that the fishery is open.

e) Miscellaneous: Transportation or possession of fish outside the fishing area is unlawful until ODFW staff has biologically sampled individual catches. A sampling station will be established at the MERTS dock. After sampling, fishers will be issued a transportation permit by agency staff.

f) 24-hour quick reporting in effect for Washington buyers.

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

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 220-33-01000Y Columbia River seasons below Bonneville. (09-18)

The following section of the Washington Administrative Code is repealed effective May 1, 2009:

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

WSR 09-07-017

EMERGENCY RULES

DEPARTMENT OF

FISH AND WILDLIFE

[Order 09-26—Filed March 6, 2009, 10:40 a.m., effective March 6, 2009, 10:40 a.m.]

Effective Date of Rule: Immediately.

Purpose: Amend commercial fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-52-04600D; 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 allocation and to reduce fishing mortality in areas that do not meet the hard-shell criteria. There is insufficient time to adopt permanent rules.

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

Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

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

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

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

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

Date Adopted: March 6, 2009.

Loreva M. Preuss
for Philip Anderson
Director

NEW SECTION

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

1) Effective 7:00 p.m. March 20, 2009, until further notice, it will be unlawful to fish for Dungeness Crab for commercial purposes in those waters of Crab Management Region 1 (Marine Fish-Shellfish Management and Catch Reporting Areas 20A, 20B, 21A, 21B, 22A, and 22B).

2) Effective 7:00 p.m. March 31, 2009, until further notice, it will be unlawful to fish for Dungeness Crab for commercial purposes in those waters of Crab Management Regions 2 West and 3 (Marine Fish-Shellfish Management and Catch Reporting Areas 23A, 23B, 23C, 23D, 25A, 25B, 25D, 25E, 26A West, and 29).

3) Effective immediately until further notice, it will be unlawful to fish for Dungeness Crab for commercial purposes in those waters of Crab Management Region 2 East (Marine Fish-Shellfish Management and Catch Reporting Areas 24A, 24B, 24C, 24D, and 26A East).

REPEALER

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

WAC 220-52-04600D Crab fishery—Seasons and areas. (09-15)

WSR 09-07-024

EMERGENCY RULES

DEPARTMENT OF HEALTH

[Filed March 6, 2009, 3:37 p.m., effective March 6, 2009, 3:37 p.m.]

Effective Date of Rule: Immediately.

Purpose: The purpose of this rule is to amend chapter 246-296 WAC, Drinking water state revolving fund loan program, to include criteria for water systems to obtain a loan as

provided in the federal American Recovery and Reinvestment Act of 2009.

Citation of Existing Rules Affected by this Order: Amending WAC 246-296-020 Definitions.

Statutory Authority for Adoption: RCW 70.119A.170.

Other Authority: American Recovery and Reinvestment Act of 2009.

Under RCW 34.05.350 the agency for good cause finds that state or federal law or federal rule or a federal deadline for state receipt of federal funds requires immediate adoption of a rule.

Reasons for this Finding: The Administrative Procedure Act allows the department to adopt an emergency rule as follows:

(1) If an agency for good cause finds: (a) 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; or (b) that state or federal law or federal rule or a federal deadline for state receipt of federal funds requires immediate adoption of a rule, the agency may dispense with those requirements and adopt, amend, or repeal the rule on an emergency basis. The agency's finding and a concise statement of the reasons for its finding shall be incorporated in the order for adoption of the emergency rule or amendment filed with the office of the code reviser under RCW 34.05.380 and with the rules review committee.

The new federal law, the American Recovery and Reconstruction Act (ARRA), requires immediate adoption of a rule for the drinking water state revolving fund (DWSRF) program, as described below.

