

**WSR 09-13-004**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**

[Order 09-101—Filed June 3, 2009, 3:45 p.m., effective June 6, 2009, 12:01 a.m.]

Effective Date of Rule: June 6, 2009, 12:01 a.m.

Purpose: Amend personal use fishing rules.

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

Statutory Authority for Adoption: RCW 77.12.047 and 77.04.020.

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 date for retention of sturgeon was adopted because Washington and Oregon fish managers estimate that the harvest guideline of seven hundred fish will be reached on June 5, 2009. 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Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 1, Amended 0, Repealed 1.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.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: June 3, 2009.

Philip Anderson  
 Director

NEW SECTION

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

(1) Effective immediately 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 McNary Dam.

(2) Effective 12:01 a.m. June 6, 2009 until further notice, it is unlawful to retain sturgeon caught in those waters of the Columbia River and tributaries from Bonneville Dam upstream to The Dalles Dam.

REPEALER

The following section of the Washington Administrative Code is repealed effective 12:01 a.m. June 6, 2009:

WAC 232-28-61900K Exceptions to statewide rules—Columbia River sturgeon. (09-47)

**WSR 09-13-005**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**

[Order 09-102—Filed June 3, 2009, 3:48 p.m., effective June 3, 2009, 3:48 p.m.]

Effective Date of Rule: Immediately.

Purpose: Amend personal use fishing rules.

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

Statutory Authority for Adoption: RCW 77.12.047 and 77.04.020.

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 department is in the process of adopting permanent rules that are necessary to implement the personal use fishing plans agreed-to with resource comanagers at the North of Falcon proceedings. These emergency rules are necessary to comply with agreed-to management plans, and are interim until permanent rules take effect.

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: June 3, 2009.

Philip Anderson  
 Director

NEW SECTION

**WAC 232-28-61900S Exceptions to statewide rules—2009 North of Falcon.** Notwithstanding the provisions of

WAC 232-28-619, effective immediately, until further notice, it is unlawful to violate the following provisions, provided that unless otherwise amended, all permanent rules remain in effect:

**(1) Baker River (Skagit County):** Mouth to Highway 20 Bridge: Salmon: closed. From Highway 20 Bridge at Concrete to fish barrier dam: Closed waters.

**(2) Hoh River (Jefferson County),** Outside of Olympic National Park:

(a) From Olympic National Park upstream to DNR Oxbow Campground Boat Launch, selective gear rules not in effect.

(b) Selective gear rules August 1 until further notice, from DNR Oxbow Campground Boat Launch to Willoughby Creek.

(c) Selective gear rules beginning the first Saturday in June until further notice, from Willoughby Creek to Olympic National Park Boundary below the mouth of South Fork.

**(3) Nisqually River (Pierce County),** from mouth to Military Tank Crossing Bridge: Salmon: Open July 1 until further notice. Daily limit 6 fish, of which no more than 3 may be adult salmon; and of the adult salmon, only 2 may be any combination of pink, chum and coho. Release wild adult Chinook.

**(4) Naselle River (Pacific/Wahkiakum counties),** from Highway 101 Bridge upstream including all forks: Salmon: Open August 1 until further notice, from Highway 101 Bridge to Highway 4 Bridge. Daily limit 6 fish, of which no more than 3 may be adult salmon; and of these 3 adult fish, no more than 2 may be adult Chinook and only 1 may be a wild adult coho. Release chum salmon.

**(5) Nemah River, North, Middle, and South:** Salmon: Open August 1 until further notice on Middle Nemah from mouth to DNR Bridge, and on South Nemah from mouth to confluence with Middle Nemah. Middle and South Nemah: Daily limit 6 fish, of which no more than 2 may be adult salmon; and of the two adult fish, no more than one may be a wild adult coho. Release chum.

**(6) Quinault River, Upper (Jefferson County),** from mouth at upper end of Quinault Lake to the National Park boundary: Salmon: Open July 1 until further notice. Daily limit 6 fish, only 2 of which may be an adult.

**(7) Samish River (Whatcom County),** Salmon: Open July 1 until further notice from mouth to Thomas Road Bridge. Daily limit two salmon. Release wild coho.

**(8) Skagit River (Skagit/Whatcom counties):**

(a) From mouth to Memorial Highway Bridge (Highway 536 at Mt. Vernon): Salmon: Open July 9 through August 9. Open only 12:01 p.m. Thursday through Sunday. Daily limit 2 Chinook salmon, only one of which may be an adult Chinook. Night closure.

(b) From Memorial Highway Bridge (Highway 536 at Mt. Vernon) upstream to Gilligan Creek: All species: Anti-snagging rule not in effect. Salmon: Open July 9 through August 9. Open only 12:01 p.m. Thursday through Sunday. Daily limit 2 Chinook salmon, only one of which may be an adult Chinook. Night closure - July 1 until further notice.

(c) From the Dalles Bridge at Concrete to the Highway 530 Bridge at Rockport: Closed June 1 until further notice between a line 200 feet above the east bank of the Baker

River to a line 200 feet below the west bank of the Baker River. Anti-snagging rule and night closure July 1 until further notice. Salmon closed until further notice.

**(9) Willapa River (Pacific County):** Mouth to Highway 6 Bridge: Salmon: Open August 1 until further notice from mouth to Highway 6 Bridge approximately 2 miles below mouth of Trap Creek. Daily limit 6 fish, of which no more than 3 may be adult salmon; and of the adult salmon, not more than one may be a wild adult coho and not more than two may be adult Chinook. Release chum.

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

#### REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 232-28-61900R	Exceptions to statewide rules—2009 North of Falcon. (09-69)
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#### **WSR 09-13-017**

#### **EMERGENCY RULES**

#### **GROWTH MANAGEMENT**

#### **HEARINGS BOARDS**

[Filed June 5, 2009, 10:39 a.m., effective July 1, 2009, 12:01 a.m.]

Effective Date of Rule: July 1, 2009, 12:01 a.m.

Purpose: Amend sections of the boards' rules of practice and procedures to reflect the consolidation of the administrative functions of the three boards into a single office. Amendments are needed to streamline procedures, provide accurate information to potential parties, and facilitate electronic transmittal of documents.

Citation of Existing Rules Affected by this Order: Amending WAC 242-02-040, 242-02-052, 242-02-070, 242-02-072, 242-02-074, 242-02-075, 242-02-080, 242-02-140, 242-02-210, 242-02-230, 242-02-240, 242-02-250, 242-02-292, 242-02-320, 242-02-330, 242-02-340, 242-02-530, 242-02-534, and 242-02-834.

Statutory Authority for Adoption: RCW 36.70A.270(7).

Under RCW 34.05.350 the agency for good cause finds that in order to implement the requirements or reductions in appropriations enacted in any budget for fiscal years 2009, 2010, or 2011, which necessitates the need for the immediate adoption, amendment, or repeal of a rule, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the fiscal needs or requirements of the agency.

Reasons for this Finding: The legislature's biennium appropriation reflects an approximate 16% reduction in the boards' budgets, with budget notes specifically contemplating the consolidation of the boards' current three offices into a single location. In order to address these budget appropriations, a consolidation is needed to realize savings through efficiency and staff reductions. The boards' rules of practices

must be amended to reflect this consolidation and create needed efficiency along with clarification to potential parties.

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 19, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 19, 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: May 27, 2009.

James J. McNamara, Chair  
Rules Committee

AMENDATORY SECTION (Amending WSR 98-01-144, filed 12/19/97, effective 1/20/98)

**WAC 242-02-040 Definitions.** As used in this title, the following terms shall have the following meaning:

(1) "Act" means the Growth Management Act, chapter 36.70A RCW, and subsequent amendments.

(2) "Board" means the Eastern Washington, Western Washington or Central Puget Sound growth management hearings board.

(3) "Final decision" means:

(a) Any final order as provided in RCW 36.70A.300; or  
(b) Any other written finding, determination or order of the board which finally determines a legal right, duty, or other legal interest of the parties in the case and which clearly states such written finding, determination or order that it is a final decision subject to appeal to superior court.

(4) "Hearing examiner" means an authorized agent of a board who has a demonstrated knowledge of land use planning and law, appointed to assist the board in the performance of its hearing function as delegated by the board as provided by the act.

(5) "Joint boards" means the three independent boards meeting or acting jointly.

(6) "Office of the growth management hearings boards" means the administrative office of the three growth management hearings boards established in RCW 36.70A.250.

(7) "Participant" means any person with standing to challenge a legislative action as set forth in RCW 36.70A.330(2).

~~((7))~~ (8) "Party" means any person named in the caption of a case before a board.

~~((8))~~ (9) "Person" means any individual, partnership, corporation, association, state agency, governmental subdivision or unit, or public or private organization or entity of any character.

~~((9))~~ (10) "Petitioner" means a person who appeals any matter or who brings a petition for rule making to the board. A petitioner is a party to a case before the board.

~~((10))~~ (11) "Presiding officer" means any member of a board, or a hearing examiner, who is assigned to conduct a conference or hearing as directed by a board. The presiding officer shall be designated pursuant to WAC 242-02-521 and have authority as provided by WAC 242-02-522.

~~((11))~~ (12) "Publication" means:

(a) For a city, the date the city publishes the ordinance or summary of the ordinance adopting a comprehensive plan, development regulations or subsequent amendment, as is required to be published, or the date the city publishes notice that the shoreline master program or amendment has been approved or disapproved by the department of ecology;

(b) For a county, the date the county publishes the notice that it has adopted a comprehensive plan, development regulations or other enactments, or subsequent amendments pursuant to RCW 36.70A.290(2), or the date the county publishes notice that the shoreline master program or amendment has been approved or disapproved by the department of ecology.

~~((12))~~ (13) "Respondent" means a person who is named as a responding party in any petition for review before a board.

AMENDATORY SECTION (Amending WSR 03-15-047, filed 7/11/03, effective 8/11/03)

**WAC 242-02-052 Petition for rule making.** (1) Right to petition for rule making. Any person may petition the joint boards for the adoption, amendment, or repeal of any rule. Said petition shall be filed with the ~~((Western Washington))~~ joint boards in care of the office of growth management hearings boards.

(2) Form of petition. The form of the petition for adoption, amendment, or repeal of any rule shall generally adhere to the following:

(a) A caption in the following form:

BEFORE THE JOINT GROWTH MANAGEMENT  
HEARINGS BOARDS  
STATE OF WASHINGTON

No.

In the matter of  
the Petition of  
(Name of Petitioner)  
for Rule Making

PETITION FOR RULE MAKING

(b) The body of the petition shall be set out in numbered paragraphs. The first paragraph shall state the name and address of the petitioning party and whether the petitioner seeks the adoption of a new rule or rules, or amendment or repeal of an existing rule or rules. The second paragraph, in case of a proposed new rule or amendment of an existing rule, shall set forth the desired rule in its entirety. Where the petition is for repeal of an existing rule, such shall be stated and the rule proposed to be repealed shall either be set forth in full or shall be referred to by board rule number. The third paragraph shall set forth concisely the reasons for the proposal of the petitioner and shall contain a statement as to the interests of the petitioner and the subject matter of the rule. Additional

numbered paragraphs may be used to give full explanation of petitioner's reason for the action sought.

(c) The petition shall be dated and signed by the party named in the first paragraph or by the petitioner's attorney or other authorized representative. The original and nine copies shall be filed with the appropriate board at its office.

AMENDATORY SECTION (Amending WSR 03-15-047, filed 7/11/03, effective 8/11/03)

**WAC 242-02-070 Quorum.** (1) Joint boards. For the purpose of adopting, amending, or repealing these rules or transacting other administrative business, at least two members of each board (~~(must concur)~~) shall constitute a quorum of the joint boards. A quorum being present, any action may be taken upon the vote of the majority of the joint board members.

(2) Individual board. For purposes of making orders or decisions or transacting other official administrative business for an individual board, two members of a board shall constitute a quorum and may act even though one position on the board is vacant. One member or designated hearing examiner may hold hearings and take testimony. The findings of such member or hearing examiner shall not become final until approved by a majority of the board. A board member who does not attend a hearing shall review a transcript or recording of the hearing before signing the decision.

