

WSR 10-19-001
EMERGENCY RULES
GROWTH MANAGEMENT
HEARINGS BOARD

[Filed September 1, 2010, 12:03 p.m., effective September 7, 2010]

Effective Date of Rule: September 7, 2010.

Other Findings Required by Other Provisions of Law as Precondition to Adoption or Effectiveness of Rule: RCW 34.05.350(2) permits adoption of similar emergency rules so long as permanent rule making is underway. WSR 10-15-012 and 10-15-013 denote the permanent adoption process.

Purpose: A CR-103E was filed with the code reviser's office on May 11, 2010, and published in WSR 10-11-028. This provided for the emergency enactment of various amendments to the rules of Practice and procedure, chapter 242-02 WAC, and Public records, chapter 242-04 WAC, related to the growth management hearings board per SHB [SSB] 6214, adopted during the 2010 regular session of the legislature. This CR-103E adopts these same emergency rules for another one hundred twenty days until the permanent rules can be adopted.

Citation of Existing Rules Affected by this Order: Amending chapters 242-02 and 242-04 WAC.

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

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

Reasons for this Finding: With the 2010 regular session, the legislature adopted SHB [SSB] 6214 which changed the existing structure of the growth management hearings board. Emergency rules were filed with the code reviser on May 11, 2010, with the one hundred twenty days expiring on September 8, 2010. The rules will not be able to be voted on to move them into a permanent status until after September 21; thus, continuation of the rules in their emergency status is needed in order to cover this interim time period.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

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

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

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

Date Adopted: September 1, 2010.

James J. McNamara
 Chair, Rules Committee

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

WAC 242-02-010 Organization. ~~((Three))~~ The growth management hearings board~~((s-were))~~ was established pursuant to chapter 36.70A RCW. ~~((Each))~~ The board is an independent quasi-judicial agency of the state of Washington with ~~((three))~~ seven members appointed by the governor who are qualified by experience or training in matters pertaining to land use planning. These rules were developed, adopted, and amended ~~((jointly))~~ by ~~((all three))~~ the board~~((s))~~ pursuant to RCW 36.70A.270(7). They should be read in conjunction with the act and the Administrative Procedure Act, chapter 34.05 RCW.

NEW SECTION

WAC 242-02-015 Regional panels. (1) Each petition for review that is filed with the growth management hearings board shall be heard and decided by a regional panel of growth management hearings board members. Regional panels shall be constituted as follows:

(a) Central Puget Sound region. A three-member Central Puget Sound panel shall be selected to hear matters pertaining to cities and counties located within the region comprised of King, Pierce, Snohomish, and Kitsap counties.

(b) Eastern Washington region. A three-member Eastern Washington panel shall be selected to hear matters pertaining to cities and thirty-two counties that are required or choose to plan under RCW 36.70A.040 and are located east of the crest of the Cascade mountains.

(c) Western Washington region. A three-member Western Washington panel shall be selected to hear matters pertaining to cities and counties that are required or choose to plan under RCW 36.70A.040, are located west of the crest of the Cascade mountains, and are not included in the Central Puget Sound region. Skamania County, if it is required or chooses to plan under RCW 36.70A.040, may elect to be included within either the Western Washington region or the Eastern Washington region.

(2)(a) Each regional panel selected to hear and decide cases shall consist of three board members, at least a majority of whom shall reside within the region in which the case arose, unless such members cannot sit on a particular case because of recusal or disqualification, or unless the board administrative officer determines that there is an emergency including, but not limited to, the unavailability of a board member due to illness, absence, vacancy, or significant workload imbalance. The presiding officer of each case shall reside within the region in which the case arose, unless the board administrative officer determines that there is an emergency.

(b) Except as provided otherwise in (b) of this subsection, each regional panel must:

(i) Include one member admitted to practice law in this state;

(ii) Include one member who has been a city or county elected official; and

(iii) Reflect the political composition of the board. The requirements of (b) of this subsection may be waived by the board administrative officer due to member unavailability, significant workload imbalances, or other reasons.

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

WAC 242-02-020 Function—Local deference. (1) The function of ~~((a))~~ the board is to make informed decisions on appeals arising from implementation of the Growth Management Act in a clear, consistent, timely, and impartial manner that recognizes regional diversity.

(2) The legislature requires growth management planning to occur in compliance with the goals and requirements of the act. The responsibility for managing local growth and shaping a county's or city's future rests with the local community. The board~~(s)~~ will grant deference to counties and cities in how they plan for and manage growth.

AMENDATORY SECTION (Amending WSR 97-04-008, filed 1/24/97, effective 3/1/97)

WAC 242-02-030 Jurisdiction. This section is intended to be general and informational only, and failure to list matters over which ~~((a))~~ the board has jurisdiction at law shall not constitute any waiver of or withdrawal from such jurisdiction.

(1) Geographic jurisdiction. Each ~~((board))~~ panel shall hear only those matters pertaining to the cities and counties located within its jurisdictional boundaries. The boundaries are as follows:

(a) The Eastern Washington ~~((board))~~ regional panel includes all counties and the cities now or subsequently located within these counties that are required or choose to plan under RCW 36.70A.040 and are located east of the crest of the Cascade mountains;

(b) The Central Puget Sound ~~((board))~~ regional panel includes and is limited to King, Pierce, Snohomish and Kitsap counties, and the cities now or subsequently located within those counties; and

(c) The Western Washington ~~((board))~~ regional panel includes all counties and the cities now or subsequently located within those counties that are required or choose to plan under RCW 36.70A.040 and are located west of the crest of the Cascade mountains and are not included in the Central Puget Sound ~~((board))~~ regional panel boundaries;

(d) Skamania County, should it be required or choose to plan under RCW 36.70A.040, may elect to be included within the jurisdictional boundaries of the Western or Eastern Washington ~~((boards))~~ regional panels.

