

WSR 09-09-009
EMERGENCY RULES
EMPLOYMENT SECURITY DEPARTMENT

[Filed April 2, 2009, 2:29 p.m., effective April 5, 2009]

Effective Date of Rule: April 5, 2009.

Purpose: ESHB 1906 was passed by the 2009 legislature and takes effect immediately. Sections 4 and 5 make changes to the training benefits program established under chapter 50.22 RCW. Parts of section 4 apply to unemployment claims filed on or after April 5, 2009. This rule-making order modifies existing rules consistent with these changes pending the adoption of permanent rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 192-270-020, 192-270-025 and 192-270-030; and amending WAC 192-270-005, 192-270-035, and 192-270-050.

Statutory Authority for Adoption: RCW 50.12.010, 50.12.040, 50.22.150, and section 4, chapter 3, Laws of 2009.

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: ESHB 1906 makes significant changes to the training benefits program established by chapter 50.22 RCW which apply to unemployment claims effective April 5, 2009, and later. These rules are necessary to implement these changes until permanent rules can be adopted.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 3, Amended 0, Repealed 3.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: April 2, 2009.

Paul Trause
Deputy Commissioner

AMENDATORY SECTION (Amending WSR 01-11-085, filed 5/16/01, effective 6/16/01)

WAC 192-270-005 Definitions. The definitions below apply to this chapter, ~~(and)~~ RCW 50.22.150, and chapter 3, laws of 2009, § 4:

(1) "Labor market" means the geographic area in which workers in your particular occupation or with your particular set of skills have customarily found work. For the purpose of determining whether you are a dislocated worker, "labor mar-

ket" is based on your place of residence at the time you separated from employment. You will not be considered a dislocated worker if, following your separation from work, you move from a labor market area where your skills are in demand to an area where they are declining.

(2) ~~("NAICS" means the North American industry classification system code.~~

~~(3))~~ For claims with an effective date prior to April 5, 2009, "plurality of wages" means the largest proportion of wages earned within a particular occupation or skill set. These wages must be earned in:

- (a) Your base year, and
- (b) At least two of the four twelve-month periods preceding your base year.

~~((4) "SIC" means the standard industrial classification code.~~

~~(5))~~ (3) "Skill set" means the work-related knowledge and abilities needed to produce a particular product or provide a particular service.

~~(6) (4) "Training benefits" means the additional benefits paid under RCW 50.22.150 and chapter 3, laws of 2009, § 4 to eligible dislocated workers enrolled in and making satisfactory progress in a training program approved by the commissioner.~~

~~((7) "Wages" means remuneration earned in employment as defined in Title 50 RCW or the comparable laws of another state. This means that only wages in covered employment can be considered in determining whether you have sufficient tenure in an occupation or in work with a particular skill set.)~~

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

AMENDATORY SECTION (Amending WSR 01-11-085, filed 5/16/01, effective 6/16/01)

WAC 192-270-035 Time frames. Information about training benefits will be included in the claimant information booklet mailed to you at the time you file your application for unemployment benefits (see WAC 192-120-010). For purposes of this section, the claimant information booklet is considered your notification of the eligibility requirements for the training benefits program.

(1) Submitting a training plan.

(a) For claims with an effective date prior to April 5, 2009, you have 60 calendar days to submit a training plan to the department for approval, beginning on the date you are notified by the department about the eligibility requirements for training benefits. For new claims, the deadline will be 65 calendar days from the date your application for benefits is filed, which represents 60 days plus five days for the booklet to reach you by mail.

(b) For claims with an effective date on or after April 5, 2009, you have 90 calendar days to submit a training plan to the department for approval, beginning on the date you are notified by the department about the eligibility requirements for training benefits. For new claims, the deadline will be 95 calendar days from the date your application for benefits is filed, which represents 90 days plus five days for the booklet to reach you by mail.

(2) Enrollment in training.

(a) For claims with an effective date prior to April 5, 2009, you must be enrolled in training within 90 calendar days, beginning on the date you are notified by the department about the eligibility requirements for training benefits. For new claims, the deadline will be 95 calendar days from the date your application for benefits is filed, which represents 90 days plus five days for the booklet to reach you by mail.

(b) For claims with an effective date on or after April 5, 2009, you must be enrolled in training with 120 calendar days, beginning on the date you were notified about the eligibility requirements for training benefits. For new claims, the deadline will be 125 calendar days from the date your application for benefits is filed, which represents 120 days plus five days for the booklet to reach you by mail.

(3) For claims with an effective date on or after April 5, 2009, these timeframes may be waived for good cause. For purposes of this section, "good cause" includes but is not limited to situations where:

(a) You were employer attached, including being on standby or partially unemployed, when you filed your claim for unemployment benefits but your attachment to your employer subsequently ended;

(b) You acted or failed to act on authoritative advice directly from department or partner staff upon which a reasonable person would normally rely;

(c) You were incapacitated due to illness or injury or other factors of similar gravity; or

(d) Other factors which would effectively prevent a reasonably prudent person, as defined in WAC 192-100-010, facing similar circumstances, from meeting the timelines established under this section.

(4) If you return to work, and subsequently become unemployed, the time frames described in subsections (1) and (2) begin with the date you file your additional claim for benefits.

AMENDATORY SECTION (Amending WSR 01-11-085, filed 5/16/01, effective 6/16/01)

WAC 192-270-050 Criteria for approving training plans. (1) The department will consider the following factors when reviewing your application for training benefits:

(a) Whether you have a current benefit year as required by RCW 50.22.010(9);

(b) Whether suitable employment is available in the labor market in which you currently reside (if you were originally determined to be a dislocated worker, but moved from the area where your skills were declining to an area where your skills are in demand, you are not eligible for training benefits);

(c) Your plan for completion of the training including, but not limited to, what financial resources you intend to use to fund the complete training plan when training benefits run out;

(d) Whether you have the qualifications and aptitudes to successfully complete the training;

(e) Whether the training relates to a high demand occupation(~~(-meaning)~~).

(i) For claims with an effective date prior to April 5, 2009, "high demand" means that the number of job openings in the labor market for the occupation or with that skill set exceeds the supply of qualified workers.

(ii) For claims with an effective date on or after April 5, 2009, "high demand" means an occupation with a substantial number of current or projected employment opportunities;

(f) Whether the training is likely to enhance your marketable skills and earning power, based on an assessment of what your employment prospects would be if training were not approved; and

(g) (~~(Effective July 1, 2001,)~~) Whether the educational institution meets the performance criteria established by the workforce training and education coordinating board.

(2) Academic training may be approved if it meets the criteria of subsection (1) and it meets specific requirements for certification, licensing, or specific skills necessary for the occupation.

(3) The department may approve educational training that has been identified as necessary by the training facility as a prerequisite to a vocational training program that meets the criteria of subsection (1).

(4) In the case of individuals with physical or sensory disabilities, or in other unusual circumstances, a written decision of the commissioner may waive any of the requirements of this section on an individual basis.

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 192-270-020	Employment in the aerospace industry.
WAC 192-270-025	Employment in the forest products industry.
WAC 192-270-030	Employment in the fishing industry.

WSR 09-09-016 EMERGENCY RULES DEPARTMENT OF FISH AND WILDLIFE

[Order 09-37—Filed April 3, 2009, 1:22 p.m., effective April 16, 2009, 12:01 a.m.]

Effective Date of Rule: April 16, 2009, 12:01 a.m.

Purpose: Amend personal use fishing rules.

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

Statutory Authority for Adoption: RCW 77.12.047.

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

Reasons for this Finding: This closure of Long's Pond is necessary to allow staff to set nets and stock fish for the April 18, 2009, fishing activities and ensure a successful family fish-in event. 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: April 3, 2009.

Philip Anderson
Director

NEW SECTION

WAC 232-28-61900F Exceptions to statewide rules—Long's Pond (Thurston Co.) Notwithstanding the provisions of WAC 232-28-619, effective 12:01 a.m. April 16 through 8:00 a.m. April 18, 2009, it is unlawful to fish in those waters of Long's Pond.

REPEALER

The following section of the Washington Administrative Code is repealed effective 8:01 a.m. April 18, 2009:

WAC 232-28-61900F	Exceptions to statewide rules—Long's Pond (Thurston Co.)
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WSR 09-09-017
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 09-49—Filed April 3, 2009, 2:21 p.m., effective April 3, 2009, 2:21 p.m.]

Effective Date of Rule: Immediately.

Purpose: Amend commercial fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-52-07100W and 220-52-07100X; and amending WAC 220-52-071.

Statutory Authority for Adoption: RCW 77.12.047.

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

notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.

Reasons for this Finding: Harvestable amounts of sea cucumbers are available in the sea cucumber districts listed. Prohibition of all diving within two days of scheduled sea cucumber openings discourages the practice of fishing on closed days and hiding the unlawful catch underwater until the legal opening. 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 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: April 3, 2009.

Philip Anderson
Director

[NEW SECTION]

WAC 220-52-07100X Sea cucumbers. Notwithstanding the provisions of WAC 220-52-071, effective immediately until further notice, it is unlawful to take or possess sea cucumbers taken for commercial purposes except as provided for in this section:

(1) Sea cucumber harvest using shellfish diver gear is allowed in Sea Cucumber District 1 seven days-per-week.

(2) Sea cucumber harvest using shellfish diver gear is allowed in Sea Cucumber District 5 on Monday through Friday of each week.

(3) It is unlawful to dive for any purpose from a commercially licensed sea cucumber fishing vessel in Sea Cucumber District 5 on Saturday and Sunday of each week, except by written permission from the Director.

Reviser's note: The bracketed material preceding the section above was supplied by the code reviser's office.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 220-52-07100W	Sea cucumbers. (09-19)
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The following section of the Washington Administrative Code is repealed effective one-half hour before official sunset on April 30, 2009:

WAC 220-52-07100X	Sea cucumbers.
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WSR 09-09-018
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 09-47—Filed April 3, 2009, 2:29 p.m., effective April 13, 2009,
12:01 a.m.]

Effective Date of Rule: April 13, 2009, 12:01 a.m.

Purpose: Amend fishing rules.

Citation of Existing Rules Affected by this Order:
Amending WAC 232-28-619.

Statutory Authority for Adoption: RCW 77.12.047.

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

Reasons for this Finding: The closure dates for retention of sturgeon were adopted because Washington and Oregon fish managers estimate the harvest guideline of three hundred fish will be caught by April 19, 2009, between The Dalles Dam and John Day Dam and the harvest guideline of one hundred sixty-five fish will be caught by April 13, 2009, from John Day Dam to McNary Dam. 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: April 3, 2009.

Philip Anderson
Director

NEW SECTION

WAC 232-28-61900K Exceptions to statewide rules—Columbia River sturgeon. Notwithstanding the provisions of WAC 232-28-619:

(1) Effective 12:01 a.m. April 19, 2009, until further notice, it is unlawful to retain sturgeon caught in those waters of the Columbia River and tributaries from The Dalles Dam upstream to the John Day Dam.

(2) Effective 12:01 a.m. April 13, 2009, until further notice, it is unlawful to retain sturgeon caught in those waters of the Columbia River and tributaries from John Day Dam upstream to McNary Dam.

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

WSR 09-09-024
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 09-46—Filed April 6, 2009, 11:21 a.m., effective April 16, 2009,
12:01 a.m.]

Effective Date of Rule: April 16, 2009, 12:01 a.m.

Purpose: Amend commercial rules.

Citation of Existing Rules Affected by this Order:
Repealing WAC 220-40-03100F; and amending WAC 220-40-031.

Statutory Authority for Adoption: RCW 77.12.047.

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

Reasons for this Finding: Harvestable white sturgeon are available within the Willapa Bay management guideline for a commercial fishery. 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: April 6, 2009.

Joe Stohr
for Philip Anderson
Director

NEW SECTION

WAC 220-40-03100F Willapa Bay spring white sturgeon fishery. Notwithstanding the provisions of WAC 220-40-031, effective April 16, 2009 through May 15, 2009, until further notice, it is unlawful to fish for salmon in Willapa Bay for commercial purposes or to possess salmon taken from those waters for commercial purposes, except that:

Fishing periods

(1) Gill net gear may be used to fish for sturgeon:

Time	Area
12:01 a.m. April 16 through 11:59 p.m. May 15, 2009	Area 2G easterly of a line from the most northerly upland at Leadbetter Point (approximately 46 degrees 39' N) to the eastern most upland at Toke Point (approximately 123 degrees 58' W); and areas 2H, 2J and 2M.

The Tokeland Boat basin is closed to commercial fishing during the openings in SMCRA 2G described in this section. The Tokeland Boat basin means that portion of SMCRA 2G bounded on the south by the shoreline of the boat basin, on the west by the seawall, and on the north and east by a line from the Tokeland Channel Marker "3" (flashing green, 4-second) to Tokeland Channel Marker "4" to the tip of the seawall.

Gear

- (2) Gill net gear restrictions - All areas:
 - (a) Drift gill net gear only. It is unlawful to use set net gear.
 - (b) April 16 through May 15, 2009 - 9-inch minimum mesh.
 - (c) All salmon, non-legal sturgeon, and steelhead must be handled with care to minimize injury to fish and released immediately to the river/bay.

Other

- (3) A new method of measuring white sturgeon state-wide became effective January 1, 2009. This method measures fork length from the tip of the nose to the fork in the tail with the fish on its side. The new legal fork length size limit is 43 - 54 inches.
- (4) Quick reporting is required for wholesale dealers and fishers retailing their fish (WAC 220-69-240) by 10 a.m. the day following landing.
- (5) Fishers must take department observers, if requested by WDFW staff, when participating in these openings and provide Notice of Intent via phone, fax, or e-mail to participate in Quick Reporting, WAC 220-69-240, prior to 10:00 a.m. April 10, 2009.
- (6) The NOAA Fisheries listed the southern population of green sturgeon as threatened under the Endangered Species Act, effective July 6, 2006. Most of the green sturgeon taken in Washington fisheries are from the southern population. Therefore, the retention of green sturgeon is prohibited to protect this federally listed stock.
- (7) Report ALL encounters with Chinook, green sturgeon and steelhead (your name, Date of encounter, and number of species encountered) to Quick Reporting office via phone at 866.771.1280, fax at 360.664.0689, or email at harborfish_tickets@dfw.wa.gov.
- (8) Retrieve any information from spaghetti tags near the dorsal fin on green or white sturgeon. For green sturgeon, do NOT remove tags. For white sturgeon retained, please submit tags to Washington Department of Fish and Wildlife, 48 Devonshire Rd., Montesano, WA, 98563.

REPEALER

The following section of the Washington Administrative Code is repealed effective 12:01 a.m. May 16, 2009:

WAC 220-40-03100F Willapa Bay spring white sturgeon fishery.

WSR 09-09-027 EMERGENCY RULES DEPARTMENT OF FISH AND WILDLIFE

[Order 09-51—Filed April 6, 2009, 1:54 p.m., effective April 10, 2009, 12:01 a.m.]

Effective Date of Rule: April 10, 2009, 12:01 a.m.

Purpose: Amend personal use fishing rules.

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

Statutory Authority for Adoption: RCW 77.12.047.

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

Reasons for this Finding: Survey results show that adequate clams are available for harvest in Razor Clam Areas 1 and 2. Washington department of health has certified clams from these beaches to be safe for human consumption. 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: April 6, 2009.

Joe Stohr
for Philip Anderson
Director

NEW SECTION

WAC 220-56-36000U Razor clams—Areas and seasons. Notwithstanding the provisions of WAC 220-56-360, it is unlawful to dig for or possess razor clams taken for per-

sonal use from any beach in Razor Clam Areas 1, 2, or 3, except as provided for in this section:

1. Effective 12:01 a.m. April 10 through 11:59 a.m. April 12, 2009, razor clam digging is allowed in Razor Clam Area 2. Digging is allowed from 12:01 a.m. to 11:59 a.m. each day only.
2. Effective 12:01 a.m. April 11 through 11:59 a.m. April 12, 2009, razor clam digging is allowed in Razor Clam Area 1. Digging is allowed from 12:01 a.m. to 11:59 a.m. each day only.
3. It is unlawful to dig for razor clams at any time in Long Beach, Twin Harbors Beach or Copalis Beach Clam sanctuaries defined in WAC 220-56-372.

REPEALER

The following section of the Washington Administrative Code is repealed effective 12:01 p.m. April 12, 2009:

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

WSR 09-09-030
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 09-50—Filed April 6, 2009, 4:49 p.m., effective April 7, 2009, 1:00 p.m.]

Effective Date of Rule: April 7, 2009, 1:00 p.m.

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

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

Sets the second commercial fishing period for the winter/spring salmon season, consistent with the compact action of April 6, 2009. Also allows one additional fishing period in the Deep River select area site. 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: April 6, 2009.

Lori Preuss
for Philip Anderson
Director

NEW SECTION

WAC 220-33-01000B 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. Mainstem Columbia River

a) Area: SMCRA 1D - 1E, only in the area from the west towers on Hayden Island upstream to the commercial fishing boundary near Beacon Rock.

b) Dates: 1:00 p.m. to 11:00 p.m. April 7, 2009.

c) Gear: Drift gill nets only, 4-1/4 inch maximum mesh. Mesh size is determined by placing three consecutive meshes under hand tension and taking the measurement from the inside of one vertical knot to the outside of the opposite vertical knot of the center mesh. Hand tension means sufficient linear tension to draw opposing knots of meshes into contact. Monofilament gill nets are not allowed for the 4-1/4 inch mesh. Gill nets that are fished at any time between official sunset and official sunrise must have lighted buoys on both ends of the net unless the net is attached to the boat. If the net is attached to the boat, then one lighted buoy on the opposite end of the net from the boat is required.

There are no restrictions on the use of slackers or stringers to slacken the net vertically. There are no restrictions on the hang ratio. The hang ratio is used to horizontally add slack to the net. The hang ratio is determined by the length of the web per length of the corkline.

Net length not to exceed 150 fathoms, except under the following conditions: An optional use of a steelhead excluder panel of mesh may be hung between the corkline and the 4-1/4 inch maximum mesh size tangle net. The excluder panel web must be a minimum mesh size of 12 inches when stretched taut under hand tension. Monofilament mesh is allowed for the excluder panel. The excluder panel must be a minimum of 5 feet in depth and must not exceed 10 feet in depth as measured from the corkline to the upper margin of the tangle net mesh as the net hangs naturally from a taut corkline. Weedlines or droppers (bobber type) may be used in place of the steelhead excluder panel. A weedline-type excluder means the net is suspended below the corkline by lines of no less than five feet in length between the corkline and the upper margin of the tangle net. A dropper-type excluder means the entire net is suspended below the surface of the water by lines of no less than five feet in length extending from individual surface floats to a submerged corkline. The corkline cannot be capable of floating the net in its entirety (including the leadline) independent of the attached floats. Weedlines or droppers, must extend a minimum of 5 feet above the 4 1/4-inch maximum mesh size tangle net. Tangle nets constructed with a steelhead excluder panel, weedlines, or droppers, may extend to a maximum

length of 175 fathoms. Tangle nets constructed with a steelhead excluder panel, weedlines, or droppers must have two red corks at each end of the net, as well as the red corks under miscellaneous regulations.