AMENDATORY SECTION (Amending WSR 08-10-029, filed 4/28/08, effective 5/29/08)

**WAC 242-02-072 ((Principal)) Board offices.** ((The principal offices of each board are as follows:

- (1) Eastern Washington Growth Management Hearings Board  
15 West Yakima Avenue, Suite 102  
Yakima, Washington 98902  
509-574-6960  
509-574-6964 fax  
e-mail: AAndreas@EW.GMHB.WA.GOV  
web site: www.gmhb.wa.gov/eastern
- (2) Western Washington Growth Management Hearings Board  
319 7th Avenue S.E. (as of June 2008)  
Olympia, WA 98501  
P.O. Box 40953  
Olympia, Washington 98504-0953  
(360) 664-8966  
(360) 664-8975 fax  
e-mail: western@ww.gmhb.wa.gov  
web site: www.gmhb.wa.gov/western
- (3) Central Puget Sound Growth Management Hearings Board  
800 Fifth Avenue, Suite 2356  
Seattle, Washington 98104  
(206) 389-2625  
(206) 389-2588 fax  
e-mail: central@cps.gmhb.wa.gov

~~web site: www.gmhb.wa.gov/central~~) (1) The administration of the three boards is consolidated in one office - the office of the growth management hearings boards:

Office of the Growth Management Hearings Boards  
319 - 7th Avenue S.E.  
Olympia, WA 98501  
P.O. Box 40953  
Olympia, WA 98504-0953  
360-586-0260  
360-664-8975 Fax  
e-mail: eastern@ew.gmhb.wa.gov  
western@ww.gmhb.wa.gov  
central@cps.gmhb.wa.gov  
web site: www.gmhb.wa.gov

(2) The filing of all petitions, briefings, exhibits, and other documents related to any proceeding before an individual board shall be made to the office of the growth management hearings boards, with specific indication of the appropriate board's name - Eastern, Western, or Central Puget Sound.

AMENDATORY SECTION (Amending WSR 08-10-029, filed 4/28/08, effective 5/29/08)

**WAC 242-02-074 Regular meetings.** (1) Regular meetings of each board will be held at ~~((its principal))~~ the office of the growth management hearings boards, or a designated location at the following times:

(a) Eastern Washington board - on the first Wednesday of each month at 10:00 a.m. or following any scheduled hearing on that date.

(b) Western Washington board - on the second Wednesday of each month at 11:00 a.m. or following any scheduled hearing on that date.

(c) Central Puget Sound board - on the first Monday of each month at 10:00 a.m. or following any scheduled hearing on that date.

(2) The joint boards shall meet annually at a time and location to be announced.

(3) An individual board shall make available the location of such a meeting if it is not to be held at the office of the growth management hearings boards.

AMENDATORY SECTION (Amending WSR 08-21-015, filed 10/3/08, effective 11/3/08)

**WAC 242-02-075 Special meeting.** (1) A special meeting of the joint boards may be called at the request of any three of the nine board members. To call a special meeting, a written notice of the meeting shall be posted on the boards' web site and personally e-mailed to:

(a) Each member of the boards; and

(b) Each general circulation newspaper, television or radio station which has on file with the boards a written request to be notified of special meetings.

(2) The written notice shall state the date and time of the meeting, and shall specify the business to be transacted by the boards. The boards will not take final action on any matter that is not specified in the written notice.

- (3) Notices of special meetings shall be sent by e-mail:
  - (a) ~~((Ten days))~~ One day (twenty-four hours) before the scheduled meeting; except
  - (b) When a special meeting is called to consider rule changes pursuant to chapter 34.05 RCW, the notice shall be sent at least twenty days prior to the meeting; and except
  - (c) In the event of an emergency requiring board action, the notice and timing requirements may be waived as provided in RCW 42.30.080.
- (4) The special meeting shall be chaired by one of the board members who called the meeting.
- (5) A special meeting may be held by telephone conference call.
- (6) Two members of each board will constitute a quorum for a special meeting.
- (7) Members of the public may attend a special meeting by appearing at any of the three board offices, or the location of the special meeting, at the date and time set for the meeting.

AMENDATORY SECTION (Amending WSR 92-21-034, filed 10/15/92, effective 10/15/92)

**WAC 242-02-080 Form and size of documents.** Documents, other than exhibits, shall be ~~((typewritten or printed, properly captioned, signed by the appropriate person submitting the same, shall include his/her address and telephone number, and shall be on 8 1/2 x 11 inch paper. Each board uses IBM compatible software. A board may request submission of a disk from a party, if appropriate))~~ provided in the manner indicated in a board's prehearing order.

AMENDATORY SECTION (Amending WSR 94-07-033, filed 3/9/94, effective 4/9/94)

**WAC 242-02-140 Signing of pleadings, motions, and legal memoranda.** Every pleading, motion and legal memorandum of a party shall be dated and signed by the party, or the party's attorney or other authorized representative and include an address ~~((and)),~~ telephone and fax numbers, and electronic mail address.

AMENDATORY SECTION (Amending WSR 06-12-019, filed 5/26/06, effective 6/26/06)

**WAC 242-02-210 Petition for review—Forms—Contents.** A petition for review shall substantially contain:

- (1) A caption in the following form:

BEFORE THE. . . GROWTH MANAGEMENT  
HEARINGS BOARD  
STATE OF WASHINGTON

Petitioner,

Case No.

v.

PETITION FOR REVIEW

Respondent.

- (2) Numbered paragraphs stating:
  - (a) Petitioner's name, mailing address ~~((and)),~~ telephone number, and electronic mail address, and those of the attorney or other authorized representative, if any;
  - (b) Date of the challenged order, determination, publication, or other action or, in the case of an alleged failure to act, the date by which the action was required to be taken;
  - (c) A detailed statement of the issues presented for resolution by the board that specifies the provision of the act or other statute allegedly being violated and, if applicable, the provision of the document that is being appealed;
  - (d) A statement specifying the type and the basis of the petitioner's standing before the board pursuant to RCW 36.70A.280(2);
  - (e) The estimated length of the hearing;
  - (f) The relief sought, including the specific nature and extent;
  - (g) A statement that the petitioner has read the petition for review and believes the contents to be true, followed by the petitioner's signature or signature of the attorney(s) or other authorized representative(s), if any.

(3) One copy of the applicable provisions of the document being appealed, if any, shall be attached to the petition for review. Petitioner shall provide the board with a copy of the entire document being appealed within thirty days of filing a petition for review, unless otherwise directed by the board.

AMENDATORY SECTION (Amending WSR 08-10-029, filed 4/28/08, effective 5/29/08)

**WAC 242-02-230 Petition for review—Service and filing.** (1) At least one copy of the petition for review shall be filed with the board by electronic mail, as provided in WAC 242-02-240, unless a petitioner does not have the technological capacity to do so. The original and four copies of the petition for review shall be filed with a board personally, or by first class, certified, or registered mail. Filings may also be made with a board by ~~((electronic mail or))~~ telefacsimile transmission as provided in WAC 242-02-240. A copy of the petition for review shall be personally served upon all other named parties or deposited in the mail and postmarked on or before the date filed with the board. When a county is a party, the county auditor shall be served in noncharter counties and the agent designated by the legislative authority in charter counties. The mayor, city manager, or city clerk shall be served when a city is a party. When the state of Washington is a party, the office of the attorney general shall be served at its main office in Olympia unless service upon the state is otherwise provided by law. Proof of service may be filed with the board pursuant to WAC 242-02-340.

(2) A board may dismiss a case for failure to substantially comply with subsection (1) of this section.

AMENDATORY SECTION (Amending WSR 08-10-029, filed 4/28/08, effective 5/29/08)

**WAC 242-02-240 Date of filing—Facsimile and electronic mail.** (1) The date of filing shall be the date of actual receipt by a board at ~~((its))~~ the office of the growth manage-

ment hearings boards. The date stamp placed on the petition shall be presumptive evidence of the date of receipt.

(2) Filing of any documents with a board by electronic mail or telefacsimile transmission is at the risk of the sender and shall not be deemed complete unless the following procedures are strictly observed:

(a) An electronic mail or telefacsimile document will only be stamped "received" by the board between the hours of 8:00 a.m. and 5:00 p.m. excluding Saturdays, Sundays, and legal holidays. Any transmission not completed before 5:00 p.m. will be stamped received on the following business day. The date and time indicated by the board's telefacsimile machine or receiving computer shall be presumptive evidence of the date and time of receipt of transmission.

(b) The original document and four copies (~~(must)~~) shall be mailed and postmarked or otherwise transmitted to the board on or before the date of sending the telefacsimile transmission or electronic mail.

(c) Documents over fifteen pages in length may not be filed by telefacsimile without prior approval of the presiding officer.

(3) A telefacsimile or electronic mail copy shall constitute an original solely for the purpose of establishing the date a document was filed.

AMENDATORY SECTION (Amending WSR 08-10-029, filed 4/28/08, effective 5/29/08)

**WAC 242-02-250 Notice of appearance and answer.**

(1) The respondent shall file a notice of appearance with the board and serve a copy on the petitioner and all other parties promptly after having been served with a petition for review. The notice of appearance shall be dated, signed and contain the respondent's address, telephone and fax numbers, and (~~(e-mail)~~) electronic mail address.

(2) The respondent, at its option, may file an answer to the petition for review. The respondent shall file the original and four copies with the board and serve a copy on the petitioner. Answers shall be filed no later than twenty days from the date of service of the petition for review. Answers shall be verified in the same manner as the petition for review.

AMENDATORY SECTION (Amending WSR 98-01-144, filed 12/19/97, effective 1/20/98)

**WAC 242-02-292 Direct review by superior court—Agreement of the parties.** (1) A direct review agreement of the parties shall contain:

(a) A caption in the following form:

BEFORE THE . . . GROWTH MANAGEMENT  
HEARINGS BOARD  
STATE OF WASHINGTON

Petitioner, Case No.  
v.  
Respondent Agreement for Direct Review  
by . . . County Superior Court

(b) Numbered paragraphs stating:

(i) Petitioner's name, mailing address (~~(and)~~), telephone number, and electronic mail address, and those of the attorney or other designated representative, if any;

(ii) Respondent's name, mailing address (~~(and)~~), telephone number, and electronic mail address, and those of the attorney or other designated representative, if any;

(iii) Intervenor's name, mailing address (~~(and)~~), telephone number, and electronic mail address, and those of the attorney or other designated representative, if any;

(iv) A statement indicating agreement to seek direct review by superior court of the petition for review filed with the board, citing case name and number as assigned by the board. The statement shall include agreement to proper venue, and may include other terms;

(v) Date the petition for review was filed, or if multiple petitions were filed and consolidated, the date the board served notice of consolidation;

(vi) A statement that all parties have read the agreement for direct review by superior court, and agree to its terms, followed by the signatures of all the parties or the signatures of the attorneys or other designated representatives, if any.

(2) One copy of the filed petition for review, with the case name, number and date stamp shall be filed with the agreement for direct review by superior court.

AMENDATORY SECTION (Amending WSR 08-10-029, filed 4/28/08, effective 5/29/08)

**WAC 242-02-320 Method of service.** Service of papers, specified in WAC 242-02-310(1), shall be made by electronic mail unless the party does not have the technological capacity to do so. Service may also be made personally (~~(or)~~) by first class, registered or certified mail, or by telefacsimile transmission. (~~(The board may be served)~~) If service is by electronic mail (~~(filings, provided that)~~) or telefacsimile, an original and four copies (~~(are)~~) shall be properly addressed to a board, deposited in the mail, and postmarked no later than the same day. Exhibits shall not be served electronically but shall be deemed timely filed if included in the mailed copies.

AMENDATORY SECTION (Amending WSR 94-07-033, filed 3/9/94, effective 4/9/94)

**WAC 242-02-330 Service of papers—When complete.** (1) Papers required to be filed with a board shall be deemed filed upon actual receipt during office hours at the board's office.

(2) All facsimile and electronic mail transmissions are sent at the risk of the sender and only pursuant to the procedures specified in WAC 242-02-240.

(3) This section shall not extend any applicable time for appeal to a board nor extend the time for providing notice of appeal to any named party.

AMENDATORY SECTION (Amending WSR 04-21-046, filed 10/15/04, effective 11/15/04)

**WAC 242-02-340 Proof of service—Certificate.** Where proof of service is required by this chapter, by statute, or upon a board's request, filing the original document with

the board and serving copies upon all attorneys or other authorized representatives of record and upon parties not represented together with one of the following documents shall constitute proof of service:

- (1) An acknowledgement of service;
- (2) A certificate that the person signing the certificate did on the date of the certificate serve the papers upon each party or the party's attorney or other authorized representative of record in the proceeding by delivering a copy thereof in person to the named individuals;
- (3) A certificate that the person signing the certificate did on the date of the certificate serve the papers upon all parties of record in the case by:
  - (a) Mailing a copy, properly addressed with postage prepaid, to each party or that party's attorney or other authorized representative; or
  - (b) Transmitting a copy by electronic mail or telefacsimile (~~(device)~~), and on the same day mailing a copy to each party in the case or that party's attorney, or other authorized representative; or
  - (c) Depositing a copy, properly addressed with charges prepaid, with a commercial parcel delivery company or courier service.