With the national economic recession, the federal government has created a stimulus program through the ARRA that appropriates additional funds to DWSRF, with a preference for quick-start activities that maximize job creation and economic benefit. The ARRA process generally fits within Washington state's DWSRF process, but contains a number of special requirements that are only applicable to this funding. The state must assure that our requirements align with these requirements in order to receive this funding. Some of the ARRA requirements are not covered under or are not consistent with our current state rule. For example, the ARRA requires that projects be ready to proceed within twelve months of the effective date of the ARRA in order to be eligible for funding. It further requires that states provide subsidization to eligible recipients in the form of principal forgiveness, negative interest loans or grants or a combination of these for at least 50% of the federal capitalization grant, and establishes a requirement that 20% of the funds be used for eligible green projects. The ARRA also includes a preference for projects that can begin with [within] one hundred twenty days of the effective date of [the] act. The current SRF rules establish eligibility, priority and selection criteria for loans, but do not define readiness to proceed as an eligibility criterion. Further, they do not identify any form of funding other than loans with principal repayment, nor do they address funding of green projects.

The necessary rule changes must be in place prior to awarding the economic stimulus funds. The quick start provisions of the ARRA require that the application and award process happen very quickly. The federal agency that administers the capitalization grants, the Environmental Protection Agency, has asked the states to expedite the process in order to help selected project applicants meet the ARRA-imposed construction deadlines. One of the initial steps in the process of awarding funds is publication for review and comment of a draft intended use plan (IUP) that includes a list of fundable projects. IUPs are required for all DWSRF grants, as part of a public review process. The department will publish the draft IUP in April in order to address the quick start requirements. The expedited timelines imposed by the ARRA do not allow use of the normal rule-making process. Therefore, an emergency rule is necessary in order to meet the requirements of the federal stimulus legislation.

Number of Sections Adopted in Order to Comply with Federal Statute: New 1, 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 1, Amended 0, Repealed 0.

Date Adopted: March 6, 2009.

Mary C. Selecky
Secretary

AMENDATORY SECTION (Amending WSR 01-21-137, filed 10/24/01, effective 11/24/01)

WAC 246-296-020 Definitions. "Act" means the Federal Safe Drinking Water Act (SDWA).

"Application" means a DWSRF loan application submitted to DOH for DWSRF assistance.

"Application package" means DWSRF loan application form(s), requirements, terms of assistance, and related information jointly developed and published by DOH, the board, and the board's agent, CTED.

"Binding commitment" means a legal obligation by the state to an assistance recipient that defines the terms and the timing for assistance under this chapter.

"Board" means the state of Washington public works board.

"Borrower" means the entity or individual that has the legal and financial responsibility for the loan.

"Certification/certify" means documentation signed by the loan recipient that specific requirements or standards have been or will be met.

"Change orders" means a formal document that alters specific conditions of the original construction contract doc-

ument including a change in the scope of work, contract price, construction methods, construction schedule, change in location, size, capacity, or quality of major equipment.

"Community water system" means any Group A public water system that regularly serves fifteen or more year-round residential connections, or twenty-five or more year-round residents for one hundred eighty or more days per year.

"Construction documents" means construction documents developed and approved under WAC 246-290-120.

"Construction completion report" means a form provided by DOH to the applicant required to be completed for each specific construction project to document project construction in accordance with chapter 246-290 WAC and general standards of engineering practice. The completed form must be stamped with an engineer's seal, signed, and dated by a professional engineer.

"Cross-cutting authorities" means federal or state laws and authorities that apply to projects or activities receiving federal or state assistance.

"CTED" means the department of community, trade and economic development.

"Debt obligation" means a legal obligation or liability to pay something to someone else.

"Default" means failure to meet a financial obligation such as a loan payment.

"Disadvantaged community" means the service area of a public water system where at least fifty-one percent of the customers are at or below eighty percent of the county median household income as defined annually by the Federal Department of Housing and Urban Development.

"Distressed county" means a county that is designated by the Washington state employment security department as distressed as of May 1, 2008.

"DOH" means the department of health.

"Drinking water state revolving fund (DWSRF)" means the program established to administer the federal funds and other funds deposited in the account authorized to finance water system infrastructure, drinking water program activities, and to meet the applicable requirements of RCW 70.119A.170.

"Eligible system" means Group A community water systems, both privately and publicly owned, and nonprofit Group A noncommunity water systems.

"EPA" means the United States Environmental Protection Agency.

"Group A system" means a public water system that regularly serves fifteen or more residential connections, or twenty-five or more people per day for sixty or more days per year.

"Group B system" means a public water system that serves less than fifteen residential connections and less than twenty-five people per day, or serves twenty-five or more people per day for sixty or fewer days per year.