Nets not lawful for use at that time and area may be onboard the boat if properly stored. A "properly stored" net is defined as a net on a drum that is fully covered by tarp (canvas or plastic) and bound with a minimum of ten revolutions of rope with a diameter of 3/8 (0.375) inches or greater.

d) Allowable Sale: Adipose fin-clipped salmon, white sturgeon (43-54 inch fork length), and shad. An adipose fin-clipped salmon is defined as a hatchery salmon with a clipped adipose fin and having a healed scar at the location of the fin. Green sturgeon retention is prohibited.

e) Sanctuaries: Washougal and Sandy rivers.

f) Miscellaneous Regulations:

i. Soak times, defined as the time elapsed from when the first of the gill net web is deployed into the water until the gill net web is fully retrieved from the water, must not exceed 45 minutes.

ii. Red corks are required at 25 fathom intervals, and red corks must be in contrast to the corks used in the remainder of the net.

iii. Each boat will be required to have two operable recovery boxes or one box with two chambers, on board. Each box and chamber shall be operating during any time that the net is being retrieved or picked. The flow in the recovery box will be a minimum of 16 gallons per minute in each chamber of the box, not to exceed 20 gallons per minute. Each chamber of the recovery box must meet the following dimensions as measured from within the box; the inside length measurement must be at or within 39 1/2 inches to 48 inches, the inside width measurements must be at or within 8 to 10 inches, and the inside height measurement must be at or within 14 to 16 inches.

Each chamber of the recovery box must include a water inlet hole between 3/4 inch and 1 inch in diameter, centered horizontally across the door or wall of the chamber and 1 3/4 inches from the floor of the chamber. Each chamber of the recovery box must include a water outlet hole opposite the inflow that is a least 1 1/2 inches in diameter. The center of the outlet hole must be located a minimum of 12 inches above the floor of the box or chamber. The fisher must demonstrate to WDFW and ODFW employees, fish and wildlife enforcement officers, or other peace officers, upon request, that the pumping system is delivering the proper volume of fresh river water into each chamber.

iv. All non-legal sturgeon, non-adipose fin-clipped salmon, and steelhead must be released immediately to the river with care and with the least possible injury to the fish, or placed into an operating recovery box.

v. Any fish that is bleeding or lethargic must be placed in the recovery box prior to being released. All fish placed in recovery boxes must be released to the river prior to landing or docking.

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

vii. As a condition of fishing, owners or operators of commercial fishing vessels must cooperate with department observers or observers collecting data for the department,

when notified by the observer of his or her intent to board the commercial vessel for observation and sampling during an open fishery.

viii. Columbia River tangle net certification: This is any individual meeting the qualifications of RCW 77.65.040(2) and who obtained a tangle net certificate by attending and completing a WDFW/ODFW sponsored workshop concerning live captive commercial fishing techniques. At least one fisher on each boat must have tangle net certification.

Nothing in this section sets any precedent for any fishery after this spring Chinook fishery. The fact that an individual received a Columbia River tangle net certificate does not entitle the certificate holder to participate in any other fishery. If the department authorizes a tangle net fishery any other time, WDFW may establish qualifications and requirements that are different from those established for this season. In particular, the department may consider an individual's compliance with these rules in determining that individual's eligibility to participate in any future tangle net fisheries.

2. 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).

Dates: 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.

b) Gear: Nets are restricted to 100 fathoms in length, with no weight restriction on leadline. Use of additional weights or anchors attached directly to the leadline is allowed. 8-inch maximum mesh.

c) 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.

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

3. Deep River Select Area

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

b) Dates: 7:00 p.m. April 8 to 7:00 a.m. April 9, 2009; and 7:00 p.m. Wednesdays to 7:00 a.m. Thursdays **and** 7:00 p.m. Sundays to 7:00 a.m. Mondays, 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. 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.

4. 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 typographical error in the above section occurred in the copy filed by the agency and appears in the Register pursuant to the requirements of RCW 34.08.040.

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 effective 1:00 p.m. April 7, 2009:

WAC 220-33-01000A Columbia River seasons below Bonneville. (09-38)

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

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

WSR 09-09-035
EMERGENCY RULES
DEPARTMENT OF HEALTH

[Filed April 7, 2009, 3:38 p.m., effective May 1, 2009]

Effective Date of Rule: May 1, 2009.

Purpose: WAC 246-16-800 through 246-16-890, sanction schedule. These rules adopt a sanction schedule for disciplinary action in all credentialed health care professions as required by RCW 18.130.390.

Statutory Authority for Adoption: RCW 18.130.390.

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 department adopted emergency sanction schedule rules on January 1, 2009, and is developing permanent rules as required by RCW 18.130.390. The law requires the rules be applied to all disciplinary actions commenced after January 1, 2009. Re-adoption of emergency rules is necessary to allow time for experience with and comment on the emergency rules before adopting 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 8, 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 8, Amended 0, Repealed 0.

Date Adopted: April 7, 2009.

Mary C. Selecky
Secretary

SANCTIONS

NEW SECTION

WAC 246-16-800 Sanctions—General provisions. (1) Applying these rules.

(a) The disciplining authorities listed in RCW 18.130.-040(2) will apply these rules to determine sanctions imposed for professional misconduct by a license holder in active or expired status. The rules do not apply to applicants.

(b) The disciplining authorities will apply the rules in:

(i) Orders under RCW 18.130.110 or 18.130.160; and

(ii) Stipulations to informal disposition under RCW 18.130.172.

(c) Sanctions will begin on the effective date of the order.

(2) Selecting sanctions.

(a) The disciplining authority will select sanctions to protect the public and, if possible, rehabilitate the license holder.

(b) The disciplining authority may impose the full range of sanctions listed in RCW 18.130.160 for orders and RCW 18.130.172 for stipulations to informal dispositions.

(i) Suspension or revocation will be imposed when the license holder cannot practice with reasonable skill or safety.

(ii) Permanent revocation may be imposed when the disciplining authority finds the license holder can never be rehabilitated or can never regain ability to practice safely.

(iii) Surrender of credential may be imposed when the license holder is at the end of his/her effective practice and surrender alone is enough to protect the public. The license holder must agree to retire and not resume practice.

(iv) Indefinite suspension may be imposed in default and waiver of hearing orders.

(c) The disciplining authority may deviate from the sanction schedules in these rules if the schedule does not adequately address the facts in a case. The disciplining authority will acknowledge the deviation and state its reasons for deviating from the sanction schedules in the order or stipulation to informal disposition.

(d) If the sanction schedules in these rules do not address the misconduct, the disciplining authority will use its judgment to determine appropriate sanctions.

(3) Using sanction schedules.

(a) Step 1: The findings of fact in an order or the allegations in an informal disposition describe the misconduct. The disciplining authority uses the misconduct described to select the appropriate sanction schedule contained in WAC 246-16-810 through 246-16-860.

(i) If the act of misconduct falls in more than one sanction schedule, the greater sanction is imposed.

(ii) If different acts of misconduct fall in the same sanction schedule, the highest sanction is imposed and the other acts of misconduct are considered aggravating factors.

(b) Step 2: The disciplining authority identifies the severity of the misconduct and identifies a tier using the sanction schedule tier descriptions.

(c) Step 3: The disciplining authority identifies aggravating or mitigating factors using the list in WAC 246-16-890. The disciplining authority describes the factors in the order or stipulation to informal disposition.

(d) Step 4: The disciplining authority selects sanctions within the identified tier.


(i) Aggravating factors move the appropriate sanctions towards the maximum end of the tier.

(ii) Mitigating factors move the appropriate sanctions towards the minimum end of the tier.

(iii) Mitigating or aggravating factors may result in determination of a sanction outside the range in the tier. The disciplining authority will state its reasons for deviating from the sanction schedules in the order or stipulation to informal disposition. The disciplining authority has complied with these rules if it acknowledges the deviation and states its reasons for deviating from the sanction schedules in the order or stipulation to informal disposition.


NEW SECTION

WAC 246-16-810 Sanction schedule—Practice below standard of care.

PRACTICE BELOW STANDARD OF CARE				
Severity	Tier / Conduct	Sanction Range In consideration of Aggravating & Mitigating Circumstances		Duration
		Minimum	Maximum	
least  greatest	A – Caused no or minimal patient harm or a low risk of minimal patient harm	Conditions that may include reprimand, training, monitoring, supervision, probation, evaluation, etc.	Oversight for 3 years which may include reprimand, training, monitoring, supervision, evaluation, probation, suspension, etc.	0-3 years
	B – Caused patient harm or risk of severe patient harm	Oversight for 2 years which may include suspension, probation, practice restrictions, training, monitoring, supervision, probation, evaluation, etc.	Oversight for 5 years which may include suspension, probation, practice restrictions, training, monitoring, supervision, probation, evaluation, etc. OR revocation.	2 years - 5 years unless revocation
	C – Caused severe harm or death to a human patient	Oversight for 3 years which may include suspension, probation, practice restrictions, training, monitoring, supervision, probation, evaluation, etc. In addition - demonstration of knowledge or competency.	Permanent conditions, restrictions or revocation.	3 years - permanent


NEW SECTION

WAC 246-16-820 Sanction schedule—Sexual misconduct or contact.

SEXUAL MISCONDUCT OR CONTACT (including convictions for sexual misconduct)				
Severity	Tier / Conduct	Sanction Range In consideration of Aggravating & Mitigating Circumstances		Duration
		Minimum	Maximum	
least  greatest	A –Inappropriate conduct, contact, or statements of a sexual or romantic nature	Conditions that may include reprimand, training, monitoring, probation, supervision, evaluation, etc.	Oversight for 3 years which may include reprimand, training, monitoring, supervision, evaluation, probation, suspension, etc.	0-3 years
	B – Sexual contact, romantic relationship, or sexual statements that risk or result in patient harm	Oversight for 2 years which may include suspension, probation, practice restrictions, training, monitoring, supervision, probation, evaluation, etc.	Oversight for 5 years which may include suspension, probation, practice restrictions, training, monitoring, supervision, probation, evaluation, etc. OR revocation.	2 years - 5 years unless revocation
	C – Sexual contact, including but not limited to contact involving force and/or intimidation.	1 year suspension AND oversight for 5 additional years which may include suspension, probation, practice restrictions, training, monitoring, supervision, probation, evaluation, etc. AND demonstration of successful completion of evaluation and treatment.	Permanent conditions, restrictions, or revocation.	6 years - permanent


NEW SECTION

WAC 246-16-830 Sanction schedule—Abuse—Physical and emotional.

ABUSE -- Physical and/or Emotional				
Severity	Tier / Conduct	Sanction Range In consideration of Aggravating & Mitigating Circumstances		Duration
		Minimum	Maximum	
least  greatest	A – Verbal or nonverbal intimidating, forceful contact, or disruptive or demeaning behavior, including general behavior, not necessarily directed to a specific patient or patients	Conditions that may include reprimand, training, monitoring, probation, supervision, evaluation, etc.	Oversight for 3 years which may include reprimand, training, monitoring, supervision, evaluation, probation, suspension, etc.	0-3 years
	B – Moderately abusive unnecessary or forceful contact or disruptive or demeaning behavior, including general behavior not directed at a specific patient or patients causing mental or physical injury	Oversight for 2 years which may include suspension, probation, practice restrictions, training, monitoring, supervision, probation, evaluation, etc.	Oversight for 5 years which may include suspension, probation, practice restrictions, training, monitoring, supervision, probation, evaluation, etc. OR revocation..	2 years - 5 years unless revocation
	C – Severe physical, verbal, or forceful contact; or emotional disruptive behavior; that results in significant harm or death	1 year suspension AND oversight for 5 additional years which may include suspension, probation, practice restrictions, training, monitoring, supervision, probation, evaluation, etc. AND demonstration of successful completion of evaluation and treatment.	Permanent conditions, restrictions, or revocation.	6 years - permanent


NEW SECTION

WAC 246-16-840 Sanction schedule—Diversion of controlled substances or legend drugs.

DIVERSION OF CONTROLLED SUBSTANCES OR LEGEND DRUGS				
Severity	Tier/Conduct	Sanction Range In consideration of Aggravating & Mitigating Circumstances		Duration
		Minimum	Maximum	
least  greatest	A – Diversion with no or minimal patient harm or risk of harm	Conditions that may include reprimand, training, monitoring, probation, supervision, evaluation, etc.	Oversight for 5 years which may include reprimand, training, monitoring, supervision, evaluation, probation, suspension, etc.	0-5 years
	B – Diversion with moderate patient harm or risk of harm or for distribution	Oversight for 2 years which may include suspension, probation, practice restrictions, training, monitoring, supervision, probation, evaluation, etc.	Oversight for 7 years which may include suspension, probation, practice restrictions, training, monitoring, supervision, probation, evaluation, etc. OR revocation.	2 - 7 years unless revocation
	C – Diversion with severe physical injury or death of a patient or a risk of severe physical injury or death or for substantial distribution to others	1 year suspension AND oversight for 5 additional years which may include suspension, probation, practice restrictions, training, monitoring, supervision, probation, evaluation, etc. AND demonstration of successful completion of evaluation and treatment.	Permanent conditions, restrictions OR revocation.	6 years - permanent

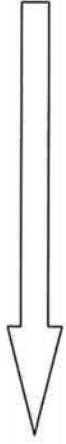
NEW SECTION

WAC 246-16-850 Sanction schedule—Substance abuse.

SUBSTANCE ABUSE				
Severity	Tier / Conduct	Sanction Range In consideration of Aggravating & Mitigating Circumstances		Duration
		Minimum	Maximum	
least  greatest	A – Misuse of drugs or alcohol with no to minimal patient harm or risk of harm	Conditions that may include reprimand, training, monitoring, probation, supervision, evaluation, etc.	Oversight for 5 years which may include reprimand, training, monitoring, supervision, evaluation, probation, suspension, etc.	0-5 years
	B – Misuse of drugs or alcohol with moderate patient harm or risk of harm	Oversight for 2 years which may include suspension, probation, practice restrictions, training, monitoring, supervision, probation, evaluation, etc.	Oversight for 7 years which may include suspension, probation, practice restrictions, training, monitoring, supervision, probation, evaluation, etc. OR revocation.	2 - 7 years unless revocation
	C – Misuse of drugs or alcohol with severe physical injury or death of a patient or a risk of significant physical injury or death	1 year suspension AND oversight for 5 additional years which may include suspension, probation, practice restrictions, training, monitoring, supervision, probation, evaluation, etc. AND demonstration of successful completion of evaluation and treatment.	Permanent conditions, restrictions OR revocation.	6 years - permanent

NEW SECTION

WAC 246-16-860 Sanction schedule—Criminal convictions.

CRIMINAL CONVICTIONS (excluding sexual misconduct)				
Severity	Tier / Conviction	Sanction Range In consideration of Aggravating & Mitigating Circumstances		Duration
		Minimum	Maximum	
least  greatest	A – Conviction of a Gross Misdemeanor except sexual offenses in RCW 9.94A.030	Conditions that may include reprimand, training, monitoring, probation, supervision, evaluation, etc.	Oversight for 5 years which may include reprimand, training, monitoring, supervision, evaluation, probation, suspension, etc.	0-5 years
	B – Conviction of a Class B, C, OR Unclassified Felony, except sexual offenses in RCW 9.94A.030	Oversight for 2 years which may include suspension, probation, practice restrictions, training, monitoring, supervision, probation, evaluation, etc.	Oversight for 5 years which may include suspension, probation, practice restrictions, training, monitoring, supervision, probation, evaluation, etc. OR revocation.	2 years - 5 years unless revocation
	C – Conviction of a Class A Felony, except sexual offenses in RCW 9.94A.030	5 years suspension	Permanent revocation	5 years - permanent revocation

NEW SECTION

WAC 246-16-890 Sanctions—Aggravating and mitigating factors. The following nonexclusive list identifies factors that may mitigate or aggravate the sanctions that should be imposed in an order or stipulation to informal disposition.

- (1) Factors related to the misconduct:
 - (a) Gravity of the misconduct;
 - (b) Age, capacity and/or vulnerability of the patient, client or victim;
 - (c) Number or frequency of the acts of misconduct;
 - (d) Injury caused by the misconduct;
 - (e) Potential for injury to be caused by the misconduct;
 - (f) Degree of responsibility for the outcome;
 - (g) Abuse of trust;
 - (h) Intentional or inadvertent act(s);
 - (i) Motivation is criminal, immoral, dishonest or for personal gain;
 - (j) Length of time since the misconduct occurred.
- (2) Factors related to the license holder:
 - (a) Experience in practice;
 - (b) Past disciplinary record;
 - (c) Previous character;
 - (d) Mental and/or physical health;

- (e) Personal circumstances;
- (f) Personal problems having a nexus with the misconduct.
- (3) Factors related to the disciplinary process:
 - (a) Admission of key facts;
 - (b) Full and free disclosure to the disciplining authority;
 - (c) Voluntary restitution or other remedial action;
 - (d) Bad faith obstruction of the investigation or discipline process or proceedings;
 - (e) False evidence, statements or deceptive practices during the investigation or discipline process or proceedings;
 - (f) Remorse or awareness that the conduct was wrong;
 - (g) Impact on the patient, client, or victim.
- (4) General factors:
 - (a) License holder's knowledge, intent, and degree of responsibility;
 - (b) Presence or pattern of other violations;
 - (c) Present moral fitness of the license holder;
 - (d) Potential for successful rehabilitation;
 - (e) Present competence to practice;
 - (f) Dishonest or selfish motives;
 - (g) Illegal conduct;
 - (h) Heinousness of the misconduct;
 - (i) Ill repute upon the profession;
 - (j) Isolated incident unlikely to reoccur.

WSR 09-09-046
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 09-54—Filed April 9, 2009, 2:40 p.m., effective May 1, 2009]

Effective Date of Rule: May 1, 2009.

Purpose: Amend personal use fishing rules.

Citation of Existing Rules Affected by this Order:
 Repealing WAC 232-28-61900M; 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: Washington department of fish and wildlife predicts that two hundred hatchery spring chinook (approximately 125 age-3 jacks and 75 age-5 adults) will return to the Ringold Springs Rearing Facility in 2009. All returning fish are available for harvest. 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: April 9, 2009.