AMENDATORY SECTION (Amending WSR 08-10-029, filed 4/28/08, effective 5/29/08)

**WAC 242-02-530 Motions—Requirements.** (1) A motion is an application for an order or ruling. Every motion shall be in writing, unless made during a hearing; shall state with particularity the grounds; and shall set forth the relief or order sought. An original and four copies of the motion shall be filed with a board and a copy served on each opposing party or that party's attorney or other authorized representative.

(2) All motions shall be properly captioned and signed by the moving party or that party's attorney or other authorized representative.

(3) The motion shall specify the amount of time required for argument, whether appearance by telecommunication is requested, and the names (~~(and)~~), telephone numbers, and electronic mail addresses of all parties served with the motion.

(4) Dispositive motions on a limited record, similar to a motion for summary judgment in superior court or a motion on the merits in the appellate courts, are permitted. Time frames for making and responding to such a motion shall be established by the presiding officer.

(5) Motions to disqualify a hearing examiner acting as the presiding officer, or a board member, for bias, prejudice, interest or other cause, with supporting affidavit(s), may be filed with a board.

(6) Any party may bring a motion for the board to decide a challenge to compliance with the notice and public participation requirements of the act raised in the petition for review, provided that the evidence relevant to the challenge is limited. If such a motion is timely brought, the presiding officer or the board shall determine whether to decide the notice and public participation issue(s) on motion or whether to continue those issues to the hearing on the merits.

AMENDATORY SECTION (Amending WSR 92-21-034, filed 10/15/92, effective 10/15/92)

**WAC 242-02-534 Response to motions.** (1) A party served with a motion shall have ten days from the date of (~~(receipt)~~) service of the motion to respond to it, unless otherwise directed by the presiding officer. A response to the motion shall be filed with a board and a copy served on the opposing party/parties.

(2) The response shall specify the amount of time required for argument, whether appearance by telecommunication is requested, and the names (~~(and)~~), telephone numbers, and electronic mail addresses of all parties served with the response.

AMENDATORY SECTION (Amending WSR 03-15-047, filed 7/11/03, effective 8/11/03)

**WAC 242-02-834 Publication of final decision and orders.** Copies of all final decisions and orders are available (~~(from the)~~) for an individual board that entered the decision and order from the office of the growth management hearings boards. The growth management hearings boards web site is [www.gmh.wa.gov](http://www.gmh.wa.gov). Each board posts its decisions within its individual portion of the web site and maintains a digest of its decisions.

**WSR 09-13-019**  
**EMERGENCY RULES**  
**GROWTH MANAGEMENT**  
**HEARINGS BOARDS**

[Filed June 5, 2009, 11:46 a.m., effective July 1, 2009, 12:01 a.m.]

Effective Date of Rule: July 1, 2009, 12:01 a.m.

Purpose: Amend sections of the boards' rules regarding public records to reflect the consolidation of the administrative functions of the three boards into a single office. Amendments are needed to streamline procedures, provide accurate information to members of the public, and facilitate requests for access to the boards' public records documents.

Citation of Existing Rules Affected by this Order: Amending chapter 242-04 WAC (all sections except WAC 242-02-040).

Statutory Authority for Adoption: RCW 36.70A.270(7).

Under RCW 34.05.350 the agency for good cause finds that in order to implement the requirements or reductions in appropriations enacted in any budget for fiscal years 2009, 2010, or 2011, which necessitates the need for the immediate adoption, amendment, or repeal of a rule, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the fiscal needs or requirements of the agency.

Reasons for this Finding: The legislature's biennium appropriation reflects an approximate 16% reduction in the boards' budgets, with budget notes specifically contemplating the consolidation of the boards' current three offices into a single location. In order to address these budget appropriations, a consolidation is needed to realize savings through efficiency and staff reductions. The boards' rules relating to

public records must be amended to reflect this consolidation and create needed efficiency along with clarification to members of the public seeking access to these records.

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 14, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 14, 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: July 27, 2009.

James J. McNamara, Chair  
Rules Committee

AMENDATORY SECTION (Amending WSR 92-21-034, filed 10/15/92, effective 10/15/92)

**WAC 242-04-010 Purpose.** The purpose of this chapter is to ensure compliance by each individual board ~~((and))~~, the joint boards, and the office of the growth management hearings boards with the provisions of chapter 42.17 RCW, and in particular with RCW 42.17.250 through 42.17.340, dealing with public records.

AMENDATORY SECTION (Amending WSR 94-23-112, filed 11/22/94, effective 12/23/94)

**WAC 242-04-020 Definitions.** (1) "Board" means the Eastern Washington, Western Washington, or Central Puget Sound growth management hearings board. Each is a quasi-judicial body created pursuant to chapter 36.70A RCW. Where appropriate the term board also refers to the staff and employees of each board.

(2) "Joint boards" means the three independent boards meeting or acting jointly.

(3) "Office of the growth management hearings boards" means the administrative office of the three growth management hearings boards established in RCW 36.70A.250.

(4) "Public record" means any writing containing information relating to the conduct of government or the performance of any governmental or proprietary function prepared, owned, used, or retained by any state or local agency regardless of physical form or characteristics.

~~((4))~~ (5) "Writing" means handwriting, typewriting, printing, photostating, photographing, and every other means of recording any form of communication or representation, including, but not limited to, letters, words, pictures, sounds, or symbols, or combination thereof, and all papers, maps, magnetic or paper tapes, photographic films and prints, motion pictures, film and video recordings, magnetic or punched cards, discs, drums, diskettes, sound recordings, and

other documents including existing data compilations from which information may be obtained or translated.

AMENDATORY SECTION (Amending WSR 00-09-094, filed 4/19/00, effective 5/20/00)

**WAC 242-04-030 Description of organization and public meetings.** (1) Each board is an independent agency of the state of Washington, composed of three members appointed by the governor. Each board elects an administrative chairperson from its members at least annually.

(2) The administrative chairpersons constitute the administrative committee of the joint boards. ~~((The administrative committee elects an administrative chairperson from its members at least annually.))~~

(3) Regular meetings of each board will be held at ~~((its principal))~~ the office of the growth management hearings boards or other designated location at the following times:

(a) Eastern Washington board - on the first Wednesday of each month at 10:00 a.m.

(b) Western Washington board - on the second Wednesday of each month at 11:00 a.m.

(c) Central Puget Sound board - on the first Monday of each month at 10:00 a.m.

(4) The joint boards, comprised of the members of the three individual boards, shall meet at least annually at a time and location to be announced.

(5) The office of the growth management hearings boards provides for the administrative operations of the three individual boards and the joint boards.

AMENDATORY SECTION (Amending WSR 08-10-030, filed 4/28/08, effective 5/29/08)

**WAC 242-04-050 Communications with each board or the joint boards.** (1) All communications with a board, including but not limited to the submission of materials pertaining to its operations and/or administration or enforcement of chapter 42.17 RCW and these rules, requests for copies of each board's decisions and other matters, shall be addressed to the appropriate ~~((board's office))~~ board as follows:

~~((a))~~ Eastern Washington Growth Management Hearings Board  
15 West Yakima Avenue, Suite 102  
Yakima, Washington 98902  
509-574-6960  
509-574-6964 fax  
e-mail: AAndreas@EW.GMHB.WA.GOV  
web site: www.gmhb.wa.gov/eastern

(b) Western Washington Growth Management Hearings Board  
319 7th Avenue S.E. (as of June 2008)  
Olympia, WA 98501  
P.O. Box 40953  
Olympia, Washington 98504-0953  
(360) 664-8966  
(360) 664-8975 fax  
e-mail: western@www.gmhb.wa.gov  
web site: www.gmhb.wa.gov/western



(e) Central Puget Sound Growth Management Hearings Board  
 800 Fifth Avenue, Suite 2356  
 Seattle, Washington 98104  
 (206) 389-2625  
 (206) 389-2588 fax  
 e-mail: [central@cps.gmhba.wa.gov](mailto:central@cps.gmhba.wa.gov)  
 web site: [www.gmhba.wa.gov/central](http://www.gmhba.wa.gov/central))

The Office of the Growth Management Hearings Boards

(Insert name of appropriate board)

319 - 7th Avenue S.E.

Olympia, WA 98501

P.O. Box 40953

Olympia, WA 98504-0953

360-586-0260

360-664-6975 fax

e-mail: [eastern@ew.gmhba.wa.gov](mailto:eastern@ew.gmhba.wa.gov)

[western@ww.gmhba.wa.gov](mailto:western@ww.gmhba.wa.gov)

[central@cps.gmhba.wa.gov](mailto:central@cps.gmhba.wa.gov)

web site: [www.gmhba.wa.gov](http://www.gmhba.wa.gov)

(2) All communications with the joint boards shall be addressed (~~in care of the Western Washington board~~) as noted in subsection (1) of this section.

AMENDATORY SECTION (Amending WSR 92-21-034, filed 10/15/92, effective 10/15/92)

**WAC 242-04-060 Public records officer.** (1) The administrative chairperson (~~of each~~) responsible for management of the office of the growth management hearings boards, or his/her designee, shall be in charge of the public records for all three boards and for the joint boards.

(2) (~~The administrative chairperson of the joint boards, or designee, shall be in charge of the public records for the joint boards.~~

(3)) Such person(s) shall be responsible for implementation of these rules and regulations regarding release of public records, and generally assuring compliance with the public records disclosure requirements of chapter 42.17 RCW, and in particular RCW 42.17.250 through 42.17.340.

AMENDATORY SECTION (Amending WSR 92-21-034, filed 10/15/92, effective 10/15/92)

**WAC 242-04-070 Office hours.** Public records shall be available for inspection and copying during the customary office hours of (~~each~~) the office of the growth management hearings boards. For the purposes of this chapter, the customary office hours shall be from 8:00 a.m. to noon and from 1:00 p.m. to 5:00 p.m., Monday through Friday, excluding legal holidays.

AMENDATORY SECTION (Amending WSR 92-21-034, filed 10/15/92, effective 10/15/92)

**WAC 242-04-080 Requests for public records.** In accordance with the provisions of chapter 42.17 RCW, that agencies prevent unreasonable invasions of privacy, protect public records from damage or disorganization, and prevent excessive interference with essential functions of the agency,

public records may be inspected or copied, or copies of such records may be obtained, by members of the public upon compliance with the following procedures:

(1) A request shall be made in writing upon a form prescribed by (~~a board or~~) the joint boards which shall be available at (~~its~~) the office of the growth management hearings boards. A completed form shall be presented to (~~that board~~) the public records officer or to any staff member (~~of the board's staff~~) at the office of the growth management hearings boards during customary office hours. The request shall include the following information:

(a) The name and address of the person requesting the record and the organization represented, if any;

(b) The time of day and calendar date on which the request was made;

(c) A description of the material requested;

(d) If the matter requested is referenced within the current index maintained by the public records officer, a reference to the requested record as it is described in such current index;

(e) If the requested matter is not identifiable by reference to a current index, an appropriate identification of the record requested.

(2) In all cases in which a member of the public is making a request, it shall be the obligation of the (~~board~~) public records officer or staff member to whom the request is made to assist the member of the public in appropriately identifying the public record requested.

AMENDATORY SECTION (Amending WSR 92-21-034, filed 10/15/92, effective 10/15/92)

**WAC 242-04-090 Responses to requests for public records.** Within five business days of receiving a public record request, (~~a board~~) the public records officer must respond by either:

(1) Providing the record;

(2) Acknowledging that the (~~board~~) public records officer has received the request for an individual board or the joint boards and providing a reasonable estimate of the time that the (~~board~~) public records officer will require to respond to the request. Additional time required to respond to a request may be based upon the need to clarify the intent of the request, to locate and assemble the information requested, to notify third persons or agencies affected by the request, or to determine whether any of the information requested is exempt and that a denial should be made as to all or part of the request. In acknowledging receipt of a public record request that is unclear, (~~a board~~) the public records officer may ask the requestor to clarify what information the requestor is seeking. If the requestor fails to clarify the request, the (~~board~~) public records officer need not respond to it; or

(3) Denying the public record request.