"Individual water supply system" means any water system that is not subject to the state board of health drinking water regulations, chapter 246-290 WAC; or chapter 246-291 WAC, providing water to one single-family residence, or four or fewer connections all of which serve residences on the same farm.

"Intended use plan (IUP)" means the federally required document prepared each year by the state which identifies the intended uses of the funds in the DWSRF and describes how those uses support the goals of the DWSRF.

"HUD" means the United States Department of Housing and Urban Development.

"Loan" means an agreement between the DWSRF and the assistance recipient through which the DWSRF provides funds for eligible assistance and the recipient agrees to repay the ((principle)) principal sum to the DWSRF except when the funds are provided in the form of a loan on which all or some of the principal is forgiven.

"Multiple benefit" means project improvements that address more than one type of health risk.

"Noncommunity water system" means a Group A public water system that is not a community water system.

"Nonprofit organization" means a system that has a federal tax exempt status identification number.

"Nontransient noncommunity system" means a Group A noncommunity water system that serves twenty-five or more of the same people per day for one hundred eighty or more days per year.

"Owner" means any agency, subdivision of the state, municipal corporation, firm, company, mutual or cooperative association, institution, partnership, person, or any other entity that holds as property a public water system.

"Project report" means a project report developed and approved under chapter 246-290 WAC.

"Public water system" means any system, providing water for human consumption through pipes or other constructed conveyances excluding systems serving only one single-family residence and systems with four or fewer connections all of which serve residences on the same farm.

"Purveyor" means an agency, subdivision of the state, municipal corporation, firm, company, mutual or cooperative association, institution, partnership, or person, or other entity owning or operating a public water system. Purveyor also means the authorized agents of such entities.

"Regional benefit" means project improvements that affect more than one public water system.

"Restructuring" means changing system operation, management and/or ownership, including, but not limited to:

- (1) Mergers;
- (2) Voluntary transfer of ownership; or
- (3) Receivership (involuntary transfer of operation and/or ownership).

"Safe Drinking Water Act (SDWA)" means the Federal Safe Drinking Water Act, including all amendments.

"Satellite management agency (SMA)" means a person or entity that is approved by the department of health to own or operate public water systems on a regional or county-wide basis, without the necessity for a physical connection between such systems. SMA's are regulated under chapter 246-295 WAC.

"Set-aside" means the use of a portion of DWSRF funds allotted to the state for a range of specific SDWA-related activities as authorized in Section 1452 of the SDWA, to fund new programs, and other drinking water program activities.

"Significant noncomplier (SNC)" means a water system that is violating or has violated department rules and the

violations may create or have created an imminent or a significant risk to human health.

"Small water system management program (SWSMP)" means a small water system management program developed and approved under WAC 246-290-105.

"State environmental review process (SERP)" means the environmental review process conducted on all DWSRF projects that ensures compliance with state and federal environmental review through a National Environmental Policy Act (NEPA)-like process.

"State match" means funds equaling at least twenty percent of the amount of the federal capitalization grants the state must deposit into the DWSRF loan fund including the necessary match for set-asides.

"Surface water" means a body of water open to the atmosphere and subject to surface runoff.

"System capacity" means the system's operational, technical, managerial and financial capability to achieve and maintain compliance with all relevant local, state, and federal plans and regulations.

"Transfer of ownership" means to convey ownership of a water system from one person or entity to another.

"Transient noncommunity system" means a Group A noncommunity water system that serves:

- (1) Twenty-five or more different people per day during sixty or more days per year;
- (2) Twenty-five or more of the same people per day for less than one hundred eighty days per year and during more than fifty-nine days per year; or
- (3) One thousand or more people for two or more consecutive days.

"Water facilities inventory form (WFI)" means the DOH form summarizing each public water system's characteristics.

"Water right" means a permit, claim, or other authorization, on record with or accepted by the department of ecology, authorizing the beneficial use of water in accordance with all applicable state laws.

"Water system plan (WSP)" means a water system plan developed and approved under WAC 246-290-100.

NEW SECTION

WAC 246-296-185 Implementation of the American Recovery and Reinvestment Act of 2009. (1) Purpose and intent.

