

**WSR 10-18-002**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**

[Order 10-210—Filed August 18, 2010, 2:00 p.m., effective August 19, 2010, 8:00 p.m.]

Effective Date of Rule: August 19, 2010, 8:00 p.m.

Purpose: The purpose of this rule making is to allow nontreaty commercial fishing opportunity in the Columbia River while protecting fish listed as threatened or endangered under the Endangered Species Act (ESA). 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 220-33-01000G; 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.

Reasons for this Finding: Sets mainstem late fall commercial seasons. The seasons are consistent with the 2008-2017 interim management agreement, the 2010 non-Indian salmon allocation agreement and the 2010 sturgeon accord. Salmon and sturgeon are available for harvest during fall season fisheries. The regulation is consistent with compact action of July 29 and August 17, 2010. There is insufficient time to promulgate permanent rules.

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

Some Columbia River Basin salmon and steelhead stocks are listed as threatened or endangered under the federal ESA. 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 ESA, 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: August 18, 2010.

Lori Preuss  
for Philip Anderson  
Director

**NEW SECTION**

**WAC 220-33-01000H Columbia River season below Bonneville.** Notwithstanding the provisions of WAC 220-33-010, and WAC 220-33-020, it is unlawful for a person to take or possess salmon or sturgeon for commercial purposes from Columbia River Salmon Management and Catch Reporting Areas (SMCRA) 1A, 1B, 1C, 1D, and 1E, except as provided in the following subsections.

**1. Mainstem Columbia River**

a. SEASON: 8:00 p.m. August 19 to 6:00 a.m. August 20, 2010

9:00 p.m. August 22 to 6:00 a.m. August 23, 2010

9:00 p.m. August 24 to 6:00 a.m. August 25, 2010

b. AREA: SMCRA 1D and 1E (Zones 4-5)

c. GEAR: Drift gillnets only. 9-inch minimum mesh size. Monofilament gear is allowed.

Nets not specifically authorized for use in this fishery may be onboard the vessel if properly stored. A properly stored net is defined as a net on a drum that is fully covered by a tarp (canvas or plastic) and bound with a minimum of ten revolutions of rope with a diameter of 3/8 (0.375) inches or greater.

Nets fished any time between official sunset and official sunrise must have lighted buoys on both ends of the net. If

the net is attached to the boat, then one lighted buoy on the end of the net opposite the boat is required.

d. SANCTUARIES: Grays River, Elochoman-B, Abernathy, Cowlitz, Kalama-B, Lewis-B, Washougal and Sandy Rivers as applicable

e. ALLOWABLE SALES: Salmon and white sturgeon. A maximum of four (4) white sturgeon may be possessed or sold by each participating vessel during each calendar week (Sunday through Saturday) that the fishery is open. The sturgeon possession/sales limit applies only to mainstem fisheries.

## 2. Blind Slough/Knappa Slough Select Area.

a. SEASON: Monday, Tuesday, Wednesday, and Thursday nights from August 30 through October 29, 2010. Open hours are 7 PM to 7 AM from August 30 through September 17 and 6 PM to 8 AM thereafter.

b. AREA: Blind Slough and Knappa Slough. An area closure of an approximately 100-foot radius at the mouth of Big Creek is defined by markers. Concurrent jurisdiction waters include all areas in Knappa Slough and downstream of the Railroad Bridge in Blind Slough.

c. GEAR: Gillnet. Monofilament gear is allowed. 9 3/4-inch maximum mesh size. Maximum net length of 100 fathoms. No weight restriction on lead line. Use of additional weights or anchors attached directly to the lead line is allowed.

Nets not specifically authorized for use in this fishery may be onboard the vessel if properly stored. A properly stored net is defined as a net on a drum that is fully covered by a tarp (canvas or plastic) and bound with a minimum of ten revolutions of rope with a diameter of 3/8 (0.375) inches or greater.

Nets fished any time between official sunset and official sunrise must have lighted buoys on both ends of the net. If the net is attached to the boat, then one lighted buoy on the end of the net opposite the boat is required.

d. ALLOWABLE SALES: Salmon and white sturgeon. A maximum of two white sturgeon may be possessed or sold by each vessel participating each calendar week (Sunday through Saturday). The white sturgeon possession and sales limit includes Select Area fisheries only.

## 3. Tongue Point/South Channel Select Area.

a. SEASON: Monday, Tuesday, Wednesday, and Thursday nights from August 31 through October 30, 2009. Open 7 PM - 7 AM from August 31 - September 18 and 4 PM - 8 AM thereafter.

b. AREA: Tongue Point and South Channel. All waters in this fishing area are concurrent jurisdiction waters.

c. GEAR: Gillnet. Monofilament gear is allowed. 6-inch maximum mesh

Tongue Point fishing area: Net length 250 fathoms maximum. Weight not to exceed two pounds on any one fathom.

South Channel area: Net length 100 fathoms maximum. No weight restriction on lead line. Use of additional weights or anchors attached directly to the lead line is allowed.

Nets not specifically authorized for use in this fishery may be onboard the vessel if properly stored. A properly stored net is defined as a net on a drum that is fully covered by a tarp (canvas or plastic) and bound with a minimum of ten

revolutions of rope with a diameter of 3/8 (0.375) inches or greater.

Nets fished any time between official sunset and official sunrise must have lighted buoys on both ends of the net. If the net is attached to the boat, then one lighted buoy on the end of the net opposite the boat is required.

d. ALLOWABLE SALES: Salmon and white sturgeon. A maximum of two white sturgeon may be possessed or sold by each vessel participating each calendar week (Sunday through Saturday). The white sturgeon possession and sales limit includes Select Area fisheries only.

## 4. Deep River Select Area.

a. SEASON: Monday and Thursday nights immediately through August 27, 2010. Open hours are 7 PM to 9 AM. And Monday, Tuesday, Wednesday and Thursday nights from August 30 through October 29, 2010. Open 7 PM - 9 AM from August 30 through September 17 and 4 PM - 8 AM thereafter

b. AREA: The Deep River Select Area. Concurrent jurisdiction waters extend downstream of the Highway 4 Bridge.

c. GEAR: Gill net. Monofilament gear is allowed. 6-inch maximum mesh. Net length 100 fathoms maximum. No weight restriction on the lead line. Use of additional weights or anchors attached directly to the lead line is allowed. Nets may not be tied off to stationary structures. Nets may not fully cross the navigation channel.

Nets not specifically authorized for use in this fishery may be onboard the vessel if properly stored. A properly stored net is defined as a net on a drum that is fully covered by a tarp (canvas or plastic) and bound with a minimum of ten revolutions of rope with a diameter of 3/8 (0.375) inches or greater.

Nets fished any time between official sunset and official sunrise must have lighted buoys on both ends of the net. If the net is attached to the boat, then one lighted buoy on the end of the net opposite the boat is required.

d. ALLOWABLE SALES: Salmon and white sturgeon. A maximum of two white sturgeon may be possessed or sold by each vessel participating each calendar week (Sunday through Saturday). The white sturgeon possession and sales limit includes Select Area fisheries only.

**5. Quick Report:** 24-hour quick reporting required for Washington wholesale dealers, pursuant to WAC 220-69-240. When quick reporting is required, Columbia River reports must be submitted within 24 hours of the closure of each fishing period. This Quick report requirement applies to all seasons described above (Columbia River and Select Areas).

## REPEALER

The following section of the Washington Administrative Code is repealed effective 8:00 p.m. August 19, 2010:

WAC 220-33-01000G Columbia River season below Bonneville. (10-197)

**WSR 10-18-003**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**

[Order 10-212—Filed August 18, 2010, 2:02 p.m., effective August 24, 2010, 6:00 a.m.]

Effective Date of Rule: August 24, 2010, 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 220-32-05100M; 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.

Reasons for this Finding: Sets the initial weekly commercial fishing periods for fall season treaty gillnet fisheries. Continues to allow sales of fish caught in areas above and below Bonneville Dam with platform hook-and-line gear. Continues to allow sales of fish from Yakama Nation tributary fisheries. Based on current forecasts, adult fall chinook and steelhead remain available for treaty Indian harvest. Impact limits to ESA-listed salmonids 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 June 10 and August 17, 2010. Conforms state rules with tribal rules. There is insufficient time to promulgate permanent regulations.

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

as threatened or endangered under the federal 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; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 1, Amended 0, Repealed 1.

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: August 18, 2010.

Lori Preuss  
for Philip Anderson  
Director

NEW SECTION

**WAC 220-32-05100N 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, sturgeon, shad, walleye, carp, yellow perch, catfish or bass for commercial purposes in Columbia River Salmon Management and Catch Reporting Areas (SMCRA) 1E, 1F, 1G, and 1H, and in the White Salmon River, Klickitat River, and Drano Lake, except as provided in the following subsections, and except that individuals possessing treaty fishing rights under the Yakama, Warm Springs, Umatilla, and Nez Perce treaties may fish for Salmon, steelhead, walleye, shad, yellow perch, bass carp, or sturgeon under the following provisions, pursuant to lawfully enacted tribal rules and MOUs:

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

a) SEASON: 6:00 AM Tuesday, August 24 to 6:00 PM Friday, August 27.

6:00 AM Monday, August 30 to 6:00 PM Friday September 3.

6:00 AM Tuesday, September 7 to 6:00 PM Friday, September 10

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

c) SANCTUARIES: Small Spring Creek sanctuary (150-ft radius around the hatchery ladder).

d) GEAR: Gillnets. No mesh restriction.