AMENDATORY SECTION (Amending WSR 98-01-144, filed 12/19/97, effective 1/20/98)

**WAC 242-04-100 Copying.** No fee shall be charged for the inspection of public records. (~~Each board~~) The public records officer, on behalf of either an individual board or the

joint boards, shall charge a reasonable fee for providing copies of public records and for use of ~~((each board's))~~ the office of the growth management hearings boards' photocopy equipment. ~~((Each board))~~ The public records officer may charge a reasonable fee for electronic facsimile transmissions (fax). The charge is the amount necessary to reimburse ~~((each))~~ the office of the growth management hearings boards for its actual costs incident to such copying or transmission.

AMENDATORY SECTION (Amending WSR 92-21-034, filed 10/15/92, effective 10/15/92)

**WAC 242-04-110 Exemptions.** (1) ~~((Each))~~ The public records officer, on behalf of each individual board or the joint boards, reserves the right to determine that a public record requested in accordance with the procedures outlined in WAC 242-04-080 is exempt under the provisions of RCW 42.17.310 including but not limited to the following:

(a) Personal information in files maintained for members and employees of ~~((a))~~ an individual board, the joint boards, or the office of the growth management hearings boards, to the extent that disclosure would violate their right to privacy;

(b) Preliminary drafts, notes, recommendations, and intra-agency memoranda in which opinions are expressed or policies formulated or recommended, except that a specific record shall not be exempt when publicly cited by an agency in connection with any agency action;

(c) All applications for public employment, including the names of applicants, resumes, and other related materials submitted with respect to an applicant;

(d) The residential addresses and residential telephone numbers of employees or volunteers of a public agency which are held by the agency in personnel records, employment or volunteer rosters, or mailing lists of employees or volunteers.

(2) Pursuant to RCW 42.17.260, ~~((each board))~~ the public records officer reserves the right to delete identifying details when ~~((#))~~ he/she makes available or publishes any public records, in all cases when there is reason to believe that disclosure of such details would be an invasion of personal privacy protected by chapter 42.17 RCW. ~~((Each board))~~ The public records officer will fully justify such deletion in writing.

(3) All public records otherwise exempt by law shall be considered exempt under the provision of these rules.

AMENDATORY SECTION (Amending WSR 92-21-034, filed 10/15/92, effective 10/15/92)

**WAC 242-04-120 Review of denials of public records requests.** Any person who objects to a denial of a public records request or who objects to the reasonableness of the estimate of the time ~~((a board))~~ the public records officer requires to respond to a public records request, shall petition the superior court in the county in which the record is maintained under the provisions of RCW 42.17.340.

AMENDATORY SECTION (Amending WSR 92-21-034, filed 10/15/92, effective 10/15/92)

**WAC 242-04-130 Protection of public records.** In order to protect the public records in the custody of each individual board ~~((or))~~, the joint boards, or the office of the growth management hearings boards, the following guidelines shall be followed by any person inspecting such public records:

(1) No public records shall be removed from the office;

(2) Inspection of any public record shall be conducted in the presence of ~~((a board member))~~ the public records officer or his/her designee;

(3) No public record may be marked or defaced in any manner during inspection;

(4) Public records which are maintained in the file jacket, or in chronological order, may not be dismantled except for purpose of copying, and then only by ~~((a board member))~~ the public records officer or his/her designee;

(5) Access to file cabinets, shelves, vaults, and other storage locations is restricted to the public records officer, board members, and staff.

AMENDATORY SECTION (Amending WSR 92-21-034, filed 10/15/92, effective 10/15/92)

**WAC 242-04-140 Records index.** (1) Index. ~~((Each board and the joint boards))~~ The public records officer has available to all persons a current index which provides identifying information as to records which have been issued, adopted, or promulgated since May 15, 1992, as follows:

(a) Final orders, including concurring and dissenting opinions, made in the adjudication of cases;

(b) Those statements of policy and interpretations of policy, statute, and the Constitution which have been adopted by ~~((a))~~ an individual board and/or the joint boards;

(c) Administrative staff manuals and instructions to staff that affect a member of the public;

(d) Individual board and joint board planning policies and goals, and interim and final planning decisions;

(e) Factual staff reports and studies, a consultant's factual reports and studies, scientific reports and studies, and any other factual information derived from tests, studies, reports, or surveys, whether conducted by public employees or others; and

(f) Correspondence, and materials referred to therein, by and with ~~((a))~~ an individual board, the joint boards, or the office of the growth management hearings boards relating to any regulations, supervisory or enforcement responsibilities of ~~((a))~~ the growth management hearings boards, where ~~((a))~~ an individual board determines or is asked to determine the rights of the state, the public, a subdivision of state government, or of any private party.

(2) Availability. The current index promulgated by ~~((each board and the joint boards))~~ the public records officer shall be available for inspection by all persons under the same rules and on the same conditions as are applied to public records available for inspection.

AMENDATORY SECTION (Amending WSR 94-23-112, filed 11/22/94, effective 12/23/94)

**WAC 242-04-150 Adoption of form.** Each individual board and the joint boards adopts the use by all persons requesting inspection and/or copies of records the form set out below, entitled "Request for inspecting and/or copying public records."

We have received your request for inspection of and/or copies of our public records. Please complete this form and return it with the amount required, if applicable. We will forward the requested copies to you as soon as we receive this completed form with payment.

Return to:

((~~name and address of applicable board~~))  
PUBLIC RECORDS OFFICER

OFFICE OF THE GROWTH MANAGEMENT HEARINGS BOARDS  
(INSERT APPROPRIATE BOARD'S NAME)  
REQUEST FOR INSPECTING AND/OR COPYING PUBLIC RECORDS

Date:

Name:

Address:

Day Phone Number:

Description of Record(s) Requested:

I certify that the information obtained through this request for public records will be used in compliance with chapter 42.17 RCW.

\_\_\_\_\_  
Signature

Number of Copies

Number of Pages

Per Page Cost \$

Total Charge \$

**WSR 09-13-021**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**

[Order 09-106—Filed June 5, 2009, 1:17 p.m., effective June 6, 2009]

Effective Date of Rule: June 6, 2009.

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 and 77.04.020.

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: Wild summer steelhead inhabiting the affected waters are part of the Puget Sound steelhead distinct population segment, which is listed as threatened under the Endangered Species Act. This emergency rule is needed to protect wild summer steelhead from incidental fishing mortality. 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: June 5, 2009.

Philip Anderson  
Director

NEW SECTION

**WAC 232-28-61900W Exceptions to statewide rules—Gray Wolf River (Clallam Co.)** Notwithstanding the provisions of WAC 232-28-619, effective June 6, 2009 until further notice, in those waters of Gray Wolf River from the mouth at Dungeness Forks Campground upstream to the Olympic National Park boundary: All game fish - catch and release, selective gear rules in effect.

**WSR 09-13-043**  
**EMERGENCY RULES**  
**DEPARTMENT OF HEALTH**

[Filed June 11, 2009, 10:03 a.m., effective June 11, 2009, 10:03 a.m.]

Effective Date of Rule: Immediately.

Purpose: The purpose of the rule is to obtain immediately from health care providers and health care facilities notification of cases and suspected cases caused by novel influenza A (H1N1) resulting in hospitalization or death. This information will allow for the monitoring of hospitalizations as opposed to monitoring all illnesses due to influenza and will identify periods when epidemic flu "thresholds" are exceeded. In addition, such a system will identify groups at-risk for serious illness in order to prioritize their vaccination in any influenza vaccination programs in the coming 2009-2010 influenza season.

Citation of Existing Rules Affected by this Order:  
Amending WAC 246-101-101 and 246-101-301.

Statutory Authority for Adoption: RCW 43.20.050.

Other Authority: WAC 246-101-015(4).

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: Observing the time requirements of the regular rule-making process would impede the department's ability to track, respond and understand the novel influenza A (H1N1) virus before the upcoming 2009-2010 influenza season. It is necessary to obtain this information to identify groups at-risk for serious illness in order to prioritize their vaccination in any influenza vaccination programs. For this reason, immediate adoption of this rule is necessary to protect the public health.

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 2, Repealed 0.

Date Adopted: June 2, 2009.

Mary C. Selecky  
Secretary

AMENDATORY SECTION (Amending WSR 05-03-055, filed 1/11/05, effective 2/11/05)

**WAC 246-101-101 Notifiable conditions and the health care provider.** This section describes the conditions that Washington's health care providers must notify public health authorities of on a statewide basis. The board finds that the conditions in the table below (Table HC-1) are notifiable for the prevention and control of communicable and noninfectious diseases and conditions in Washington. Principal health care providers shall notify public health authorities of these conditions as individual case reports using procedures described throughout this chapter. Other health care providers in attendance shall notify public health authorities of the following notifiable conditions, unless the condition notification has already been made. Local health officers may require additional conditions to be notifiable within the local health officer's jurisdiction.

WAC 246-101-105, 246-101-110, 246-101-115, and 246-101-120 also include requirements for how notifications shall be made, when they shall be made, the content of these notifications, and how information regarding notifiable conditions cases must be handled and may be disclosed.

Table HC-1 (Conditions Notifiable by Health Care Providers)

Notifiable Condition	Time Frame for Notification	Notifiable to Local Health Department	Notifiable to State Department of Health
Acquired Immunodeficiency Syndrome (AIDS)	Within 3 work days	√	
Animal Bites	Immediately	√	
Arboviral Disease	Within 3 work days	√	
Asthma, occupational	Monthly		√
Birth Defects – Autism Spectrum Disorders	Monthly		√
Birth Defects – Cerebral Palsy	Monthly		√
Birth Defects – Alcohol Related Birth Defects	Monthly		√
Botulism (foodborne, infant, and wound)	Immediately	√	
Brucellosis ( <i>Brucella</i> species)	Immediately	√	
Campylobacteriosis	Within 3 work days	√	
Chancroid	Within 3 work days	√	
<i>Chlamydia trachomatis</i> infection	Within 3 work days	√	
Cholera	Immediately	√	
Cryptosporidiosis	Within 3 work days	√	
Cyclosporiasis	Within 3 work days	√	
Diphtheria	Immediately	√	

Notifiable Condition	Time Frame for Notification	Notifiable to Local Health Department	Notifiable to State Department of Health
Disease of suspected bioterrorism origin (including): • Anthrax • Smallpox	Immediately	√	
Disease of suspected foodborne origin (communicable disease clusters only)	Immediately	√	
Disease of suspected waterborne origin (communicable disease clusters only)	Immediately	√	
Enterohemorrhagic <i>E. coli</i> (shiga-like toxin producing infections only) such as <i>E. coli</i> O157:H7 Infection	Immediately	√	
Giardiasis	Within 3 work days	√	
Gonorrhea	Within 3 work days	√	
Granuloma inguinale	Within 3 work days	√	
<i>Haemophilus influenzae</i> (invasive disease, children under age 5)	Immediately	√	
Hantavirus pulmonary syndrome	Within 3 work days	√	
Hemolytic uremic syndrome	Immediately	√	
Hepatitis A (acute infection)	Immediately	√	
Hepatitis B (acute infection)	Within 3 work days	√	
Hepatitis B surface antigen + pregnant women	Within 3 work days	√	
Hepatitis B (chronic) – Initial diagnosis, and previously unreported prevalent cases	Monthly	√	
Hepatitis C – Acute and chronic	Monthly	√	
Hepatitis (infectious), unspecified	Within 3 work days	√	
Herpes simplex, neonatal and genital (initial infection only)	Within 3 work days	√	
Human immunodeficiency virus (HIV) infection	Within 3 work days	√	
Legionellosis	Within 3 work days	√	
Leptospirosis	Within 3 work days	√	
Listeriosis	Immediately	√	
Lyme Disease	Within 3 work days	√	
Lymphogranuloma venereum	Within 3 work days	√	
Malaria	Within 3 work days	√	
Measles (rubeola)	Immediately	√	
Meningococcal disease	Immediately	√	
Mumps	Within 3 work days	√	
<u>Novel influenza A (H1N1) (hospitalized or fatal only)</u>	<u>Immediately</u>	<u>√</u>	
Paralytic shellfish poisoning	Immediately	√	
Pertussis	Immediately	√	
Pesticide poisoning (hospitalized, fatal, or cluster)	Immediately		√
Pesticide poisoning (all other)	Within 3 work days		√