(a) The purpose of this section is to implement the requirements of the American Recovery and Reinvestment Act of 2009 (ARRA).

(b) The DWSRF rules in this chapter apply to the ARRA funds except as otherwise provided in this section. If a conflict exists between the rules in this chapter and the ARRA, the ARRA shall control.

(2) Provision of funds.

(a) Notwithstanding the requirements of section 1452(f) of the Safe Drinking Water Act, 42 U.S.C. Sec. 300j-12(f), the state will provide at least fifty percent of the amount of the federal grant to provide additional subsidization to eligible recipients in the form of forgiveness of principal.

(b) In addition to the criteria identified in WAC 246-296-140, the board, in consultation with DOH, may bypass higher priority projects in the final project selection if necessary to meet the requirement in (a) of this subsection.

(c) To the extent there are sufficient eligible applications, the state will provide at least twenty percent of the funds for green projects to address green infrastructure, water or energy efficiency improvements or other environmentally innovative activities.

(d) In addition to the criteria identified in WAC 246-296-140, the board, in consultation with DOH, may bypass higher priority projects in the final project selection if necessary to meet the requirement in (c) of this subsection.

(3) Qualification for principal forgiveness.

(a) If the water system is located in a disadvantaged community, a project may be awarded a loan with principal forgiveness for the entire loan amount.

(b) If the project does not fall under (a) of this subsection, and the water system is located in a distressed county, the project may be awarded a loan with principal forgiveness for one-half of the loan amount.

(c) If the project does not fall under (a) or (b) of this subsection, it may be awarded a low interest loan.

(4) Readiness to proceed. In addition to the minimum eligibility requirements in WAC 246-296-100, only projects that are ready to begin construction by February 16, 2010, are eligible for assistance from ARRA funds.

(5) Priority. In addition to the priority ranking criteria identified in WAC 246-296-130, DOH may give priority to projects that can be initiated not later than June 16, 2009.

(6) Loan fee. A loan fee of one percent will be charged on all loans including those loans on which all, some or none of the principal is forgiven.

(7) Default. If CTED terminates the loan under WAC 246-296-150(5), the recipient shall immediately pay back the entire remaining loan balance.

(8) Notwithstanding WAC 246-296-070 (2)(c), ARRA funds shall not be used to retroactively finance projects.

(9) Notwithstanding WAC 246-296-080(10), ARRA funds may be used to fund service meter projects if such projects are needed to satisfy subsection (2)(d) of this section.

(10) Notwithstanding WAC 246-296-100(2), an approved water system plan or SWSMP is not required prior to loan execution, but completion, submittal, and DOH approval of a water system plan or SWSMP, whichever is applicable, containing the proposed project and addressing any capacity-related deficiencies shall be required as a part of the loan contract.

(11) Notwithstanding WAC 246-296-130 (1)(b)(ii) through (iv), DOH will not apply restructuring, regional benefit or multiple benefit as criteria when prioritizing projects for ARRA funds.

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 implements 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. A proposed rule-making notice has been filed with a hearing scheduled for April 7, 2009. The hearing was scheduled as late as possible under the CR-102 filing to permit the legislature to consider amending RCW 50.20.050 as a result of the supreme court decision. Several such bills are currently under consideration. Pending possible action by the legislature, the emergency rule is being extended.

Date Adopted: March 9, 2009.

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.

WSR 09-07-025

EMERGENCY RULES

EMPLOYMENT SECURITY DEPARTMENT

[Filed March 9, 2009, 8:42 a.m., effective March 9, 2009, 8:42 a.m.]

Effective Date of Rule: Immediately.

(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 and the work is no longer suitable under RCW 50.20.100 because your health would be adversely affected by continuing in that employment.

(4) **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.

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 09-07-028
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE**

[Order 09-28—Filed March 9, 2009, 2:57 p.m., effective March 9, 2009, 2:57 p.m.]

Effective Date of Rule: Immediately.

Purpose: Amend commercial rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-44-05000A; and amending WAC 220-44-050.

Statutory Authority for Adoption: RCW 77.12.047.

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

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

Reasons for this Finding: These rules were adopted by the Pacific Fisheries Management Council and provide harvest of available stocks of bottomfish, while reserving brood stock for future fisheries. There is insufficient time to adopt permanent rules.