Joe Stohr
 for Philip Anderson
 Director

NEW SECTION

WAC 232-28-61900M Exceptions to statewide rules—Columbia River. Notwithstanding the provisions of WAC 232-28-619, effective May 1, 2009 through June 15, 2009, a person may fish for salmon in those waters of the Columbia River adjacent to Ringold Springs Rearing Facility (in Franklin County), from the Washington Department of Fish and Wildlife markers 1/4 mile downstream of the Ringold irrigation wasteway outlet, to the markers 1/2 mile upstream of Ringold Springs Creek. The daily limit is two hatchery salmon, and the minimum size is 12 inches in length. Fishing only from the hatchery side (east bank), and only from the bank. Night closure in effect.

REPEALER

The following section of the Washington Administrative Code is repealed effective June 16, 2009:

WAC 232-28-61900M Exceptions to statewide rules—Columbia River (Ringold)

WSR 09-09-050
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 09-55—Filed April 10, 2009, 9:57 a.m., effective April 10, 2009, 9:57 a.m.]

Effective Date of Rule: Immediately.

Purpose: Amend commercial fishing rules.

Citation of Existing Rules Affected by this Order:
 Amending WAC 220-52-051.

Statutory Authority for Adoption: RCW 77.12.047.

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

Reasons for this Finding: The 2009 state/tribal shrimp harvest management plans for the Strait of Juan de Fuca and north Puget Sound require adoption of harvest seasons and the prohibition on night-time fishing contained in this emergency rule. This emergency rule opens the Regions 1 and 3 beam trawl fishery season. 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: April 10, 2009.

Joe Stohr
 for Philip Anderson
 Director

NEW SECTION

WAC 220-52-05100K Puget Sound shrimp beam trawl fishery—Season. Notwithstanding the provisions of

WAC 220-52-051, effective immediately without further notice, it is unlawful to fish for shrimp for commercial purposes in Puget Sound except as provided for in this section:

(1) Shrimp beam trawl gear:

(a) Shrimp Management Area (SMA) 3 (outside of the Discovery Bay Shrimp District, Sequim Bay and Catch Area 23D) will open at 7:00 a.m. April 16, 2009, until further notice. Sequim Bay includes those waters of Catch Area 25A south of a line projected west from Travis Spit on the Miller Peninsula.

(b) That portion of Catch Area 22A within SMA 1B east of a line projected 122.47°W longitude and west of a line projected 122.43°W longitude in Rosario Strait will open at 7:00 a.m. May 1, 2009, until further notice.

(2) It is unlawful to set or pull shrimp beam trawl gear from one hour after official sunset to one hour before official sunrise.

(3) All shrimp taken under this section must be sold to licensed Washington wholesale fish dealers.

WSR 09-09-051
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 09-44—Filed April 10, 2009, 1:17 p.m., effective April 24, 2009, 12:01 a.m.]

Effective Date of Rule: April 24, 2009, 12:01 a.m.

Purpose: Amend personal use fishing rules.

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

Statutory Authority for Adoption: RCW 77.12.047.

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

Reasons for this Finding: This rule change is necessary to assure a safe and successful fishing kids event. The fish will be planted one day prior to the event to better acclimate them before the event. Several thousand fish will be placed into netted areas along the shoreline. On the day of the event, preregistered kids will be allowed to fish within these netted areas. The reason for keeping the pond closed for four hours after the event is to ensure the safety of the public as well as the event participants while the event is shutting down and equipment and nets are being removed. 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: April 10, 2009.

Joe Stohr
for Philip Anderson
Director

NEW SECTION

WAC 232-28-61900I Exceptions to statewide rules—Lake Sacajawea (Cowlitz Co.) Notwithstanding the provisions of WAC 232-28-619, effective 12:01 a.m. April 24, 2009, through 7:00 p.m. April 25, 2009, it is unlawful to fish from Martin's Dock or within 600 feet on either side of the dock, except that this area is open to participants in the Fishing Kid's event, 8:00 a.m. to 3:00 p.m. on April 25, 2009.

REPEALER

The following section of the Washington Administrative Code is repealed effective 7:00 p.m. April 25, 2009:

WAC 232-28-61900I	Exceptions to statewide rules—Lake Sacajawea (Cowlitz Co.)
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WSR 09-09-063
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 09-57—Filed April 13, 2009, 4:35 p.m., effective April 13, 2009, 4:35 p.m.]

Effective Date of Rule: Immediately.

Purpose: Amend fishing rules.

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

Statutory Authority for Adoption: RCW 77.12.047.

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

Reasons for this Finding: This rule conforms to federal action taken by the Pacific Fisheries Management Council. The Puget Sound recreational halibut quota is sufficient to cover these dates. 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: April 13, 2009.

Philip Anderson
Director

NEW SECTION

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

(a) Catch Record Card Areas 6 through 11 and 13 - Open April 23 through June 5, 2009, 12:01 a.m. through 11:59 p.m., Thursdays through Mondays only.

(b) Daily limit one halibut, no minimum size limit. The possession limit is two daily limits of halibut in any form, except the possession limit aboard the fishing vessel is one daily limit.

REPEALER

The following section of the Washington Administrative Code is repealed effective June 6, 2009:

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

WSR 09-09-064
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 09-58—Filed April 13, 2009, 4:35 p.m., effective April 14, 2009, 9:00 a.m.]

Effective Date of Rule: April 14, 2009, 9:00 a.m.

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

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

Sets the third commercial fishing period for the winter/spring salmon season, consistent with the compact action of April 13, 2009. 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: April 13, 2009.

Philip Anderson
Director

NEW SECTION

WAC 220-33-0100C 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. Mainstem Columbia River

a) Area: SMCRA 1D - 1E, only in the area from the west towers on Hayden Island upstream to the commercial fishing boundary near Beacon Rock.

b) Dates: 9:00 a.m. to 1:00 p.m. April 14, 2009.

c) Gear: Drift gill nets only, 4-1/4 inch maximum mesh. Mesh size is determined by placing three consecutive meshes under hand tension and taking the measurement from the inside of one vertical knot to the outside of the opposite vertical knot of the center mesh. Hand tension means sufficient linear tension to draw opposing knots of meshes into contact. Monofilament gill nets are not allowed for the 4-1/4 inch mesh. Gill nets that are fished at any time between official sunset and official sunrise must have lighted buoys on both ends of the net unless the net is attached to the boat. If the net is attached to the boat, then one lighted buoy on the opposite end of the net from the boat is required.

There are no restrictions on the use of slackers or stringers to slacken the net vertically. There are no restrictions on the hang ratio. The hang ratio is used to horizontally add slack to the net. The hang ratio is determined by the length of the web per length of the corkline.

Net length not to exceed 150 fathoms, except under the following conditions: An optional use of a steelhead excluder panel of mesh may be hung between the corkline and the 4-1/4 inch maximum mesh size tangle net. The excluder panel web must be a minimum mesh size of 12 inches when stretched taut under hand tension. Monofilament mesh is allowed for the excluder panel. The excluder

panel must be a minimum of 5 feet in depth and must not exceed 10 feet in depth as measured from the corkline to the upper margin of the tangle net mesh as the net hangs naturally from a taut corkline. Weedlines or droppers (bobber type) may be used in place of the steelhead excluder panel. A weedline-type excluder means the net is suspended below the corkline by lines of no less than five feet in length between the corkline and the upper margin of the tangle net. A dropper-type excluder means the entire net is suspended below the surface of the water by lines of no less than five feet in length extending from individual surface floats to a submerged corkline. The corkline cannot be capable of floating the net in its entirety (including the leadline) independent of the attached floats. Weedlines or droppers, must extend a minimum of 5 feet above the 4 1/4-inch maximum mesh size tangle net. Tangle nets constructed with a steelhead excluder panel, weedlines, or droppers, may extend to a maximum length of 175 fathoms. Tangle nets constructed with a steelhead excluder panel, weedlines, or droppers must have two red corks at each end of the net, as well as the red corks under miscellaneous regulations.

Nets not lawful for use at that time and area may be onboard the boat if properly stored. A "properly stored" net is defined as a net on a drum that is fully covered by tarp (canvas or plastic) and bound with a minimum of ten revolutions of rope with a diameter of 3/8 (0.375) inches or greater.

d) Allowable Sale: Adipose fin-clipped salmon, white sturgeon (43-54 inch fork length), and shad. An adipose fin-clipped salmon is defined as a hatchery salmon with a clipped adipose fin and having a healed scar at the location of the fin. Green sturgeon retention is prohibited.

e) Sanctuaries: Washougal and Sandy rivers.

f) Miscellaneous Regulations:

i. Soak times, defined as the time elapsed from when the first of the gill net web is deployed into the water until the gill net web is fully retrieved from the water, must not exceed 45 minutes.

ii. Red corks are required at 25 fathom intervals, and red corks must be in contrast to the corks used in the remainder of the net.

iii. Each boat will be required to have two operable recovery boxes or one box with two chambers, on board. Each box and chamber shall be operating during any time that the net is being retrieved or picked. The flow in the recovery box will be a minimum of 16 gallons per minute in each chamber of the box, not to exceed 20 gallons per minute. Each chamber of the recovery box must meet the following dimensions as measured from within the box; the inside length measurement must be at or within 39 1/2 inches to 48 inches, the inside width measurements must be at or within 8 to 10 inches, and the inside height measurement must be at or within 14 to 16 inches.

Each chamber of the recovery box must include a water inlet hole between 3/4 inch and 1 inch in diameter, centered horizontally across the door or wall of the chamber and 1 3/4 inches from the floor of the chamber. Each chamber of the recovery box must include a water outlet hole opposite the inflow that is a least 1 1/2 inches in diameter. The center of the outlet hole must be located a minimum of 12 inches above the floor of the box or chamber. The fisher must demonstrate

to WDFW and ODFW employees, fish and wildlife enforcement officers, or other peace officers, upon request, that the pumping system is delivering the proper volume of fresh river water into each chamber.

iv. All non-legal sturgeon, non-adipose fin-clipped salmon, and steelhead must be released immediately to the river with care and with the least possible injury to the fish, or placed into an operating recovery box.

v. Any fish that is bleeding or lethargic must be placed in the recovery box prior to being released. All fish placed in recovery boxes must be released to the river prior to landing or docking.

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

vii. As a condition of fishing, owners or operators of commercial fishing vessels must cooperate with department observers or observers collecting data for the department, when notified by the observer of his or her intent to board the commercial vessel for observation and sampling during an open fishery.

viii. Columbia River tangle net certification: This is any individual meeting the qualifications of RCW 77.65.040(2) and who obtained a tangle net certificate by attending and completing a WDFW/ODFW sponsored workshop concerning live captive commercial fishing techniques. At least one fisher on each boat must have tangle net certification.

Nothing in this section sets any precedent for any fishery after this spring Chinook fishery. The fact that an individual received a Columbia River tangle net certificate does not entitle the certificate holder to participate in any other fishery. If the department authorizes a tangle net fishery any other time, WDFW may establish qualifications and requirements that are different from those established for this season. In particular, the department may consider an individual's compliance with these rules in determining that individual's eligibility to participate in any future tangle net fisheries.

2. 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).

Dates: 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.

b) Gear: Nets are restricted to 100 fathoms in length, with no weight restriction on leadline. Use of additional weights or anchors attached directly to the leadline is allowed. 8-inch maximum mesh.

c) 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.

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

3. Deep River Select Area

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

b) Dates: 7:00 p.m. Wednesdays to 7:00 a.m. Thursdays **and** 7:00 p.m. Sundays to 7:00 a.m. Mondays, 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. 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.

4. 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.

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

REPEALER

The following section of the Washington Administrative Code is repealed effective 9:00 a.m. April 14, 2009:

WAC 220-33-01000B Columbia River seasons below Bonneville. (09-50)

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

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

WSR 09-09-066 EMERGENCY RULES DEPARTMENT OF FISH AND WILDLIFE

[Order 09-48—Filed April 14, 2009, 8:39 a.m., effective April 15, 2009, 12:01 a.m.]

Effective Date of Rule: April 15, 2009, 12:01 a.m.

Purpose: Amend personal use fishing rules.

Citation of Existing Rules Affected by this Order: Amending WAC 232-28-619.

Statutory Authority for Adoption: RCW 77.12.047.

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

Reasons for this Finding: Washington department of fish and wildlife (WDFW) provides a salmon fishery in Lake Chelan by annually stocking a relatively small number of triploid, sterile chinook. WDFW seeks to maintain the abundance of chinook at a level that minimizes predation on kokanee and cutthroat trout but still provides fish for harvest. Sufficient numbers of stocked chinook are available to open the season early. 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: April 14, 2009.

Philip Anderson
Director

NEW SECTION

WAC 232-28-61900L Exceptions to statewide rules—Lake Chelan (Chelan Co.) Notwithstanding the provisions of WAC 232-28-619, effective April 15, 2009, until further notice, a person may fish for salmon in waters of Lake Chelan, except closed within 400 feet of the mouth of all tributaries. Daily limit of one Chinook salmon, minimum size 15 inches in length.

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

[Order 09-56—Filed April 14, 2009, 10:36 a.m., effective April 16, 2009]

Effective Date of Rule: April 16, 2009.

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 fish and wildlife commission recently adopted the replacement of the nonbuoyant lure restriction with the anti-snagging rule. Under permanent regulations, both Wind River and Drano Lake had the nonbuoyant lure restrictions. During the recent North of Falcon process, the department proposed a test to remove the upcoming anti-snagging rule during the spring chinook sport season based upon public response. The department has received numerous concerns about bank and boat interactions near the outlet of Drano Lake during the spring chinook fisheries. Bank fishing is limited in the lake and the outlet is a popular and productive area for both bank and boat anglers. The proposed rule will be a test to determine if the conflicts can be reduced. 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: April 14, 2009.

Philip Anderson
Director

NEW SECTION

WAC 232-28-61900N Exceptions to statewide rules—Wind River and Drano Lake. Notwithstanding the provisions of WAC 232-28-619:

(1) Wind River - Effective May 1 through June 30, 2009, in waters from the mouth (boundary/markers) to the Burlington-Northern Railroad Bridge, the anti-snagging rule is rescinded for all species except sturgeon.

(2) Drano Lake - Effective May 1 through June 30, 2009, in waters from the Highway 14 Bridge to markers on points of land downstream and across from the Little White Salmon National Fish Hatchery, the anti-snagging rule is rescinded for all species except sturgeon.

(a) Drano Lake - Effective April 16 through June 30, 2009, in waters around the outlet of Drano Lake west of a line projected from the eastern most pillar of the Highway 14 Bridge, to a posted marker on the north shore, a person may only fish from the bank.

REPEALER

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

WAC 232-28-61900N Exceptions to statewide rules—Wind River and Drano Lake.

**WSR 09-09-075
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE**

[Order 09-59—Filed April 14, 2009, 4:18 p.m., effective April 14, 2009, 4:18 p.m.]

Effective Date of Rule: Immediately.

Purpose: Amend personal use rules.

Citation of Existing Rules Affected by this Order: Amending WAC 220-56-325.

Statutory Authority for Adoption: RCW 77.12.047.

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

notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.

Reasons for this Finding: This regulation is needed to ensure an orderly fishery, manage within court-ordered sharing requirements, and to ensure conservation. The Discovery Bay shrimp district closure is necessary, as insufficient shrimp are available to conduct a fishery. The closure of Marine Area 11 at the end of the day on May 2, 2009, is necessary because the recreational harvest share of spot shrimp will have been harvested by that time. 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: April 14, 2009.

Philip Anderson
Director

NEW SECTION

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

1) Effective immediately until further notice, it is unlawful to fish for or possess shrimp taken for personal use in all waters of the Discovery Bay Shrimp District.

2) Effective 3:00 p.m., May 2, 2009 until further notice, it is unlawful to fish for or possess shrimp taken for personal use in all waters of Marine Area 11.

**WSR 09-09-078
EMERGENCY RULES
DEPARTMENT OF ECOLOGY**

[Order 09-03—Filed April 15, 2009, 11:27 a.m., effective April 15, 2009, 11:27 a.m.]

Effective Date of Rule: Immediately.

Purpose: The purpose of this emergency rule is to amend existing sections of chapter 173-98 WAC, Uses and limitations of the water pollution control revolving fund, and to add a new section to the rule in order for the department of ecology (ecology) to receive and disburse federal stimulus money to public bodies to fund high priority water quality projects. The administration of the federal stimulus money and the water quality projects that it funds must be consistent with the intent of the federal American Recovery and Reinvestment Act of 2009 (Recovery Act).

The emergency rule will enable ecology to administer the Recovery Act funds and will provide a framework regarding the application process, funding criteria, loan interest rates and amount of additional subsidies, funding limits, technical and federal environmental review requirements, and additional parameters related to the disbursement of the federal stimulus money. This emergency rule is required because the Recovery Act provides fast-approaching deadlines, including a goal to use half of the stimulus money by June 17, 2009, and a requirement to use all of the stimulus money by February 16, 2010.

If ecology does not use all of the federal stimulus money by February 16, 2010, it must be returned to the federal government and it will be given to other states that can use it quickly. This would have a negative impact on the Washington state economy and would be a barrier to public bodies needing to implement high priority water quality projects.

In order to meet the intent of the Recovery Act, ecology reopened its fiscal year (FY) 2010 application cycle to solicit new projects to add to the existing FY 2010 draft project list. This emergency rule will provide the framework for funding decisions associated with the application process and the overall management of federal-stimulus-funded projects.

Citation of Existing Rules Affected by this Order: Amending WAC 173-98-010, 173-98-020, 173-98-030, 173-98-040, 173-98-100, 173-98-110, 173-98-200, 173-98-210, 173-98-220, 173-98-230, 173-98-300, 173-98-310, 173-98-320, 173-98-400, 173-98-410, 173-98-420, 173-98-430, 173-98-440, 173-98-450, 173-98-460, 173-98-470, 173-98-500, 173-98-510, 173-98-520, 173-98-530, 173-98-540; 173-98-550, 173-98-560, 173-98-600, 173-98-700, 173-98-710, 173-98-720, 173-98-730, 173-98-800, 173-98-810, 173-98-900, 173-98-910, 173-98-920, 173-98-930, 173-98-940, 173-98-950, 173-98-960, and 173-98-970.

Statutory Authority for Adoption: Chapter 90.50A RCW, Water pollution control facilities—Federal capitalization grants.