Notifiable Condition	Time Frame for Notification	Notifiable to Local Health Department	Notifiable to State Department of Health
Plague	Immediately	√	
Poliomyelitis	Immediately	√	
Psittacosis	Within 3 work days	√	
Q Fever	Within 3 work days	√	
Rabies (Confirmed Human or Animal)	Immediately	√	
Rabies (Including use of post-exposure prophylaxis)	Within 3 work days	√	
Relapsing fever (borreliosis)	Immediately	√	
Rubella (including congenital rubella syndrome)	Immediately	√	
Salmonellosis	Immediately	√	
Serious adverse reactions to immunizations	Within 3 work days	√	
Shigellosis	Immediately	√	
Syphilis	Within 3 work days	√	
Tetanus	Within 3 work days	√	
Trichinosis	Within 3 work days	√	
Tuberculosis	Immediately	√	
Tularemia	Within 3 work days	√	
Typhus	Immediately	√	
Vibriosis	Within 3 work days	√	
Yellow fever	Immediately	√	
Yersiniosis	Within 3 work days	√	
Other rare diseases of public health significance	Immediately	√	
Unexplained critical illness or death	Immediately	√	

**AMENDATORY SECTION** (Amending WSR 05-03-055, filed 1/11/05, effective 2/11/05)

**WAC 246-101-301 Notifiable conditions and health care facilities.** This section describes the conditions that Washington's health care facilities must notify public health authorities of on a statewide basis. The board finds that the conditions in the table below (Table HF-1) are notifiable for the prevention and control of communicable and noninfectious diseases and conditions. Local health officers may require additional conditions to be notifiable within the local health officer's jurisdiction. Health care facilities are required to notify public health authorities of cases that occur in their facilities. Health care facilities may choose to assume the notification for their health care providers for conditions designated in Table HF-1. Health care facilities may not assume the reporting requirements of laboratories that are components of the health care facility. Local health officers may require additional conditions to be notifiable within the local health officer's jurisdiction.

WAC 246-101-305, 246-101-310, 246-101-315, and 246-101-320 also include requirements for how notifications shall be made, when they are made, the content of these notifications, and how information regarding notifiable conditions cases must be handled and may be disclosed.

Table HF-1 (Conditions Notifiable by Health Care Facilities)

Notifiable Condition	Time Frame for Notification	Notifiable to Local Health Department	Notifiable to State Department of Health
Acquired Immunodeficiency Syndrome (AIDS)	Within 3 work days		√
Animal Bites	Immediately	√	
Arboviral Disease	Within 3 work days	√	

Notifiable Condition	Time Frame for Notification	Notifiable to Local Health Department	Notifiable to State Department of Health
Asthma, occupational	Monthly		√
Birth Defects – Abdominal Wall Defects (inclusive of gastroschisis and omphalocele)	Monthly		√
Birth Defects – Autism Spectrum Disorders	Monthly		√
Birth Defects – Cerebral Palsy	Monthly		√
Birth Defects – Down Syndrome	Monthly		√
Birth Defects – Alcohol Related Birth Defects	Monthly		√
Birth Defects – Hypospadias	Monthly		√
Birth Defects – Limb reductions	Monthly		√
Birth Defects – Neural Tube Defects (inclusive of anencephaly and spina bifida)	Monthly		√
Birth Defects – Oral Clefts (inclusive of cleft lip with/without cleft palate)	Monthly		√
Botulism (foodborne, infant, and wound)	Immediately	√	
Brucellosis ( <i>Brucella</i> species)	Immediately	√	
Cancer ( <i>See chapter 246-430 WAC</i> )	Monthly		√
Chancroid	Within 3 work days	√	
<i>Chlamydia trachomatis</i> infection	Within 3 work days	√	
Cholera	Immediately	√	
Cryptosporidiosis	Within 3 work days	√	
Cyclosporiasis	Within 3 work days	√	
Diphtheria	Immediately	√	
Disease of suspected bioterrorism origin (including): • Anthrax • Smallpox	Immediately	√	
Disease of suspected foodborne origin (communicable disease clusters only)	Immediately	√	
Disease of suspected waterborne origin (communicable disease clusters only)	Immediately	√	
Enterohemorrhagic <i>E. coli</i> (shiga-like toxin producing infections only) such as <i>E. coli</i> O157:H7 Infection	Immediately	√	
Giardiasis	Within 3 work days	√	
Gonorrhea	Within 3 work days	√	
Granuloma inguinale	Within 3 work days	√	
Gunshot wounds (nonfatal)	Monthly		√
<i>Haemophilus influenzae</i> (invasive disease, children under age 5)	Immediately	√	
Hantavirus pulmonary syndrome	Within 3 work days	√	
Hemolytic uremic syndrome	Immediately	√	
Hepatitis A (acute infection)	Immediately	√	
Hepatitis B (acute infection)	Within 3 work days	√	
Hepatitis B surface antigen + pregnant women	Within 3 work days	√	

Notifiable Condition	Time Frame for Notification	Notifiable to Local Health Department	Notifiable to State Department of Health
Hepatitis B (chronic) – Initial diagnosis, and previously unreported prevalent cases	Monthly	√	
Hepatitis C – Acute and chronic	Monthly	√	
Hepatitis (infectious), unspecified	Within 3 work days	√	
Human immunodeficiency virus (HIV) infection	Within 3 work days	√	
Legionellosis	Within 3 work days	√	
Leptospirosis	Within 3 work days	√	
Listeriosis	Immediately	√	
Lyme Disease	Within 3 work days	√	
Lymphogranuloma venereum	Within 3 work days	√	
Malaria	Within 3 work days	√	
Measles (rubeola)	Immediately	√	
Meningococcal disease	Immediately	√	
Mumps	Within 3 work days	√	
<u>Novel influenza A (H1N1) (hospitalized or fatal only)</u>	<u>Immediately</u>	<u>√</u>	
Paralytic shellfish poisoning	Immediately	√	
Pertussis	Immediately	√	
Pesticide poisoning (hospitalized, fatal, or cluster)	Immediately		√
Plague	Immediately	√	
Poliomyelitis	Immediately	√	
Psittacosis	Within 3 work days	√	
Q Fever	Within 3 work days	√	
Rabies (Confirmed Human or Animal)	Immediately	√	
Rabies (Use of post-exposure prophylaxis)	Within 3 work days	√	
Relapsing fever (borreliosis)	Immediately	√	
Rubella (including congenital rubella syndrome)	Immediately	√	
Salmonellosis	Immediately	√	
Serious adverse reactions to immunizations	Within 3 work days	√	
Shigellosis	Immediately	√	
Syphilis	Within 3 work days	√	
Tetanus	Within 3 work days	√	
Trichinosis	Within 3 work days	√	
Tuberculosis	Immediately	√	
Tularemia	Within 3 work days	√	
Typhus	Immediately	√	
Vibriosis	Within 3 work days	√	
Yellow fever	Immediately	√	
Yersiniosis	Within 3 work days	√	
Other rare diseases of public health significance	Immediately	√	



Notifiable Condition	Time Frame for Notification	Notifiable to Local Health Department	Notifiable to State Department of Health
Unexplained critical illness or death	Immediately	√	

**WSR 09-13-045  
EMERGENCY RULES  
DEPARTMENT OF  
FISH AND WILDLIFE**

[Order 09-112—Filed June 11, 2009, 11:20 a.m., effective June 12, 2009]

Effective Date of Rule: June 12, 2009.

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

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

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

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

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

Reasons for this Finding: Reverts steelhead retention to permanent rules, and allows the retention of sockeye and hatchery jack chinook. The steelhead fishery scheduled to occur (beginning May 16) under permanent regulations was delayed due to concerns of incidental handling of Endangered Species Act (ESA) listed chinook. Such incidental handling of ESA listed chinook has now been judged to be bearable, based on the current spring chinook run size of 165,000 fish. There is insufficient time to adopt permanent rules.

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

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

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

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

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

Date Adopted: June 11, 2009.

Lori Preuss  
for Philip Anderson  
Director

NEW SECTION

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

**Columbia River**

1. From a true north and south line through Buoy 10 to a projected line from Rocky Point on the Washington bank through Red Buoy 44 to the navigation light at Tongue Point on the Oregon bank: Effective August 1 until further notice, release all salmon other than Chinook and hatchery coho. Only one Chinook may be retained.

2. From a line projected from Rocky Point on the Washington bank through Red Buoy 44 to the navigation light at Tongue Point on the Oregon bank, to the I-5 Bridge: Effective immediately through July 31, release all salmon other than Chinook and sockeye. Effective immediately through June 15, release wild Chinook. Effective immediately through June 21, and July 6 through July 31, release adult Chinook. Effective August 1 until further notice, release all salmon other than Chinook and hatchery coho. Only one may be an adult Chinook.

3. From the I-5 Bridge to Bonneville Dam: Effective June 16 through July 31, release all salmon other than Chinook and sockeye. Effective June 16 through June 21, and July 6 through July 31, release adult Chinook. Effective August 1 until further notice, release all salmon other than Chinook and hatchery coho. Only one may be an adult Chinook.

4. From Bonneville Dam to the Highway 395 Bridge at Pasco: Effective June 16 through July 31, release all salmon other than Chinook and sockeye. Effective June 16 through June 30, release adult Chinook. Effective August 1 until further notice, release all salmon other than Chinook and coho.

Release wild coho from Bonneville Dam to Hood River Bridge.

5. From the Highway 395 Bridge at Pasco to Priest Rapids Dam: Effective July 1 until further notice, the salmon daily limit is 6 fish, of which no more than 2 may be adults. Release sockeye.

#### REPEALER

The following section of the Washington Administrative Code is repealed effective June 12, 2009:

WAC 232-28-61900F	Exceptions to statewide rules—2009 North of Falcon (09-90)
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**WSR 09-13-048**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**

[Order 09-115—Filed June 11, 2009, 1:31 p.m., effective June 12, 2009]

Effective Date of Rule: June 12, 2009.

Purpose: Amend personal use fishing rules.

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

Statutory Authority for Adoption: RCW 77.12.047 and 77.04.020.

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) estimates about 2,000 hatchery origin, and between 145–160 natural origin spring chinook are expected to return to the Entiat River in 2009, which could result in a hatchery-to-wild ratio as large as 10:1. Based upon these estimates, WDFW believes a selective fishery to remove excess nonendemic hatchery spring chinook is warranted. 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 Mak-

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

Date Adopted: June 11, 2009.

Lori Preuss  
for Philip Anderson  
Director

#### NEW SECTION

**WAC 232-28-61900A Exceptions to statewide rules—Entiat River (Chelan Co.)** Notwithstanding the provisions of WAC 232-28-619, effective June 12 through June 30, 2009, a person may fish for salmon in those waters of the Entiat River from the Alternate Highway 97 Bridge, upstream approximately 6 miles to 800 feet downstream of the Entiat National Fish Hatchery fish ladder entrance. Daily limit, two hatchery Chinook salmon, minimum size 12 inches. Night closure, anti-snagging rule, and single point barbless hooks required.

#### REPEALER

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

WAC 232-28-61900A	Exceptions to statewide rules—Entiat River.
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**WSR 09-13-054**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**

[Order 09-113—Filed June 12, 2009, 10:44 a.m., effective June 13, 2009]

Effective Date of Rule: June 13, 2009.

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 220-33-01000E; 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: Sets the summer season commercial fisheries for the mainstem Columbia River. Based on the preseason runsize, there are 4,000 upper Columbia summer chinook available for commercial harvest in the mainstem. 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, consistent with the compact action taken on May 13 and June 10, 2009. There is insufficient time to adopt permanent rules.

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

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

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

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

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

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

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

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

Date Adopted: June 12, 2009.

Lori Preuss  
for Philip Anderson  
Director

## NEW SECTION

**WAC 220-33-01000E 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 1A, 1B and 1C (Zones 1-3) up to the Longview Bridge

b) Dates: 6:00 p.m. Thursday June 18 to 6:00 a.m. Friday June 19, 2009

c) Gear: 8-inch maximum mesh.

d) Allowable sales: Chinook, sockeye, coho, 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. The weekly sturgeon sales limit applies to mainstem and Select Area fisheries

e) A 12-hour quick reporting rule is in effect for Washington buyers.