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

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

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

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

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

Date Adopted: March 9, 2009.

Joe Stohr
for Philip Anderson
Director

NEW SECTION

WAC 220-44-05000B Coastal bottomfish catch limits. Notwithstanding the provisions of WAC 220-44-050, effective immediately until further notice:

(1) It is unlawful to possess, transport through the waters of the state, or land into any Washington port, bottomfish taken from Marine Fish-Shellfish Management and Catch Reporting Areas 58B, 59A-1, 59A-2, 60A-1, 60A-2, 61, 62, or 63, in excess of the amounts or less than the minimum sizes, or in violation of any gear, handling or landing requirement, established by the Pacific Fisheries Management Council and published in the Federal Register, Volume 74, Number 43, published on March 6, 2009. Therefore, persons must consult the federal regulations, which are incorporated by reference and made a part of Chapter 220-44 WAC. Where rules refer to the fishery management area, that area is extended to include Washington State waters coterminous with the Exclusive Economic Zone.

(a) Effective immediately until further notice, it is unlawful to possess, transport through the waters of the state, or land into any Washington port, walleye pollock taken with trawl gear from Marine Fish-Shellfish Management and Catch Reporting Areas 58B, 59A-1, 59A-2, 60A-1, 60A-2, 61, 62, or 63, except by trawl vessels participating in the directed Pacific whiting fishery and the directed coastal groundfish fishery.

(b) Effective immediately until further notice, it is unlawful for trawl vessels participating in the directed Pacific whiting and/or the directed coastal groundfish fishery to land incidental catches of walleye pollock greater than forty per-

cent of their total landing by weight, not to exceed 10,000 pounds.

(2) At the time of landing of coastal bottom fish into a Washington port, the fish buyer receiving the fish is required to clearly mark on the fish receiving ticket, in the space reserved for dealer's use, all legally defined trawl gear aboard the vessel at the time of delivery. The three trawl gear types are: midwater trawl, roller trawl, and small foot rope trawl (foot rope less than eight inches in diameter). The notation of the gear type(s) aboard the vessel is required prior to the signing of the fish receiving ticket by the vessel representative.

(3) Vessels engaged in chartered research for the National Marine Fisheries Service (NMFS) may land and sell bottomfish caught during that research without the catch being counted toward any trip or cumulative limit for the participating vessel. Vessels that have been compensated for research work by NMFS with an Exempted Fishing Permit (EFP) to land fish as payment for such research may land and sell fish authorized under the EFP without the catch being counted toward any trip or cumulative limit for the participating vessel. Any bottomfish landed during authorized NMFS research or under the authority of a compensating EFP for past chartered research work must be reported on a separate fish receiving ticket and not included on any fish receiving ticket reporting bottomfish landed as part of any trip or cumulative limit. Bottomfish landed under the authority of NMFS research work or an EFP compensating research with fish must be clearly marked "NMFS Compensation Trip" on the fish receiving ticket in the space reserved for dealer's use. The NMFS scientist in charge must sign the fish receiving ticket in the area reserved for dealer's use if any bottomfish are landed during authorized NMFS research. If the fish are landed under the authority of an EFP as payment for research work, the EFP number must be listed in the dealer's use space.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 220-44-05000A Coastal bottomfish catch limits. (09-01)

WSR 09-07-068

EMERGENCY RULES

DEPARTMENT OF ECOLOGY

[Order 08-11—Filed March 13, 2009, 8:57 a.m., effective March 13, 2009, 8:57 a.m.]

Effective Date of Rule: Immediately.

Purpose: This third 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.

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 12, 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: March 13, 2009.

Jay J. Manning
Director

Chapter 173-539A WAC

UPPER KITTITAS 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. Other than the metering requirement of WAC 173-539A-070, the requirements of this chapter apply only in Upper 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 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.

"Applicant" as used herein includes the owner(s) of the parcels that are the subject of the application.