(2) Subject matter jurisdiction. ~~((Each))~~ The board shall hear and determine petitions alleging that a state agency, county, or city is not in compliance with the requirements of the act, or chapter 90.58 RCW as it relates to the adoption or amendment of shoreline master programs, or chapter 43.21C RCW as it relates to plans, development regulations, and amendments adopted under the act or chapter 90.58 RCW; or, petitions from cities or the governor relating to an adopted

county-wide planning policy; or, that the twenty-year growth management planning projections adopted by the office of financial management pursuant to RCW 43.62.035 should be adjusted.

(3) Jurisdictional issues. Any party to a proceeding before ~~((a))~~ the board and its regional panel may, by motion, challenge the jurisdiction of ~~((that board))~~ the panel in any petition for review. ~~((A))~~ The board may, upon its own motion, raise such an issue.

AMENDATORY SECTION (Amending WSR 09-21-039, filed 10/13/09, effective 11/13/09)

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

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

(2) "Board" means ~~((the Eastern Washington, Western Washington or Central Puget Sound))~~ the growth management hearings board or a panel of the board hearing a matter.

(3) "Final decision" means:

(a) Any final order as provided in RCW 36.70A.300; or

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

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

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

~~((6))~~ "Office of the growth management hearings board~~(s)~~" means the administrative office of the ~~((three growth management hearings))~~ board~~(s)~~ established ~~((in RCW 36.70A.250))~~ pursuant to RCW 36.70A.270(2).

~~((7))~~ (6) "Participant" means any person with standing to challenge a legislative action as set forth in RCW 36.70A.330(2).

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

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

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

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

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

(a) For a city, the date the city publishes the ordinance or summary of the ordinance adopting a comprehensive plan, development regulations or subsequent amendment, as is

required to be published, or the date the city publishes notice that the shoreline master program or amendment has been approved or disapproved by the department of ecology;

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

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

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

WAC 242-02-050 Rules. These rules shall govern the ~~((joint boards'))~~ board's adoption or amendment of ~~((joint))~~ rules, and all practice and procedure for hearings before ~~((a))~~ the board. Where a time frame is different in these rules from those in chapter 10-08 WAC, it is because ~~((a))~~ the board is required to act pursuant to the time frames set forth in the act.

AMENDATORY SECTION (Amending WSR 09-23-009, filed 11/5/09, effective 12/6/09)

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

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

(a) A caption in the following form:

BEFORE THE JOINT GROWTH MANAGEMENT
HEARINGS BOARD~~((S))~~
STATE OF WASHINGTON

No.

PETITION FOR RULE MAKING

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

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

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

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

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

WAC 242-02-054 Petition for rule making—Consideration and disposition. (1) Each petition for the adoption, amendment, or repeal of a rule shall be considered by the ~~((joint))~~ board~~((s))~~, and the ~~((joint))~~ board~~((s))~~ may, in ~~((their))~~ its discretion, solicit comments or invite discussion concerning the matter prior to disposition of the petition.

(2) Consideration of petitions. All petitions shall be considered by the ~~((joint))~~ board~~((s or representatives designated by each board,))~~ and the ~~((joint))~~ board~~((s))~~ may, in ~~((their))~~ its discretion, hold meetings for the further consideration and discussion of the requested adoption, amendment, or repeal of any rule.

(3) Notification of disposition of petition. The ~~((joint))~~ board~~((s))~~ or designated representatives shall notify the petitioner within a reasonable time of the disposition, if any, of the petition.

AMENDATORY SECTION (Amending WSR 09-21-041, filed 10/13/09, effective 11/13/09)

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

~~((2) Individual board. For purposes of making orders or decisions or transacting other official administrative business for an individual board, two members of a board shall constitute a quorum and may act even though one position on the board is vacant. One member or designated hearing examiner may hold hearings and take testimony. The findings of such member or hearing examiner shall not become final until approved by a majority of the board. A board member who does not attend a hearing shall review a transcript or recording of the hearing before signing the decision.))~~ Board quorum. For the purpose of adopting, amending, or repealing these rules or transacting other administrative business, at least four members of the board shall constitute a quorum of the board. A quorum being present, any action may be taken upon the vote of the majority of the board members.

Panel quorum. For purposes of making orders or decisions in a case, two members of a panel shall constitute a quorum and may act even though one panel member is absent. One member or designated hearing examiner may hold hearings and take testimony. The findings of such member or hearing examiner shall not become final until approved by a majority of the panel. A panel member who does not attend a hearing shall review a transcript or recording of the hearing before signing the decision.

AMENDATORY SECTION (Amending WSR 09-21-039, filed 10/13/09, effective 11/13/09)

WAC 242-02-072 Board office. (1) The administration of the ~~((three))~~ board((s)) is consolidated in one office - the office of the growth management hearings board((s)):

~~((Office of the))~~

Growth Management Hearings Board((s))

319 - 7th Avenue S.E., Suite 103

Olympia, WA 98501

P.O. Box 40953

Olympia, WA 98504-0953

360-586-0260

360-664-8975 Fax

e-mail: eastern@ew.gmhb.wa.gov

e-mail: western@wwgmhb.wa.gov

e-mail: central@cps.gmhb.wa.gov

web site: www.gmhb.wa.gov

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

AMENDATORY SECTION (Amending WSR 09-21-041, filed 10/13/09, effective 11/13/09)

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

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

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

~~((c) Central Puget Sound board—on the first Monday of each month at 10:00 a.m. or following any scheduled hearing on that date)) on the first Wednesday of each month at 10:00 a.m. or following any scheduled hearing on that date. Meetings may be held telephonically.~~

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

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

AMENDATORY SECTION (Amending WSR 09-21-041, filed 10/13/09, effective 11/13/09)

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

(a) Each member of the board((s)); and

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

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

(3) Notices of special meetings shall be sent by e-mail:

(a) One day (twenty-four hours) before the scheduled meeting; except

(b) When a special meeting is called to consider rule changes pursuant to chapter 34.05 RCW, the notice shall be sent at least twenty days prior to the meeting; and except

(c) In the event of an emergency requiring board action, the notice and timing requirements may be waived as provided in RCW 42.30.080.