Other Authority: Title VI of The Clean Water Act and the 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: On February 17, 2009, President Obama signed federal legislation that enacted the American Recovery and Reinvestment Act of 2009 (Recovery Act) to address a national economic emergency. The Recovery Act calls for the enactment of legislation to create jobs, restore economic growth, and strengthen America's middle class through measures that modernize the nation's infrastructure. The Recovery Act, Section 5. Emergency Designations, provides that "each amount [appropriated] in this act is designated as an emergency requirement and necessary to meet emergency needs pursuant to section 204(a) of S. Con. Res. 21 (110th Congress) and section 301 (b)(2) of S. Con. Res. 70 (110th Congress), the concurrent resolutions on the budget for fiscal years 2008 and 2009."

The Recovery Act appropriates \$4 billion for capitalization grants for the clean water state revolving funds under Title VI of the Federal Water Pollution Control Act to fund

wastewater infrastructure and innovative green projects. Washington state will receive approximately \$68 million of this appropriation to administer to public bodies for high priority water quality projects. The Recovery Act provides a short timeframe in which to obligate these funds, as well as new options for additional subsidies in the form of forgivable principal, that are not currently provided for in ecology's state statute or rules.

This emergency rule will allow ecology to receive stimulus funding and obligate such funding to public bodies in need.

Number of Sections Adopted in Order to Comply with Federal Statute: New 1, Amended 43, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

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

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

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

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

Date Adopted: April 15, 2009.

Jay J. Manning
Director

AMENDATORY SECTION (Amending Order 05-16, filed 6/29/07, effective 7/30/07)

WAC 173-98-010 Purpose. The purpose of this chapter is to set forth requirements for the department of ecology's administration of the Washington state water pollution control revolving fund, as authorized by chapter 90.50A RCW, water pollution control facilities financing. This fund is primarily comprised of federal capitalization grants, state matching moneys, and principal and interest repayments. It is used to provide loan assistance to public bodies for statewide, high-priority water quality projects that are consistent with the Clean Water Act, 33 U.S.C. 1251-1387. This chapter also sets forth requirements for the department to administer recovery funds consistent with the American Recovery and Reinvestment Act of 2009.

AMENDATORY SECTION (Amending Order 05-16, filed 6/29/07, effective 7/30/07)

WAC 173-98-020 Integrated funding approach. (1) Where possible, the Washington state department of ecology combines the management of the Washington state water pollution control revolving fund with other funding programs, such as the centennial clean water program, and the federal Clean Water Act section 319 nonpoint source fund, and recovery funds or as otherwise provided in WAC 173-98-980.

(2) The integrated funding process includes a combined funding cycle, program guidelines, funding offer and applicant list, and statewide funding workshops.

AMENDATORY SECTION (Amending Order 05-16, filed 6/29/07, effective 7/30/07)

WAC 173-98-030 Definitions. For the purposes of this chapter:

(1) **Act** means the federal Clean Water Act (33 U.S.C. 1251-1387).

(2) **Activities** see water pollution control activities.

(3) **Annual debt service** means the amount of debt the applicant is obligated to pay on the loan in one year.

(4) **Applicant** means a public body that has applied for funding.

(5) **Best management practices (BMP)** means physical, structural, and/or managerial practices approved by the department that prevent or reduce pollutant discharges.

(6) **Ceiling amount** means the highest level of financial assistance the department can provide to a recipient for an individual project.

(7) **Commercial, industrial, and institutional flows** mean the portion of the total flows to a facility that originate from commercial establishments, industrial facilities, or institutional sources such as schools, hospitals, and prisons.

(8) **Competitive funding** means moneys available for projects through a statewide evaluation process.

(9) **Completion date** or **expiration date** means the date indicated in the funding agreement in which all milestones and objectives associated with the goals of the project are met.

(10) **Concentrated animal feeding operation (CAFO)** means:

(a) An animal livestock feeding operation that discharges animal waste to the waters of Washington state more frequently than the twenty-five-year, twenty-four-hour storm event;

(b) An operation that is under a department administrative order, notice of violation, a National Pollution Discharge Elimination System permit;

(c) An operation that will be required to have a National Pollution Discharge Elimination System permit coverage in the near future; or

(d) An operation designated by the Environmental Protection Agency as polluting the waters of Washington state.

(11) **Conservation easement** means a recorded legal agreement between a landowner and a public body to allow or restrict certain activities and uses that may take place on his or her property.

(12) **Conservation plan** means a document that outlines how a project site will be managed using best management practices to avoid potential negative environmental impacts.

(13) **Construction** means to erect, install, expand, or improve water pollution control facilities or activities. Construction includes construction phase engineering and preparation of the operation and maintenance manual.

(14) **Cost-effective alternative** means the option selected in an approved facilities plan that meets the requirements of the project, recognizes environmental and other

nonmonetary impacts, and offers the lowest cost over the life of the project (i.e., lowest present worth or equivalent annual value).

(15) **Department** means the Washington state department of ecology.

(16) **Design** means the preparation of the plans and specifications used for construction of water pollution control facilities or activities.

(17) **Director** means the director of the Washington state department of ecology or his or her authorized designee.

(18) **Draft offer and applicant list** means a catalog of all projects considered and proposed for funding based on an evaluation and the appropriations in the Washington state capital budget.

(19) **Easement** means a recorded legal agreement between a public body and a landowner that allows the public body to have access to the landowner's property at any time to inspect, maintain, or repair loan-funded activities or facilities.

(20) **Effective date** means the date the loan agreement is signed by the department's water quality program manager.

(21) **Eligible cost** means the portion of the facilities or activities project that can be funded.

(22) **Enforcement order** means an administrative requirement issued by the department under the authority of RCW 90.48.120 that directs a public body to complete a specified course of action within an explicit period to achieve compliance with the provisions of chapter 90.48 RCW.

(23) **Engineering report** means a document that includes an evaluation of engineering and other alternatives that meet the requirements in chapter 173-240 WAC, Submission of plans and reports for construction of wastewater facilities.

(24) **Environmental degradation** means the reduced capacity of the environment to meet social and ecological objectives and needs.

(25) **Environmental emergency** means a problem that a public body and the department agree poses a serious, immediate threat to the environment or to the health or safety of a community and requires immediate corrective action.

(26) **Estimated construction cost** means the expected amount for labor, materials, equipment, and other related work necessary to construct the proposed project.

(27) **Existing need** means water pollution control facility's capacity reserved for all users, at the time of application, in order to meet the requirements of the water quality based effluent limitations in the associated National Pollution Discharge Elimination System or state waste discharge permit.

(28) **Existing residential need** means water pollution control facility's capacity reserved for the residential population, at the time of application, in order to meet the water quality based effluent limitations in the associated National Pollution Discharge Elimination System or state waste discharge permit.

(29) **Facilities** see water pollution control facility.

(30) **Facilities plan** means an engineering report that includes all the elements required by the state environmental review process (SERP), National Environmental Policy Act (NEPA) as appropriate, other federal statutes, and planning

requirements under chapter 173-240 WAC, Submission of plans and reports for construction of wastewater facilities.

(31) **Federal capitalization grant** means a federal grant awarded by the U.S. Environmental Protection Agency (EPA) to the state to help expand the state water pollution control revolving fund.

(32) **Final offer and applicant list** means a catalog of all projects considered and proposed for funding and those offered funding.

(33) **Force account** means loan project work performed using labor, materials, or equipment of a public body.

(34) **Funding category** see "water pollution control activities funding category" and "water pollution control facilities funding category."

(35) **Funding cycle** means the events related to the competitive process used to allocate moneys from the Washington state water pollution control revolving fund, centennial clean water program, and the Clean Water Act section 319 nonpoint source fund for a state fiscal year.

(36) **General obligation debt** means an obligation of the recipient secured by annual ad valorem taxes levied by the recipient and by the full faith, credit, and resources of the recipient.

(37) **Indirect cost** means costs that benefit more than one activity of the recipient and not directly assigned to a particular project objective.

(38) **Infiltration and inflow** means water, other than wastewater, that enters a sewer system.

(39) **Infiltration and inflow correction** means the cost-effective alternative or alternatives and the associated corrective actions identified in an approved facilities plan or engineering report for eliminating or reducing the infiltration and inflow to existing sewer system.

(40) **Initiation of operation** means the actual date the recipient begins using, or could begin using, the facilities for its intended purpose. This date may occur prior to final inspection or project completion.

(41) **Intended use plan (IUP)** means a document identifying the types of projects proposed and the amount of all money available for financial assistance from the water pollution control revolving fund for a fiscal year as described in section 606(c) of the act.

(42) **Landowner agreement** means a written arrangement between a public body and a landowner that allows the public body to have access to the property to inspect project-related components.

(43) **Loan agreement** means a contractual arrangement between a public body and the department that involves a disbursement of moneys that must be repaid.

(44) **Loan default** means failure to make a loan repayment to the department within sixty days after the payment was due.

(45) **Nonpoint source water pollution** means pollution that enters any waters from widespread water-based or land-use activities. Nonpoint source water pollution includes, but is not limited to atmospheric deposition; surface water runoff from agricultural lands, urban areas, and forest lands; subsurface or underground sources; and discharges from some boats or other marine vessels.

(46) **Perpetuity** means the point at which the water pollution control revolving fund is earning at least fifty percent of the market rate for tax-exempt municipal bonds on its loan portfolio. To ensure that administering recovery funds does not negatively impact the long-term health of the revolving fund, there is no perpetuity requirement for recovery funds. Recovery funds may be tracked separately and not included in the revolving fund portfolio when determining revolving fund perpetuity.

(47) **Plans and specifications** means the construction contract documents and supporting engineering documents prepared in sufficient detail to allow contractors to bid on and construct water pollution control facilities. "Plans and specifications" and "design" may be used interchangeably.

(48) **Preliminary project priority list** means a catalog of all projects considered for funding based on the governor's budget and submitted to the Washington state legislature for its consideration during budget development.

(49) **Principal forgiveness** means a loan made by the department using recovery funds from the water pollution control revolving fund under which some or all of the principal may be forgiven by the department.

(50) **Project** means a water quality improvement effort funded with a ~~((grant or))~~ loan.

~~((50))~~ (51) **Project completion or expiration** means the date indicated in the funding agreement in which all milestones and objectives associated with the goals are met.

~~((51))~~ (52) **Public body** means a state of Washington county, city or town, conservation district, other political subdivision, municipal corporation, quasi-municipal corporation, those Indian tribes recognized by the federal government, or institutions of higher education when the proposed project is not part of the school's statutory responsibility.

~~((52))~~ (53) **Public health emergency** means a situation declared by the Washington state department of health in which illness or exposure known to cause illness is occurring or is imminent.

~~((53))~~ (54) **Recipient** means a public body that has an effective loan agreement with the department.

~~((54))~~ (55) **Recovery act** means the American Recovery and Reinvestment Act of 2009.

(56) **Recovery funding or recovery fund(s)** means a federal grant awarded to the state and administered through the water pollution control revolving fund that originates from the American Recovery and Reinvestment Act of 2009.

(57) **Recovery funds categories** include the following:

(a) **Recovery funds category for wastewater treatment hardship facilities construction (WWTF hardship construction)** means that portion of the recovery funding dedicated to WWTF hardship construction projects.

(b) **Recovery funds category for green project reserves** means that portion of the recovery funding dedicated to green infrastructure, water or energy efficiency improvements, or other environmentally innovative activities that protect or improve water quality.

(c) **Recovery funds category for water pollution control facilities** means that portion of the recovery funding used for facilities projects not included in the recovery funding categories for WWTF hardship construction and green project reserves.

~~((58))~~ **(58) Reserve account** means an account created by the recipient to secure the payment of the principal and interest on the water pollution control revolving fund loan.

~~((55))~~ **(59) Revenue-secured debt** means an obligation of the recipient secured by a pledge of the revenue of a utility.

~~((56))~~ **(60) Revolving fund** means the water pollution control revolving fund.

~~((57))~~ **(61) Riparian buffer or zone** means a swath of vegetation along a channel bank that provides protection from the erosive forces of water along the channel margins and external nonpoint sources of pollution.

~~((58))~~ **(62) Scope of work** means a detailed description of project tasks, milestones, and measurable objectives.

~~((59))~~ **(63) Senior lien obligations** means all revenue bonds and other obligations of the recipient outstanding on the date of execution of a loan agreement (or subsequently issued on a parity therewith, including refunding obligations) or issued after the date of execution of a loan agreement having a claim or lien on the gross revenue of the utility prior and superior to the claim or lien of the loan, subject only to maintenance and operation expense.

~~((60))~~ **(64) Service area population** means the number of people served in the area of the project.

~~((61))~~ **(65) Severe public health hazard** means a situation declared by the Washington state department of health in which the potential for illness exists, but illness is not occurring or imminent.

~~((62))~~ **(66) Sewer** means the pipe and related pump stations located on public property, or on public rights of way and easements that convey wastewater from buildings.

~~((63))~~ **(67) Side sewer** means a sanitary sewer service extension from the point five feet outside the building foundation to the publicly owned collection sewer.

~~((64))~~ **(68) State environmental review process (SERP)** means the National Environmental Policy Act (NEPA)-like environmental review process adopted to comply with the requirements of the Environmental Protection Agency's Code of Regulations (40 CFR § 35.3140). SERP combines the State Environmental Policy Act (SEPA) review with additional elements to comply with federal requirements.

~~((65))~~ **(69) Total eligible project cost** means the sum of all expenses associated with a water quality project that are eligible for funding.

~~((66))~~ **(70) Total project cost** means the sum of all expenses associated with a water quality project.

~~((67))~~ **(71) Water pollution** means contamination or other alteration of the physical, chemical, or biological properties of any waters of the state, including change in temperature, taste, color, turbidity, or odor of the waters; or any discharge of a liquid, gas, solid, radioactive substance, or other substance into any waters of the state that creates a nuisance or renders such waters harmful, detrimental, or injurious to the public, to beneficial uses, or to livestock, wild animals, birds, fish, or other aquatic life.

~~((68))~~ **(72) Water pollution control activities or activities** means actions taken by a public body for the following purposes:

(a) To prevent or mitigate pollution of underground water;

(b) To control nonpoint sources of water pollution;

(c) To restore the water quality of freshwater lakes; and

(d) To maintain or improve water quality through the use of water pollution control facilities or other means.

~~((69))~~ **(73) Water pollution control activities funding category** means that portion of the water pollution control revolving fund dedicated to nonpoint source pollution projects.

~~((70))~~ **(74) Water pollution control facility or facilities** means any facilities or systems for the control, collection, storage, treatment, disposal, or recycling of wastewater, including, but not limited to, sanitary sewage, storm water, residential, commercial, industrial, and agricultural wastes. Facilities include all necessary equipment, utilities, structures, real property, and interests in and improvements on real property.

~~((71))~~ **(75) Water pollution control facilities funding category** means that portion of the water pollution control revolving fund dedicated to facilities projects.

~~((72))~~ **(76) Water pollution control revolving fund (revolving fund)** means the water pollution control revolving fund established by RCW 90.50A.020.

~~((73))~~ **(77) Water resource inventory area (WRIA)** means one of the watersheds in the state of Washington, each composed of the drainage areas of a stream or streams, as established in the Water Resources Management Act of 1971 (chapter 173-500 WAC).

AMENDATORY SECTION (Amending Order 05-16, filed 6/29/07, effective 7/30/07)

WAC 173-98-040 Water pollution control revolving fund (revolving fund) uses. The revolving fund may be used for the following purposes:

(1) To provide loans to finance the planning, design, and/or construction of water pollution control facilities;

(2) To provide loans for nonpoint source pollution control management projects that implement the Washington's water quality management plan to control nonpoint sources of pollution, and for developing and implementing a conservation and management plan under section 320 of the act;

(3) To provide loans for up to twenty years reserve capacity for water pollution control facilities;

(4) To buy or refinance the debt obligations incurred by applicants after March 7, 1985, for the construction of water pollution control facilities;

(5) To guarantee or purchase insurance for local obligations to improve credit market access or reduce interest rates;

(6) As a source of revenue or security for the payment of principal and interest on revenue or general obligation bonds issued by the state if the proceeds of those bonds will be deposited in the revolving fund; and

(7) To finance administration costs incurred by the department as authorized by the act and chapter 90.50A RCW.

(8) To administer recovery funds consistent with the American Recovery and Reinvestment Act of 2009.

AMENDATORY SECTION (Amending Order 05-16, filed 6/29/07, effective 7/30/07)

WAC 173-98-100 Eligible. Certain projects or project elements, including, but not limited to the following, may be eligible for loan assistance(=:). To see examples of what projects and project elements are eligible for recovery funds see WAC 173-98-980 (5) and (12).

(1) **Aquatic plant control** when the water quality degradation is due to the presence of aquatic plants, and the source(s) of pollution is addressed sufficiently to ensure that the pollution is eliminated;

(2) **BMP implementation** on private property:

(a) Best management practices that consist of new, innovative, or alternative technology not yet demonstrated in the department's region in which it is proposed;

(b) Best management practices in the riparian buffer or zone, such as revegetation or fence construction and where a conservation easement or landowner agreement is granted by the landowner; and

(c) Other water quality best management practices that are evaluated and approved by the department on a case-by-case basis, and where a conservation easement or landowner agreement is granted by the landowner.

(3) **BMP implementation** on public property;

(4) **Capacity for growth.** Loans for up to twenty years capacity for water pollution control facilities. Capacity in excess of the twenty year design capacity are not eligible;

(5) **Computer equipment and software** specific to the funded project and preapproved by the department;

(6) **Confined animal feeding operations (CAFO)** water pollution control projects located in federally designated national estuaries;

(7) **Conservation planning;**

(8) **Design-build or design-build-operate** (alternative contracting/service agreements) for water pollution control facilities and other alternative public works contracting procedures;

(9) **Diagnostic studies** to assess current water quality;

(10) **Education and outreach** efforts for the public;

(11) **Environmental checklists**, assessments, and impact statements necessary to satisfy requirements for the SEPA, the NEPA, and the SERP;

(12) **Equipment and tools** as identified in a loan agreement;

(13) **Facilities** for the control, storage, treatment, conveyance, disposal, or recycling of domestic wastewater and storm water for residential, and/or a combination of residential, commercial, institutional and industrial:

(a) **Planning:**

(i) **Comprehensive sewer planning**, including wastewater elements of capital facilities planning under the growth management act;

(ii) **Storm water planning;**

(iii) **Facilities planning** for water pollution control facilities;

(b) **Design** preparation of plans and specifications for water pollution control facilities;

(c) **Construction** of:

(i) Facilities for the control, storage, treatment, conveyance, disposal, or recycling of domestic wastewater and storm water;

(ii) Combined sewer overflow abatement;

(iii) Facilities to meet existing needs plus twenty years for growth;

(iv) Side sewers or individual pump stations or other appurtenances on private residential property if solving a nonpoint source pollution problem, such as failing on-site septic systems;

(v) Side sewers existing on public property or private property (with an easement) to correct infiltration and inflow and replace existing water pollution control facilities; and

(vi) New sewer systems to eliminate failing or failed on-site septic systems;

(d) **Value engineering** for water pollution control facilities;

(e) **Design or construction** costs associated with design-build or design-build-operate contracts.