"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 or degree of legal or equitable property interest held by an applicant in any proximate parcel. Common ownership also includes a joint development arrangement between the applicant and any owner of a proximate parcel. A joint development arrangement must involve significant voluntary joint activity and cooperation between the applicant and the owner(s) of one or more proximate parcels with respect to the development of the parcels in question. Joint activity and cooperation that is customary or required by land use or other legal requirements does not itself constitute a joint development arrangement. A joint development arrangement may be evidenced by, but is not limited to, agreements for coordinated development and shared use of services or materials for permitting, design, engineering, architecture, plat or legal documents, financing,

marketing, environmental review, clearing or preparing land, and construction (include road construction), and agreements for common use of structures, facilities, lands, water, sewer and other infrastructure, covenants, building materials, or equipment.

"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 proximate 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 and/or others approved by Kittitas County in consultation with ecology 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.

"Proximate" 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.

"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 whether such use is in connection with 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 with ecology and Kittitas County that:

(a) Identifies all parcels that are part of the residential development;

(b) Identifies all joint development arrangements with respect to proximate parcels; and

(c) States that to the best of the applicant's knowledge and belief all such parcels and arrangements have been identified. If the application is approved, such statement shall be recorded against all such parcels in which the applicant holds a legal or equitable property interest. The residential development includes all parcels that are the subject of the application 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 of the group withdrawal. If no exempt lawn or non-commercial 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 unless a condition is recorded as a covenant to use a lesser amount of the group withdrawal.

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 set forth in the plat, a land use approval, or a public water system approval, or by any other legal restriction that 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/or others approved by Kittitas County in consultation with ecology; 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

- Wells located within a one-year and five-year area of pumping influence.

(e) Identification and description of existing surface water or ground water withdrawals that may be adversely affected by the proposed use of the ground water exemption.

(f) The preparer'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 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 90.42.100 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 mitigate for potential impact of an exempt use to the total water supply available and to avoid potential future regulation in favor of senior water rights, ecology encourages exempt users to participate in a mitigation program through the Yakima Basin Pilot Water Bank or to obtain a senior water right.

(4) 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 after the upper county ground water study is complete or within five years of rule adoption whichever occurs first 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

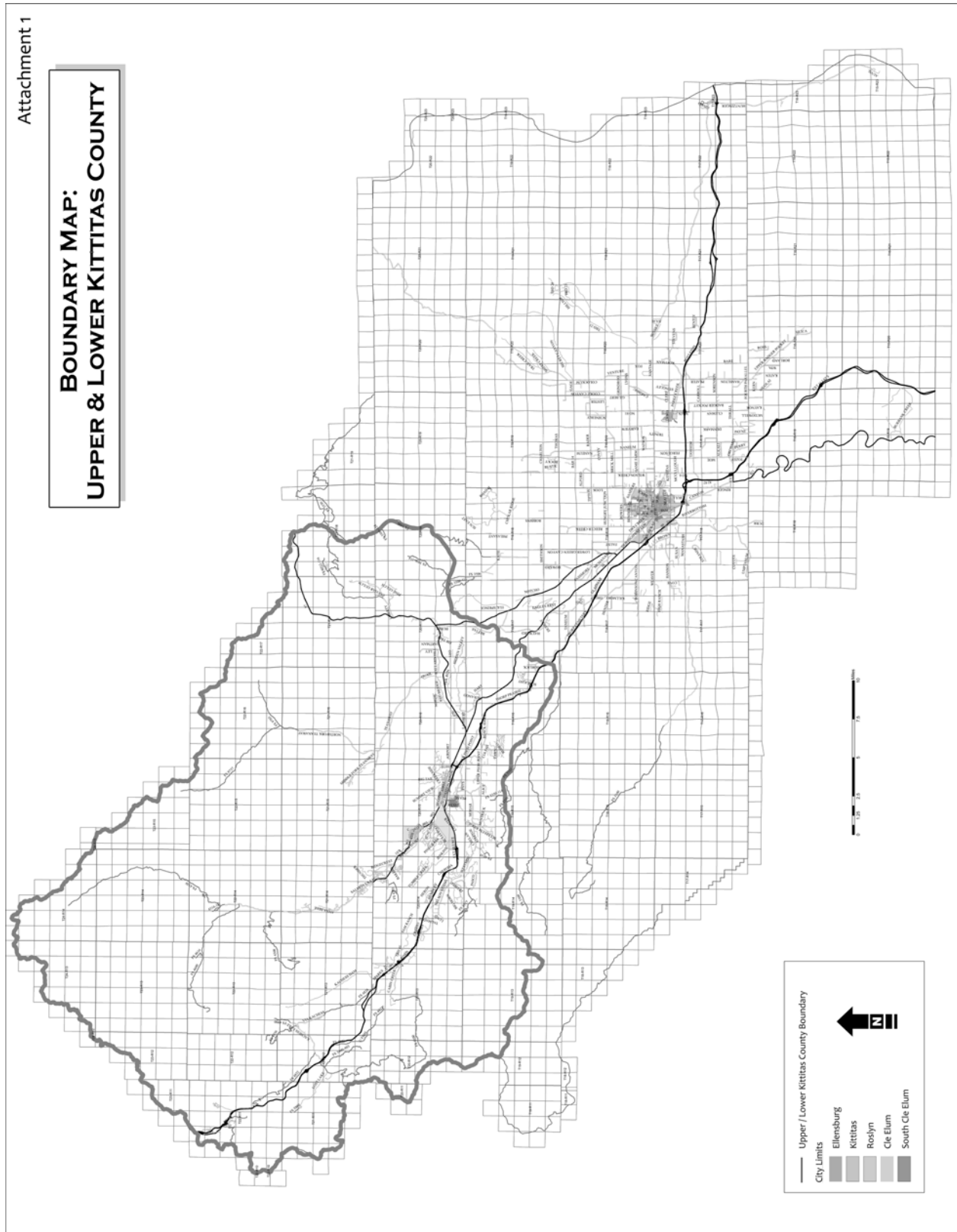
changes are necessary.