(4) The special meeting shall be chaired by ~~((one of the board members who called the meeting))~~ the administrative officer.

(5) A special meeting may be held by telephone conference call.

~~((Two members of each board will constitute a quorum for a special meeting.~~

~~((7))~~ Members of the public may attend a special meeting by appearing at ~~((any of))~~ the ~~((three))~~ board office((s)), or the location of the special meeting, at the date and time set for the meeting.

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

WAC 242-02-076 Annual and semiannual ~~((joint))~~ board((s)) meetings. (1) The annual ~~((joint))~~ board((s)) meeting will be held on the first Thursday and first Friday of October of each year. The annual meeting will be held in person.

(a) In odd-numbered years the annual ~~((joint))~~ board((s)) meeting will be held within the Central Puget Sound ~~((boards'))~~ region.

(b) In even-numbered years the annual ~~((joint))~~ board((s)) meeting will be held within the Eastern Washington ~~((boards'))~~ region.

(c) The location, time and agenda for the annual ~~((joint))~~ board((s)) meeting will be posted on the ~~((boards'))~~ board's web site (www.gmhb.wa.gov) in September of each year.

(2) The semiannual ~~((joint))~~ board((s)) meeting will be held on the last Thursday in April each year. The semiannual meeting will be held in person.

(a) Each year the semiannual ~~((joint))~~ board((s)) meeting will be held within the Western Washington ~~((boards'))~~ region.

(b) The location, time and agenda for the semiannual ~~((joint))~~ board((s)) meeting will be posted on the ~~((boards'))~~ board's web site (www.gmhb.wa.gov) in March of each year.

AMENDATORY SECTION (Amending WSR 09-23-009, filed 11/5/09, effective 12/6/09)

WAC 242-02-080 Form and size of documents. Documents, other than exhibits, shall be provided in the manner indicated in ~~((a))~~ the board's prehearing order.

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

WAC 242-02-090 Case numbering. ~~((Each))~~ The board shall assign a case number to each petition for review which shall be the official reference number for purposes of identification. The first two digits of the case number shall correspond to the last two digits of the calendar year in which the petition was filed. The third digit shall designate which ~~((board))~~ regional panel has jurisdiction over the matter. The Eastern Washington ~~((board))~~ panel shall use the digit "1"; the Western Washington ~~((board))~~ panel shall use the digit "2"; and the Central Puget Sound ~~((board))~~ panel shall use the digit "3." The last four digits shall be numbered sequentially in order of receipt.

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

WAC 242-02-110 Appearance and practice before ~~((a))~~ the board—Who may appear. Practice before ~~((a))~~ the board shall be open to the following persons who have met the standing requirements of chapter 36.70A RCW:

(1) A party or participant to a case before the board may appear personally or, by a duly authorized representative;

(2) Attorneys at law practicing before the board must be duly qualified and entitled to practice in the courts of the state of Washington; and

(3) Other persons permitted by law.

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

WAC 242-02-120 Rules of professional conduct. All persons appearing in proceedings before ~~((a))~~ the board in a representative capacity shall conform to the rules of professional conduct required of attorneys before the courts of Washington. If any such person does not conform to such rules, the board may decline to permit such person to appear in a representative capacity in any current or future proceeding before ~~((that))~~ the board or impose other appropriate sanctions.

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

WAC 242-02-150 Teleconference proceeding. (1) At the discretion of ~~((a))~~ the board or a presiding officer, or where the parties agree and where the rights of the parties will not be prejudiced, all or part of any hearing, prehearing, or motion hearing may be conducted by telephone, television, or other electronic means. Each party in the proceeding must have an opportunity to participate effectively in, to hear, and if technically and economically feasible, to see the entire proceeding while it is taking place.

(2) The board may require documentary evidence, motions, and briefs to be submitted sufficiently in advance of the teleconference proceeding to insure fair consideration and presentation of the issues. All such material shall also be served on other parties at the time of filing with ~~((a))~~ the board.

AMENDATORY SECTION (Amending WSR 97-04-008, filed 1/24/97, effective 3/1/97)

WAC 242-02-220 Petition for review—Time for filing. (1) A petition relating to whether or not an adopted comprehensive plan, development regulation, shoreline master program or subsequent amendments, is in compliance with the goals and requirements of the act or chapter 90.58 or 43.21C RCW shall be filed with ~~((a))~~ the board within sixty days from the date of publication by the legislative body of the county or city as specified by RCW 36.70A.290(2).

(2) A petition relating to an adopted county-wide planning policy shall be filed within sixty days of its adoption as specified in RCW 36.70A.210(6).

(3) A petition alleging that the twenty-year growth management planning population projections adopted by the office of financial management pursuant to RCW 43.62.035 should be adjusted can be filed at any time.

(4) For all other matters, a petition must be filed with ~~((a))~~ the board within sixty days of the final written decision, order, determination, publication, or action being entered.

(5) A petition relating to the failure of a state agency, city or county to take an action by a deadline specified in the act may be brought at any time after the deadline for action has passed.