**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, but 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 openings or allow platform gear and sales of fish in Zone 6 (SMCRA 1F, 1G, 1H).

b) AREA: Drano Lake, and White Salmon and Klickitat, 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) PARTICIPANTS: Tribal members may participate under the conditions described in the 2007 Memo of Agreement (MOA) with the Yakama Nation (YN), in the 2010 MOU (Memo of Understanding) with the Confederated Tribes of the Umatilla Indian Reservation (CTUIR), and the 2010 MOU with the Confederated Tribes of the Warm Spring Reservation (CTWS). Tribal members fishing below Bonneville Dam must carry an official tribal enrollment card.

b) SEASON: Immediately until further notice, except closed Thursdays through Saturdays for the CTUIR and the CTWS when non-tribal salmon fishing is open in the MOU area. Sales allowed when platform gear and sales of fish are allowed in Zone 6 (SMCRA 1F, 1G, 1H).

c) AREA: SMCRA 1E, Yakama Nation MOA: 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). Umatilla and Warm Springs MOU: Covers the banks of the Columbia River bounded by a deadline marker on the Oregon bank approximately four miles downstream of Bonneville Dam Powerhouse #1 in a straight line thorough the western tip of Pierce Island, to a deadline marker on the Washington bank at Beacon Rock, up the river to a point 600 feet below the Bonneville Dam, but excluding the following four areas:

1. Between the markers located 150 feet upstream and 450 feet downstream from the mouth of Tanner Creek, out to the center of the Columbia river, during the period from August 16, 2010, until further notice.

2. Inside the south navigation lock at Bonneville Dam from a marker on the western-most tip of Robins Island to a marker on the Oregon mainland shore.

3. From Bradford Island below Bonneville Dam from the south shore between the dam and a line perpendicular to the shore marker at the west end of riprap.

4. From the north shore between the fishway entrance and a line perpendicular to the shoreline marker 850 feet downstream. From Robins Island below Bonneville Dam downstream to a line perpendicular to the shoreline marker on the mooring cell.

d) GEAR: Hoop nets, dip bag nets, and rod and reel with hook-and-line, consistent with tribal regulations.

**5. SANCTUARIES:** Standard river mouth and dam sanctuaries are applicable to these gear types, except that the small Spring Creek Hatchery sanctuary is in effect (150 ft radius around hatchery ladder).

**6. ALLOWABLE SALES:** Salmon, steelhead, walleye, shad, yellow perch, bass and carp. 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. **Sturgeon caught below Bonneville Dam may NOT be retained and may NOT be sold.** Fish may not be sold on USACE Property below Bonneville Dam, but may be caught and transported off USACE Property for sale.

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

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

REPEALER

The following section of the Washington Administrative Code is repealed effective 6:00 a.m. August 24, 2010:

WAC 220-32-05100M	Columbia River salmon seasons above Bonneville Dam. (10-190)
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**WSR 10-18-014**

**EMERGENCY RULES**

**DEPARTMENT OF**

**FISH AND WILDLIFE**

[Order 10-211—Filed August 20, 2010, 10:33 a.m., effective August 31, 2010, 8:13 p.m.]

Effective Date of Rule: August 31, 2010, 8:13 p.m.

Purpose: Amend personal use fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 232-28-61900S.

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: By August 31, 2010, most of the sockeye currently in the lake will have migrated to the White and Little Wenatchee rivers and will be unavailable to anglers. 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 0, 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: August 20, 2010.

Philip Anderson  
Director

#### REPEALER

The following section of the Washington Administrative Code is repealed, effective 8:13 p.m. August 31, 2010:

WAC 232-28-61900S Lake Wenatchee. (10-201)

**WSR 10-18-015**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**

[Order 10-213—Filed August 20, 2010, 10:33 a.m., effective August 20, 2010, 10:33 a.m.]

Effective Date of Rule: Immediately.

Purpose: Amend personal use fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 232-28-62000Z; and amending WAC 232-28-620.

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: Hatchery chinook salmon returning to the Makah National Fish Hatchery are not expected to make egg-take goals if normally scheduled fisheries occur. A sport closure around the river mouth is necessary. 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: August 20, 2010.

Philip Anderson  
Director

#### NEW SECTION

**WAC 232-28-62000A Coastal salmon seasons.** Notwithstanding the provisions of WAC 232-28-620, effective immediately until further notice, it is unlawful to fish for salmon in coastal waters except as provided for in this section, provided that unless otherwise amended, all permanent rules remain in effect:

(1) **Area 1:** Open seven days per week until further notice: Daily limit 2 salmon, except release wild coho.

(2) **Area 2:** Open seven days per week until further notice: Daily limit 2 salmon, except release wild coho.

(3) **Area 3:** Open seven days per week until further notice: Daily limit 2 salmon, except release wild coho.

(4) **Area 4:**

(a) Open seven days per week until further notice: Daily limit 2 salmon, except release wild coho.

(i) Effective immediately, release Chinook east of the Bonilla-Tatoosh Line.

(ii) Effective immediately, also release chum.

(iii) Effective August 21, 2010, waters of Makah Bay east of the 124 degrees, 41 minutes line are closed, which is from Waatch Point to Anderson Point.

#### REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 232-28-62000Z Coastal salmon seasons. (10-186)

**WSR 10-18-018**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**

[Order 10-216—Filed August 20, 2010, 4:00 p.m., effective August 21, 2010, 5:00 a.m.]

Effective Date of Rule: August 21, 2010, 5:00 a.m.

Purpose: Amend commercial fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-47-50100X; and amending WAC 220-47-501.

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: This regulation provides for Pacific Salmon Commission authorized fisheries in Areas 7 and 7A. These emergency rules are necessary to initiate fisheries targeting a harvestable amount of sockeye salmon available. 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: August 20, 2010.

Philip Anderson  
Director

NEW SECTION

**WAC 220-47-50100X Puget Sound all-citizen commercial salmon fishery—Open periods.** Notwithstanding the provisions of Chapter 220-47 WAC, effective immediately until further notice, it is unlawful to take, fish for, or possess salmon taken for commercial purposes in Puget Sound Salmon Management and Catch Reporting Areas except in accordance with the open periods, mesh size, areas, species restrictions, notification, and landing requirements set forth in this section, provided that unless otherwise amended, all permanent rules remain in effect:

**Areas 7 and 7A:**

(1) **Purse Seines** - Open to purse seine gear according to the times, dates, and conditions as prescribed and listed here:

Hours	Dates
11:00 AM - 5:00 PM	8/21

(a) It is unlawful to retain rockfish, Chinook, coho, and chum.

(b) Purse seine fishers must also use a recovery box in compliance with WAC 220-47-301 (7)(a) through (f).

(c) It is unlawful to bring salmon aboard a vessel unless all salmon captured in the seine net are removed from the seine net using a brailer or dip net meeting the specifications in WAC 220-47-325, prior to the seine net being removed from the water. All salmon and rockfish must be immediately sorted, and those required to be released must be placed in an operating recovery box or released into the water before the next brail may be brought on the deck. However, small

numbers of fish may be brought on board the vessel by pulling the net in without mechanical or hydraulic assistance.

(d) It is unlawful to fish for salmon with purse seine gear in Areas 7 and 7A unless the vessel operator has attended a "Fish Friendly" best fishing practices workshop and is in possession of a department issued certification card.

(e) Waters in the portion of Area 7A north and west of a line projected from Iwerson Dock on Point Roberts to the Georgina Point light at the entrance to Active Pass in the Province of British Columbia are closed to purse seines.

(2) **Gill Nets** - Open to gill net gear with 5 inch minimum and 5 1/2 inch maximum mesh size according to the times, dates, and conditions as prescribed and listed here:

Hours	Dates
8:00 AM - Midnight	8/21

(a) It is unlawful to retain rockfish.

(b) It is unlawful to fish for salmon with gill net gear in Areas 7 and 7A unless the vessel operator has attended a "Fish Friendly" best fishing practices workshop and is in possession of a department issued certification card.

(3) **Reef Nets** - Open to reef net gear according to the times, dates, and conditions as prescribed and listed here:

Hours	Dates
5:00 AM - 9:00 PM	8/21

(a) It is unlawful to retain rockfish, unmarked Chinook, unmarked coho, and chum.

(b) It is unlawful to retain marked Chinook unless the reef net operator is in immediate possession of a Puget Sound Reef Net Logbook.

(c) It is unlawful to fish for salmon with reef net gear in Areas 7 and 7A unless the vessel operator has attended a "Fish Friendly" best fishing practices workshop and is in immediate possession of a department issued certification card.

(4) **"Quick Reporting Fisheries":**

All fisheries opened under this section, and any fishery opening under authority of the Fraser Panel for sockeye in Puget Sound Salmon Management and Catch Reporting Areas (WAC 220-22-030), are designated as "Quick Reporting Required" per WAC 220-47-001.

REPEALER

The following section of the Washington Administrative Code is repealed effective August 22, 2010:

WAC 220-47-50100X Puget Sound all-citizen commercial salmon fishery—Open periods.

**WSR 10-18-019  
EMERGENCY RULES  
DEPARTMENT OF  
FISH AND WILDLIFE**

[Order 10-215—Filed August 20, 2010, 4:14 p.m., effective August 20, 2010, 4:14 p.m.]

Effective Date of Rule: Immediately.

Purpose: Amend commercial fishing rules.

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

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: Emergency rule needed to accurately describe number and species allowed for retention during various management periods when permit-only fishing is to occur. Language was revised to clarify the requirements for use of recovery boxes and which species may be retained during the general season. There is insufficient time to adopt permanent rules.

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

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

Number of Sections Adopted on the Agency's Own Initiative: New 1, Amended 0, Repealed 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: August 20, 2010.

Philip Anderson  
Director

NEW SECTION

**WAC 220-40-02700L Salmon—Willapa Bay fall fishery.** Notwithstanding the provisions of WAC 220-40-027 and 220-40-020, effective immediately through November 30, 2010, it is unlawful to fish for salmon in Willapa Bay for commercial purposes or to possess salmon or white sturgeon taken from those waters for commercial purposes, except as provided in this section:

**Fishing periods and areas:**

1. The Tokeland Boat basin is closed to commercial fishing. The Tokeland Boat basin is that portion of SMCRA 2G bounded on the south by the shoreline of the boat basin, on

the west by the seawall, and on the north and east by a line from the Tokeland Channel Marker "3" (flashing green, 4-seconds), to Tokeland Channel Marker "4," to the tip of the seawall.