(14) **Ground water protection activities** such as well-head protection and critical aquifer recharge area protection;

(15) **Hardship assistance** for wastewater treatment facilities construction, storm water, and on-site septic system repair and replacement;

(16) **Indirect costs** as defined in the most recently updated edition of *Administrative Requirements for Ecology Grants and Loans* (publication #91-18);

(17) **Lake implementation and associated planning activities** on lakes with public access;

(18) **Land acquisition:**

(a) As an integral part of the treatment process (e.g., land application); or

(b) For wetland habitat preservation;

(19) **Landscaping for erosion control** directly related to a project, or site-specific landscaping in order to mitigate site conditions and comply with requirements in the SERP;

(20) **Legal expenses** will be determined on a case-by-case basis, such as development of local ordinances, use of a bond counsel, review of technical documents;

(21) **Light refreshments** for meetings when preapproved by the department;

(22) **Monitoring BMP effectiveness;**

(23) **Monitoring equipment** used for water quality assessment;

(24) **Monitoring water quality;**

(25) **Model ordinances** development and dissemination of model ordinances to prevent or reduce pollution from non-point sources;

(26) **On-site septic systems:**

(a) **On-site septic system repair and replacement** for residential and small commercial systems;

(b) **On-site wastewater** system surveys;

(c) **Local loan fund** program development and implementation;

(27) **Planning** comprehensive basin, watershed, and area-wide water quality development;

(28) **Refinancing** of water pollution control facility debt;

(29) **Riparian and wetlands habitat restoration** and enhancement, including revegetation;

(30) **Sales tax;**

(31) **Spare parts** initial set of spare parts for equipment that is critical for a facility to operate in compliance with discharge permit requirements;

(32) **Stream restoration projects;**

(33) **Total maximum daily load study** development and implementation;

(34) **Training** to develop specific skills that are necessary to directly satisfy the funding agreement scope of work. Training, conference registration or annual meeting fees must be preapproved by the department;

(35) **Transferring ownership** of a small wastewater system to a public body;

(36) **Wastewater or storm water utility development;**

(37) **Wastewater or storm water utility rate** or development impact fee studies;

(38) **Water quality education** and stewardship programs.

AMENDATORY SECTION (Amending Order 05-16, filed 6/29/07, effective 7/30/07)

WAC 173-98-110 Noneligible. Certain projects or project elements, including but not limited to the following are not eligible for loan assistance. Noneligible projects and project elements may be different for recovery funds (see WAC 173-98-980):

(1) **Abandonment** or demolition of existing structures not interfering with proposed construction of a wastewater or storm water treatment facility;

(2) **Acts of nature** that alter the natural environment, thereby causing water quality problems;

(3) **Aquatic plant control** for aesthetic reasons, navigational improvements, or other purposes unrelated to water quality;

(4) **Bond costs** for debt issuance;

(5) **Bonus or acceleration payments** to contractors to meet contractual completion dates for construction;

(6) **Commercial, institutional or industrial** wastewater pollution control activities or facilities or portions of those facilities that are solely intended to control, transport, treat, dispose, or otherwise manage wastewater;

(7) **Commercial, institutional or industrial** monitoring equipment for sampling and analysis of discharges from municipal water pollution control facilities;

(8) **Commercial, institutional or industrial** wastewater pretreatment;

(9) **Compensation** or damages for any claim or injury of any kind arising out of the project, including any personal injury, damage to any kind of real or personal property, or any kind of contractual damages, whether direct, indirect, or consequential;

(10) **Cost-plus-a-percentage-of-cost contracts** (also known as multiplier contracts), time and materials contracts, and percent-of-construction contracts in facilities projects;

(11) **Engineering reports;**

(12) **Fines and penalties** due to violations of or failure to comply with federal, state, or local laws;

(13) **Flood control**, projects or project elements intended solely for flood control;

(14) **Funding application preparation** for loans or grants;

(15) **Interest** on bonds, interim financing, and associated costs to finance projects;

(16) **Landscaping** for aesthetic reasons;

(17) **Legal expenses** associated with claims and litigation;

(18) **Lobbying** or expenses associated with lobbying;

(19) **Mitigation** unless it addresses water quality impacts directly related to the project, and determined on a case-by-case basis;

(20) **Office furniture** not included in the recipient's indirect rate;

(21) **Operating expenses** of local government, such as the salaries and expenses of a mayor, city council member, city attorney, etc.;

(22) **Operation and maintenance** costs;

(23) **Overtime** differential paid to employees of public body to complete administrative or force account work;

(24) **Permit fees;**

(25) **Personal injury compensation** or damages arising out of the project, whether determined by adjudication, arbitration, negotiation, or other means;

(26) **Professional dues;**

(27) **Reclamation** of abandoned mines;

(28) **Refinancing** of existing debt;

(29) **Solid or hazardous waste cleanup;**

(30) **Vehicle purchase** except for vehicles intended for the transportation of liquid, dewatered sludge, septage, or special purpose vehicles as approved by the department; and

(31) **Water quantity** or other water resource projects that solely address water quantity issues.

AMENDATORY SECTION (Amending Order 05-16, filed 6/29/07, effective 7/30/07)

WAC 173-98-200 Application for funding. (1) To apply for funding the applicant must submit a completed application to the department. The department will provide the application on the agency web site.

(2) The applicant may be asked to provide the following project information:

(a) Basic information such as names of contacts, addresses, and other tracking information;

(b) Project summary;

(c) Project goals, objectives, and milestones;

(d) Overall water quality benefits;

(e) Public health benefits;

(f) Sources of pollution addressed;

(g) How the project will address state and federal mandates, elements in "Washington's water quality plan to control nonpoint sources of pollution," or other such plans;

(h) Performance measures and postproject assessment monitoring;

(i) Readiness to proceed, likelihood of success, and measures of success specific to the project;

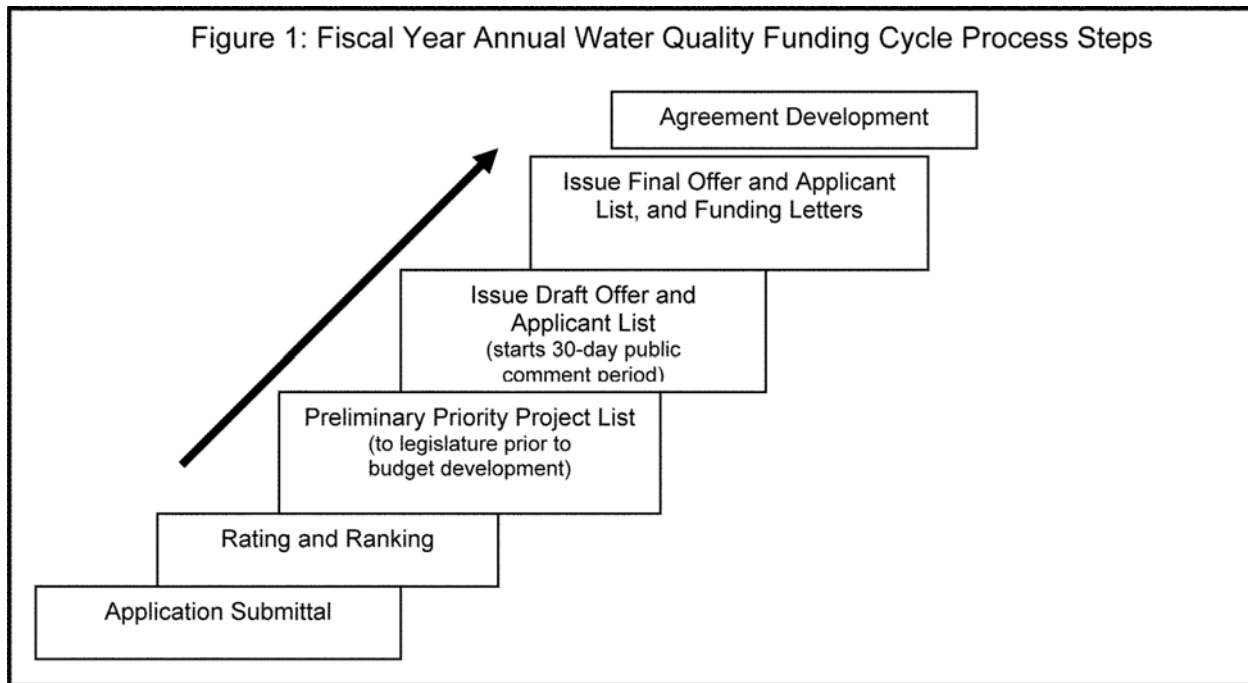
(j) Local initiatives, commitments, or priorities related to the project; or

(k) Other information requested by the department.

(3) WAC 173-98-200 applies to recovery funds or as otherwise provided in WAC 173-98-980.

AMENDATORY SECTION (Amending Order 05-16, filed 6/29/07, effective 7/30/07)

WAC 173-98-210 Ecology's responsibilities. (1) A general funding cycle schedule is provided in figure 1. The department may deviate from this funding cycle schedule to administer recovery funds or other emergency federal or state stimulus moneys.



(2) Ecology will provide the following services:

- (a) Make available the application and applicable guidelines before the associated funding cycle begins;
- (b) Conduct at least one application workshop in each of ecology's four regions;
- (c) Conduct preapplication workshops to discuss regional level priorities if applicable;
- (d) After the application deadline, complete an initial review of project proposals for funding eligibility;
- (e) Request other agencies to provide evaluation assistance as needed;
- (f) Rate and rank the applications using a consistent scoring system;
- (g) Prepare a combined preliminary project priority list, after evaluation and scoring of all applications;
- (h) Submit preliminary project priority list to the state legislature for budget consideration;
- (i) Develop a combined draft offer and applicant list and a draft revolving fund IUP;
- (j) Facilitate a public review and comment period for the combined draft offer and applicant list and revolving fund IUP;
- (k) Sponsor at least one public meeting to explain the combined draft offer and applicant list and the revolving fund IUP;
- (l) Develop a combined "final offer and applicant list" and a final revolving fund IUP. Public comments collected during draft public review period will be incorporated and result in a responsiveness summary;
- (m) Issue funding decision letters to all applicants; and
- (n) Negotiate, develop, and finalize loan agreements.

AMENDATORY SECTION (Amending Order 05-16, filed 6/29/07, effective 7/30/07)

WAC 173-98-220 Final offer and applicant list. Loan offers identified on the "final offer and applicant list" will be effective for up to one year from the publication date of the "final offer and applicant list." Loan offers that do not result in a signed agreement are automatically terminated. Loans made with recovery funds may have different signing deadlines pursuant to WAC 173-98-980 (3) and (4).

AMENDATORY SECTION (Amending Order 05-16, filed 6/29/07, effective 7/30/07)

WAC 173-98-230 Revolving fund intended use plan (IUP). (1) As required by the EPA, the department issues an IUP for each funding cycle.

(2) The IUP is issued in conjunction with the "final offer and applicant list."

(3) It contains a detailed report of how the department expects to allocate moneys available in the current funding cycle.

(4) This section also applies to recovery funds or as otherwise provided in WAC 173-98-980.

AMENDATORY SECTION (Amending Order 05-16, filed 6/29/07, effective 7/30/07)

WAC 173-98-300 Wastewater treatment facilities construction. (1) Hardship criteria for principal forgiveness using recovery funds is found in WAC 173-98-980(7). The following is used to determine interest rates for hardship con-

struction projects. There are three primary factors considered in determining hardship funding for the construction portion of wastewater treatment facilities projects:

- (a) Service area population;
- (b) Existing residential need at the time of application;

and
 (c) Level of financial burden placed on the ratepayers.
 (2) **Service area population.** Applicants with a service area population of twenty-five thousand or less can request hardship-funding consideration by submitting a financial hardship analysis form along with the funding application. If the service area population is different from the population of the applicant, the applicant must show that the hardship assistance is solely used to benefit the population of the service area.

(3) **Existing residential need.** The applicant and the department calculate the water pollution control facilities construction costs that are associated with existing residential need at the time of application.

(4) **Level of financial burden.**

(a) Financial burden for the sewer ratepayer is determined by calculating the residential sewer user fee as a percent of the median household income (MHI). The residential sewer user fee is calculated using the construction cost estimates including:

- (i) Estimated construction cost;
- (ii) Existing annual operation and maintenance costs;
- (iii) Discounted, existing annual operation and maintenance costs as a result of constructing the project;
- (iv) Projected future annual operation and maintenance costs for the total facility;
- (v) The applicant's current and future annual debt service on the project;
- (vi) The revolving fund annual debt service for the funded project;
- (vii) Other grants;
- (viii) The applicant's level of debt for other wastewater facilities not associated with the project;

(6) **Figure 2. Loan Hardship-Funding Continuum**

Sewer User Fee divided by MHI	Below 2.0%	2.0% and above, but Below 3.0%	3.0% and above, but Below 5.0%	5.0% and above
Hardship Designation	<i>Nonhardship</i> (Low sewer user rates in relation to MHI) (Not funded with grant dollars)	<i>Moderate Hardship</i>	<i>Elevated Hardship</i>	<i>Severe Hardship</i> (Very high sewer user rates in relation to median household income (MHI))
Loan Hardship-Funding Continuum	Loan at 60% of market rate	Loan at 40% of market rate	Loan at 20% of market rate	Loan at 0% interest

(ix) The total number of households existing at the time of application that will be served by the project;

(x) The nonresidential share of the total annual costs is deducted; and

(xi) Median household income;

(b) The sewer user fee as a percentage of MHI is the basis for the department's loan hardship-funding continuum shown in figure 2;

(c) The most recent available census data determines the median household income. This data is updated yearly based on inflation rates as measured by the federal Bureau of Labor Statistics and published as the *Consumer Price Index*; and

(d) If median household income data are not available for a community or if the community disputes the data used by the department, the department may allow an applicant to conduct a scientific survey to determine the median household income.

(5) **Loan terms and interest rates.** The department uses the loan hardship-funding continuum to determine the hardship-loan interest rates. Forgivable principal may be provided with recovery funds as specified in WAC 173-98-980(7). Not more than fifty percent of the funding category can be awarded to any one applicant per funding cycle. In addition to a reduced interest rate, the applicant may receive longer loan repayment terms, not to exceed twenty years.

For example:

Assuming that the average market rate for tax-exempt municipal bonds is five percent, the following would apply.

When an applicant with a service area population of twenty-five thousand or less can demonstrate that its sewer user rates for the proposed project are between three and five percent of the median household income, the applicant may be eligible for a twenty-year repayment term and a one percent interest rate. This interest rate represents twenty percent of the average market rate for tax-exempt municipal bonds (see figure 2).

AMENDATORY SECTION (Amending Order 05-16, filed 6/29/07, effective 7/30/07)

WAC 173-98-310 On-site septic system repair and replacement programs. (1) On-site septic system repair and replacement projects funded with recovery funds are eligible pursuant to green project reserves provided in WAC 173-98-980(12). Applicants may apply for a revolving fund loan to establish or continue programs that provide funding for on-

site septic repair and replacement for homeowners and small commercial enterprises.

(2) **Final loan blended interest rate.** The department may adjust the recipient's interest rates based on the interest rates that the recipient charged to homeowners and small commercial enterprises. To receive the adjusted interest rate, the recipient must issue loans shown in figure 3.

(3) Figure 3 shows the interest rate schedule for loans targeted to homeowners at three levels of county median household income. For information on how the market rate is determined, see WAC 173-98-400.

Figure 3.

Homeowner Income is:	20-Year Term	5-Year Term	Hardship Level
Above 80% county MHI	60% of MR	30% of MR	Nonhardship
50 - 80% county MHI	30% of MR	Up to 15% of MR	Moderate
Below 50% county MHI	Up to 15% of MR	0%	Severe

Figure 4.

Figure 4 shows the interest rate schedules for loans targeted to small commercial enterprises at three levels of annual gross revenue. For example, in order for a small commercial enterprise to be considered for moderate to severe hardship, the business must provide documentation to substantiate that annual gross revenue is less than one hundred thousand dollars.

Small Commercial Enterprise Annual Gross Revenue is:	20-Year Term	5-Year Term	Hardship Level
Above \$100,000	60% of MR	30% of MR	Nonhardship
\$50,000 - \$100,000	30% of MR	Up to 15% of MR	Moderate
Below \$50,000	Up to 15% of MR	0%	Severe

(4) The recipient agrees to submit a final compilation of the local loans provided to homeowners and small commercial enterprises throughout the duration of the project. The list will include information provided by the RECIPIENT regarding the number and final dollar amounts of loans funded in the following respective homeowner income and small commercial enterprise revenue levels:

- (a) Homeowner income:
 - (i) Above 80% of county MHI
 - (ii) 50 to 80% of county MHI
 - (iii) Below 50% of county MHI
- (b) Small commercial enterprise annual gross revenue:
 - (i) Above \$100,000
 - (ii) \$50,000 to \$100,000
 - (iii) Below \$50,000

AMENDATORY SECTION (Amending Order 05-16, filed 6/29/07, effective 7/30/07)

WAC 173-98-320 Storm water projects. (1) There are three primary factors in determining financial hardship for storm water projects:

- (a) Service area population;

- (b) Presence of a permit; and
- (c) Community's median household income (MHI).

(2) **Service area population, presence of permit, and median household income.** Applicants under a permit, with a service area population of twenty-five thousand or less, and whose MHI is sixty percent or less of the average statewide MHI can request hardship-funding consideration. If the service area population is different from the population of the applicant, the applicant must show that the hardship assistance is solely used to benefit the population of the service area.

(3) If MHI data are not available for a community or if the community disputes the data used by the department, the department may allow an applicant to conduct a scientific survey to determine the MHI.

(4) Figure 5 describes the interest rate schedule. For information on how the market rate is determined, see WAC 173-98-400.

Figure 5.

Service area MHI is:	20-Year Term	5-Year Term
Above 60% statewide MHI	Not eligible	Not eligible
60% or below statewide MHI	Up to 30% of MR	Up to 15% of MR

(5) WAC 173-98-320 applies to recovery funding for storm water activities that are required by a National Pollutant Discharge Elimination System (NPDES) permit and storm water projects that are defined by section 212 of the Clean Water Act.

AMENDATORY SECTION (Amending Order 05-16, filed 6/29/07, effective 7/30/07)

WAC 173-98-400 Loan interest rates. (1) Interest will accrue on each disbursement as it is paid to the recipient.