AMENDATORY SECTION (Amending WSR 09-23-009, filed 11/5/09, effective 12/6/09)

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

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

AMENDATORY SECTION (Amending WSR 09-23-009, filed 11/5/09, effective 12/6/09)

WAC 242-02-240 Date of filing—Facsimile and electronic mail. (1) The date of filing shall be the date of actual receipt by ~~((a))~~ the board at ~~((the))~~ its office ~~((of the growth management hearings boards))~~. The date stamp placed on the petition shall be presumptive evidence of the date of receipt.

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

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

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

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

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

AMENDATORY SECTION (Amending WSR 97-04-008, filed 1/24/97, effective 3/1/97)

WAC 242-02-260 Amendments to petitions for review and answers. (1) A petition for review or answer may be amended as a matter of right until thirty days after its date of filing.

(2) Thereafter any amendments shall be requested in writing by motion, and will be made only after approval by ((a)) the board or presiding officer. Amendments shall not be freely granted and may be denied upon a showing by the adverse party of unreasonable and unavoidable hardship, or by ((a)) the board's finding that granting the same would adversely impact ((a)) the board's ability to meet the time requirements of RCW 36.70A.300 for issuing a final order. The board may, upon motion of a party or upon its own motion, require a more complete statement of the nature of the claim or defense or any other matter stated in a pleading.

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

WAC 242-02-280 Amicus. (1) Any person whose interest may be substantially affected by a proceeding before ((a)) the board may, by motion, request status as an amicus in the case.

(2) A motion to file an amicus curiae brief must include a statement of:

(a) Applicant's interest and the person or group applicant represents;

(b) Applicant's familiarity with the issues involved in the matter and with the scope of the argument presented or to be presented by the parties;

(c) Specific issues to which the amicus curiae brief will be directed; and

(d) Applicant's reason for believing that additional argument is necessary on these specific issues. The brief of amicus curiae may be filed with the motion but must be filed

no later than the time set for the filing of the brief for the party whose position the amicus supports.

(3) If the person qualifies for amicus, the presiding officer may impose conditions upon the amicus's participation in the proceedings, either at the time that amicus status is granted or at any subsequent time.

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

WAC 242-02-290 Direct review by superior court—Procedures. RCW 36.70A.295 provides for direct review by superior court of a petition for review filed with ((a)) the board if:

(1) All parties to the board proceeding agree to direct review by superior court;

(2) The parties file a direct review agreement, signed by all parties, or their designated representatives, with the ((appropriate)) board;

(3) The direct review agreement includes agreement to proper venue; and

(4) The direct review agreement is filed with the ((appropriate)) board within ten days after the petition for review is filed, or if multiple petitions have been filed and the board has consolidated the petitions, within ten days after the board serves notice of consolidation.

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

WAC 242-02-310 Service of papers. (1) Parties filing pleadings, briefs, exhibits and other documents or papers with ((a)) the board shall also serve copies upon all other parties no later than the date upon which they were filed with the board. Parties served shall be those included on the declaration of service list attached to the board's prehearing order, or amended prehearing order.

(2) Service upon a party's attorney or other authorized representative shall be considered valid service for all purposes upon the party represented.

(3) Final decisions of the board shall be served upon the parties and their attorney or representative of record, if any.

AMENDATORY SECTION (Amending WSR 09-23-009, filed 11/5/09, effective 12/6/09)

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

AMENDATORY SECTION (Amending WSR 09-23-009, filed 11/5/09, effective 12/6/09)

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

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

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

AMENDATORY SECTION (Amending WSR 09-23-009, filed 11/5/09, effective 12/6/09)

WAC 242-02-340 Proof of service—Declaration.

Where proof of service is required by this chapter, by statute, or upon ((a)) the board's request, filing the original document with the board and serving copies upon all attorneys or other authorized representatives of record and upon parties not represented together with one of the following documents shall constitute proof of service:

(1) An acknowledgment of service;

(2) A certificate that the person signing the certificate did on the date of the certificate serve the papers upon each party or the party's attorney or other authorized representative of record in the proceeding by delivering a copy thereof in person to the named individuals;

(3) A certificate that the person signing the certificate did on the date of the certificate serve the papers upon all parties of record in the case by:

(a) Mailing a copy, properly addressed with postage prepaid, to each party or that party's attorney or other authorized representative; or

(b) Transmitting a copy by electronic mail or telefacsimile, and on the same day mailing a copy to each party in the case or that party's attorney, or other authorized representative; or

(c) Depositing a copy, properly addressed with charges prepaid, with a commercial parcel delivery company or courier service.

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

WAC 242-02-410 Discovery—Limitation. (1) Discovery shall not be permitted except upon an order of ((a)) the board or its presiding officer.

(2) Insofar as applicable and not in conflict with this chapter, when discovery has been authorized by ((a)) the board or presiding officer, the statutes and court rules regarding pretrial procedures in civil cases in superior courts of the state of Washington shall be used. Such statutes and rules shall include but shall not be limited to those rules pertaining to discovery of evidence by parties to civil actions.

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

WAC 242-02-420 Subpoena—Issuance. (1) Subpoenas shall be issued and enforced, and witness fees paid, as provided in RCW 34.05.446 and court rules.

(2) Every subpoena shall identify the party causing its issuance. Subpoenas may be issued by ((a)) the board or by an attorney of record. The person issuing shall sign the subpoena. Parties desiring subpoenas to be signed by ((a)) the board shall make a showing of relevance and reasonable scope of the testimony or evidence sought and shall prepare the subpoenas for issuance, send them to the board's office for signature, and, upon return, shall make arrangements for service.

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

WAC 242-02-510 Notice of hearing—Setting of time and place.

(1) Within ten days of the filing of a petition for review, unless a petition for review has been removed to superior court, pursuant to WAC 242-02-290 through 242-02-295, ((a)) the board or presiding officer will schedule a hearing date and notify the parties of the date.