2. Gill net gear may be used to fish for Chinook, coho, chum, and white sturgeon only as shown below. All non-legal sturgeon, all steelhead, and all other species including Chinook, coho, chum and white sturgeon, must be handled with care to minimize injury to the fish and must be released immediately to the river/bay.

Time:	Area:
6:00 p.m. September 22 through 6:00 p.m. September 23, 2010; AND 6:00 p.m. September 27 through 6:00 p.m. September 28, 2010.	<b>Area 2K</b>
6:00 p.m. September 12 through 5:59 p.m. September 15, 2010.	<b>Area 2G</b> east of a line projected true south from the most waterward exposed end of the rock jetty located near Washaway Beach, except:
	<b>Closed Waters Area (Net Free Zone):</b> That portion of the SMCRA 2G lying within the following boundary lines: Western Boundary: Those waters east of a line drawn from the most waterward exposed end of the jetty at Toke Point (46°42.446'N, 123°57.973'W), to Willapa Marker 2 (46°41.529'N, 123°57.973'W), then 180 degrees true to Goose Point (46°38.184'N, 123°57.584'W). Eastern boundary includes those waters west of a north-south line (180 degrees true) through Range Marker "B" (46°42.564'N, 123°51.3'W) between Channel Markers 26 and 28.
	<b>Area 2H, Area 2J</b> north of a true east-west line drawn through the North Entrance Marker to the Nahcotta Boat Basin (RF #2), and <b>Area 2M.</b>
6:00 p.m. September 15 through 6:00 p.m. September 22, 2010.	<b>Area 2G</b> east of a line projected true south from the most waterward exposed end of the rock jetty located near Washaway Beach, <b>Area 2H</b> west of Willapa Channel Marker 40, <b>Area 2J</b> north of a true

Time:	Area:
	east-west line drawn through the North Entrance Marker to the Nahcotta Boat Basin (RF #2), and <b>Area 2M.</b>
6:01 p.m. September 22 through 6:00 p.m. September 30, 2010.	<b>Areas 2G</b> east of a line projected true south from the most waterward exposed end of the rock jetty located near Washaway Beach, <b>Area 2H, Area 2J</b> north of a true east-west line drawn through the North Entrance Marker to the Nahcotta Boat Basin (RF #2), and <b>Area 2M.</b>
6:00 p.m. October 1, 2010, through 6:00 p.m. October 2, 2010.	<b>Area 2G</b> east of a line projected true south from the most waterward exposed end of the rock jetty located near Washaway Beach, <b>Area 2H, Area 2J</b> north of a true east-west line drawn through the North Entrance Marker to the Nahcotta Boat Basin (RF #2), and <b>Area 2M.</b>
12:00 p.m. November 6 through 12:00 p.m. November 30, 2010.	<b>Areas 2G, 2H, 2J, and 2M.</b>

**3. Landing limitations**

a. Immediately through September 30, 2010, all wild (unmarked) coho, wild (unmarked) Chinook, nonlegal sturgeon and all steelhead must be handled with care to minimize injury to the fish and must be released immediately to the river/bay or to an operating recovery box when fishing in Willapa Bay Areas 2G, 2H, 2J, 2K, and 2M and including special permit sub-areas 1, 2, 3, and 4.

b. From October 1 through November 30, 2010, all wild (unmarked) coho, nonlegal sturgeon, and all steelhead must be handled with care to minimize injury to the fish and must be released immediately to the river/bay or to an operating recovery box when fishing in Willapa Bay Areas 2G, 2H, 2J, 2K, and 2M and including special permit sub-areas 1, 2, 3, and 4.

**Gear**

4. Gill net gear restrictions - All areas:

a. Drift gill net gear only. It is unlawful to use set net gear. It is permissible to have on-board a commercial vessel more than one net, provided the nets are of a mesh size that is legal for the fishery, and the length of any one net does not exceed one thousand five hundred feet in length.

b. Nets with a mesh size different from that being actively fished must be properly stored. A properly stored net is defined as a net on a drum that is fully covered by a tarp (canvas or plastic) and bound with a minimum of ten revolutions of rope that is 3/8 (0.375) inches or greater.

c. It is unlawful to use a gill net to fish for salmon if the lead line weighs more than two pounds per fathom of net as measured on the cork line, provided that it is permissible to have a gill net with a lead line weighing more than two pounds per fathom aboard a vessel when the vessel is fishing in or in transiting through Willapa Bay.

d. Immediately through August 31, 2010, mesh size must not exceed six-inch minimum mesh to nine-inch maximum mesh.

e. From September 1 through 6:00 p.m. September 22, 2010, mesh size must not exceed six-inch maximum mesh.

f. From 6:01 p.m. September 22 through October 15, 2010, mesh size must not exceed six and one-half inch maximum mesh.

g. From November 6 through November 30, 2010, mesh size must not exceed nine inch minimum mesh.

h. Only one net may be fished at a time; other nets must be properly stored.

i. Immediately through October 31, 2010, each boat must have two operable recovery boxes or one box with two chambers on board when fishing in SMCRA 2G, 2H, 2J, 2K, and 2M and including special permit sub-areas 1,2,3, and 4. Each box must be operating during any time the net is being retrieved or picked. The flow in the recovery box must be a minimum of 16 gallons per minute in each chamber of the box, not to exceed 20 gallons per minute. Each chamber of the recovery box must meet the following dimensions as measured from within the box: The inside length measurement must be at or within 39-1/2 inches to 48 inches, the inside width measurements must be at or within 8 to 10 inches, and the inside height measurement must be at or within 14 to 16 inches.

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

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

k. Any fish that is bleeding or lethargic must be placed in the recovery box prior to being released to the river/bay.

l. All fish placed in recovery boxes must be released to the river/bay prior to landing or docking.

**Other**

5.. It is unlawful to fish for salmon with gill net gear in Areas 2G, 2H, 2J, 2K, and 2M unless the vessel operator has attended a department-sponsored "Fish Friendly" best fishing practices workshop.

6. Quick reporting is required for wholesale dealers and fishers retailing their catch under a "direct retail endorse-



ment." According to WAC 220-69-240(12), reports must be made by 10:00 a.m. the day following landing.

7. NOAA Fisheries has listed the southern population of green sturgeon as threatened under the Endangered Species Act, effective July 6, 2006. Green sturgeon taken in Washington fisheries may be part of the southern population. Therefore, the retention of green sturgeon is prohibited to protect this federally listed stock.

8. Fishers must take department staff on-board, if requested by WDFW, when participating in these openings to observe fishing operations and/or collect biological data on the catch.

**9. Permit-only fishery** for Chinook and coho. Only permitted licensees are allowed to participate in this fishery, and they must adhere to all conditions described herein and as outlined in their permit. All gear requirements of the general commercial season described above apply during permit-only fisheries unless otherwise described in the permit.

Specific date and time of permit fishery opening will be described in permit. Those dates will be restricted to, and occur within, August 22-24, August 29-31, September 6-8, and October 10-12, 2010.

Sub-areas for permit fishery:

Sub-Area	Description
1	Commercial gillnet area 2J: Nahcotta east to Diamond Pt. (46° 29.914'N, 123° 58.888'W), then north to Island Sands Light 54 (46° 32.3'N, 123° 58.6'W) then a true east-west line from Light 54
2	Commercial gillnet area 2M: Northern boundary: Diamond Pt. (46° 29.914'N, 123° 58.888'W), north to Island Sands Light 54 (46° 32.3'N, 123° 58.6'W), then a true east-west line to landfall. Southern Boundary A: North of a true east-west line to landfall from Diamond Point. Southern Boundary B: North of Stanley Point to Paradise Point on NW and from Stanley Point directly NE to landfall.
3	Commercial gillnet Area 2G: Southern boundary: a true east-west line to landfall from Island Sands Light 54 (46° 32.3'N, 123° 58.6'W). Northern boundary: Grassy Island (46° 38'N, 124° 02.2'W) to Goose Pt (46° 38.184'N, 123° 57.584'W)
4	Commercial gillnet Area 2G and 2H: Focus will be near the Willapa Airport between Channel Markers 29 and 35.

10. To facilitate data collection, WDFW personnel must be notified by calling 360/480-5159 a minimum of **6 hours** in advance of landing. Unless otherwise instructed, fishers must provide access to salmon for sampling.

11. When an observer is not on-board, Chinook catch is limited to 100 hatchery Chinook, identified by having a clipped adipose fin and a healed scar in the location of the fin. All legal white sturgeon and hatchery coho, identified by having a clipped adipose fin and a healed scar in the location of the fin, may be retained, except all fishing must cease once

100 hatchery Chinook are brought on-board. No chum may be retained.

12. When an observer is on-board, up to 100 hatchery Chinook, identified by having a clipped adipose fin and a healed scar in the location of the fin, or that are identified as having a coded wire tag by the observer, using a coded wire tag detector, may be retained. All legal white sturgeon and hatchery coho, identified by having a clipped adipose fin and a healed scar in the location of the fin, may be retained, except all fishing must cease once 100 Chinook that have a clipped adipose fin or have a coded wire tag are brought on-board. No chum may be retained.

13. From October 10 through 12, 2010, when an observer is not on-board, Coho catch is limited to 100 fish. All legal white sturgeon may be retained. Up to 100 hatchery Chinook, identified by having a clipped adipose fin and a healed scar in the location of the fin, except all fishing must cease once 100 coho are brought on-board. No chum may be retained.

14. From October 10 through 12, 2010, when an observer is on-board, up to 100 coho may be retained. All legal white sturgeon may be retained. Up to 100 hatchery Chinook, identified by having a clipped adipose fin and a healed scar in the location of the fin, or that are identified as having a coded wire tag by the observer, using a coded wire tag detector, may be retained. All fishing must cease once 100 coho are brought on-board. No chum may be retained.