(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 09-07-072
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 09-29—Filed March 13, 2009, 3:38 p.m., effective March 14, 2009]

Effective Date of Rule: March 14, 2009.

Purpose: Amend commercial fishing rules.

Citation of Existing Rules Affected by this Order:
 Amending WAC 220-56-230.

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: Canary and yelloweye rockfish are two of seven overfished groundfish stocks that are managed under rebuilding plans by the Pacific Fishery Management Council (PFMC). The PFMC has adopted harvest guidelines for canary rockfish for state recreational fisheries to ensure that rebuilding goals are achieved. Depth restrictions have been effective in avoiding early canary and yelloweye rockfish harvest guideline attainment. The PFMC adopted these management measures for the 2009 season to provide continued protection to yelloweye rockfish. This regulation closes all species of bottomfish, including lingcod and halibut. These rules conform to federal regulations adopted by the PFMC. There is insufficient time to adopt permanent rules.

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

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

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

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

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

Date Adopted: March 13, 2009.

Joe Stohr
 for Philip Anderson
 Director

NEW SECTION

WAC 220-56-23000H Bottomfish closed areas. Notwithstanding the provisions of WAC 220-56-230, WAC 220-56-235, and WAC 220-56-250:

(a) Effective 12:01 a.m. March 14 through June 15, 2009, it is unlawful to take, fish for or possess bottomfish seaward of 30 fathoms in Marine Area 2, except that effective May 1 through June 15, 2009, a person may fish for and pos-

sess sablefish and Pacific Cod seaward of 30 fathoms in Marine Area 2.

The following coordinates define the 30-fathom line:

47°31.70'N lat.	124°37.03'W long.;
47°25.67'N lat.	124°34.79'W long.;
47°12.82'N lat.	124°29.12'W long.;
46°52.94'N lat.	124°22.58'W long.;
46°44.18'N lat.	124°18.00'W long.;
46°38.17'N lat.	124°15.88'W long.

(b) Effective March 14, 2009, until further notice, it is unlawful to take, fish for or possess bottomfish taken for personal use in waters defined in the following coordinates of Marine Area 2:

South Coast Yelloweye Rockfish Conservation Areas:

46°58.00'N lat.	124°48.00'W long.;
46°55.00'N lat.	124°48.00'W long.;
46°55.00'N lat.	124°49.00'W long.;
46°58.00'N lat.	124°49.00'W long.

Westport Offshore Yelloweye Rockfish Conservation Areas:

46°54.30'N lat.	124°53.40'W long.;
46°54.30'N lat.	124°51.00'W long.
46°53.30'N lat.	124°51.00'W long.;
46°53.30'N lat.	124°53.40'W long.