(2) The board or presiding officer will thereafter schedule a place for the hearing.

(3) A written notice of the date and location of the hearing shall be sent to all parties not less than twenty days prior to the hearing date.

(4) The notice shall identify the appeal to be heard, the names of the parties to the appeal and their attorneys or other authorized representatives, if any, and shall specify the time and place of hearing. The notice shall include the information specified in RCW 34.05.434 and if the hearing is to be conducted by teleconference call the notice shall so state.

(5) The notice shall state that if a limited-English-speaking or hearing impaired party or witness needs an interpreter, a qualified interpreter will be appointed and that there will be no cost to the party or witness. The notice shall include a form for a party to indicate if an interpreter is needed and identification of the primary language, or if a participant is hearing impaired.

(6) The notice may also include an order fixing the pre-hearing date and/or deadlines as provided in these rules.

(7) Defects in notice may be waived if the waiver is knowing and voluntary.

AMENDATORY SECTION (Amending WSR 97-04-008, filed 1/24/97, effective 3/1/97)

WAC 242-02-520 Record. Within thirty days of service of a petition for review, the respondent shall file with the board and serve a copy on the parties of an index of all material used in taking the action which is the subject of the petition for review. The index shall contain sufficient identifying information to enable unique documents to be distinguished. In addition, the written or tape-recorded record of the legislative proceedings where action was taken shall be available to the parties for inspection.

AMENDATORY SECTION (Amending WSR 97-04-008, filed 1/24/97, effective 3/1/97)

WAC 242-02-521 Designation of presiding officer. ((A)) The board shall designate the presiding officer for each case at the time it issues its notice of hearing pursuant to WAC 242-02-510. In the event the presiding officer subsequently changes, the board shall promptly notify the parties.

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

WAC 242-02-522 Presiding officer—Powers and duties. It shall be the duty of the presiding officer to conduct conferences or hearings as directed by ((a)) the board in an impartial and orderly manner. The presiding officer shall have the authority, subject to the other provisions of the act or these rules to:

(1) Inspect the petition for review to determine whether, on its face, compliance with the jurisdictional and standing requirements of the act is shown, and if compliance is not shown, to recommend an action or to refer the issue to the full board for resolution;

(2) Take appropriate action with respect to the qualifications of the parties or the parties' attorney(s) or other authorized representative(s) to appear before ((a)) the board;

(3) Administer oaths and affirmations if witnesses are permitted to testify;

(4) Issue subpoenas as provided in RCW 34.05.446;

(5) Rule on all procedural matters, objections and motions unless a board determination is required;

(6) Rule on all evidentiary matters including offers of proof;

(7) When applicable, question witnesses called by the parties in an impartial manner as needed to develop any facts deemed necessary to fairly and adequately decide the issue;

(8) Issue orders joining other parties, on motion of any party, when it appears that such other parties may have an interest in, or may be affected by the case;

(9) Consolidate cases for hearing when such consolidation will expedite disposition and avoid duplication of testimony and when consolidation will not unduly prejudice the rights of any party;

(10) Hold conferences for the settlement or amplification of the issues;

(11) Regulate the course of the case;

(12) Encourage the parties to stipulate to the admissibility of documents in advance of a hearing and to rule on issues concerning the content of the record;

(13) Limit the length of a brief or impose format restrictions;

(14) Sign and file certificates of agreement acknowledging receipt of timely, complete, executed agreements for direct review by superior court;

(15) Rule on requests for settlement extensions;

(16) Waive any requirement of these rules unless a party shows that it would be prejudiced by such a waiver; and

(17) Take any other action necessary and authorized by these rules, the act, or the Administrative Procedure Act, chapter 34.05 RCW.

AMENDATORY SECTION (Amending WSR 09-23-009, filed 11/5/09, effective 12/6/09)

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

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

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

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

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

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

AMENDATORY SECTION (Amending WSR 97-04-008, filed 1/24/97, effective 3/1/97)

WAC 242-02-532 Motions—Time for filing and hearing. (1) A motion can be filed at any time unless otherwise specified in these rules or by ((a)) the board or presiding officer.

(2) After prehearing or other order. If a prehearing order or other order has been entered establishing a deadline for filing motions, no written motion may be filed after the date specified in the order without written permission of the board or presiding officer.

(3) ((A)) The board or presiding officer, after taking into consideration when the motion was received and the complexity of the issues raised, may, in its discretion, schedule a hearing for argument of a motion at the time of a prehearing conference or at a separate hearing time, or may defer consideration of the motion until commencement of the hearing on the petition for review. ((A)) The board or presiding officer may also limit argument on a motion to briefs.

(4) A motion, other than a dispositive motion or a motion to supplement the record, is deemed denied unless the board takes action within twenty days of filing of the motion.

AMENDATORY SECTION (Amending WSR 09-23-009, filed 11/5/09, effective 12/6/09)

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

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

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

WAC 242-02-540 New or supplemental evidence. Generally, ((a)) the board will review only the record developed by the city, county, or state in taking the action that is the subject of review by the board. A party by motion may request that ((a)) the board allow such additional evidence as would be necessary or of substantial assistance to the board in reaching its decision, and shall state its reasons. ((A)) The board may order, at any time, that new or supplemental evidence be provided.