15. Fishers must maintain a legible, accurate, and complete harvest log for all salmon fishing activity during the permit fishery. A GPS of fishing location(s) must be maintained and provided to the Department such that logs will be received no later than the second day following landing. Logs must be submitted to: WDFW Region 6 Office, Barbara McClellan, 48 Devonshire Rd., Montesano, WA 98563

16. Licensees for this fishery must fish all fishing periods in the area assigned to them, and they must attend a pre-fishery meeting that will be arranged following their selection. The licensees selected to fish sub-area 2 must fish in sections A and B for each fishing period as described in their permit.

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

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 220-40-02700K Salmon—Willapa Bay fall fishery. (10-207)

The following section of the Washington Administrative Code is repealed effective December 1, 2010:

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

**WSR 10-18-020**  
**EMERGENCY RULES**  
**DEPARTMENT OF ECOLOGY**

[Order 10-01—Filed August 23, 2010, 8:55 a.m., effective August 23, 2010, 8:55 a.m.]

Effective Date of Rule: Immediately.

Purpose: This rule will amend chapter 173-98 WAC, Use and limitations of the water pollution control revolving fund. These amendments will address provisions (e.g. green infrastructure or forgivable principal) in the new 2010 clean water state revolving fund federal appropriation which affect how the agency can distribute funding to local jurisdictions for water pollution control project.

Citation of Existing Rules Affected by this Order: Amending chapter 173-98 WAC.

Statutory Authority for Adoption: RCW 90.48.035.

Other Authority: Chapters 90.50A, 34.05 RCW, RCW 43.21.080.

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: Emergency adoption is necessary to comply with provisions of the 2010 clean water state revolving fund federal appropriation.

Number of Sections Adopted in Order to Comply with Federal Statute: New 2, Amended 9, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

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

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

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

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

Date Adopted: August 20, 2010.

Ted Sturdevant  
 Director

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

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

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

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

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

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

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

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

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

~~((7))~~ (8) **Commercial, industrial, and institutional flows** means the portion of the total flows to a facility that originate from commercial establishments, industrial facilities, or institutional sources such as schools, hospitals, and prisons.

~~((8))~~ (9) **Competitive funding** means moneys available for projects through a statewide evaluation process.

~~((9))~~ (10) **Completion date** or **expiration date** means the date indicated in the funding agreement in which all milestones and objectives associated with the goals of the project are met.

~~((10))~~ (11) **Concentrated animal feeding operation (CAFO)** means:

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

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

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

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

~~((11))~~ (12) **Conservation easement** means a recorded legal agreement between a landowner and a public body to allow or restrict certain activities and uses that may take place on his or her property.

~~((12))~~ (13) **Conservation plan** means a document that outlines how a project site will be managed using best management practices to avoid potential negative environmental impacts.

~~((13))~~ (14) **Construction** means to erect, install, expand, or improve water pollution control facilities or activities. Construction includes construction phase engineering and preparation of the operation and maintenance manual.

~~((14))~~ (15) **Cost-effective alternative** means the option selected in an approved facilities plan that meets the requirements of the project, recognizes environmental and other nonmonetary impacts, and offers the lowest cost over the life of the project (i.e., lowest present worth or equivalent annual value).

~~((15))~~ (16) **Department** means the Washington state department of ecology.

~~((16))~~ (17) **Design** means the preparation of the plans and specifications used for construction of water pollution control facilities or activities.

~~((17))~~ (18) **Director** means the director of the Washington state department of ecology or his or her authorized designee.

~~((18))~~ (19) **Draft offer and applicant list** means a catalog of all projects considered and proposed for funding

based on an evaluation and the appropriations in the Washington state capital budget.

~~((19))~~ **(20) Easement** means a recorded legal agreement between a public body and a landowner that allows the public body to have access to the landowner's property at any time to inspect, maintain, or repair loan-funded activities or facilities.

~~((20))~~ **(21) Effective date** means the date the loan agreement is signed by the department's water quality program manager.

~~((21))~~ **(22) Eligible cost** means the portion of the facilities or activities project that can be funded.

~~((22))~~ **(23) Energy efficiency projects** means the use of improved technologies and practices to reduce the energy consumption of water quality projects as defined by the Environmental Protection Agency (EPA) under Green Project Reserve.

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

~~((23))~~ **(25) Engineering report** means a document that includes an evaluation of engineering and other alternatives that meet the requirements in chapter 173-240 WAC, Submission of plans and reports for construction of wastewater facilities.

~~((24))~~ **(26) Environmental degradation** means the reduced capacity of the environment to meet social and ecological objectives and needs.

~~((25))~~ **(27) Environmental emergency** means a problem that a public body and the department agree poses a serious, immediate threat to the environment or to the health or safety of a community and requires immediate corrective action.

~~((26))~~ **(28) Environmentally innovative projects** means projects that demonstrate new or innovative approaches to managing water quality issues in a more sustainable way, including projects that achieve pollution prevention or pollutant removal with reduced costs and projects that foster adaptation of water protection programs and practices to climate change.

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

~~((27))~~ **(30) Existing need** means water pollution control facility's capacity reserved for all users, at the time of application, in order to meet the requirements of the water quality based effluent limitations in the associated National Pollution Discharge Elimination System or state waste discharge permit.

~~((28))~~ **(31) Existing residential need** means water pollution control facility's capacity reserved for the residential population, at the time of application, in order to meet the water quality based effluent limitations in the associated National Pollution Discharge Elimination System or state waste discharge permit.

~~((29))~~ **(32) Facilities** see water pollution control facility.

~~((30))~~ **(33) Facilities plan** means an engineering report that includes all the elements required by the state environmental review process (SERP), National Environmental Policy Act (NEPA) as appropriate, other federal statutes, and planning requirements under chapter 173-240 WAC, Submission of plans and reports for construction of wastewater facilities.

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

~~((32))~~ **(34) Final offer and applicant list** means a catalog of all projects considered and proposed for funding and those offered funding.

~~((33))~~ **(35) Force account** means loan project work performed using labor, materials, or equipment of a public body.

~~((34))~~ **(36) Forgivable principal** means the portion of a loan made by the department that is not required to be paid back by the borrower if allowable by Congress through federal appropriation.

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

~~((35))~~ **(38) Funding cycle** means the events related to the competitive process used to allocate moneys from the Washington state water pollution control revolving fund, centennial clean water program, and the Clean Water Act section 319 nonpoint source fund for a state fiscal year.

~~((36))~~ **(39) General obligation debt** means an obligation of the recipient secured by annual ad valorem taxes levied by the recipient and by the full faith, credit, and resources of the recipient.

~~((37))~~ **(40) Green infrastructure projects** means a wide array of practices at multiple scales that manage and treat storm water and maintain and restore natural hydrology.

**(41) Green project reserves** means water efficiency, energy efficiency, green infrastructure, and environmentally innovative projects.

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

~~((38))~~ **(43) Infiltration and inflow** means water, other than wastewater, that enters a sewer system.

~~((39))~~ **(44) Infiltration and inflow correction** means the cost-effective alternative or alternatives and the associated corrective actions identified in an approved facilities plan or engineering report for eliminating or reducing the infiltration and inflow to existing sewer system.

~~((40))~~ **(45) Initiation of operation** means the actual date the recipient begins using, or could begin using, the facilities for its intended purpose. This date may occur prior to final inspection or project completion.

~~((41))~~ **(46) Intended use plan (IUP)** means a document identifying the types of projects proposed and the amount of all money available for financial assistance from the water pollution control revolving fund for a fiscal year as described in section 606(c) of the act.

~~((42))~~ **(47) Landowner agreement** means a written arrangement between a public body and a landowner that

allows the public body to have access to the property to inspect project-related components.

~~((43))~~ ~~(48)~~ **Loan agreement** means a contractual arrangement between a public body and the department that involves a disbursement of moneys that must be repaid.

~~((44))~~ ~~(49)~~ **Loan default** means failure to make a loan repayment to the department within sixty days after the payment was due.

~~((45))~~ ~~(50)~~ **Nonpoint source water pollution** means pollution that enters any waters from widespread water-based or land-use activities. Nonpoint source water pollution includes, but is not limited to atmospheric deposition; surface water runoff from agricultural lands, urban areas, and forest lands; subsurface or underground sources; and discharges from some boats or other marine vessels.

~~((46))~~ ~~(51)~~ **Perpetuity** means the point at which the water pollution control revolving fund is earning at least fifty percent of the market rate for tax-exempt municipal bonds on its loan portfolio.

~~((47))~~ ~~(52)~~ **Plans and specifications** means the construction contract documents and supporting engineering documents prepared in sufficient detail to allow contractors to bid on and construct water pollution control facilities. "Plans and specifications" and "design" may be used interchangeably.

~~((48))~~ ~~(53)~~ **Preliminary project priority list** means a catalog of all projects considered for funding based on the governor's budget and submitted to the Washington state legislature for its consideration during budget development.

~~((49))~~ ~~(54)~~ **Principal forgiveness** means a loan made by the department using the water pollution control revolving fund under which some or all of the principal may be forgiven by the department, if allowable by Congress through federal appropriation.

~~(55)~~ **Project** means a water quality improvement effort funded with a grant or loan.

~~((50))~~ ~~(56)~~ **Project completion or expiration** means the date indicated in the funding agreement in which all milestones and objectives associated with the goals are met.

~~((51))~~ ~~(57)~~ **Public body** means a state of Washington county, city or town, conservation district, other political subdivision, municipal corporation, quasi-municipal corporation, those Indian tribes recognized by the federal government, or institutions of higher education when the proposed project is not part of the school's statutory responsibility.

~~((52))~~ ~~(58)~~ **Public health emergency** means a situation declared by the Washington state department of health in which illness or exposure known to cause illness is occurring or is imminent.

~~((53))~~ ~~(59)~~ **Recipient** means a public body that has an effective loan agreement with the department.

~~((54))~~ ~~(60)~~ **Reserve account** means an account created by the recipient to secure the payment of the principal and interest on the water pollution control revolving fund loan.

~~((55))~~ ~~(61)~~ **Revenue-secured debt** means an obligation of the recipient secured by a pledge of the revenue of a utility.