WSR 09-07-073
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 09-33—Filed March 13, 2009, 3:43 p.m., effective March 14, 2009]

Effective Date of Rule: March 14, 2009.

Purpose: Amend fishing rules.

Citation of Existing Rules Affected by this Order:
 Amending WAC 220-56-255.

Statutory Authority for Adoption: RCW 77.12.047.

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

Reasons for this Finding: Canary and yelloweye rockfish are two of eight overfished groundfish stocks that are managed under rebuilding plans by the Pacific Fishery Management Council (PFMC). The PFMC has adopted harvest guidelines for canary rockfish for state recreational fisheries to ensure that rebuilding goals are achieved. The two closures off of Westport that are closed to bottomfishing and halibut have been identified as yelloweye "hot spots," or areas where fishers are more likely to catch a yelloweye rockfish. This regulation closes all species of bottomfish, including halibut. These rules conform to federal regulations

adopted by the PFMC. There is insufficient time to adopt permanent rules.

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

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

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

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

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

Date Adopted: March 13, 2009.

Joe Stohr
for Philip Anderson
Director

NEW SECTION

WAC 220-56-25500N Halibut—Seasons and areas.

Notwithstanding the provisions of WAC 220-56-255, effective March 14, 2009, until further notice, it is unlawful to take, fish for or possess halibut taken for personal use in waters defined in the following coordinates of Marine Area 2:

South Coast Yelloweye Rockfish Conservation Areas:

- 46°58.00'N lat. 124°48.00'W long.;
- 46°55.00'N lat. 124°48.00'W long.;
- 46°55.00'N lat. 124°49.00'W long.;
- 46°58.00'N lat. 124°49.00'W long.

Westport Offshore Yelloweye Rockfish Conservation Areas:

- 46°54.30'N lat. 124°53.40'W long.;
- 46°54.30'N lat. 124°51.00'W long.;
- 46°53.30'N lat. 124°51.00'W long.;
- 46°53.30'N lat. 124°53.40'W long.

**WSR 09-07-074
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE**

[Order 09-34—Filed March 13, 2009, 3:45 p.m., effective March 16, 2009]

Effective Date of Rule: March 16, 2009.

Purpose: Amend personal use fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 232-28-61900D; 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: Early indications are both hatchery and natural steelhead returning to the Chehalis River basin are well below preseason projections. Available data indicate escapement goals will not be met. Many independent tributaries have not achieved their spawner escapement goals in recent years; the entire Chehalis River system has not met minimum conservation goals for the last two years. To minimize overall impact to the natural spawning population and to ensure hatchery egg-take needs are achieved, the sport fishery will be closed. There is insufficient time to adopt permanent rules.

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

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

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

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

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

Date Adopted: March 13, 2009.

Joe Stohr
for Philip Anderson
Director

NEW SECTION

WAC 232-28-61900D Exceptions to statewide rules—Chehalis River. Notwithstanding the provisions of WAC 232-28-619, effective March 16, through April 30, 2009, the following waters are closed to fishing:

- (a) Chehalis River (from the mouth to high bridge on Weyerhaeuser 1000 line approximately 400 yards downstream of Roger Creek, upstream, except that the mouth to Porter Bridge is open for white sturgeon).
- (b) Chehalis River, South Fork from the mouth to Hwy bridge at Boistfort School).
- (c) Cloquallum Creek (from the mouth to Hwy. 8 Bridge to the 2nd bridge on Cloquallum Rd).
- (d) Newaukum River (South, Middle and North Forks).
- (e) Satsop River and East Fork (from the mouth to the bridge at Schafer State Park).
- (f) Skookumchuck River (from the mouth to 400' below outlet of PP&L/WDFW steelhead rearing pond located at the base of Skookumchuck Dam).
- (g) Wishkah River (from the mouth to 200' below the weir at the Wishkah Rearing Ponds).

(h) Wynoochee River (from the mouth to above the mouth of Schafer Creek upstream).

REPEALER

The following section of the Washington Administrative Code is repealed effective May 1, 2009:

WAC 232-28-61900D Exceptions to statewide
rules—Chehalis River.