(2) The department bases loan interest rates on the average market interest rate. The average market interest rate is:

- (a) Based on the daily market rate published in the bond buyer's index for tax-exempt municipal bonds; and
- (b) Taken from the period sixty to thirty days before the annual funding application cycle begins.

(3) See WAC 173-98-300 or (~~(173-98-3010)~~) 173-98-310 for hardship interest rates.

Figure 6: Loan Terms and Interest Rates

Repayment Period	Interest Rate
Up to 5 years:	30% of the average market rate.
More than 5 but no more than 20 years:	60% of the average market rate.

(4) The director may approve lower interest rates for the annual funding application cycle if a financial analysis of the revolving fund demonstrates that lower interest rates for that year are not detrimental to the perpetuity of the revolving fund.

(5) WAC 173-98-400 applies to recovery funds or as otherwise provided in WAC 173-98-980.

AMENDATORY SECTION (Amending Order 05-16, filed 6/29/07, effective 7/30/07)

WAC 173-98-410 Refinancing. (1) There are two kinds of refinance with different regulations: Standard refinance and interim refinance. Recovery funds cannot be used to refinance debt except under certain conditions pursuant to WAC 173-98-980(11).

(2) **Standard refinance** refers to a completed project funded with moneys from a source other than the department. It is limited to water pollution control facilities where project construction began after March 7, 1985.

(a) Applicants requesting standard refinancing must meet all the requirements contained in the act;

(b) Standard refinance projects will only be funded if there is limited demand for moneys for new projects;

(c) All department prerequisites must have been met at the time the project was undertaken;

(d) If multiple standard refinance applications are received, priority will be given based on impacts to the rate payers in the service area of the project;

(e) Standard refinance projects are not eligible for hardship financial assistance; and

(f) Repayment begins six months after a funding agreement becomes effective.

(3) **Interim refinance** applies to a project that is in progress using moneys from a source other than the department. Interim refinance retires existing debt and also covers the remaining eligible project costs. Interim refinance projects must meet all applicable requirements of this chapter.

AMENDATORY SECTION (Amending Order 05-16, filed 6/29/07, effective 7/30/07)

WAC 173-98-420 Defeasance. (1) No defeasance is allowed as long as the department holds the recovery fund and revolving fund loans.

(2) Defeasance means setting money aside in a special account that is dedicated to pay all or some of the principal and interest on a debt when it comes due.

AMENDATORY SECTION (Amending Order 05-16, filed 6/29/07, effective 7/30/07)

WAC 173-98-430 Repayment. When a project, including recovery funded projects, is complete and all disbursements are made the department will execute a final amendment that will include:

(1) A final loan repayment schedule that reflects the length of repayment terms and the principal from disbursements and accrued interest;

(2) The first repayment of principal and interest will be due one year after the initiation of operation date, or one year after the project completion date, whichever occurs first;

(3) Equal payments will be due every six months;

(4) If the due date for any payment falls on a Saturday, Sunday, or designated holiday for Washington state agencies,

the payment shall be due on the next business day for Washington state agencies;

(5) Loan balances may be repaid or additional principal payments may be made at any time without penalty; and

(6) The department may assess a late fee for delinquent payments, according to WAC 173-98-470.

AMENDATORY SECTION (Amending Order 05-16, filed 6/29/07, effective 7/30/07)

WAC 173-98-440 Loan security. Loans shall be secured by a general obligation pledge or a revenue pledge of the recipient. The obligation of the recipient to make loan repayments from the sources identified in its revolving fund loan agreement shall be absolute and unconditional, and shall not be subject to diminution by setoff, counterclaim, or abatement of any kind.

(1) **General obligation.** Repayment of the loan may be secured by a general obligation pledge. The recipient shall pledge to include in its budget an amount sufficient to pay the principal and interest on the loan when due. For so long as the loan is outstanding, the recipient shall ensure adequate funds are available to enable timely loan repayment, which may require the recipient to levy additional annual taxes against the taxable property within its boundaries. The full faith, credit, and resources of the recipient shall be pledged irrevocably for the annual levy and collection of those taxes and the prompt payment of the principal of and interest on the loan.

(2) **Revenue obligation.** Repayment of a loan may be secured by an irrevocable pledge of the net revenues of the recipient's utility and, in appropriate cases, utility local improvement district assessments.

Repayment of a loan shall constitute a lien and charge upon the net revenues of the recipient's utility prior and superior to any other charges whatsoever, except that the lien and charge shall be junior and subordinate to the lien and charge of any senior lien obligations. If applicable, repayment of a loan shall constitute a lien and charge upon utility local improvement district assessments prior and superior to any other charges whatsoever.

(3) **Tribal governmental enterprises.** Federally recognized Indian tribes may provide loan security through dedicated revenue from governmental enterprises. The recipient must demonstrate that the security used has a sufficient track record of income to secure the loan. Tribal governmental enterprises may include leases, gaming as provided under approved gaming compacts, forestry, or other tribal government-owned enterprises.

(4) WAC 173-98-440 applies to recovery funds or as otherwise provided in WAC 173-98-980.

AMENDATORY SECTION (Amending Order 05-16, filed 6/29/07, effective 7/30/07)

WAC 173-98-450 Loan reserve requirements. For a revenue obligation secured loan with terms greater than five years, the recipient must accumulate a reserve account equivalent to the annual debt service on the loan. This reserve must be established before or during the first five years of the loan repayment period. The reserve account may be used to make the last two payments on the revolving fund loan. WAC 173-

98-450 applies to recovery funds or as otherwise provided in WAC 173-98-980.

AMENDATORY SECTION (Amending Order 05-16, filed 6/29/07, effective 7/30/07)

WAC 173-98-460 Loan default. In the event of loan default, the state of Washington may withhold any amounts due to the recipient from the state for other purposes. Such moneys will be applied to the debt. WAC 173-98-460 applies to recovery funds or as otherwise provided in WAC 173-98-980.

AMENDATORY SECTION (Amending Order 05-16, filed 6/29/07, effective 7/30/07)

WAC 173-98-470 Late payments. A late fee of one percent per month on the past due amount will be assessed starting on the date the debt becomes past due and until it is paid in full. WAC 173-98-470 applies to recovery funds or as otherwise provided in WAC 173-98-980.

AMENDATORY SECTION (Amending Order 05-16, filed 6/29/07, effective 7/30/07)

WAC 173-98-500 Funding categories. (1) The revolving fund, excluding recovery funds, is split into two funding categories:

(a) Water pollution control facilities category: Eighty percent of the revolving fund is used for facilities projects as established under section 212 of the act; and

(b) Water pollution control activities category: Twenty percent of the revolving fund will be available for the implementation of programs or projects established under the "Washington's water quality management plan to control nonpoint sources of pollution."

(2) If the demand is limited in either funding category, the department can shift moneys between the funding categories.

(3) Recovery funds categories:

(a) Recovery funds category for wastewater treatment hardship facilities construction (WWTF hardship construction): Not less than fifty percent of the recovery fund is dedicated to WWTF hardship construction projects.

(b) Recovery funds category for green project reserves: Not less than twenty percent of the recovery fund is dedicated for green project reserves.

(c) Recovery funds category for water pollution control facilities: The portion of the recovery funds not used for other recovery funds categories (WWTF hardship construction and green project reserves) will be used for this category.

AMENDATORY SECTION (Amending Order 05-16, filed 6/29/07, effective 7/30/07)

WAC 173-98-510 Funding recognition. (1) Where applicable, the recipient must acknowledge department and EPA funding, including recovery funds, in reports, technical documents, publications, brochures, and other materials.

(2) Where applicable, the recipient must display signs for site-specific projects acknowledging department and EPA

funding. The sign must be large enough to be seen from nearby roadways and include a department or EPA logo.

AMENDATORY SECTION (Amending Order 05-16, filed 6/29/07, effective 7/30/07)

WAC 173-98-520 Ceiling amounts. (For recovery funds ceiling amounts, see WAC 173-98-980(8).) (1) Water pollution control facilities category:

(a) Not more than fifty percent of the revolving fund in this category will be available to any one applicant per funding cycle; and

(b) No more than five million dollars is available for each smaller combined design-construct project (step four). See WAC 173-98-530 for information on smaller combined design-construct projects (step four).

(2) Water pollution control activities category: Not more than fifty percent of the revolving fund in this category will be available to any one applicant per funding cycle.

(3) Partially funded projects: If a project is offered partial funding due to the lack of available revolving fund moneys, and the recipient is demonstrating progress on the project, the recipient may apply for the remaining eligible project costs in the subsequent funding cycle.

(4) Water pollution control facilities construction bid overruns:

(a) If the low responsive responsible construction bid(s) exceeds the engineer's estimate of construction costs, the department may approve funding increases for up to ten percent of the engineer's original estimate;

(b) The ceiling amounts that were established in the fiscal year in which the project was offered funding apply; and

(c) First priority for funding bid overruns will be given to hardship communities based on the severity of financial need.

(5) Water pollution control facilities construction change orders:

(a) The department may approve funding for change orders for up to five percent of the eligible portion of the low responsive responsible construction bid(s);

(b) The ceiling amounts that were established in the fiscal year in which the project was offered funding apply; and

(c) First priority for funding change orders will be given to hardship communities based on the severity of financial need.

AMENDATORY SECTION (Amending Order 05-16, filed 6/29/07, effective 7/30/07)

WAC 173-98-530 Step process for water pollution control facilities. (1) The step process is required for facilities projects. The process begins with site-specific planning, and continues through design to construction.

(2) For steps one through three, an applicant may only apply for funding for one step of the process at a time. At the time of application, completion of the previous steps must be approved by the department. Funding of one step does not guarantee the funding of subsequent steps.

(3) The step process includes the following:

(a) **Planning (step one):** Step one involves the preparation of a site-specific facilities plan that identifies the cost-effective alternatives for addressing a water pollution control

problem. There is no prerequisite for planning. If there is an existing engineering report, it must be upgraded to a facilities plan;

(b) **Design (step two):** Step two includes the preparation of plans and specifications for use in construction. These must be based on the preferred cost-effective alternative identified in the facilities plan. A facilities plan must be approved by the department before an application for design can be considered for funding.

Facilities plans approved by the department more than two years prior to the close of the application period must contain evidence of recent review by the department to ensure the document reflects current conditions; and

(c) **Construction (step three):** Step three includes the actual building of facilities based on the approved design. Design must be approved by the department before an application for construction can be considered for funding.

(4) **Combined steps for smaller design-construct projects (step four):** In some cases, design and construction may be combined into one loan. See WAC 173-98-980 (5)(c) for step four projects funded with recovery funds. Step four applicants must demonstrate that step two (design) can be completed and approved by the department within one year of the effective date of the funding agreement. The total project costs for step four projects must be five million dollars or less.

(5) **Step deviations.** During the application phase of the funding cycle, the department may allow an applicant to deviate from the traditional step requirements if:

(a) The Washington state department of health has declared a public health emergency; and

(b) The proposed project would remedy this situation.

No loan agreement will be signed until all previous steps have been completed and approved by the department.

(6) For timelines on submitting planning and design documents to the department for recovery funds, see WAC 173-98-980 (4) and (5).

AMENDATORY SECTION (Amending Order 05-16, filed 6/29/07, effective 7/30/07)

WAC 173-98-540 Step process for water pollution control activities. The step process is required for lake projects and recommended for all activities projects, except for recovery funded activities projects.

(1) **Planning** involves the identification of problems and evaluation of cost-effective alternatives.

(2) **Implementation** is the actual implementation of the project based on the planning document. Where the project includes construction, a design element may be included before the implementation step.

AMENDATORY SECTION (Amending Order 05-16, filed 6/29/07, effective 7/30/07)

WAC 173-98-550 Declaration of construction after project completion. Recipients shall submit a declaration of construction of water pollution control facilities to the department within thirty days of project completion. WAC 173-98-550 applies to recovery funds or as otherwise provided in WAC 173-98-980.

AMENDATORY SECTION (Amending Order 05-16, filed 6/29/07, effective 7/30/07)

WAC 173-98-560 Performance measures and post-project assessment. (1) The department may require a recipient to develop and implement a postproject assessment plan.

(2) A recipient may be required to participate in a post-project survey and interview regarding performance measures.

(3) WAC 173-98-560 applies to recovery funds or as otherwise provided in WAC 173-98-980.

AMENDATORY SECTION (Amending Order 05-16, filed 6/29/07, effective 7/30/07)

WAC 173-98-600 Design-build and design-build-operate project requirements. (1) Design-build or design-build-operate projects are not eligible for recovery funds.

(2) Design-build or design-build-operate projects must be consistent with applicable statutes, such as chapter 39.10 RCW, Alternative public works contracting procedures, chapter 70.150 RCW, Water Quality Joint Development Act, and/or chapter 35.58 RCW, Metropolitan municipal corporations.

~~((2))~~ (3) The design and construction portions of a design-build-operate project under chapter 70.150 RCW, Water Quality Joint Development Act, may be eligible for reduced interest rate if the public body can demonstrate financial hardship in accordance with WAC 173-98-300.

~~((3))~~ (4) The following conditions apply to design-build and design-build-operate projects:

(a) The ceiling amounts in WAC 173-98-520;

(b) If eligible project costs exceed the ceiling amounts in WAC 173-98-520, then public bodies can compete for additional funding in the subsequent funding cycle;

(c) Interest rates for nonhardship projects are set according to WAC 173-98-400;

(d) In the case of hardship, a reduced interest rate may be available for the design and construction portion of a design-build-operate project;

(e) The project scope of work must implement a department-approved facilities plan;

(f) In addition to the project application information listed in WAC 173-98-200, the project will be evaluated on the applicant's level of administrative and technical expertise;

(g) Applicants may apply for up to one hundred ten percent of the facilities planning estimate for design and construction. The loan agreement will be written for the final negotiated contract price;

(h) At the time of application, the following must be provided:

(i) A legal opinion from an attorney of the public body indicating that the public body has sufficient legal authority to utilize the process;

(ii) A department-approved facilities plan;

(iii) A report detailing the projected savings based on a cost and time-to-complete as compared to the traditional design-bid-construct process;

(i) The department may require that the public body obtain delegation authority consistent with chapter 90.48 RCW, Water pollution control, and assume the responsibility

for sequential review and approval of plans, specifications, and change orders. The department will continue to make all eligibility determinations;

(j) Costs associated with change orders are not eligible for reimbursement;

(k) Before delegation authority is granted to the applicant and the loan agreement is signed, the following must be approved by the department:

(i) Primary design elements;

(ii) Final service agreements and/or contracts;

(l) Projects funded prior to the effective date of this rule will continue to be managed in accordance with the program guidelines for the year the project was funded;

(m) Projects must be completed according to the timeline in WAC 173-98-800 and 173-98-810; and

(n) Projects funded under the alternative contracting service agreement AC/SA pilot rule of 2002 are placed at the top of the "final offer and applicant list" and IUP each year in relative priority to other AC/SA projects. Loan moneys may be disbursed in equal annual payments or by other means that are not detrimental to the perpetuity of the revolving fund.

AMENDATORY SECTION (Amending Order 05-16, filed 6/29/07, effective 7/30/07)

WAC 173-98-700 General requirements. (1) Recipients must fully comply with all applicable federal, state, and local laws and regulations relating to topics such as procurement, discrimination, labor, job safety, drug-free environments, and minority and women owned businesses.

(2) Ongoing management of most aspects of loan projects is subject to the most recent edition of *Administrative Requirements for Ecology Grants and Loans*.

(3) Ongoing management of all aspects of loan projects is subject to the associated funding program guidelines.

(4) The applicant shall secure all necessary permits required by authorities having jurisdiction over the project. Copies must be available to the department upon request.

(5) WAC 173-98-700 applies to recovery funds or as otherwise provided in WAC 173-98-980.

AMENDATORY SECTION (Amending Order 05-16, filed 6/29/07, effective 7/30/07)

WAC 173-98-710 The Growth Management Act. (1) A local government not in compliance with the Growth Management Act may not receive loans or grants from the department, except, in limited circumstances, where a local government must address a documented public health need or substantial environmental degradation.

(2) For the purposes of this section, "compliance with the Growth Management Act" means: A county, city, or town that is required to or chooses to plan under RCW 36.70A.040 has adopted a comprehensive plan, including a capital facilities plan element, and development regulations as required by chapter 36.70A RCW.

(3) For the purposes of this chapter, a public health need related to a loan must be documented by a letter signed by the secretary of the Washington state department of health or his or her designee and addressed to the public official who

signed the loan application. "Public health need" means a situation where:

(a) There is a documented potential for:

(i) Contaminating a source of drinking water; or

(ii) Failure of existing wastewater system or systems resulting in contamination being present on the surface of the ground in such quantities and locations as to create a potential for public contact; or

(iii) Contamination of a commercial or recreational shellfish bed as to create a critical public health risk associated with consumption of the shellfish; or

(iv) Contamination of surface water so as to create a critical public health risk associated with recreational use; and

(b) The problem generally involves a serviceable area including, but not limited to, a subdivision, town, city, or county, or an area serviced by on-site sewage disposal systems; and

(c) The problem cannot be corrected through more efficient operation and maintenance of an existing wastewater disposal system or systems.

(4) For the purposes of this chapter, a substantial environmental degradation related to a loan must be documented by a letter signed by the director and addressed to the public official who signed the loan application. "Substantial environmental degradation" means that:

(a) There is a situation causing real, documented, critical environmental contamination that:

(i) Contributes to violations of the state's water quality standards; or

(ii) Interferes with beneficial uses of the waters of the state;

(b) The problem generally involves a serviceable area including, but not limited to, a subdivision, town, city, or county, or an area serviced by on-site sewage disposal systems; and

(c) The problem cannot be corrected through more efficient operation and maintenance of an existing wastewater disposal system or systems.

(5) A county, city, or town that has been offered a loan for a water pollution control facilities project may not receive loan funds while the county, city, or town is not in compliance with the Growth Management Act unless:

(a) Documentation showing that a public health need has been provided by the Washington state department of health; or documentation showing that a substantial environmental degradation exists has been provided by the department;

(b) The county, city, or town has provided documentation to the department that actions or measures are being implemented to address the public health need or substantial environmental degradation; and

(c) The department has determined that the project is designed to address only the public health need or substantial environmental degradation described in the documentation, and does not address unrelated needs including, but not limited to, provisions for additional growth.

AMENDATORY SECTION (Amending Order 05-16, filed 6/29/07, effective 7/30/07)

WAC 173-98-720 State environmental review process (SERP). (1) All recipients must comply with the SERP.