~~((56))~~ ~~(62)~~ **Revolving fund** means the water pollution control revolving fund.

~~((57))~~ ~~(63)~~ **Riparian buffer or zone** means a swath of vegetation along a channel bank that provides protection from the erosive forces of water along the channel margins and external nonpoint sources of pollution.

~~((58))~~ ~~(64)~~ **Scope of work** means a detailed description of project tasks, milestones, and measurable objectives.

~~((59))~~ ~~(65)~~ **Senior lien obligations** means all revenue bonds and other obligations of the recipient outstanding on the date of execution of a loan agreement (or subsequently issued on a parity therewith, including refunding obligations) or issued after the date of execution of a loan agreement having a claim or lien on the gross revenue of the utility prior and superior to the claim or lien of the loan, subject only to maintenance and operation expense.

~~((60))~~ ~~(66)~~ **Service area population** means the number of people served in the area of the project.

~~((61))~~ ~~(67)~~ **Severe public health hazard** means a situation declared by the Washington state department of health in which the potential for illness exists, but illness is not occurring or imminent.

~~((62))~~ ~~(68)~~ **Sewer** means the pipe and related pump stations located on public property, or on public rights of way and easements that convey wastewater from buildings.

~~((63))~~ ~~(69)~~ **Side sewer** means a sanitary sewer service extension from the point five feet outside the building foundation to the publicly owned collection sewer.

~~((64))~~ ~~(70)~~ **State environmental review process (SERP)** means the National Environmental Policy Act (NEPA)-like environmental review process adopted to comply with the requirements of the Environmental Protection Agency's Code of Regulations (40 CFR § 35.3140). SERP combines the State Environmental Policy Act (SEPA) review with additional elements to comply with federal requirements.

~~((65))~~ ~~(71)~~ **Total eligible project cost** means the sum of all expenses associated with a water quality project that are eligible for funding.

~~((66))~~ ~~(72)~~ **Total project cost** means the sum of all expenses associated with a water quality project.

~~((67))~~ ~~(73)~~ **Water efficiency projects** means the use of improved technologies and practices to deliver equal or better water quality services with less water.

~~(74)~~ **Water pollution** means contamination or other alteration of the physical, chemical, or biological properties of any waters of the state, including change in temperature, taste, color, turbidity, or odor of the waters; or any discharge of a liquid, gas, solid, radioactive substance, or other substance into any waters of the state that creates a nuisance or renders such waters harmful, detrimental, or injurious to the public, to beneficial uses, or to livestock, wild animals, birds, fish, or other aquatic life.

~~((68))~~ ~~(75)~~ **Water pollution control activities or activities** means actions taken by a public body for the following purposes:

- (a) To prevent or mitigate pollution of underground water;
- (b) To control nonpoint sources of water pollution;
- (c) To restore the water quality of freshwater lakes; and
- (d) To maintain or improve water quality through the use of water pollution control facilities or other means.

~~((69))~~ **(76) Water pollution control activities funding category** means that portion of the water pollution control revolving fund dedicated to nonpoint source pollution projects.

~~((70))~~ **(77) Water pollution control facility or facilities** means any facilities or systems for the control, collection, storage, treatment, disposal, or recycling of wastewater, including, but not limited to, sanitary sewage, storm water, residential, commercial, industrial, and agricultural wastes. Facilities include all necessary equipment, utilities, structures, real property, and interests in and improvements on real property.

~~((71))~~ **(78) Water pollution control facilities funding category** means that portion of the water pollution control revolving fund dedicated to facilities projects.

~~((72))~~ **(79) Water pollution control revolving fund (revolving fund)** means the water pollution control revolving fund established by RCW 90.50A.020.

~~((73))~~ **(80) Water resource inventory area (WRIA)** means one of the watersheds in the state of Washington, each composed of the drainage areas of a stream or streams, as established in the Water Resources Management Act of 1971 (chapter 173-500 WAC).

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

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

- (1) To provide loans to finance the planning, design, and/or construction of water pollution control facilities;
- (2) To provide loans for nonpoint source pollution control management projects that implement the Washington's water quality management plan to control nonpoint sources of pollution, and for developing and implementing a conservation and management plan under section 320 of the act;
- (3) To provide loans for up to twenty years reserve capacity for water pollution control facilities;
- (4) To buy or refinance the debt obligations incurred by applicants after March 7, 1985, for the construction of water pollution control facilities;
- (5) To guarantee or purchase insurance for local obligations to improve credit market access or reduce interest rates;
- (6) As a source of revenue or security for the payment of principal and interest on revenue or general obligation bonds issued by the state if the proceeds of those bonds will be deposited in the revolving fund; and
- (7) To finance administration costs incurred by the department as authorized by the act and chapter 90.50A RCW.
- (8) To provide loan subsidies in the form of reduced interest rates and forgivable principal to public bodies for statewide, high-priority water quality projects that are consistent with the Clean Water Act, 33 U.S.C. 1251-1387 as defined by the EPA and allowable by Congress through federal appropriation bills.

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

**WAC 173-98-100 Eligible.** Certain projects or project elements, including, but not limited to the following, may be eligible for loan assistance:

- (1) **Aquatic plant control** when the water quality degradation is due to the presence of aquatic plants, and the source(s) of pollution is addressed sufficiently to ensure that the pollution is eliminated;
- (2) **BMP implementation** on private property:
  - (a) Best management practices that consist of new, innovative, or alternative technology not yet demonstrated in the department's region in which it is proposed;
  - (b) Best management practices in the riparian buffer or zone, such as revegetation or fence construction and where a conservation easement or landowner agreement is granted by the landowner; and
  - (c) Other water quality best management practices that are evaluated and approved by the department on a case-by-case basis, and where a conservation easement or landowner agreement is granted by the landowner.
- (3) **BMP implementation** on public property;
- (4) **Capacity for growth.** Loans for up to twenty years capacity for water pollution control facilities. Capacity in excess of the twenty year design capacity are not eligible;
- (5) **Computer equipment and software** specific to the funded project and preapproved by the department;
- (6) **Confined animal feeding operations (CAFO)** water pollution control projects located in federally designated national estuaries;
- (7) **Conservation planning;**
- (8) **Design-build or design-build-operate** (alternative contracting/service agreements) for water pollution control facilities and other alternative public works contracting procedures;
- (9) **Diagnostic studies** to assess current water quality;
- (10) **Education and outreach** efforts for the public;
- (11) **Environmental checklists**, assessments, and impact statements necessary to satisfy requirements for the SEPA, the NEPA, and the SERP;
- (12) **Equipment and tools** as identified in a loan agreement;
- (13) **Facilities** for the control, storage, treatment, conveyance, disposal, or recycling of domestic wastewater and storm water for residential, and/or a combination of residential, commercial, institutional and industrial:
  - (a) **Planning:**
    - (i) **Comprehensive sewer planning**, including wastewater elements of capital facilities planning under the growth management act;
    - (ii) **Storm water planning;**
    - (iii) **Facilities planning** for water pollution control facilities;
  - (b) **Design** preparation of plans and specifications for water pollution control facilities;
  - (c) **Construction** of:
    - (i) Facilities for the control, storage, treatment, conveyance, disposal, or recycling of domestic wastewater and storm water;
    - (ii) Combined sewer overflow abatement;

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

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

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

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

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

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

(14) **Green project reserves** such as water efficiency, energy efficiency, green infrastructure, and environmentally innovative projects or project elements as outlined in WAC 173-98-125 and as defined by EPA guidance, and allowed by Congress in federal appropriation bills.

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

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

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

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

((18)) (19) **Land acquisition:**

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

(b) For wetland habitat preservation;

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

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

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

((22)) (23) **Monitoring BMP effectiveness;**

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

((24)) (25) **Monitoring water quality;**

((25)) (26) **Model ordinances** development and dissemination of model ordinances to prevent or reduce pollution from nonpoint sources;

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

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

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

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

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

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

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

((30)) (31) **Sales tax;**

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

((32)) (33) **Stream restoration projects;**

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

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

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

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

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

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

#### NEW SECTION

#### **WAC 173-98-125 Green project reserves projects.**

When considering eligibility of green project reserves, the department will consider guidance documents provided by the EPA as well as the provisions provided in subsections (1) through (4) of this section.

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

(2) **Energy efficiency.** Energy efficiency is the use of improved technologies and practices to reduce the energy consumption of water quality projects. Energy efficiency projects can be stand-alone projects and they do not need to be part of a larger capital improvement project.

(3) **Green infrastructure.** Green infrastructure includes a wide array of practices at multiple scales that manage and treat storm water and maintain and restore natural hydrology. Green infrastructure projects can be stand-alone projects and they do not need to be part of a larger capital improvement project.