AMENDATORY SECTION (Amending WSR 97-04-008, filed 1/24/97, effective 3/1/97)

WAC 242-02-550 Prehearing conference. A prehearing conference is optional at the discretion of the presiding officer. The purpose of a prehearing conference is to:

- (1) Determine the feasibility of and encourage settlement of the matter or any portion thereof;
- (2) Obtain a stipulation of relevant facts including ((a)) the board's jurisdiction and the party's standing in the matter;
- (3) Obtain agreement as to the issues of law and fact presented and their simplification, limitation, or resolution;
- (4) Determine the qualifications of expert witnesses, if they are permitted to testify;
- (5) Receive any motions concerning qualification of individual board members to hear the matter;
- (6) Obtain information as to the number of expert and/or lay witnesses expected to be called by the parties and their names, addresses and telephone numbers;
- (7) Set subsequent deadlines, if and when appropriate, for filing final exhibit and witness lists, filing motions, and completing discovery; establish a briefing schedule, limit the length of briefs; and decide other matters related to the conduct of the hearing;
- (8) Determine the approximate time necessary for the presentation of evidence and/or argument of the respective parties; and
- (9) Obtain all other information which may aid in the prompt disposition of the matter.

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

WAC 242-02-552 Prehearing conference—When held. (1) ((A)) The board or presiding officer may order a prehearing conference on not less than seven days notice mailed to each party at a time and place fixed by ((a)) the board or presiding officer.

(2) At any time prior to a hearing on a petition for review, any party may file a written application with ((a)) the board requesting a prehearing conference.

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

WAC 242-02-558 Prehearing conference—Agreements. At the conclusion of a prehearing conference, the presiding officer may require the parties to submit a proposed prehearing order. The presiding officer will issue an order reciting the action taken at the conference and any agreements of the parties or decisions of the presiding officer. The order may include provisions pertaining to:

- (1) Jurisdiction and standing;
 - (2) Issues;
 - (3) Admissions;
 - (4) Witnesses, if permitted;
 - (5) Time, location and length of hearings;
 - (6) Authenticity and/or admissibility of exhibits;
 - (7) Qualification of witnesses, if permitted;
 - (8) Rulings of the board prior to the prehearing conference;
 - (9) Rulings of the presiding officer; and
 - (10) Any other matters that may expedite the hearing.
- Any objection to such order shall be made in writing within seven days after the date the order is dated. ((A)) The board shall serve its prehearing order on the same day that the order is dated. The order shall control ensuing proceedings unless modified for good cause by a subsequent order.

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

WAC 242-02-560 Settlement extensions—Continuances. (1) If additional time is necessary to achieve settlement of a dispute that is an issue in a petition before ((a)) the board, ((a)) the board may extend the one hundred eighty-day time limit for issuing a final decision and order, as provided in RCW 36.70A.300 (2)(b). ((A)) The board may authorize one, or more, extensions of up to ninety days each.

(2) A request for a settlement extension must be filed with ((a)) the board not later than seven days before the date scheduled for the hearing on the merits of the petition.

(3) ((A)) The board may grant a request for a settlement extension if:

- (a) The request was timely filed; and
- (b)(i) All parties named in the caption of the petition, agree to and sign the request; or
- (ii) A petitioner and respondent agree to and sign the request and the board determines that a negotiated settlement between the remaining parties could resolve significant issues in dispute.

(4) Continuances of hearings will be granted only on ((a)) the board's initiative or upon timely request of a party setting forth in detail the reasons for such a request and a date by which such reason will no longer apply. The board will continue the matter only upon a finding of good cause and in order to prevent manifest injustice.

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

WAC 242-02-570 Briefs. (1) A petitioner, or a moving party when a motion has been filed, shall submit a brief on each legal issue it expects ((a)) the board to determine. Failure by such a party to brief an issue shall constitute abandonment of the unbriefed issue. Briefs shall enumerate and set forth the legal issue(s) as specified in the prehearing order if one has been entered.

(2) The original and four copies of briefs and exhibits not previously filed with the board in the pending case and that are cited in the brief shall be filed with ((a)) the board at least five business days prior to the hearing unless otherwise provided by ((a)) the board or presiding officer. When briefs and exhibits are filed, a copy shall also be served on each party, unless otherwise directed by ((a)) the board or presiding officer. ((A)) The board or presiding officer may permit or require the filing of additional briefs.

(3) Clarity and brevity are expected to assist ((a)) the board in meeting its statutorily imposed time limits. A presiding officer may limit the length of a brief and impose format restrictions.

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

WAC 242-02-582 Waiver of parties' appearance. Upon stipulation by all parties, or upon order of the board, a matter may be submitted to ((a)) the board or presiding officer without oral argument or appearance. The board or presiding officer, in its discretion, may require appearance for oral argument.

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

WAC 242-02-610 Hearing—Testimony under oath—Interpreters. (1) All testimony to be considered by ((a)) the board or presiding officer shall be sworn, and each person shall swear or affirm that the testimony to be given shall be the truth, the whole truth, and nothing but the truth, or according to the provisions of RCW 5.28.020 through 5.28.060.

(2) Every interpreter shall, before beginning to interpret, take an oath that a true interpretation will be made to the person being examined of all the proceedings in a language or in a manner which the person understands, and that the interpreter will repeat the statements of the person being examined to the presiding officer, in the English language, to the best of the interpreter's skill and judgment.

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

WAC 242-02-634 Standard of proof. Where a petition for review alleges a lack of compliance with the Growth Management Act, ((a)) the board shall find compliance unless it determines that the action by the state agency, county or city is clearly erroneous in view of the entire record before the board and in light of the goals and requirements of the act.

AMENDATORY SECTION (Amending WSR 97-04-008, filed 1/24/97, effective 3/1/97)

WAC 242-02-650 Rules of evidence—Admissibility criteria. (1) All relevant evidence, including hearsay evidence, is admissible if, in the opinion of the presiding officer, the offered evidence is the kind of evidence upon which reasonably prudent persons are accustomed to rely in the conduct of their affairs. The presiding officer shall exclude evidence that is excludable on constitutional or statutory grounds or on the basis of evidentiary privilege recognized in the courts of this state. The presiding officer shall exclude evidence that is irrelevant, immaterial, or unduly repetitious.