(2) SERP includes all the provisions of the State Environmental Policy Act (SEPA), chapter 43.21C RCW, and the SEPA rules, chapter 197-11 WAC, and applicable federal requirements.

(3) All mitigation measures committed to in documents developed in the SERP process, such as the environmental checklist, environmental report, SEPA environmental impact statement (EIS), the finding of no significant impact/environmental assessment, or record of decision/federal EIS will become revolving fund loan agreement conditions. Failure to abide by these conditions will result in withholding of payments and may result in immediate repayment of the loan.

(4) WAC 173-98-720 applies to recovery funds or as otherwise provided in WAC 173-98-980.

AMENDATORY SECTION (Amending Order 05-16, filed 6/29/07, effective 7/30/07)

WAC 173-98-730 Cost-effectiveness analysis for water pollution control facilities. (1) Funding will only be considered if the project is shown to be the cost-effective alternative/solution to the water pollution control problem. The cost-effective alternative is determined using a cost-effectiveness analysis.

(2) A cost-effectiveness analysis must be included in the facilities plan and must include the following:

(a) A comparison of the total cost, total present worth or annual equivalent costs of alternatives considered for the planning period;

(b) The no action alternative; and

(c) A consideration of the monetary or nonmonetary costs/benefits of each alternative, such as the environmental impact, energy impacts, growth impacts, and community priorities.

(3) Facilities plans proposing design-build or design-build-operate projects must demonstrate that this approach is the cost-effective alternative for procurement.

(4) WAC 173-98-730 applies to recovery funds or as otherwise provided in WAC 173-98-980.

AMENDATORY SECTION (Amending Order 05-16, filed 6/29/07, effective 7/30/07)

WAC 173-98-800 Starting a project. Costs incurred before a loan agreement is effective are not eligible for reimbursement, unless prior authorization is granted by the department or interim refinancing is approved. For more information on interim refinancing, see WAC 173-98-410. See WAC 173-98-980(11) for more information on prior authorization of previously incurred costs for recovery funded projects.

(1) **Prior authorization to incur eligible costs.**

(a) An applicant may request prior authorization to incur eligible project costs if the following applies:

(i) The project is identified on the IUP;

(ii) Costs are incurred between the publication date of the "final offer and applicant" list and when the funding agreement is signed by the water quality program manager or other schedules set in the prior authorization letter; and

(iii) The written request is made to the water quality program manager;

(b) The water quality program manager will send the applicant a letter approving or denying the prior authorization; ~~((and))~~

(c) Any project costs incurred prior to the publication date of the "final offer and applicant list" are not eligible for reimbursement. All costs incurred before the agreement is signed by the water quality program manager are at the applicant's own risk; and

(d) Criteria related to previously incurred costs for recovery funded projects is found in WAC 173-98-980(11).

(2) **Project initiation.** Loan moneys must be spent in a timely fashion. The recipient must consistently meet the performance measures agreed to in the loan agreement. These performance measures include, but are not limited to, the following:

(a) Work on a project must be started within sixteen months of the publication date of the "final offer and applicant list" on which the project was proposed. WAC 173-98-800 (2)(a) does not apply to recovery funds. See WAC 173-98-980 for information on starting a recovery funded project.

(b) Starting a project means making any measurable step toward achieving the milestones, objectives, and overall goals of the project.

(c) Loan offers identified on the "final offer and applicant list" will be effective for up to one year from the publication date of the "final offer and applicant list." Local offers that do not result in a signed agreement are automatically terminated, see WAC 173-98-220 Final offer and applicant list.

(3) **Project initiation extension (excluding recovery funded projects).** Certain circumstances may allow a time extension of no more than twelve months for starting a project. For example:

(a) Schedules included in water quality permits, consent decrees, or enforcement orders; or

(b) There is a need to do work during an environmental window in a specific season of the year; or

(c) Other reasons as identified by the department on a case-by-case basis.

AMENDATORY SECTION (Amending Order 05-16, filed 6/29/07, effective 7/30/07)

WAC 173-98-810 Finishing a project. Costs incurred after the project completion or expiration dates are not eligible for reimbursement.

(1) **Project completion.**

(a) Work on a project must be completed within five years of the publication date of the "final offer and applicant list" on which the project was proposed. A shorter time period may be specified in the loan agreement; and

(b) Completing a project means completing all milestones and objectives associated with the goals of the loan agreement.

(2) Project completion extension.

(a) After the five-year limit is reached, a time extension of no more than twelve months may be made under certain circumstances, including but not limited to:

- (i) Schedules included in water quality permits, consent decrees, or enforcement orders; or
- (ii) There is a need to do work during an environmental window in a specific season of the year; and

(b) To ensure timely processing, the time extension request must be made prior to the completion or expiration date of the loan agreement.

(3) WAC 173-98-810 applies to recovery funds or as otherwise provided in WAC 173-98-980.

AMENDATORY SECTION (Amending Order 05-16, filed 6/29/07, effective 7/30/07)

WAC 173-98-900 Water pollution control revolving fund (revolving fund) perpetuity (excluding recovery funds). (1) The act requires that the revolving fund be managed in perpetuity.

(2) The department will strive to achieve perpetuity, as defined by WAC 173-98-030, by 2016.

AMENDATORY SECTION (Amending Order 05-16, filed 6/29/07, effective 7/30/07)

WAC 173-98-910 Accounting requirements for loan recipients. (1) Recipients must maintain accounting records in accordance with RCW 43.09.200 Local government accounting—Uniform system of accounting.

(2) Accounting irregularities may result in a payment hold until irregularities are resolved. The director may require immediate repayment of misused loan moneys, including recovery funds.

AMENDATORY SECTION (Amending Order 05-16, filed 6/29/07, effective 7/30/07)

WAC 173-98-920 Appealing a department decision. If a dispute arises concerning eligibility decisions made by the department within the context of a loan agreement, the decision may be appealed. A lawsuit cannot be brought to superior court unless the aggrieved party follows these procedures, which are intended to encourage the informal resolution of disputes consistent with RCW 34.05.060.

(1) First, the recipient may seek review of the financial assistance program's initial decision within thirty days of the decision in writing to the water quality program manager. The program manager will consider the appeal information and may choose to discuss the matter by telephone or in person;

(2) The program manager will issue a written decision within thirty days from the time the appeal is received;

(3) If the recipient is not satisfied with the program manager's decision, the recipient has thirty days to submit a written request to the deputy director for a review of the decision;

(4) The deputy director will consider the appeal information, and may choose to discuss the matter by telephone or in person. The deputy director will issue a written decision within thirty days from the time the appeal is received. The

deputy director's decision will be the final decision of the department;

(5) If the recipient is not satisfied with the deputy director's final decision, the recipient may appeal to the Thurston County superior court, pursuant to RCW 34.05.570(4), which pertains to the review of "other agency action"; and

(6) Unless all parties to such appeal agree that a different time frame is appropriate, the parties shall attempt to bring the matter for a superior court determination within four months of the date in which the administrative record is filed with the court. This time frame is to ensure minimal disruptions to the program.

(7) WAC 173-98-920 applies to recovery funds or as otherwise provided in WAC 173-98-980.

AMENDATORY SECTION (Amending Order 05-16, filed 6/29/07, effective 7/30/07)

WAC 173-98-930 Audit requirements for loan recipients. The department, or at the department's discretion, another authorized auditor may audit the revolving fund loan agreement and records. WAC 173-98-930 applies to recovery funds or as otherwise provided in WAC 173-98-980.

AMENDATORY SECTION (Amending Order 05-16, filed 6/29/07, effective 7/30/07)

WAC 173-98-940 Insurance for water pollution control facilities projects. Recipients shall maintain comprehensive insurance coverage on the project for an amount equal to the moneys, including recovery funds, disbursed.

AMENDATORY SECTION (Amending Order 05-16, filed 6/29/07, effective 7/30/07)

WAC 173-98-950 Indemnification. To the extent that the Constitution and laws of the state of Washington permit, the recipient shall indemnify and hold the department harmless from and against any liability for any or all injuries to persons or property arising out of a project funded with a revolving fund loan except for such damage, claim, or liability resulting from the negligence or omission of the department. WAC 173-98-950 applies to recovery funds or as otherwise provided in WAC 173-98-980.

AMENDATORY SECTION (Amending Order 05-16, filed 6/29/07, effective 7/30/07)

WAC 173-98-960 Sale of facilities to private enterprises. Recipients may sell facilities financed with the revolving fund to private enterprises. However, the revolving fund loan agreement must be terminated and the revolving fund loan must be repaid immediately upon the sale of that facility. WAC 173-98-960 applies to recovery funds or as otherwise provided in WAC 173-98-980.

AMENDATORY SECTION (Amending Order 05-16, filed 6/29/07, effective 7/30/07)

WAC 173-98-970 Self-certification. (1) The department may authorize a recipient to certify compliance with selected program requirements. The recipient must:

- (a) Request certification authority;
- (b) Document that it has the capability and resources;
- (c) Document that it is in the best interest of the state; and
- (d) Demonstrate that the request is consistent with state and federal laws and regulations.

(2) Concurrences required in the environmental review process cannot be delegated to recipients.

(3) WAC 173-98-970 applies to recovery funds or as otherwise provided in WAC 173-98-980.

**PART 10
AMERICAN RECOVERY AND REINVESTMENT
ACT OF 2009
PROVISIONS**

NEW SECTION

WAC 173-98-980 Implementation of the American Recovery and Reinvestment Act of 2009. (1) **Purpose.**

(a) The purpose of this section is to set forth requirements for the department to administer recovery funds through the Washington state water pollution control revolving fund provided by the American Recovery and Reinvestment Act of 2009 (recovery act), as authorized by chapter 90.50A RCW, water pollution control facilities financing and the Clean Water Act.

(b) Unless the context clearly requires otherwise, recovery funds are subject to the requirements and restrictions in this chapter. Additional requirements related to recovery funds, different than other requirements in this chapter, are included and highlighted in this section. This section is intended to be interpreted and applied consistently with the intent of the recovery act.

(c) This section includes specific requirements and procedures related to the administration of recovery funds.

(2) **Use of recovery funds.** Recovery funds may be used to provide loan assistance and additional subsidies in the form of forgivable principal to public bodies for statewide, high-priority water quality projects that are consistent with the American Recovery and Reinvestment Act of 2009 (recovery act) and the Clean Water Act, 33 U.S.C. 1251-1387.

(3) Bypass authority.

(a) The department will use the water quality based rating criteria that it uses for all revolving fund projects to rate and rank eligible projects, and develop a final offer and applicant list and the intended use plan (IUP). Please refer to Part 2 "How to apply for funding" of this chapter for an overview of the funding cycle process.

(b) The recovery act requires that the department give preference to projects that can be started and completed quickly.

(c) The department, in consultation with the EPA, may bypass higher priority projects in selecting projects for funding if necessary to meet the intent of the recovery act.

(4) Readiness to proceed and starting a project.

(a) In consultation with the EPA, the department may bypass projects on the draft and final funding list and IUP to give first preference to projects that can be initiated or are ready to proceed to construction by June 17, 2009.

(b) In consultation with the EPA, the department may bypass projects on the draft and final funding list and IUP to give second preference to projects that are initiated, under contract for construction, or under construction (if a construction project) by February 16, 2010. To ensure that funding agreements are fully executed by February 16, 2010, the department will review the status of projects no later than November 17, 2009, to determine if the readiness-to-proceed milestones that are included in the funding application, funding agreement, or other related documents that were used by the department in determining readiness to proceed are met. If reasonable progress is not made and the department determines that a project will likely not result in a fully executed funding agreement and be under a contract for construction, or under construction (if a construction project) by February 16, 2010, the department may terminate the funding offer or financial assistance agreement and fund the next eligible project on the list ready to proceed to construction.

(5) Eligibility.

(a) To be eligible for recovery funding, applicable facilities planning documents must be submitted to and approved by the department. Wastewater treatment and storm water facilities projects must be based on a department-approved facilities plan.

(b) Applicable facilities design documents must be approvable and submitted to the department no later than April 17, 2009. If design documents are not approvable within the time frame needed to initiate a project or proceed to construction, as intended by the recovery act, the department may redistribute funding to other projects on its draft and final offer and applicant list and IUP based on priority and readiness to proceed.

(c) Smaller design-construct projects (step 4): Are eligible for recovery funding if the total project costs are five million dollars or less. To be eligible for recovery funding, applicable facility planning and environmental review documents must be submitted to and approved by the department. Applicable design documents must be complete and submitted to the department by September 17, 2009. The department may fund the design portion of the project costs using the revolving fund which is not recovery funding.

(d) Eligible project examples include:

(i) Wastewater, storm water, and reclamation/reuse facility projects;

(ii) Water efficiency defined in subsection (12) of this section;

(iii) Energy efficiency projects defined in subsection (12) of this section;

(iv) Green infrastructure projects defined in subsection (12) of this section; and

(v) Environmentally innovative projects as defined in subsection (12) of this section.

(6) Recovery funding allocations.

(a) The recovery act provides that not less than fifty percent of the amount of the recovery funds be used to provide additional loan subsidies to eligible public bodies in the form of forgivable principal, negative interest loans, or grants, or any combination of these.

(b) The department will provide not less than fifty percent of the recovery funds in the form of forgivable principal loans.

(c) The department will determine the level of forgivable principal for WWTF hardship construction projects based on the recovery funding hardship continuum provided in WAC 173-98-980 (7)(f), Figure 7. Project ceiling amounts apply pursuant to WAC 173-98-980(8).

(d) The recovery act provides that, to the extent there are sufficient eligible applications, not less than twenty percent of the recovery funds shall be for projects that qualify under the green project reserves category. Examples of these types of projects include: Green infrastructure, water or energy efficiency improvements, or other environmentally innovative activities.

The department may provide up to fifty percent of eligible project costs for principal forgiveness for projects eligible under the green project reserves category, not to exceed the ceiling amounts for the green project reserves category pursuant to WAC 173-98-980(8).

(7) Recovery funding forgivable principal for WWTF hardship construction. The process for determining the amount of principal forgiveness for wastewater treatment hardship facility construction projects is the same process used to determine hardship wastewater construction project interest rates in WAC 173-98-300(5). Calculating the results is the same for all WWTF hardship consideration projects, but the results of the calculation are applied differently for principal forgiveness provided in (f) of this subsection. For clarity, the process steps are repeated in this section.

(a) There are three primary factors considered in determining the amount of forgivable principal allowed for hardship for the construction portion of wastewater treatment facilities projects:

- (i) Service area population (see (b) of this subsection);
- (ii) Existing residential need at the time of application (see (c) of this subsection); and
- (iii) Level of financial burden placed on the sewer rate-payers (see (d) of this subsection).

(b) **Service area population.** Applicants with a service area population of twenty-five thousand or less can request consideration for forgivable principal by submitting a financial hardship analysis form along with the funding application. If the service area population is different from the population of the applicant, the applicant must show that the recovery funding hardship assistance is solely used to benefit the population of the service area.

(c) **Existing residential need.** The applicant and the department calculate the wastewater treatment facilities construction costs that are associated with existing residential need at the time of application.

(d) Level of financial burden.

(i) Financial burden for the sewer ratepayer is determined by calculating the residential sewer user fee as a per-

cent of the median household income (MHI). The residential sewer user fee is calculated using the construction cost estimates including:

- (A) Estimated construction cost;
- (B) Existing annual operation and maintenance costs;
- (C) Discounted, existing annual operation and maintenance costs as a result of constructing the project;
- (D) Projected future annual operation and maintenance costs for the total facility;
- (E) The applicant's current and future annual debt service on the project;
- (F) The revolving fund annual debt service for the funded project;
- (G) Other grants;
- (H) The applicant's level of debt for other wastewater facilities not associated with the project;
- (I) The total number of households existing at the time of application that will be served by the project;
- (J) The nonresidential share of the total annual costs is deducted; and
- (K) Median household income.

(ii) The sewer user fee as a percentage of median household income is the basis for the department's recovery funding hardship continuum provided in (f) of this subsection, Figure 7;

(iii) The most recent available census data determines the median household income. This data is updated yearly based on inflation rates as measured by the federal Bureau of Labor Statistics and published as the *Consumer Price Index*; and

(iv) If median household income data are not available for a community or if the community disputes the data used by the department, the department may allow an applicant to conduct a scientific survey to determine the median household income.

(e) **Forgivable principal.** The department will apply the recovery funding hardship continuum provided in (f) of this subsection to determine the amount of principal forgiveness allowed for WWTF hardship construction loan projects.

For example:

Assuming that the average market rate for tax-exempt municipal bonds is five percent, the following would apply:

Applicant information:
<ul style="list-style-type: none"> • Service area population < 25,000 • Sewer user rates are 3%-4% of the median household income
Applicant MAY be eligible for:
<ul style="list-style-type: none"> • 20-year repayment term at a one percent interest rate • Up to 75% of the loan principal may be forgiven based on existing residential need

The interest rate in the example above represents twenty percent of the average market rate for tax-exempt municipal bonds as shown in WAC 173-98-300(6) as Figure 2.

(f) **Figure 7. Recovery funding hardship continuum** (to determine amounts of forgivable loan principal allowed for eligible costs using recovery funding):

Sewer User Fee divided by MHI	Below 2.0%	2.0% and above, but Below 3.0%	3.0% and above, but Below 4.0%	4.0% and above
Hardship Designation	<i>Nonhardship</i> (Low sewer user rates in relation to MHI)	<i>Moderate Hardship</i>	<i>Elevated Hardship</i>	<i>Severe Hardship</i> (Very high sewer user rates in relation to median household income (MHI))
Loan Hardship-Funding Continuum	Not eligible for forgivable principal	50% forgivable loan principal up to ceiling amount	75% forgivable loan principal up to ceiling amount	100% forgivable loan principal up to ceiling amount

(Ceiling amounts provided in subsection (8) of this section.)

(8) Recovery funds ceiling amounts.

(a) Not more than fifty percent of each recovery funds category will be available to any one applicant unless there is a limited demand for recovery funding.

(b) Recovery funds ceiling amounts include all amounts applied for or awarded under water quality grant programs administered by the department. Grants applied for or awarded under department grant programs may be reduced to ensure that applicants do not receive more funding than the recovery funds ceiling amounts allow.

(c) Further, recovery funding applicants cannot receive more recovery funding per applicant, in any combination of the recovery funds categories, than the maximum amount allowed for the water pollution control facilities category under WAC 173-98-520 (1)(a). The recovery funds ceiling amounts provided in this section may be less than the ceiling amounts provided in WAC 173-98-520 (1)(a).