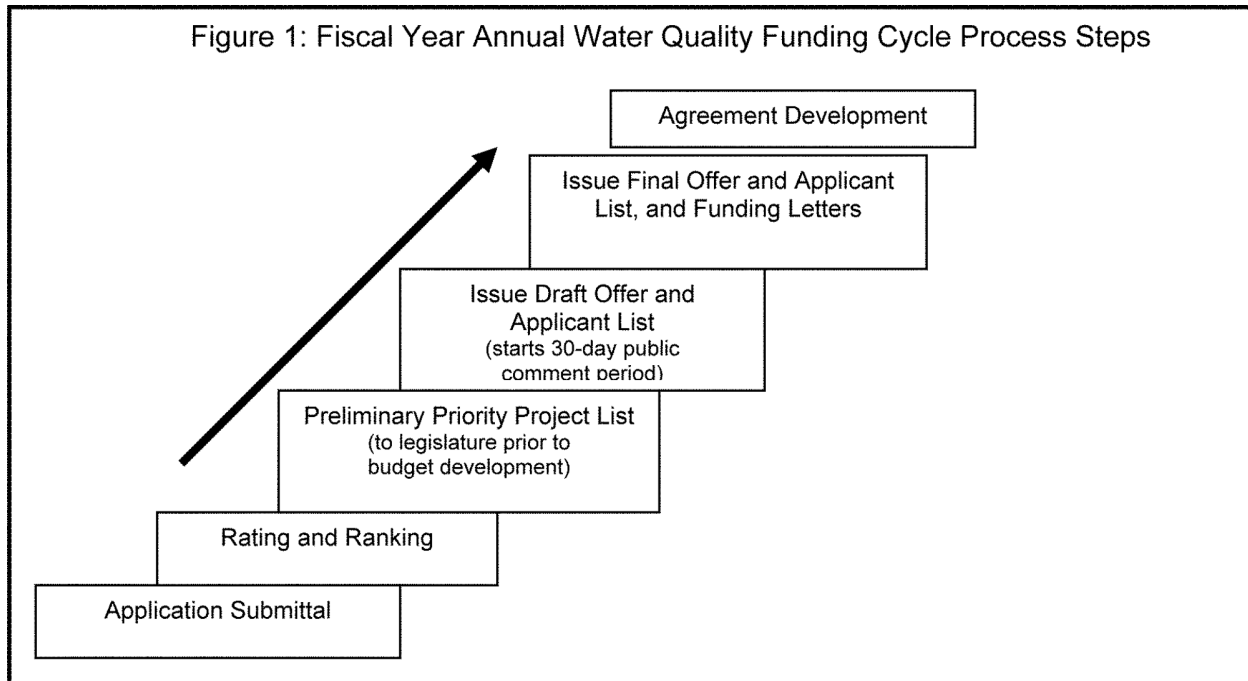
(a) On a regional scale, green infrastructure is the preservation and restoration of natural landscape features, such as forests, flood plains and wetlands, coupled with policies that reduce overall impervious impacts in a watershed.

(b) On the local scale, green infrastructure consists of site- and neighborhood-specific practices, such as bioretention, trees, green roofs, porous pavements and cisterns.

(4) **Environmentally innovative projects.** Environmentally innovative projects demonstrate new or innovative approaches to managing water quality issues in a more sustainable way, including projects that achieve pollution prevention or pollutant removal with reduced costs and projects that foster adaptation of water protection programs and practices to climate change.

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

**WAC 173-98-210 Ecology's responsibilities.** (1) A general funding cycle schedule is provided in figure 1.



(2) In general, ecology will provide the following services although annual modifications may be made to accommodate varying schedules and requirements:

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

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

**WAC 173-98-300 Wastewater treatment facilities construction.** (1) There are three primary factors considered in determining hardship funding for the construction portion of wastewater treatment facilities projects:

- (a) Service area population;
  - (b) Existing residential need at the time of application; and
  - (c) Level of financial burden placed on the ratepayers.
- (2) **Service area population.** Applicants with a service area population of twenty-five thousand or less can request hardship-funding consideration by submitting a financial hardship analysis form along with the funding application. If the service area population is different from the population of the applicant, the applicant must show that the hardship assistance is solely used to benefit the population of the service area.
- (3) **Existing residential need.** The applicant and the department calculate the water pollution control facilities construction costs that are associated with existing residential need at the time of application.

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

- (a) Financial burden for the sewer ratepayer is determined by calculating the residential sewer user fee as a percent of the median household income (MHI). The residential sewer user fee is calculated using the construction cost estimates including:
- (i) Estimated construction cost;
  - (ii) Existing annual operation and maintenance costs;
  - (iii) Discounted, existing annual operation and maintenance costs as a result of constructing the project;

- (iv) Projected future annual operation and maintenance costs for the total facility;
  - (v) The applicant's current and future annual debt service on the project;
  - (vi) The revolving fund annual debt service for the funded project;
  - (vii) Other grants;
  - (viii) The applicant's level of debt for other wastewater facilities not associated with the project;
  - (ix) The total number of households existing at the time of application that will be served by the project;
  - (x) The nonresidential share of the total annual costs is deducted; and
  - (xi) Median household income;
- (b) The sewer user fee as a percentage of MHI is the basis for the department's loan hardship-funding continuum shown in figure 2;
- (c) The most recent available census data determines the median household income. This data is updated yearly based on inflation rates as measured by the federal Bureau of Labor Statistics and published as the *Consumer Price Index*; and
- (d) If median household income data are not available for a community or if the community disputes the data used by the department, the department may allow an applicant to

conduct a scientific survey to determine the median household income.

(5) **Loan terms and interest rates.** The department uses the loan hardship-funding continuum to determine the hardship-loan interest rates. Forgivable principal loans may be provided with revolving funds as specified in WAC 173-98-330. Not more than fifty percent of the funding category can be awarded to any one applicant per funding cycle. In addition to a reduced interest rate, the applicant may receive longer loan repayment terms, not to exceed twenty years.

For example:

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

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

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

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

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

**WAC 173-98-310 On-site septic system repair and replacement programs.** (1) Applicants may apply for a revolving fund loan to establish or continue programs that provide funding for on-site septic repair and replacement for homeowners and small commercial enterprises.

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

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

Figure 3.

Homeowner Income is:	20-Year Term	5-Year Term	Hardship Level
Above 80% county MHI	60% of MR	30% of MR	Nonhardship

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

((Figure 4-))

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



Figure 4.

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

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

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

Sewer User Fee divided by MHI	Below 2.0%	2.0% and above, but Below 3.0%	3.0% and above, but Below 5.0%	5.0% and above
<b>Hardship Designation</b>	<i>Nonhardship</i> (Low sewer user rates in relation to MHI)	<i>Moderate Hardship</i>	<i>Elevated Hardship</i>	<i>Severe Hardship</i> (Very high sewer user rates in relation to MHI)
<b>Loan Hardship-Funding Continuum</b>	Not eligible for forgivable principal loan	50% forgivable principal loan up to ceiling amount defined in WAC 173-98-520	75% forgivable principal loan up to ceiling amount defined in WAC 173-98-520	100% forgivable principal loan up to ceiling amount defined in WAC 173-98-520

(3) The department will limit the amount of forgivable principal to a maximum of fifty percent of total eligible costs for a green project reserves project. If demand is limited for green project reserves projects, the ceiling amount may be raised to fully utilize available funding for the green project reserves category.

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

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

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

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

NEW SECTION

**WAC 173-98-330 Forgivable principal.** (1) **Forgivable principal.** The department will apply the funding hardship continuum provided in figure 7 below to determine the amount of forgiveness principal. Financial hardship will be determined based on the provisions in WAC 173-98-300.

For example:

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

Figure 6.

<b>Applicant information:</b>
<ul style="list-style-type: none"> <li>• Service area population &lt; 25,000</li> <li>• Sewer user rates are 3% to below 5% of the median household income</li> </ul>
<b>Applicant MAY be eligible for:</b>
<ul style="list-style-type: none"> <li>• 20-year repayment term at a 1% interest rate</li> <li>• Up to 75% of the loan principal may be forgiven based on existing residential need</li> </ul>

The interest rate in the example in figure 6 represents twenty percent of the average market rate for tax-exempt municipal bonds.

(2) **Figure 7. Forgivable principal hardship continuum** (to determine amounts of forgivable principal loan allowed for eligible costs using revolving funds):

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

**Figure ((6))8: Loan Terms and Interest Rates**

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

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

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

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

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

(b) Water pollution control activities category: Twenty percent of the revolving fund will be available for the implementation of programs or projects established under section 320 of the act (National Estuary Program) and section 319 of the act, the "Washington's water quality management plan to control nonpoint sources of pollution."

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

(3) The capitalization grant for federal fiscal year 2010 includes conditions for funding additional subsidization and green project reserves which creates new funding set aside for these specific purposes:

(a) Additional subsidization in the form of forgivable principal: Allowable amounts are based on minimums and maximums established in the 2010 Title VI appropriation.

(b) Green project reserves: Not less than twenty percent of the capitalization grant is dedicated for green project reserves.

(4) Additional subsidization in the form of forgivable principal and reduced interest rates may be provided for eligible green project reserves projects.

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

**WAC 173-98-520 Ceiling amounts.** (1) Water pollution control facilities category:

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

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

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

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

(4) Water pollution control facilities construction bid overruns:

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

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

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

(5) Water pollution control facilities construction change orders:

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

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

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

(6) The ceiling amount for forgivable principal provided for financial hardship for WAC 173-98-330 is five million dollars.

(7) Green project reserves category: Not more than fifty percent of the revolving fund in this category will be available to any one applicant per funding cycle.

(8) The ceiling amount for forgivable principal provided for eligible green project reserves projects is fifty percent of total eligible project costs. If demand is limited for green project reserves projects, the ceiling amount may be raised to fully utilize available funding.

#### WSR 10-18-026

#### EMERGENCY RULES

#### DEPARTMENT OF FISH AND WILDLIFE

[Order 10-219—Filed August 24, 2010, 1:31 p.m., effective August 24, 2010, 1:31 p.m.]

Effective Date of Rule: Immediately.

Purpose: Amend commercial fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-52-05100L; 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 2010 state/tribal shrimp harvest management plans for the Strait of Juan de Fuca and Puget Sound require adoption of harvest seasons contained in this emergency rule. This emergency rule closes the spot shrimp season in Catch Areas 26B-2, 26D and closes the non-spot shrimp season in Shrimp Management Area 1, as the quotas will be reached, and lowers the spot shrimp weekly limits in some areas to prevent overharvest of the area quotas. 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: August 24, 2010.

Joe Stohr  
for Philip Anderson  
Director

### NEW SECTION

**WAC 220-52-05100M 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) Effective immediately, all waters of Shrimp Management Areas 2W, 3, 4, and 6 are open to the harvest of all shrimp species until further notice, except as provided for in this section:

(i) All waters of Marine Fish-Shellfish Management and Catch Reporting Area (Catch Area) 23A-C, 23A-E, 23A-W and the Discovery Bay Shrimp District are closed.

(ii) All waters of Shrimp Management Area (SMA) 2W, Catch Areas 23B and 25A are closed to the harvest of spot shrimp.