(2) ((A)) The board's experience, technical knowledge, competency, and specialized knowledge may be used in evaluation of evidence.

(3) If not inconsistent with subsection (1) of this section, the presiding officer shall refer to, but shall not be bound by, the Washington rules of evidence.

(4) Documentary evidence may be submitted in the form of copies or excerpts, or by incorporation by reference.

AMENDATORY SECTION (Amending WSR 97-04-008, filed 1/24/97, effective 3/1/97)

WAC 242-02-660 Official notice—Matters of law. ((A)) The board or presiding officer may officially notice:

(1) Federal law. The Constitution; congressional acts, resolutions, records, journals, and committee reports; decisions of federal courts and administrative agencies; executive orders and proclamations; and all rules, orders, and notices published in the Federal Register.

(2) Washington state law. The Constitution of the state of Washington; decisions of the state courts; acts, resolutions, records, journals, and committee reports of the legislature; decisions of administrative agencies of the state of Washington; executive orders and proclamations by the governor; all rules, orders, and notices filed with the code reviser; and codes or standards that have been adopted by an agency of this state or by a nationally recognized organization or association.

(3) Laws of other states. The constitutions of other states; decisions of state courts; acts, resolutions, records, journals and committee reports of other state legislatures; decisions of other states administrative agencies; executive orders and proclamations issued by a governor of another state; and codes or standards that have been adopted by an agency of another state.

(4) Counties and cities. Ordinances, resolutions, and motions enacted by cities, counties, or other municipal subdivisions of the state of Washington.

(5) Federally recognized Indian tribes, Constitutions, ordinances, resolutions and motions enacted by federally recognized Indian tribes.

(6) Growth management hearings board((s)). Orders and decisions of ((any)) the board((:

~~(7) Joint boards.))~~ and the board's rules of practice and procedure.

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

WAC 242-02-670 Official notice—Material facts. In the absence of conflicting evidence, ((a)) the board or presiding officer, upon request made before or during a hearing, may officially notice:

(1) Business customs. General customs and practices followed in the transaction of business.

(2) Notorious facts. Facts so generally and widely known to all well-informed persons as not to be subject to reasonable dispute or specific facts which are capable of immediate and accurate demonstration by resort to accessible sources of generally accepted authority, including, but not exclusively, facts stated in any publication authorized or permitted by law to be made by any federal or state officer, department, or agency.

(3) Technical or scientific facts. Technical or scientific facts within ((a)) the board's specialized knowledge.

(4) Request. Any party may request, orally or in writing, that official notice be taken of a material fact. The board or presiding officer may take official notice of a material fact on its own initiative.

(5) Notice. Parties shall be notified either before or during a hearing of the material fact(s) proposed to be officially noticed, and shall be afforded the opportunity to contest such facts and materials.

(6) Statement.

(a) In determining whether to take official notice of material facts, the presiding officer may consult any source of pertinent information, whether or not furnished by any party and whether or not admissible under the rules of evidence.

(b) If official notice of a material fact is taken, it shall be clearly and precisely stated and made part of the record.

(c) Where a decision of ((a)) the board rests in whole or in part upon official notice of a material fact, such fact shall be clearly and precisely stated in such decision.

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

WAC 242-02-680 Hearings—Board questions. A hearing examiner or any member of ((a)) the board may, at any time during the hearing, ask clarifying questions as necessary to understand the evidence or argument.

AMENDATORY SECTION (Amending WSR 97-04-008, filed 1/24/97, effective 3/1/97)

WAC 242-02-710 Failure to attend—Default or dismissal—Setting aside. (1) When a party to a proceeding has, after proper notice, failed to attend a hearing or any other matter before ((a)) the board or presiding officer, a motion for default or dismissal may be sought by any party to the case or raised by ((a)) the board upon its own motion or by a presiding officer. Any order granting the motion shall include a statement of the grounds for the order and shall be served upon all parties to the case.

(2) Within seven days after service of the default order or dismissal under subsection (1) of this section, the party against whom the order was entered may file a written objection requesting that the order be vacated and stating the specific grounds relied upon. The board may, for good cause, set aside an order of dismissal or default.

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

WAC 242-02-720 Dismissal of action. Any action may be dismissed by ((a)) the board:

(1) When all parties stipulate;

(2) Upon motion of the petitioner or respondent prior to the presentation of the respondent's case;

(3) Upon motion by the respondent alleging that the petitioner has failed to prosecute the case, failed to comply with these rules, or failed to follow any order of the board; or

(4) Upon ((a)) the board's own motion for failure by the parties to comply with these rules or any order of the board.

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

WAC 242-02-810 Presentation of post hearing matters. Unless requested by or authorized by ((a)) the board, no post hearing evidence, documents, briefs, or motions will be accepted. ((A)) The board may request submission of proposed findings of fact, conclusions of law, and final order from any or all parties.

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

WAC 242-02-830 Final decision and order—Basis. (1) When the hearing on the petition for review has been held and the record reviewed by a majority of ((a-board)) the panel hearing the matter, a written final decision and order shall be issued that contains appropriate findings and conclusions, and articulates the basis for the final decision and order.

(2) The board will not issue advisory opinions on issues not presented to the board in the petition for review's statement of the issues, as modified by any prehearing order.

(3) Except as provided in RCW 36.70A.300 (2)(b) and WAC 242-02-560, the final decision and order shall be issued by ((a)) the board within one hundred eighty days of receipt of the petition for review, or if multiple petitions are filed, within one hundred eighty days of receipt of the last petition that is consolidated.