### **2. Mainstem Columbia River**

a) Area: SMCRA 1A, 1B, 1C, 1D and 1E (Zones 1-5)

b) Dates: 7:00 p.m. Wednesday June 24 to 5:00 a.m. Thursday June 25, 2009;

7:00 p.m. Tuesday June 30 to 5:00 a.m. Wednesday July 1, 2009

c) Gear: 8-inch maximum mesh.

d) Allowable sales: Chinook, sockeye, coho, 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. The weekly sturgeon sales limit applies to mainstem and Select Area fisheries

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

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

## REPEALER

The following section of the Washington Administrative Code is repealed effective July 2, 2009:

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

**WSR 09-13-055**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**

[Order 09-114—Filed June 12, 2009, 10:48 a.m., effective June 16, 2009,  
6:00 a.m.]

Effective Date of Rule: June 16, 2009, 6:00 a.m.

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

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

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

Other Authority: *United States v. Oregon*, Civil No. 68-513-KI (D. Or.), Order Adopting 2008-2017 *United States v. Oregon Management Agreement* (Aug. 12, 2008) (Doc. No. 2546); *Puget Sound Gillnetters Ass'n v. Moos*, 92 Wn.2d 939, 603 P.2d 819 (1979); *State v. James*, 72 Wn.2d 746, 435 P.2d 521 (1967); 40 Stat. 515 (Columbia River compact).

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

Reasons for this Finding: Sets the first two weekly periods for summer season treaty gillnet fisheries. Based on the preseason forecast, 18,300 chinook are available for treaty Indian harvest.

Continues to allow sales for treaty Indian fisheries, caught in platform and hook-and-line fisheries. Also continues to allow sales of these fish caught in tributary fisheries and the area immediately below Bonneville Dam (see next paragraph) by enrolled Yakama Nation tribal members when the mainstem above Bonneville Dam is open for commercial sales. Impact limits to ESA-listed chinook remain available for treaty Indian fisheries. Harvest is expected to remain within the allocation and guidelines of the 2008-2017 management agreement. Rule is consistent with action of the Columbia River compact on May 26 and June 10, 2009. Conforms state rules with tribal rules. There is insufficient time to promulgate permanent regulations.

New regulations for 2009 include fisheries that are described in the MOA between Washington state and the Yakama Nation. Yakama Nation tribal members will be allowed to fish for subsistence purposes within a specific area of the Washington shoreline below Bonneville Dam when open for enrolled Yakama Nation members under lawfully enacted Yakama Nation tribal subsistence fisheries. Sales will be allowed when the open fishery is concurrent with either commercial gillnet openings or platform gear in Zone

6 (SMCRA 1F, 1G, 1H). Sales of fish caught in this fishery are consistent with mainstem Zone 6 (SMCRA 1F, 1G, 1H) allowable sales, with the exception of sturgeon (which may not be sold or kept for subsistence purposes).

The Yakama [Yakima], Warm Springs, Umatilla, and Nez Perce Indian tribes have treaty fishing rights in the Columbia River and inherent sovereign authority to regulate their fisheries. Washington and Oregon also have some authority to regulate fishing by treaty Indians in the Columbia River, authority that the states exercise jointly under the congressionally ratified Columbia River compact. *Sohappy v. Smith*, 302 F. Supp. 899 (D. Or. 1969). The tribes and the states adopt parallel regulations for treaty Indian fisheries under the supervision of the federal courts. Some salmon and steelhead stocks in the Columbia River are listed as threatened or endangered under the federal ESA.

Columbia River fisheries are monitored very closely to ensure consistency with court orders and ESA guidelines. Because conditions change rapidly, the fisheries are managed almost exclusively by emergency rule. As required by court order, the Washington (WDFW) and Oregon (ODFW) departments of fish and wildlife convene public hearings and invite tribal participation when considering proposals for new emergency rules affecting treaty fishing rights. *Sohappy*, 302 F. Supp. at 912. WDFW and ODFW then adopt regulations reflecting agreements reached. There is insufficient time to adopt permanent rules.

Number of Sections Adopted in Order to Comply with Federal Statute: New 1, Amended 0, Repealed 1; Federal Rules or Standards: New 1, Amended 0, Repealed 1; and 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: June 12, 2009.

Lori Preuss  
for Philip Anderson  
Director

NEW SECTION

**WAC 220-32-05100P Columbia River salmon seasons above Bonneville Dam.** Notwithstanding the provisions of WAC 220-32-050, WAC 220-32-051, WAC 220-32-052, and WAC 220-32-058, effective immediately until further notice, it is unlawful for a person to take or possess salmon, steelhead, shad, carp, walleye or sturgeon for commercial purposes in Columbia River Salmon Management Catch Reporting Areas (SMCRA) 1E, 1F, 1G, and 1H, except as provided in the following subsections; and the same prohibitions apply in the Wind River, White Salmon River, Klick-

itat River, and Drano Lake, except that individuals possessing treaty fishing rights under the Yakima, Warm Springs, Umatilla, and Nez Perce treaties may fish for salmon, shad, carp, or sturgeon under the following provisions, pursuant to lawfully enacted tribal rules:

**1. Mainstem Columbia River above Bonneville Dam**

a) SEASON: 6:00 a.m. Tuesday, June 16 to 6:00 p.m. Friday, June 19, 2009

6:00 a.m. Monday, June 22 to 6:00 p.m. Thursday, June 25, 2009

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

c) GEAR: No mesh restriction on gillnets.

**2. Mainstem Columbia River above Bonneville Dam**

a) SEASON: Immediately until further notice.

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

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

**3. Columbia River Tributaries above Bonneville Dam**

a) SEASON: Immediately until further notice, and only during those days and hours when the tributaries listed below are open under lawfully enacted Yakama Nation tribal subsistence fishery regulations for enrolled Yakama Nation members, and have either commercial gillnet openings or allow platform gear in Zone 6 (SMCRA 1F, 1G, 1H).

b) AREA: Drano Lake, White Salmon, and Klickitat and Wind rivers.

c) GEAR: Hoop nets, dip bag nets, and rod and reel with hook-and-line. Gill nets may only be used in Drano Lake (no mesh restriction, 150-foot length restriction).

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

a) SEASON: Immediately until further notice, and only under the conditions in the Memo of Agreement (MOA) titled "2007 Memorandum of Agreement Between the Yakama Nation and Washington Department of Fish and Wildlife Regarding Tribal Fishing Below Bonneville Dam" and only for enrolled Yakama Nation members in areas that have either commercial gillnet openings or allow platform gear in Zone 6 (SMCRA 1F, 1G, 1H).

b) AREA: (SMCRA) 1E On the Washington shoreline from 600 feet below the fish ladder at the Bonneville Dam North shore powerhouse, downstream to Beacon Rock (bank fishing only).

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

5. **SANCTUARIES:** Standard river mouth and dam sanctuaries applicable to these gear types, except the Spring Creek Hatchery sanctuary not in effect.

6. **ALLOWABLE SALES:** Chinook, coho, sockeye, steelhead, walleye, shad, carp, yellow perch, catfish and bass. Sturgeon may not be sold. Sturgeon between 43-54 inches in fork length in The Dalles and John Day pools (SMCRA 1G, 1H) may be retained for subsistence. Sturgeon between 38-54 inches in fork length in the Bonneville pool (SMCRA 1F) may also be retained for subsistence. Fish may NOT be sold on USACE Property below Bonneville Dam, but may be caught and transported off USACE Property for sale. Sturgeon below Bonneville Dam may NOT be retained and may NOT be sold.

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

REPEALER

The following section of the Washington Administrative Code is repealed effective 6:00 a.m. June 16, 2009:

WAC 220-32-05100N	Columbia River salmon seasons above Bonneville Dam. (09-97)
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**WSR 09-13-056**

**EMERGENCY RULES**

**DEPARTMENT OF  
FISH AND WILDLIFE**

[Order 09-116—Filed June 12, 2009, 10:56 a.m., effective June 13, 2009]

Effective Date of Rule: June 13, 2009.

Purpose: Amend personal use fishing rules.

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

Statutory Authority for Adoption: RCW 77.12.047 and 77.04.020.

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: Klickitat Salmon Hatchery is expected to meet its escapement goal, and this regulation is consistent with rules that are already in effect below Fisher Hill Bridge. 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: June 12, 2009.

Lori Preuss  
for Philip Anderson  
Director

NEW SECTION

**WAC 232-28-61900B Exceptions to statewide rules—2009 North of Falcon.** Notwithstanding the provisions of WAC 232-28-619, effective immediately until further notice, it is unlawful to violate the following provisions, provided that unless otherwise amended, all permanent rules remain in effect:

(1) Cowlitz River (Cowlitz/Lewis Co.) from boundary markers at mouth to 400' below Mayfield Dam powerhouse: Salmon: Effective August 1 until further notice, daily limit 6 fish, of which no more than 2 may be adult Chinook. Release all salmon other than Chinook and hatchery coho. Release wild Chinook jacks.

(2) Deep River (Wahkiakum Co.) from mouth to town bridge: Salmon: Effective August 1 until further notice, daily limit 6 fish, of which no more than 2 may be adult Chinook. Release wild coho and chum.

(3) Elochoman River (Wahkiakum Co.) from mouth to West Fork: Salmon: Open August 1 until further notice, daily limit 6 fish, of which no more than 2 may be adult Chinook. Release wild coho, wild Chinook, and chum.

(4) Grays River (Wahkiakum Co.) from mouth to South Fork, and West Fork from mouth to hatchery intake/foot-bridge: Salmon: Effective August 1 until further notice, daily limit 6 fish, of which no more than 2 may be adult Chinook. Release wild coho, unmarked Chinook, and chum. Unmarked Chinook are Chinook without either a clipped ventral fin or a clipped adipose fin.

(5) Green River (Cowlitz Co.) from mouth to 2800 Bridge: Salmon: Open August 1 until further notice. Daily limit 6 fish, of which no more than 2 may be adult Chinook. Release wild coho, wild Chinook jacks, and chum.

(6) Kalama River (Cowlitz Co.), from boundary markers at mouth to 1,000 feet below fishway at upper salmon hatchery:

(a) Salmon: Closed through July 31, 2009.

(b) Effective August 1 until further notice, daily limit 6 fish, of which no more than 2 may be adult Chinook. Release wild coho, wild Chinook, and chum.

(c) Electric motors are allowed on those waters upstream from the Modrow Bridge.

(7) Klickitat River (Klickitat Co.), from mouth to Fisher Hill Bridge, and from 400' upstream from #5 fishway to boundary markers below Klickitat Salmon Hatchery:

(a) Salmon: Effective June 13 through July 31, 2009, daily limit 6 fish, of which no more than 2 may be adult Chinook. Release wild Chinook.

(b) Salmon: Effective August 1 until further notice, daily limit 6 fish, of which no more than 2 may be adult Chinook.

(8) Lewis River (Clark/Cowlitz Co.), from mouth to forks:

(a) Salmon: Closed through July 31, 2009.

(b) Salmon: Effective August 1 until further notice, daily limit 6 fish, of which no more than 2 may be adult hatchery Chinook. Release all salmon other than hatchery Chinook and hatchery coho.

(9) Lewis River, North Fork (Clark/Cowlitz Co.) from mouth to Colvin Creek:

(a) Salmon: Closed through July 31, 2009.

(b) Salmon: Effective August 1 until further notice, daily limit 6 fish, of which no more than 2 may be adult hatchery Chinook. Release all salmon other than hatchery Chinook and hatchery coho.

(c) Fishing from any floating device permitted from Johnson Creek to Colvin Creek.

(10) Lewis River, North Fork (Clark/Cowlitz Co.) from Colvin Creek to overhead powerlines below Merwin Dam:

(a) Salmon: Closed through July 31, 2009.

(b) Salmon: Effective August 1 until further notice, daily limit 6 fish, of which no more than 2 may be adult hatchery Chinook. Release all salmon other than hatchery Chinook and hatchery coho.

(c) Fishing from any floating device permitted from Colvin Creek upstream.

(11) Tilton River (Lewis Co.) from mouth to West Fork: Salmon: Open through July 31. Minimum size 8 inches. Daily limit 6 fish, of which 2 may be adults. Release wild coho.

(12) Toutle River (Cowlitz Co.) from mouth to forks: Salmon: Open August 1 until further notice. Daily limit 6 fish, of which no more than 2 may be adult Chinook. Release wild coho, wild Chinook jacks, and chum.

(13) Toutle River, North Fork (Cowlitz Co.) from mouth to posted deadline downstream of the fish collection facility: Salmon: Open August 1 until further notice. Daily limit 6 fish, of which no more than 2 may be adult Chinook. Release wild coho, wild Chinook jacks, and chum.