(iii) Effective 6:00 p.m. August 26, 2010, all waters of Catch Area 26B-2 are closed, and all waters of Catch Area 26D are closed to the harvest of spot shrimp.

(b) Effective immediately until further notice, only pots with a minimum mesh size of 1 inch may be pulled on calendar days when fishing for or retaining spot shrimp. Mesh size of 1 inch is defined as a mesh opening that a 7/8-inch square peg will pass through, excluding the entrance tunnels, except for flexible (web) mesh pots, where the mesh must be a minimum of 1-3/4 inch stretch measure. Stretch measure is defined as the distance between the inside of one knot to the outside of the opposite knot of one mesh, when the mesh is stretched vertically.

(c) The shrimp accounting week is Tuesday through Monday.

(d) Effective immediately, until further notice, it is unlawful for the combined total harvest of spot shrimp by a fisher and/or the fisher's alternate operator to exceed 600 pounds per week, except in the following areas:

i) Effective immediately, until 6:00 p.m. August 26, 2010, it is unlawful for the total harvest of spot shrimp by a fisher and/or the fisher's alternate operator to exceed 300 lbs per week in Catch Areas 26B-2 and 26D.

(e) It is unlawful to pull shellfish pots for commercial purposes in more than one Catch Area per day. Fishers may move all of their shellfish pot gear from one Catch Area to another Catch 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
- (ii) The Catch Area the pots are being moved to.

(f) It is unlawful to set or pull shellfish pots in one Catch Area while in possession of shrimp harvested from another Catch Area, except that 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) 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.

All waters of Catch Area 20A are open.

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

### REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 220-52-05100L Puget Sound shrimp pot and beam trawl fishery—Season. (10-209)

### **WSR 10-18-027**

#### **EMERGENCY RULES**

#### **DEPARTMENT OF**

#### **FISH AND WILDLIFE**

[Order 10-218—Filed August 24, 2010, 2:10 p.m., effective August 31, 2010, 8:20 p.m.]

Effective Date of Rule: August 31, 2010, 8:20 p.m.

Purpose: Amend commercial fishing rules.

Citation of Existing Rules Affected by this Order:  
Repealing WAC 220-52-07300N.

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 2009-2010 sea urchin harvest management period concludes after August 31, 2010. 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 0, 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: August 24, 2010.

Joe Stohr  
for Philip Anderson  
Director

**REPEALER**

The following section of the Washington Administrative Code is repealed, effective 8:20 p.m. August 31, 2010:

WAC 220-52-07300N Sea urchins. (10-127)

**WSR 10-18-029  
EMERGENCY RULES  
DEPARTMENT OF  
FISH AND WILDLIFE**

[Order 10-220—Filed August 24, 2010, 3:41 p.m., effective August 25, 2010, 5:00 a.m.]

Effective Date of Rule: August 25, 2010, 5:00 a.m.

Purpose: Amend commercial fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-47-50100Y; and amending WAC 220-47-501.

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: This regulation provides for Pacific Salmon Commission authorized fisheries in Areas 7 and 7A. These emergency rules are necessary to initiate fisheries targeting a harvestable amount of sockeye salmon available. 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: August 24, 2010.

Lori Preuss  
for Philip Anderson  
Director

**NEW SECTION**

**WAC 220-47-50100Y Puget Sound all-citizen commercial salmon fishery—Open periods.** Notwithstanding the provisions of Chapter 220-47 WAC, effective immediately until further notice, it is unlawful to take, fish for, or possess salmon taken for commercial purposes in Puget Sound Salmon Management and Catch Reporting Areas except in accordance with the open periods, mesh size, areas, species restrictions, notification, and landing requirements set forth in this section, provided that unless otherwise amended, all permanent rules remain in effect:

**Areas 7 and 7A:**

(1) **Purse Seines** - Open to purse seine gear according to the times, dates, and conditions as prescribed and listed here:

Hours	Dates
5:00 AM - 9:00 PM	8/25

(a) It is unlawful to retain rockfish, Chinook, coho, and chum.

(b) Purse seine fishers must also use a recovery box in compliance with WAC 220-47-301 (7)(a) through (f).

(c) It is unlawful to bring salmon aboard a vessel unless all salmon captured in the seine net are removed from the seine net using a brailer or dip net meeting the specifications in WAC 220-47-325, prior to the seine net being removed from the water. All salmon and rockfish must be immediately sorted, and those required to be released must be placed in an operating recovery box or released into the water before the next haul may be brought on the deck. However, small numbers of fish may be brought on board the vessel by pulling the net in without mechanical or hydraulic assistance.

(d) It is unlawful to fish for salmon with purse seine gear in Areas 7 and 7A unless the vessel operator has attended a "Fish Friendly" best fishing practices workshop and is in possession of a department issued certification card.

(2) **Gill Nets** - Open to gill net gear with 5 inch minimum and 5 1/2 inch maximum mesh size according to the times, dates, and conditions as prescribed and listed here:

Hours	Dates
8:00 AM - Midnight	8/25

(a) It is unlawful to retain rockfish.

(b) It is unlawful to fish for salmon with gill net gear in Areas 7 and 7A unless the vessel operator has attended a "Fish Friendly" best fishing practices workshop and is in possession of a department issued certification card.

(3) **Reef Nets** - Open to reef net gear according to the times, dates, and conditions as prescribed and listed here:

Hours	Dates
5:00 AM - 9:00 PM	8/25, 8/26

(a) It is unlawful to retain rockfish, unmarked Chinook, unmarked coho, and chum.

(b) It is unlawful to retain marked Chinook unless the reef net operator is in immediate possession of a Puget Sound Reef Net Logbook.

(c) It is unlawful to fish for salmon with reef net gear in Areas 7 and 7A unless the vessel operator has attended a "Fish Friendly" best fishing practices workshop and is in immediate possession of a department issued certification card.

**(4) "Quick Reporting Fisheries":**

All fisheries opened under this section, and any fishery opening under authority of the Fraser Panel for sockeye in Puget Sound Salmon Management and Catch Reporting Areas (WAC 220-22-030), are designated as "Quick Reporting Required" per WAC 220-47-001.

**REPEALER**

The following section of the Washington Administrative Code is repealed effective August 27, 2010:

WAC 220-47-50100Y Puget Sound all-citizen commercial salmon fishery—Open periods.

**WSR 10-18-052  
EMERGENCY RULES  
DEPARTMENT OF  
FISH AND WILDLIFE**

[Order 10-224—Filed August 27, 2010, 2:35 p.m., effective August 30, 2010, 5:00 a.m.]

Effective Date of Rule: August 30, 2010, 5:00 a.m.

Purpose: Amend commercial fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-47-50100Z; and amending WAC 220-47-501.

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: This regulation provides for Pacific Salmon Commission authorized fisheries in Areas 7 and 7A. These emergency rules are necessary to initiate fisheries targeting a harvestable amount of sockeye salmon available. 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: August 27, 2010.

Philip Anderson  
Director

**NEW SECTION**

**WAC 220-47-50100Z Puget Sound all-citizen commercial salmon fishery—Open periods.** Notwithstanding the provisions of Chapter 220-47 WAC, effective immediately until further notice, it is unlawful to take, fish for, or possess salmon taken for commercial purposes in Puget Sound Salmon Management and Catch Reporting Areas except in accordance with the open periods, mesh size, areas, species restrictions, notification, and landing requirements set forth in this section, provided that unless otherwise amended, all permanent rules remain in effect:

**Areas 7 and 7A:**

(1) **Purse Seines** - Open to purse seine gear according to the times, dates, and conditions as prescribed and listed here:

Hours	Dates
5:00 AM - 9:00 PM	8/30

(a) It is unlawful to retain rockfish, Chinook, coho, and chum.

(b) Purse seine fishers must also use a recovery box in compliance with WAC 220-47-301 (7)(a) through (f).

(c) It is unlawful to bring salmon aboard a vessel unless all salmon captured in the seine net are removed from the seine net using a brailer or dip net meeting the specifications in WAC 220-47-325, prior to the seine net being removed from the water. All salmon and rockfish must be immediately sorted, and those required to be released must be placed in an operating recovery box or released into the water before the next brail may be brought on the deck. However, small numbers of fish may be brought on board the vessel by pulling the net in without mechanical or hydraulic assistance.

(d) It is unlawful to fish for salmon with purse seine gear in Areas 7 and 7A unless the vessel operator has attended a "Fish Friendly" best fishing practices workshop and is in possession of a department issued certification card.

(2) **Gill Nets** - Open to gill net gear with 5 inch minimum and 5 1/2 inch maximum mesh size according to the times, dates, and conditions as prescribed and listed here:

Hours	Dates
8:00 AM - Midnight	8/30

(a) It is unlawful to retain rockfish.

(b) It is unlawful to fish for salmon with gill net gear in Areas 7 and 7A unless the vessel operator has attended a "Fish Friendly" best fishing practices workshop and is in possession of a department issued certification card.

(3) **Reef Nets** - Open to reef net gear according to the times, dates, and conditions as prescribed and listed here:

Hours	Dates
5:00 AM - 9:00 PM	8/30, 8/31

(a) It is unlawful to retain rockfish, unmarked Chinook, unmarked coho, and chum.

(b) It is unlawful to retain marked Chinook unless the reef net operator is in immediate possession of a Puget Sound Reef Net Logbook.

(c) It is unlawful to fish for salmon with reef net gear in Areas 7 and 7A unless the vessel operator has attended a "Fish Friendly" best fishing practices workshop and is in immediate possession of a department issued certification card.

**(4) "Quick Reporting Fisheries":**

All fisheries opened under this section, and any fishery opening under authority of the Fraser Panel for sockeye in Puget Sound Salmon Management and Catch Reporting Areas (WAC 220-22-030), are designated as "Quick Reporting Required" per WAC 220-47-001.

REPEALER

The following section of the Washington Administrative Code is repealed effective September 1, 2010:

WAC 220-47-50100Z Puget Sound all-citizen commercial salmon fishery—  
Open periods.