(d) If there is a limited demand for recovery funds in any of the recovery funds categories, the unused recovery funds may be shifted to another recovery funds category, provided that:

(i) Not less than fifty percent of the recovery funds are used to provide additional subsidies in the form of principal forgiveness loans; and

(ii) Not less than twenty percent is used for green project reserves.

(e) The department may increase the funding ceiling amounts proportionately if necessary to fully utilize the recovery funds as set forth in the recovery act.

(9) Prevailing wages. As required by section 1606 of the recovery act, recovery fund recipients must comply with the federal Davis Bacon prevailing wage law, consistent with the following EPA recovery funding guidance excerpt:

"Notwithstanding any other provision of law and in a manner consistent with other provisions in this Act, all laborers and mechanics employed by contractors and subcontractors on projects funded directly by or assisted in whole or in part by and through the Federal Government pursuant to this Act shall be paid wages at rates not less than those prevailing on projects of a character similar in the locality as determined by the Secretary of Labor in accordance with subchapter IV of chapter 31 of title 40, United States Code. With respect to the labor standards specified in this section, the Secretary of Labor shall have the authority and functions set forth in Reorganization Plan Numbered 14 of 1950 (64 Stat. 1267; 5

U.S.C. App.) and section 3145 of title 40, United States Code."

(10) Buy American iron, steel, and manufactured goods. The following is an excerpt from an EPA Recovery Act guidance document, which stipulates that none of the appropriated funds may be used for a project for the following:

"construction, alteration, maintenance, or repair of a public building or public work unless all of the iron, steel, and manufactured goods used in the project is produced in the United States unless (a) a waiver is provided to the recipient by the EPA or (b) compliance would be inconsistent with United States obligations under international agreements. In order to receive a waiver, the State must send a written request to the Administrator. A decision will be made based on the following criteria:

(a) The requirement is inconsistent with the public interest for purposes of the project, for which a waiver has been requested;

(b) Iron, steel, and necessary manufactured goods are not produced in the United States in sufficient and reasonably available quantities and of a satisfactory quality; or

(c) Inclusion of iron, steel, and manufactured goods produced in the United States will increase the overall cost of the project by more than 25 percent."

(11) Prior authorization to incur eligible costs. Eligible costs may be refinanced or reimbursed dating back to October 1, 2008, if specified in the recovery funding loan agreement.

(12) Green project reserves.

(a) Water efficiency.

(i) Water efficiency is the use of improved technologies and practices to deliver equal or better services with less water. Water efficiency projects are building activities that implement capital water efficiency projects. Water efficiency projects can be stand alone projects, and they do not need to be part of a larger capital improvement project.

(ii) Eligible water efficiency projects include:

(A) Publicly owned treatment works defined in section 212 of the Clean Water Act;

(B) Projects that implement the state nonpoint source management plan established under section 319 of the Clean Water Act; and

(C) Development or implementation of a comprehensive conservation management plan established under section 320 of the Clean Water Act.

(iii) Eligible water efficiency projects or project components may also include:

(A) Planning and design activities for water efficiency that are reasonably expected to result in a capital project.

(B) Building activities that implement capital water efficiency projects.

(iv) Water efficiency projects or project components may include the following:

(A) Installation of water meters;

(B) Retrofit or replacement of water using fixtures, fittings, equipment or appliances;

(C) Efficient landscape or irrigation equipment;

(D) Systems to recycle gray water;

(E) Reclamation, recycling, and reuse of existing rainwater, condensate, degraded water, storm water, and/or wastewater streams;

(F) Collection system leak detection equipment.

(b) Energy efficiency.

(i) Energy efficiency is the use of improved technologies and practices to reduce the energy consumption of water quality projects. Energy efficiency projects can be stand alone projects and they do not need to be part of a larger capital improvement project.

(ii) Eligible energy efficiency projects include projects that:

(A) Reduce energy consumption or produce clean energy used by a treatment works defined in section 212 of the Clean Water Act;

(B) Implement the state nonpoint source management plan established under section 319 of the Clean Water Act; and

(C) Include the development or implementation of a comprehensive conservation management plan established under section 320 of the Clean Water Act.

(iii) Eligible energy efficiency projects or project components may include:

(A) Planning and design activities for energy efficiency that are reasonably expected to result in a capital project.

(B) Building activities that implement capital energy efficiency.

(C) Wind, solar, geothermal, hydroelectric, and biogas combined heat and power systems.

(iv) Energy efficiency projects or project components may include the following:

(A) Energy efficient retrofits and upgrades to pumps and treatment processes;

(B) Leak detection equipment for treatment works;

(C) Producing clean power for section 212 of the Clean Water Act treatment works on site (wind, solar, hydroelectric, geothermal, biogas powered combined heat and power).

(c) Green infrastructure.

(i) Green infrastructure includes a wide array of practices at multiple scales that manage and treat storm water and maintain and restore natural hydrology. Green infrastructure projects can be stand alone projects and they do not need to be part of a larger capital improvement project.

(ii) On a regional scale, green infrastructure is the preservation and restoration of natural landscape features, such as forests, floodplains and wetlands, coupled with policies that reduce overall impervious impacts in a watershed.

(iii) On the local scale, green infrastructure consists of site- and neighborhood-specific practices, such as bioretention, trees, green roofs, porous pavements and cisterns.

(iv) Eligible green infrastructure projects include:

(A) Publicly owned treatment works defined in section 212 of the Clean Water Act;

(B) Projects that implement the state nonpoint source management plan established under section 319 of the Clean Water Act; and

(C) Development or implementation of a comprehensive conservation management plan established under section 320 of the Clean Water Act.

(v) Eligible green infrastructure projects or project components may include:

(A) Planning and design activities for green infrastructure that are reasonably expected to result in a capital project.

(B) Building activities that implement capital green infrastructure projects.

(vi) Green infrastructure projects or project components may include the following:

(A) Implementation of green streets (combinations of green infrastructure practices in transportation right of ways), for either new development, redevelopment, or retrofits;

(B) Implementation of water harvesting and reuse programs or projects, where consistent with state and local laws, regulations, and policies;

(C) Implementation of wet weather management systems and other practices that mimic natural hydrology and reduce effective imperviousness at one or more scales, including constructed wetlands;

(D) Establishing or restoring riparian buffers, floodplains, wetlands and other natural features;

(E) Downspout disconnection to remove storm water from combined sewers and storm sewers;

(F) Comprehensive retrofit programs designed to keep wet weather out of all types of sewer systems using green infrastructure technologies and approaches;

(G) Implementation of comprehensive street tree or urban forestry programs, including expansion of tree box sizes to manage additional storm water and enhance tree health.

(vii) Project file should include a calculation of the energy efficiency of the project.

(viii) If a project is specifically required by a draft or final National Pollutant Discharge Elimination System (NPDES) permit and it is eligible to receive recovery funds, then it can only be funded through section 212 or section 320 authority of the Clean Water Act.

(d) Environmentally innovative projects.

(i) Environmentally innovative projects demonstrate new and/or innovative approaches to managing water resources in a more sustainable way, including projects that achieve pollution prevention or pollutant removal with reduced costs and projects that foster adaptation of water protection programs and practices to climate change.

(ii) Eligible environmentally innovative projects include:

(A) Publicly owned treatment works defined in section 212 of the Clean Water Act;

(B) Projects that implement the state nonpoint source management plan established under section 319 of the Clean Water Act; and

(C) Development or implementation of a comprehensive conservation management plan established under section 320 of the Clean Water Act.

(iii) Eligible environmentally innovative projects or project components may include:

(A) Planning and design activities for environmentally innovative projects that are reasonably expected to result in a capital project.

(B) Capital building activities that implement environmentally innovative projects.

(iv) Environmentally innovative projects or project components may include the following:

(A) Green infrastructure/low impact development storm water projects;

(B) Wetland restoration and constructed wetlands;

(C) Decentralized wastewater treatment solutions to existing deficient or failing on-site systems;

(D) Water reuse projects that reduce energy consumption, recharge aquifers, or reduce water withdrawals and treatment costs;

(E) The water quality portion of projects that employ development and redevelopment practices that preserve or restore site hydrologic processes through sustainable landscaping and site design;

(F) Projects that use water balance approaches (water budgets) at the project, local or state level that preserve site, local or regional hydrology. Such approaches could show-case efforts to plan and manage in a concerted manner, surface and ground water withdrawals, stream flow (aquatic species protection), wetlands and floodplains;

(G) Storage, ground water recharge and regional or local reuse and harvesting strategies using a quantified methodology;

(H) Projects that facilitate adaptation of clean water programs and practices to prevent climate change;

(I) The water quality portion of projects that demonstrate energy savings;

(J) Greenhouse reduction benefits of sustainable site design practices and the use of green storm water infrastructure;

(K) Projects that incorporate differential uses of water based on the level of treatment to reduce the costs of treating all water to potable water standards;

(L) Projects that identify and quantify the benefits of using integrated water resources management approaches.

WSR 09-09-087

EMERGENCY RULES

DEPARTMENT OF

FISH AND WILDLIFE

[Order 09-60—Filed April 16, 2009, 2:46 p.m., effective April 16, 2009, 2:46 p.m.]

Effective Date of Rule: Immediately.

Purpose: Amend commercial fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-52-05100K; and amending WAC 220-52-051, 220-52-075, and 220-69-240.

Statutory Authority for Adoption: RCW 77.12.047.

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

Reasons for this Finding: The 2009 state/tribal shrimp harvest management plans for the Strait of Juan de Fuca and north Puget Sound require adoption of harvest seasons and the prohibition on night time fishing contained in this emergency rule. This emergency rule opens pot fishery season for nonspot shrimp. This emergency rule changes the phone number for shrimp daily catch reporting and purchase reporting by original receivers in Shrimp Management Areas 3, 4 and 6, so all Puget Sound shrimp pot catch phone reports go to one number. 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 3, 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: April 16, 2009.

Joe Stohr

for Philip Anderson

Director

NEW SECTION

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

(1) Shrimp pot gear:

(a) All waters of Marine Fish-Shellfish Management and Catch Reporting Area 29 are open to harvest of all shrimp species from 7:00 a.m. May 1, 2009, until further notice.

(b) All waters of Shrimp Management Areas 1B, 1C, 2E, 2W, 3, 4, and 6 outside the Discovery Bay Shrimp District are open to the harvest of all non-spot shrimp species from 7:00 a.m. May 1, 2009, until further notice, except as provided for in this section:

i) In Marine Fish/Shellfish Management and Catch Reporting Area 22A, closed through June 15 in waters inside and bounded by a line projected from Blakely Marina on the northwest corner of Blakely Island to Upright Head on Lopez Island, following the shoreline southerly on Lopez Island to intersect a line projected due west from Bald Bluff on Blakely Island.

ii) All waters of Catch Areas 23A-E, 23A-W, and 23A-C are closed.

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

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

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

(e) It is unlawful to set or pull shellfish pots in one Marine Fish-Shellfish Management and Catch Reporting Area while in possession of shrimp harvested from another Marine Fish-Shellfish Management and Catch Reporting Area, except shellfish pots may be set in a new fishing area subsequent to making a report as indicated in Section 1(d) above.

(2) Shrimp beam trawl gear:

(a) Shrimp Management Area (SMA) 3 (outside of the Discovery Bay Shrimp District, Sequim Bay and Catch Area 23D) is open immediately, until further notice. Sequim Bay includes those waters of Catch Area 25A south of a line projected west from Travis Spit on the Miller Peninsula.

(b) That portion of Catch Area 22A within SMA 1B east of a line projected 122° 47' W longitude and west of a line projected 122° 43' W longitude in Rosario Strait will open at 7:00 a.m. May 1, 2009, until further notice.

(3) It is unlawful to set or pull shrimp beam trawl gear from one hour after official sunset to one hour before official sunrise.

(4) All shrimp taken under this section must be sold to licensed Washington wholesale fish dealers.

NEW SECTION

WAC 220-52-07500H Shellfish harvest logs. Notwithstanding the provisions of WAC 220-52-075, effective immediately until further notice, it is unlawful for vessel operators engaged in commercial harvest of shrimp from Puget Sound with shellfish pot gear to fail to report their daily catch by telephone before leaving the last catch site fished each day, in the following manner:

(1) For harvest in Shrimp Management Areas 3, 4 or 6, reports must be made to the voice recorder at the La Conner district office: 360-446-4345 ext 245.

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

NEW SECTION

WAC 220-69-24000P Duties of commercial purchasers and receivers. Notwithstanding the provisions of WAC 220-69-240, effective immediately until further notice, it is unlawful for the original receiver of shrimp other than ghost shrimp taken from Puget Sound to fail to report in the following manner:

(1) For Puget Sound shrimp - Pot gear: It is unlawful for the original receiver of shrimp other than ghost shrimp taken from Puget Sound by pot gear to fail to report to the department the previous week's purchases by 10:00 a.m. the following Monday. For harvest in Shrimp Management Areas 1A, 1B, 1C, 2E, 2W, 3, 4 or 6, reports must be made to the La Conner district office by phone at 360-466-4345, extension 245, or by fax at 360-466-0515. All reports must specify the serial numbers of the fish receiving tickets on which the previous week's shrimp were sold, plus the total number of pounds caught by gear type, the Marine Fish-Shellfish Management and Catch Reporting Area (Catch Area), and the species listed on each ticket. Violation of this subsection is a gross misdemeanor, punishable under RCW 77.15.560.

(2) Puget Sound shrimp - Trawl gear: It is unlawful for the original receiver of shrimp other than ghost shrimp taken from Puget Sound by trawl gear to fail to report to the department the previous day's purchases by 10:00 a.m. the following morning. For harvest in Shrimp Management Areas 1B, 1C or 3, reports must be made to the La Conner district office by phone at 360-466-4345, extension 245, or by fax at 360-466-0515. All reports must specify the serial numbers of the fish receiving tickets on which the previous day's shrimp were sold, the total number of pounds caught by gear type, the Marine Fish-Shellfish Management and Catch Reporting Area, and the species listed on each ticket. Violation of this subsection is a gross misdemeanor, punishable under RCW 77.15.560.

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 220-52-05100K	Puget Sound shrimp beam trawl fishery—Season. (09-55)
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WSR 09-09-088
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 09-61—Filed April 16, 2009, 2:47 p.m., effective April 30, 2009, 12:01 a.m.]

Effective Date of Rule: April 30, 2009, 12:01 a.m.

Purpose: Amend personal use fishing rules.

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

Statutory Authority for Adoption: RCW 77.12.047.

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

Reasons for this Finding: This emergency regulation is necessary to assure a successful "fishing kids" event. Several thousand fish will be stocked into Columbia Park Pond two days prior to the event to better acclimate them before the event. On the day of the event, preregistered kids will be allowed to fish during the event. There is insufficient time to promulgate permanent rules.

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

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

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

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

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

Date Adopted: April 16, 2009.

Joe Stohr
 For Philip Anderson
 Director

NEW SECTION

WAC 232-28-61900P Exceptions to statewide rules—Columbia Park Pond (Benton Co.) Notwithstanding the provisions of WAC 232-28-619, effective 12:01 a.m. April 30, 2009 through 4:00 p.m. May 2, 2009, it is unlawful to fish in those waters of Columbia Park Pond, except that juveniles participating in the Fishing Kids Event may fish from 8:00 a.m. to 4:00 p.m. on May 2, 2009:

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

REPEALER

The following section of the Washington Administrative Code is repealed effective 4:01 p.m. May 2, 2009:

WAC 232-28-61900P Exceptions to statewide rules—Columbia Park Pond.

WSR 09-09-116
EMERGENCY RULES
OFFICE OF THE
STATE TREASURER

[Filed April 21, 2009, 2:25 p.m., effective April 21, 2009, 2:25 p.m.]

Effective Date of Rule: Immediately.

Purpose: To amend the procedures for the local government investment pool (LGIP) to allow the office of the state treasurer the flexibility to better accommodate pool participants' deposit and withdrawal requests.

Citation of Existing Rules Affected by this Order: Amending WAC 210-01-080 Deposit procedures and 210-01-090 Withdrawal procedures.

Statutory Authority for Adoption: RCW 43.250.090.

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

Reasons for this Finding: Current market conditions necessitate and pool participants have asked for additional flexibility.

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

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

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

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

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

Date Adopted: April 21, 2009.

Douglas D. Extine
 Deputy State Treasurer

AMENDATORY SECTION (Amending WSR 98-24-060, filed 11/30/98, effective 12/31/98)

WAC 210-01-080 Deposit procedures. To ensure same day credit, a pool participant(~~(, to receive same day credit,)~~) must inform the office of the state treasurer of any deposit over one million dollars no later than 9 a.m. on the same day

the deposit is made. Deposits for one million dollars or less can be requested at any time prior to 10 a.m. on the day of deposit.

For all other deposits over one million dollars that are requested prior to 10 a.m., a pool participant may receive same day credit at the discretion of the office of the state treasurer, taking into account when notification is received, the amount of the deposit, or any other factor that may affect the office of the state treasurer's ability to accommodate the requested deposit.

All deposits will be made by electronic funds transfer to an account designated by the state treasurer. It is the responsibility of each pool participant to pay any bank charges associated with such electronic transfers to the office of the state treasurer. Failure to wire funds by a pool participant (after notification to the state treasurer of an intended transfer) will result in a bank overdraft in the state treasurer's bank account. Bank penalties for overdrafts will be assessed to those pool participants responsible for the overdraft.

AMENDATORY SECTION (Amending WSR 98-24-060, filed 11/30/98, effective 12/31/98)

WAC 210-01-090 Withdrawal procedures. A pool participant, in order to withdraw funds from the pool, must notify the office of the state treasurer of any withdrawal over one million dollars no later than 9 a.m. on the same day the withdrawal is made. Withdrawals for one million dollars or less can be requested at any time prior to 10 a.m. on the day of withdrawal.

For all other withdrawals over one million dollars that are requested prior to 10 a.m., a pool participant may receive such withdrawal on the same day it is requested at the discretion of the office of the state treasurer, taking into account when the request is received, the amount of the requested withdrawal, or any other factor that may affect the office of the state treasurer's ability to accommodate the requested withdrawal.

Each local government entity participating in the pool shall file with the state treasurer a letter designating the financial institution at which funds withdrawn from the pool shall be deposited. This letter shall contain the name of the financial institution, location of the financial institution, account number to which funds will be deposited and account name. This letter shall be signed by local officials authorized to receive and disburse funds, as described in WAC 210-01-030. Disbursements from the pool will be by electronic funds transfer. Failure of the state treasurer to wire funds to a pool participant (after proper notification to the state treasurer to disburse funds to a pool participant) may result in a bank overdraft in the pool participant's bank account. The state treasurer will reimburse pool participants for such bank overdraft penalties charged to the pool participant's bank account.