(14) Washougal River (Clark Co.) from mouth to Salmon Falls Bridge: Salmon: Open August 1 until further notice. Daily limit 6 fish, of which no more than 2 may be adult Chinook. Release wild coho, wild Chinook jacks, and chum.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 232-28-61900V Exceptions to statewide rules—Kalama and Lewis rivers. (09-76)

**WSR 09-13-073****EMERGENCY RULES****DEPARTMENT OF COMMUNITY,  
TRADE AND ECONOMIC DEVELOPMENT**

[Filed June 16, 2009, 10:14 a.m., effective August 1, 2009]

Effective Date of Rule: August 1, 2009.

Purpose: In the 2009 legislative session, Governor Gregoire signed E2SSB 5649 into law. The purpose of this emergency rule is to clarify that new requirements for employment related to section 202 (3)(e) in E2SSB 5649 relate only to employees who conduct weatherization activities, including any sponsor employees or local agency staff and contractors. In addition, the bill added new terms which require definitions to assist with smooth program implementation.

Citation of Existing Rules Affected by this Order:  
Amending [WAC 365-180-030 and] 365-180-070.

Statutory Authority for Adoption: RCW 70.164.040.

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: It is important to be able to move energy matchmakers money within sixty days. This emergency rule is needed to provide guidance until a permanent rule can be established.

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 2, 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: June 16, 2009.

Marie Sullivan, Director  
Government Relations Office

AMENDATORY SECTION (Amending Order 92-01, filed 1/7/92, effective 2/7/92)

**WAC 365-180-030 Definitions.** (1) "Community" means the local program area served by the weatherizing agency.

(2) "Department" means the department of community development.

~~((2))~~ (3) "Disadvantaged populations" has the same meaning as "distressed communities" defined in RCW 43.63A.764(2).

(4) "Energy matchmakers local coordinated plan" means a proposal(s) for use of funding for local low-income weatherization programs in a specific geographical area.

~~((3))~~ (5) "Family wage job" is defined as a job that pays, as a minimum, prevailing wage.

(6) "Low-income" means household income that is at or below one hundred twenty-five percent of the federally established poverty level.

~~((4))~~ (7) "Nonutility sponsor" means an organization that is not an energy supplier and that submits a local coordinated plan.

~~((5))~~ (8) "Residence" means a house, including a stationary mobile home, an apartment, a group of rooms, or a single room occupied as separate living quarters; but excluding institutional buildings such as: A university, group care facility, nursing home, half-way residence, hospital, hotel, motel, etc.

~~((6))~~ (9) "Sponsor" means an organization that submits a match proposal as part of the energy matchmakers local coordinated plan.

~~((7))~~ (10) "Sponsor match" means the share, if any, of the cost of weatherization to be paid by the sponsor.

~~((8))~~ (11) "Weatherization" means materials or measures, including the education of the low-income household about energy saving behaviors in the home, and their installation or application, that are used to improve the thermal efficiency of a residence.

~~((9))~~ (12) "Weatherizing agency" means a public or nonprofit private organization, approved by the department, responsible for doing all aspects of the weatherization work.

AMENDATORY SECTION (Amending Order 88-01, filed 1/4/88)

**WAC 365-180-070 Local coordinated plan—Funding proposal process—Award of contracts.** (1) A sponsor shall make a formal proposal using forms issued by the department.

(2) Sponsors must comply with the employment requirements of RCW 70.164.040 (3)(e), which apply only to individuals hired to perform weatherization activities.

(3) A review team will evaluate the energy matchmakers local coordinated plans, and will be composed of persons with knowledge of energy conservation and of community-based public and private service organizations.

~~((3))~~ (4) Plans which include a commitment of matching resources will be given priority for funding.

~~((4))~~ (5) The department shall have the final discretion to award funds.

~~((5))~~ (6) The department will enter into a contract with weatherizing agencies identified in successful local coordinated plans. This contract shall be signed by an official with authority to bind the weatherizing agency and returned to the department prior to the release of any funds under this program.

## WSR 09-13-074

### EMERGENCY RULES

### PUBLIC DISCLOSURE COMMISSION

[Filed June 16, 2009, 10:15 a.m., effective June 30, 2009]

Effective Date of Rule: June 30, 2009.

Purpose: Adoption of new WAC 390-16-049 to clarify when a political committee that is located out-of-state is required to file as an in-state committee under RCW 42.17-040 through 42.17.090.

Statutory Authority for Adoption: RCW 42.17.370.

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: Consistent with the people's declaration that political campaign and lobbying contributions are to be fully disclosed and secrecy is to be avoided,

the sources of money used and the expenditures made to support or oppose Washington candidates for state, local or judicial office or Washington ballot propositions must be fully, timely and accurately disclosed. WAC 390-16-049 facilitates full, timely and accurate disclosure by out-of-state political committees.

To preserve the general welfare and given the timing restriction for rule making in RCW 42.17.370(1), the new rule is needed for the 2009 election season to provide guidance and clarification to out-of-state political committees who must file reports under RCW 42.17.093.

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 1, Amended 0, Repealed 0.

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

Date Adopted: June 16, 2009.

Douglas J. Ellis  
Assistant Director

#### NEW SECTION

**WAC 390-16-049 Out-of-state political committees—Implementation of RCW 42.17.093.** (1) RCW 42.17.093 governs campaign reporting in Washington state by committees located outside of Washington. The statute directs that an out-of-state political committee organized for the purpose of supporting or opposing candidates or ballot propositions in another state (and that is not otherwise required to report as an in-state committee) reports the information listed in RCW 42.17.093 on a C5 form (WAC 390-16-050). The committee begins reporting on a C5 form when it makes an expenditure supporting or opposing a Washington state candidate or political committee.

(2) To file as an out-of-state political committee, all the criteria in (a) and (b) of this subsection must be satisfied:

(a) **Out-of-state.** First, the committee must be located out-of-state. It must be maintaining its office or headquarters in another U.S. state or the District of Columbia, and has no office, street address or corporate registered agent in Washington state. If there is no office or headquarters in another state or the District of Columbia, and no corporate registered agent in Washington state, the political committee is deemed out-of-state if its treasurer resides in another U.S. state or the District of Columbia.

(b) **Organizational purpose and campaign activities.** Second, the committee must also be currently organized primarily for engaging in campaign activities in another state.

Therefore, to qualify as a current out-of-state committee, the committee must also:

(i) Be currently registered and actively filing campaign disclosure reports in one or more other states and has been so filing for the preceding two years; and

(ii) Have organizational documents showing it was originally formed and is currently organized for the purpose of making expenditures in another state or soliciting contributions for use in another state's election campaigns; and

(iii) Have spent less than twenty percent of its aggregate expenditures for all political campaign activity nationwide at any point in any calendar year to support and/or oppose Washington candidates for state, local and judicial office, Washington ballot measures and/or Washington political committees.

(3) A committee that does not satisfy the criteria in subsection (2) of this section shall file as an in-state committee under chapter 42.17 RCW, including RCW 42.17.040 through 42.17.090.

(4) Out-of-state political committees reporting under RCW 42.17.093 are also subject to reporting pursuant to RCW 42.17.103 (political advertising independent expenditures) and RCW 42.17.565 through 42.17.575 (electioneering communications).

#### **WSR 09-13-075**

#### **EMERGENCY RULES**

#### **PUBLIC DISCLOSURE COMMISSION**

[Filed June 16, 2009, 10:16 a.m., effective June 30, 2009]

Effective Date of Rule: June 30, 2009.

Purpose: Amend WAC 390-16-050 Forms for contributions and expenditures of out-of-state political committees, to incorporate provisions of WAC 390-16-049 in the C-5 form and to make inflationary adjustments in compliance with RCW 42.17.093 (1)(g).

Citation of Existing Rules Affected by this Order: Amending WAC 390-16-050.

Statutory Authority for Adoption: RCW 42.17.370 and 42.17.093.

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: Consistent with the people's declaration that political campaign and lobbying contributions are to be fully disclosed and secrecy is to be avoided, the sources of money used and the expenditures made to support or oppose Washington candidates for state, local or judicial office or Washington ballot propositions must be fully, timely and accurately disclosed. Amendments to WAC 390-16-050: (1) Clarify the reporting requirements for the disclosure of contributions and expenditures by out-of-state political committees; (2) update the C-5 form; and (3) make inflationary adjustments consistent with RCW 42.17.093 (1)(g).

To preserve the general welfare and given the timing restriction for rule making in RCW 42.17.370(1), the



amended rule is needed for the 2009 election season to provide guidance and clarification to out-of-state political committees who must file reports under RCW 42.17.093.

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

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

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

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

Date Adopted: June 16, 2009.

Douglas J. Ellis  
Assistant Director

AMENDATORY SECTION (Amending WSR 08-01-059, filed 12/14/07, effective 1/14/08)

**WAC 390-16-050 Forms for contributions and expenditures of out-of-state political committees.** The official form for the report required by RCW 42.17.093 of contributions and expenditures of an out-of-state political committee organized for the purpose of supporting or opposing candidates or ballot propositions in another state that is not otherwise required to report under RCW 42.17.040 through 42.17.090 is designated "C-5," revised ((1/08)) 6/09. Copies of this form are available at the Commission Office, Room 206, Evergreen Plaza Building, Olympia, Washington 98504-0908. Any paper attachments shall be on 8 1/2" x 11" white paper.

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Form <b>C5</b> 1/08	This space for office use P M O A S R T K  R E C E I V E D
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**OUT OF STATE COMMITTEE CONTRIBUTIONS TO WASHINGTON CANDIDATES OR COMMITTEES**

**1. Name and address of committee making the contribution**

Name  
Street address  
City / State / Zip

**2. Check appropriate box**

- This is the first report submitted during 20\_\_
- This shows new expenditures, contributions or information changed from reports submitted previously this calendar year.

**3. Provide the purpose of the committee and the identity of any business, union, association or person with which the committee is affiliated (e.g., a State Committee of the Oregon Republican Party, Idaho committee of United Workers Union or federal PAC of XYZ Trade Assn.)**

**4. Officers or responsible leaders of committee:**  
Name and address

Title

**5. Candidate contributions: List each Washington candidate for state, local or judicial office to whom you have made a contribution of more than \$50.00.**

Candidate's name	Office sought	Political Party	Date	Amount given

**6. Ballot measure committee contributions: List each Washington committee supporting or opposing a ballot measure to whom you have made a contribution of more than \$50.00.**

Committee name and address	Ballot Number	For or Against?	Date	Amount given

**7. Other contributions and expenditures: List each other contribution or expenditure of more than \$50.00 made to or on behalf of any Washington state, local or judicial candidate, ballot measure or political committee.**

Recipient's name and address	Purpose	Date	Amount given

Check here  if continued

**8. Total contributions and expenditures (Add parts 5, 6, 7) .....**

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**9. Contributions received from Washington residents:** List all contributions of more than \$25.00 in the aggregate to this out-of-state committee during the current calendar year from Washington residents or corporations with their headquarters or a primary place of business in Washington.

Name and address	Date	Amount

Check here  if continued on an attached sheet

**10. Contributions received from persons residing outside of Washington.** List the name, address, and employer of each person or corporation residing outside the state of Washington who has made contributions of more than \$2,550 in the aggregate to this out-of-state committee during the current calendar year.

Contributor's name, Address, City, State, Zip	Employer's Name, City and State	Date	Amount

Check here  if continued on an attached sheet

**11. Eligibility to Give to State Office Candidates:** During the six months prior to making a contribution to a legislative or statewide executive candidate your committee must have received contributions of \$10 or more from at least ten persons registered to vote in Washington State.

A check here indicates your awareness of and pledge to comply with this provision. Absence of a check mark means your committee does not qualify to give to legislative and statewide executive office candidates.

**12. Certification:** I certify the information contained in this report is true, complete and correct to the best of my knowledge.

Signature of Committee Official	Name – Typed or Printed
_____	_____
Title	Daytime Telephone No. (    ) _____
_____	E-Mail Address _____

\_\_\_\_\_  
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## **INSTRUCTIONS**

**(Statutory reference: RCW 42.17.093)**

### **WHO MUST REPORT**

An out-of-state political committee, including political committees filing with the Federal Election Commission, organized for the purpose of supporting or opposing candidates or ballot propositions in another state that is not otherwise required to report under RCW 42.17.040 through 42.17.090 which has made contributions or expenditures to or on behalf of a state, local or judicial candidate or political committee in Washington state.