**WSR 10-18-053  
EMERGENCY RULES  
DEPARTMENT OF  
FISH AND WILDLIFE**

[Order 10-225—Filed August 27, 2010, 4:04 p.m., effective August 27, 2010, 4:04 p.m.]

Effective Date of Rule: Immediately.

Purpose: Amend personal use fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 232-28-62000A; and amending WAC 232-28-620.

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: Hatchery chinook salmon returning to the Makah National Fish Hatchery are now

expected to make egg-take goals. 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: August 27, 2010.

Philip Anderson  
Director

NEW SECTION

**WAC 232-28-62000B Coastal Salmon seasons.** Notwithstanding the provisions of WAC 232-28-620, effective immediately until further notice, it is unlawful to fish for salmon in coastal waters except as provided for in this section, provided that unless otherwise amended, all permanent rules remain in effect:

**(1) Area 1:** Open seven days per week until further notice: Daily limit 2 salmon, except release wild coho.

**(2) Area 2:** Open seven days per week until further notice: Daily limit 2 salmon, except release wild coho.

**(3) Area 3:** Open seven days per week until further notice: Daily limit 2 salmon, except release wild coho.

**(4) Area 4:**

(a) Open seven days per week until further notice: Daily limit 2 salmon, except release wild coho.

(i) Effective immediately, release Chinook east of the Bonilla-Tatoosh Line.

(ii) Effective immediately, also release chum.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 232-28-62000A Coastal salmon seasons. (10-213)

**WSR 10-18-054  
EMERGENCY RULES  
DEPARTMENT OF  
FISH AND WILDLIFE**

[Order 10-223—Filed August 27, 2010, 4:06 p.m., effective August 27, 2010, 4:06 p.m.]

Effective Date of Rule: Immediately.

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: This emergency rule is needed to give fish that are released from the weir sufficient time to recover before entering the fishery. There is insufficient time to adopt permanent rules.

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

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

Number of Sections Adopted on the Agency's Own Initiative: New 1, Amended 0, Repealed 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: August 27, 2010.

Philip Anderson  
Director

Citation of Existing Rules Affected by this Order:  
Amending WAC 220-47-411.

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: Due to surplus hatchery coho returns, agreement over commercial gill net fishery schedules was reached with tribal comanagers. 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: August 27, 2010.

Philip Anderson  
Director

#### NEW SECTION

**WAC 232-28-61900Z Exceptions to statewide rules—Elochoman and Grays rivers.** 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) It is unlawful to fish in waters of the Elochoman River from the temporary adult fish weir on the Elochoman River to 200 feet upstream.

(2) It is unlawful to fish in waters of the Grays River from 400 feet downstream to 200 feet upstream of the Grays River temporary weir.

**WSR 10-18-055  
EMERGENCY RULES  
DEPARTMENT OF  
FISH AND WILDLIFE**

[Order 10-226—Filed August 27, 2010, 4:08 p.m., effective August 27, 2010, 4:08 p.m.]

Effective Date of Rule: Immediately.

Purpose: Amend commercial fishing rules.

#### NEW SECTION

**WAC 220-47-41100M Puget Sound gill net fishery.** Notwithstanding the provisions of WAC 220-47-411, effective immediately it is unlawful to take, or fish for salmon taken for commercial purposes with gill net gear in those waters of Puget Sound Management Catch Reporting Areas except as provided:

Area 9A - open 24 hours continuously beginning Monday, August 30, 2010, 6:00 a.m. through 7:00 p.m. Saturday, October 30, 2010.

Unless otherwise amended, all permanent rules remain in effect.

**WSR 10-18-084  
EMERGENCY RULES  
DEPARTMENT OF  
FISH AND WILDLIFE**

[Order 10-227—Filed August 31, 2010, 3:37 p.m., effective September 1, 2010, 6:00 a.m.]

Effective Date of Rule: September 1, 2010, 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 2010 state/tribal shrimp harvest management plans for the Strait of Juan de Fuca and Puget Sound require adoption of harvest seasons contained in this emergency rule. This emergency rule reopens the beam trawl fishery in Shrimp Management Area 1B because the tribes have released a portion of their harvest share to the state. 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: August 31, 2010.

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) Effective immediately, all waters of Shrimp Management Areas 2W, 3 and 6 are open to the harvest of all shrimp species until further notice, except as provided for in this section:

(i) All waters of Marine Fish-Shellfish Management and Catch Reporting Area (Catch Area) 23A-C, 23A-E, 23A-W and the Discovery Bay Shrimp District are closed.

(ii) All waters of Shrimp Management Area (SMA) 2W, Catch Areas 23B, 25A and 26D are closed to the harvest of spot shrimp.

(b) Effective immediately until further notice, only pots with a minimum mesh size of 1 inch may be pulled on calen-

dar days when fishing for or retaining spot shrimp. Mesh size of 1 inch is defined as a mesh opening that a 7/8-inch square peg will pass through, excluding the entrance tunnels, except for flexible (web) mesh pots, where the mesh must be a minimum of 1-3/4 inch stretch measure. Stretch measure is defined as the distance between the inside of one knot to the outside of the opposite knot of one mesh, when the mesh is stretched vertically.

(c) The shrimp accounting week is Tuesday through Monday.

(d) Effective immediately, until further notice, it is unlawful for the combined total harvest of spot shrimp by a fisher and/or the fisher's alternate operator to exceed 600 pounds per week.

(e) It is unlawful to pull shellfish pots for commercial purposes in more than one Catch Area per day. Fishers may move all of their shellfish pot gear from one Catch Area to another Catch 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

(ii) The Catch Area the pots are being moved to.

(f) It is unlawful to set or pull shellfish pots in one Catch Area while in possession of shrimp harvested from another Catch Area, except that 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) 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) Those portions of Catch Areas 21A and 22A within SMA 1B are open immediately until further notice.

(c) All waters of Catch Area 20A are open.

(3) 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. September 1, 2010:

WAC 220-52-05100M	Puget Sound shrimp pot and beam trawl fishery—Season. (10-219)
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**WSR 10-18-087  
EMERGENCY RULES  
DEPARTMENT OF  
FISH AND WILDLIFE**

[Order 10-229—Filed August 31, 2010, 4:34 p.m., effective September 3, 2010, 5:00 a.m.]

Effective Date of Rule: September 3, 2010, 5:00 a.m.  
Purpose: Amend commercial fishing rules.



Citation of Existing Rules Affected by this Order: Repealing WAC 220-47-50100A; and amending WAC 220-47-501.

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: This regulation provides for Pacific Salmon Commission authorized fisheries in Areas 7 and 7A. These emergency rules are necessary to initiate fisheries targeting a harvestable amount of sockeye salmon available. 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: August 31, 2010.

Joe Stohr  
for Philip Anderson  
Director

**NEW SECTION**

**WAC 220-47-50100A Puget Sound all-citizen commercial salmon fishery—Open periods.** Notwithstanding the provisions of Chapter 220-47 WAC, effective immediately until further notice, it is unlawful to take, fish for, or possess salmon taken for commercial purposes in Puget Sound Salmon Management and Catch Reporting Areas except in accordance with the open periods, mesh size, areas, species restrictions, notification, and landing requirements set forth in this section, provided that unless otherwise amended, all permanent rules remain in effect:

**Areas 7 and 7A:**

(1) **Purse Seines** - Open to purse seine gear according to the times, dates, and conditions as prescribed and listed here:

Hours	Dates
9:00 AM - 9:00 PM	9/3

(a) It is unlawful to retain rockfish, Chinook, coho, and chum.

(b) Purse seine fishers must also use a recovery box in compliance with WAC 220-47-301 (7)(a) through (f).

(c) It is unlawful to bring salmon aboard a vessel unless all salmon captured in the seine net are removed from the seine net using a brailer or dip net meeting the specifications in WAC 220-47-325, prior to the seine net being removed from the water. All salmon and rockfish must be immediately sorted, and those required to be released must be placed in an operating recovery box or released into the water before the next haul may be brought on the deck. However, small numbers of fish may be brought on board the vessel by pulling the net in without mechanical or hydraulic assistance.

(d) It is unlawful to fish for salmon with purse seine gear in Areas 7 and 7A unless the vessel operator has attended a "Fish Friendly" best fishing practices workshop and is in possession of a department issued certification card.

(e) Waters in the portion of Area 7A north and west of a line projected from Iwerson Dock on Point Roberts to the Georgina Point light at the entrance to Active Pass in the Province of British Columbia are closed to purse seines.

(2) **Gill Nets** - Open to gill net gear with 5 inch minimum and 5 1/2 inch maximum mesh size according to the times, dates, and conditions as prescribed and listed here:

Hours	Dates
8:00 AM - Midnight	9/3

(a) It is unlawful to retain rockfish.

(b) It is unlawful to fish for salmon with gill net gear in Areas 7 and 7A unless the vessel operator has attended a "Fish Friendly" best fishing practices workshop and is in possession of a department issued certification card.

(3) **Reef Nets** - Open to reef net gear according to the times, dates, and conditions as prescribed and listed here:

Hours	Dates
5:00 AM - 9:00 PM	9/3

(a) It is unlawful to retain rockfish, unmarked Chinook, unmarked coho, and chum.

(b) It is unlawful to retain marked Chinook unless the reef net operator is in immediate possession of a Puget Sound Reef Net Logbook.

(c) It is unlawful to fish for salmon with reef net gear in Areas 7 and 7A unless the vessel operator has attended a "Fish Friendly" best fishing practices workshop and is in immediate possession of a department issued certification card.

**(4) "Quick Reporting Fisheries":**

All fisheries opened under this section, and any fishery opening under authority of the Fraser Panel for sockeye in Puget Sound Salmon Management and Catch Reporting Areas (WAC 220-22-030), are designated as "Quick Reporting Required" per WAC 220-47-001.

**REPEALER**

The following section of the Washington Administrative Code is repealed effective September 4, 2010:

WAC 220-47-50100A Puget Sound all-citizen commercial salmon fishery—Open periods.