A political committee is considered "out-of-state" if it maintains its office or headquarters in another state or the District of Columbia. If there is no office or headquarters, then the political committee is considered "out-of-state" if its treasurer resides in another state or the District of Columbia.

### **WHEN TO REPORT**

A C-5 report is due no later than the 10<sup>th</sup> day of the month following any month in which a contribution or other expenditure of more than \$50 is made to or on behalf of a Washington state candidate or political committee. After filing an initial C-5 report, subsequent reports during the same calendar year shall be filed updating or amending the information previously reported. These follow-up reports are also due no later than the 10<sup>th</sup> day of the month following any month in which an additional contribution or other expenditure of more than \$50 is made.

The C-5 report is considered filed as of the postmark date.

### **SEND REPORT TO**

**Public Disclosure Commission  
711 Capitol Way, Room 206  
PO Box 40908  
Olympia, Washington 98504-0908**

### **Questions?**

**Contract PDC at [www.pdc.wa.gov](http://www.pdc.wa.gov), toll free at 1-877-601-2828 or 1-360-753-1111**

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Form <b style="font-size: 2em;">C5</b> (6/09)	This space for office use P M O A S R T K  R E C E I V E D
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## Out-of-State Political Committee Campaign Finance Report

**1. Name and full address of committee making the contribution**

Name  
 Street address  
 City / State / Zip

**2. Check appropriate box**

- This is the first report submitted during 20\_\_
- This shows new expenditures, contributions or information changed from reports submitted previously this calendar year.

**3. Provide the purpose of the committee and the identity of any business, union, association or person with which the committee is affiliated (e.g., a State Committee of the Oregon Republican Party, Idaho committee of United Workers Union or federal PAC of XYZ Trade Assn.)**

**4. Officers or responsible leaders of committee:**  
 Name and full address

Title

**5. States where this political committee is registered and has been actively reporting campaign finance information for the preceding two years:**

Name of state(s) & administrative agency(s)

Agency(s) website address

**6. Candidate contributions: List each Washington candidate for state, local or judicial office to whom you have made a contribution of more than \$50.00.**

Candidate name	Office sought	Political party	Date	Amount

**7. Ballot measure committee contributions: List each Washington committee supporting or opposing a ballot measure to whom you have made a contribution of more than \$50.00.**

Committee name & full address	Ballot number	For or Against?	Date	Amount

**8. Other contributions and expenditures: List each other contribution or expenditure of more than \$50.00 made to or on behalf of any Washington state, local or judicial candidate, ballot measure or political committee.**

Recipient name & full address	Purpose	Date	Amount

Check here  if continued on an attached sheet

**9. Total contributions and expenditures (Add parts 6, 7, 8) .....**

**10. Aggregate contributions and expenditures made during this calendar year in Washington State.**  
 Include amounts shown on this report and C5 reports previously submitted this calendar year. . . . . \_\_\_\_\_

Does this aggregate total represent 20% or more of the committee's nationwide campaign activity to date for this calendar year? Y  N

**11. Contributions received from Washington residents.** List all contributions of more than \$25.00 in the aggregate to this out-of-state committee during the current calendar year from Washington residents or corporations with their headquarters or a primary place of business in Washington.

Name and full address	Date	Amount	Aggregate Total

Check here  if continued on an attached sheet

**12. Contributions received from persons residing outside of Washington.** List the name, address, and employer of each person or corporation residing outside the state of Washington who has made contributions of more than \$2,600 in the aggregate to this out-of-state committee during the current calendar year.

Name and full address	Employer name, city and state	Date	Amount	Aggregate Total

Check here  if continued on an attached sheet

**13. Eligibility to Give to State Office Candidates:** During the six months prior to making a contribution to a legislative or statewide executive candidate your committee must have received contributions of \$10 or more from at least ten persons registered to vote in Washington State.

A check here indicates your awareness of and pledge to comply with this provision. Absence of a check mark means your committee does not qualify to give to legislative and statewide executive office candidates.

**14. Certification:** I certify the information contained in this report is true, complete and correct to the best of my knowledge.

Signature of Committee Official _____	Name – Typed or Printed _____
Title _____	Daytime Telephone No. (    ) _____
	E-Mail Address _____

**Instructions** – (Statutory reference: RCW 42.17.093)

**Who Must Report on C5 Form:** An out-of-state political committee, including political committees filing with the Federal Election Commission, organized for the purpose of supporting or opposing candidates or ballot propositions in another state that is not otherwise required to report under RCW 42.17.040 through 42.17.090 which has made contributions or expenditures to or on behalf of a state, local or judicial candidate or political committee in Washington state. See WAC 390-16-049 reprinted below. A political committee making contributions or expenditures to or on behalf of a state, local or judicial candidate or political committee in Washington state that fails to satisfy all of the conditions of WAC 390-16-049(3) shall not use the C5 form but instead shall register and report as a political committee pursuant to RCW 42.17.040 through 42.17.090 and as otherwise required by RCW 42.17.

**When to Report:** A C5 report is due no later than the 10<sup>th</sup> day of the month following any month in which a contribution or other expenditure of more than \$50 is made to or on behalf of a Washington state candidate or political committee. After filing an initial C5 report, subsequent reports during the same calendar year shall be filed updating or amending the information previously reported. These follow-up reports are also due no later than the 10<sup>th</sup> day of the month following any month in which an additional contribution or other expenditure of more than \$50 is made. The C5 report is considered filed as of the postmark date.

**Send Report to:** Public Disclosure Commission, 711 Capitol Way, Room 206, PO Box 40908, Olympia, Washington 98504-0908

**Questions?** Contact PDC at [www.pdc.wa.gov](http://www.pdc.wa.gov), toll free at 1-877-601-2828 or 1-360-753-1111

**WAC 390-16-049 Out-of-state political committees – Implementation of RCW 42.17.093**

(1) RCW 42.17.093 governs campaign reporting in Washington State by committees located outside of Washington. The statute directs that an out-of-state political committee organized for the purpose of supporting or opposing candidates or ballot propositions in another state (and that is not otherwise required to report as an in-state committee) reports the information listed in RCW 42.17.093 on a C5 form (WAC 390-16-050). The committee begins reporting on a C5 form when it makes an expenditure supporting or opposing a Washington state candidate or political committee.

(2) To file as an out-of-state political committee, all the criteria in (a) and (b) below must be satisfied:

(a) **Out-of-State.** First, the committee must be located out-of-state. It must be maintaining its office or headquarters in another U.S. state or the District of Columbia, and has no office, street address or corporate registered agent in Washington State. If there is no office or headquarters in another state or the District of Columbia, and no corporate registered agent in Washington State, the political committee is deemed out-of-state if its treasurer resides in another U.S. state or the District of Columbia.

(b) **Organizational Purpose and Campaign Activities.** Second, the committee must also be currently organized primarily for engaging in campaign activities in another state. The political committee may be described in other states as a political committee, political action committee (PAC), group (Alaska) or similar terms to describe a committee. Therefore, to qualify as a current out-of-state committee, the committee must also:

(i) Be currently registered and actively filing campaign disclosure reports in one or more other states and has been so filing for the preceding two years; and,

(ii) Have organizational documents showing it was originally formed and is currently organized for the purpose of making expenditures in another state or soliciting contributions for use in another state's election campaigns; and,

(iii) Have spent less than 20 percent of its aggregate expenditures for all political campaign activity nationwide at any point in any calendar year to support and/or oppose Washington candidates for state, local and judicial office, Washington ballot measures and/or Washington political committees.

(3) A committee that does not satisfy the criteria subsection (2) shall file as an in-state committee under RCW 42.17, including RCW 42.17.040 – RCW 42.17.090.

(4) Out-of-state political committees reporting under RCW 42.17.093 are also subject to reporting pursuant to RCW 42.17.103 (political advertising independent expenditures) and 42.17.565 through 42.17.575 (electioneering communications).

**WSR 09-13-086**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**

[Order 09-117—Filed June 16, 2009, 11:28 a.m., effective June 17, 2009,  
6:00 a.m.]

Effective Date of Rule: June 17, 2009, 6:00 a.m.

Purpose: Amend commercial fishing rules.

Citation of Existing Rules Affected by this Order:  
Repealing WAC 220-52-05100M; and amending WAC 220-52-051.

Statutory Authority for Adoption: RCW 77.12.047 and 77.04.020.

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 pot fishery season for spot shrimp. 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: June 16, 2009.

Joe Stohr  
for Philip Anderson  
Director

**NEW SECTION**

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

(1) Shrimp pot gear:

(a) All waters of Shrimp Management Areas 1A, 1C, 2E, 2W, 3, 4, and 6 are open to the harvest of all shrimp species effective immediately, until further notice, except as provided for in this section:

(i) All waters of the Discovery Bay Shrimp District are closed.

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

(c) Effective immediately, until 11:59 p.m. June 21, 2009, it is unlawful for the combined total harvest of spot shrimp by a fisher and/or the fisher's alternate operator to exceed 300 pounds.

(d) Effective 12:01 a.m. June 22, 2009, until further notice, it is unlawful for the combined total harvest of spot shrimp by a fisher and/or the fisher's alternate operator to exceed 600 pounds per week, except that it is unlawful for the total harvest of spot shrimp by a fisher and/or the fisher's alternate operator to exceed 300 pounds per week in Catch Areas 26B-1 and 26C, or to exceed 300 pounds per week in Catch Area 26B-2. It is unlawful to fish for any shrimp while in possession, on board the fishing vessel, of any spot shrimp from any previous accounting week.

(e) It is unlawful to pull shellfish pots for commercial purposes 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.

(f) It is unlawful to set or pull shellfish pots in one Marine Fish-Shellfish Management and Catch Reporting Area while in possession of shrimp harvested from another Marine Fish-Shellfish Management and Catch Reporting Area, except shellfish pots may be set in a new fishing area subsequent to making a report as indicated in Section 1(e) above.

(2) Shrimp beam trawl gear:

(a) Shrimp Management Area (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 is open immediately, until further notice.

(c) That portion of Catch Area 21A within Shrimp Management Area 1B will open at 6:00 a.m. July 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.



REPEALER

The following section of the Washington Administrative Code is repealed effective 6:00 a.m. June 17, 2009:

WAC 220-52-05100M Puget Sound shrimp pot and beam trawl fishery—Season. (09-89)

**WSR 09-13-104**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**

[Order 09-118—Filed June 17, 2009, 10:24 a.m., effective June 17, 2009, 10:24 a.m.]

Effective Date of Rule: Immediately.

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

Citation of Existing Rules Affected by this Order: Repealing WAC 220-33-01000E and 220-33-01000F; 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: Sets the summer season commercial fisheries for the mainstem Columbia River. Based on the preseason runsize, there are 4,000 upper Columbia summer chinook available for commercial harvest in the mainstem. 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, consistent with the compact action taken on May 13 and June 10, 2009. There is insufficient time to adopt permanent rules.

Washington and Oregon jointly regulate Columbia River fisheries under the congressionally ratified Columbia River compact. Four Indian tribes have treaty fishing rights in the

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

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

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

Number of Sections Adopted in Order to Comply with Federal Statute: New 1, Amended 0, Repealed 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: June 17, 2009.

Lori Preuss  
for Philip Anderson  
Director

NEW SECTION

**WAC 220-33-01000F 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 1A, 1B and 1C (Zones 1-3) up to the Longview Bridge

b) Dates: 6:00 p.m. Thursday June 18 to 6:00 a.m. Friday June 19, 2009

c) Gear: Drift gillnets only. 8-inch minimum mesh.

d) Allowable sales: Chinook, sockeye, coho, 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. The weekly sturgeon sales limit applies to mainstem and Select Area fisheries

e) A 12-hour quick reporting rule is in effect for Washington buyers.

**2. Mainstem Columbia River**

a) Area: SMCRA 1A, 1B, 1C, 1D and 1E (Zones 1-5)

b) Dates: 7:00 p.m. Wednesday June 24 to 5:00 a.m. Thursday June 25, 2009;

7:00 p.m. Tuesday June 30 to 5:00 a.m. Wednesday July 1, 2009

c) Gear: Drift gillnets only. 8-inch minimum mesh.

d) Allowable sales: Chinook, sockeye, coho, 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. The weekly sturgeon sales limit applies to mainstem and Select Area fisheries

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

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

**REPEALER**

The following section of the Washington Administrative code is repealed:

WAC 220-33-01000E      Columbia River seasons  
below Bonneville. (08-113)

The following section of the Washington Administrative Code is repealed effective July 2, 2009:

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