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

WAC 242-02-831 Final decision and order—Compliance, noncompliance, invalidity. (1) In its final decision and order, ((a)) the board shall either:

(a) Find that the state agency, county or city is in compliance with the requirements of chapter 36.70A RCW, chapter 90.58 RCW as it relates to the adoption or amendment of shoreline master programs, or chapter 43.21C RCW as it relates to adoption of plans, development regulations, and amendments thereto, under RCW 36.70A.040 or chapter 90.58 RCW; or

(b) Find that the state agency, county or city is not in compliance with the requirements of chapter 36.70A RCW, chapter 90.58 RCW as it relates to the adoption or amendment of shoreline master programs, or chapter 43.21C RCW as it relates to adoption of plans, development regulations, and amendments thereto, under RCW 36.70A.040 or chapter 90.58 RCW, in which case the board shall remand the matter to the state agency, county or city and specify a time for compliance. The period of remand shall extend to the date the board issues its next order on compliance.

(2) In its final decision and order, ((a)) the board may determine that part or all of a comprehensive plan or development regulations are invalid if the board:

(a) Makes a finding of noncompliance and issues an order of remand;

(b) Includes in its final decision and order a determination, supported by findings of fact and conclusions of law, that the continued validity of part or parts of the plan or regulation would substantially interfere with the fulfillment of the goals of the act; and

(c) Specifies the part or parts, if applicable, of the plan or regulation that are determined to be invalid and the reasons for invalidity.

(3) The effect of a determination of invalidity is as set forth in RCW 36.70A.302.

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

WAC 242-02-832 Reconsideration. (1) After issuance of a final decision any party may file a motion for reconsideration with ((a)) the board in accordance with subsection (2) of this section. Such motion must be filed within ten days of service of the final decision. The original and four copies of the motion for reconsideration shall be filed with the board. At the same time, copies shall be served on all parties of record. Within five days of filing the motion for reconsideration, a party may file an answer to the motion for reconsideration without direction or request from the board. ((A)) The board may require other parties to supply an answer. All answers to motions for reconsideration shall be served on all parties of record.

(2) A motion for reconsideration shall be based on at least one of the following grounds:

(a) Errors of procedure or misinterpretation of fact or law, material to the party seeking reconsideration;

(b) Irregularity in the hearing before the board by which such party was prevented from having a fair hearing; or

(c) Clerical mistakes in the final decision and order.

(3) In response to a motion for reconsideration, the board may deny the motion, modify its decision, or reopen the hearing. A motion is deemed denied unless the board takes action within twenty days of filing the motion for reconsideration. A board order on a motion for reconsideration is not subject to a motion for reconsideration.

(4) A decision in response to the petition for reconsideration shall constitute a final decision and order for purposes of judicial review. Copies of the final decision and order shall be served by the board on each party or the party's attorney or other authorized representative of record.

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

WAC 242-02-833 Invalidity—Hearing pursuant to motion to clarify, modify or rescind. If a motion to clarify, modify or rescind a determination of invalidity order has been filed by a county or city subject to a determination of invalidity, pursuant to RCW 36.70A.302, and the jurisdiction has not enacted legislation in response to the board's remand order, ((a)) the board shall schedule and conduct a hearing to address clarifying, modifying or rescinding the determination of invalidity. Within thirty days of the hearing the board shall continue, clarify, modify, or rescind the determination of invalidity. The board may rescind a determination of invalidity but find continuing noncompliance, in which case the board may establish a compliance schedule or new compliance date.

AMENDATORY SECTION (Amending WSR 09-21-039, filed 10/13/09, effective 11/13/09)

WAC 242-02-834 Publication of final decision and orders. Copies of all final decisions and orders are available ((for an individual board that entered the decision and order)) from the office of the growth management hearings board((s)). The growth management hearings board's web site is www.gmhb.wa.gov. Each board panel posts its decisions within its individual portion of the web site and maintains a digest of its decisions.

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

WAC 242-02-880 Transcripts. The following shall be the policy of ((each)) the board with regard to transcription of the record:

(1) ((A)) The board, in its discretion, may at any time cause a transcript to be printed. Any person may obtain a copy upon payment of the reasonable costs thereof.

(2) In any case when ((a)) the board shall not cause the transcript to be printed, it shall be the obligation of the party wishing a transcript, or portions of it, to assume the cost of producing it.

(3) When an appeal is taken from any final decision and order of a board to a reviewing court, the appealing party is responsible for ordering and paying for the transcript of the hearing.

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

WAC 242-02-890 Determination of noncompliance—Compliance schedule. In those cases where ((~~the~~) the board finds that a state agency, county, or city is not in compliance with the requirements of the act, chapter 90.58 RCW as it relates to the adoption or amendment of shoreline master programs, or chapter 43.21C RCW as it relates to adoption of plans, development regulations, and amendments thereto, under RCW 36.70A.040 or chapter 90.58 RCW, the board shall remand the matter to the affected state agency, county, or city. The board's final decision and order shall specify a reasonable time not in excess of one hundred eighty days, or such longer time as determined by the board in cases of unusual scope or complexity, within which the state agency, county, or city shall comply. In its order the board shall establish a compliance schedule and may require periodic reports on the progress the jurisdiction is making toward compliance.

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

WAC 242-02-891 Compliance—Notice of hearing. (1) After the compliance deadline specified in the final decision and order passes, or at an earlier time upon the motion of a county or city subject to a determination of invalidity under RCW 36.70A.302, ((~~the~~) the board shall issue a notice of compliance hearing setting a hearing date for the purpose of determining whether compliance has been achieved. The compliance hearing shall be given the highest priority of business.

(2) The presiding officer shall set the format of the compliance hearing in the notice of compliance hearing. At the compliance hearing the presumption of validity and burden of proof are as set forth in WAC 242-02-630 and 242-02-632. The parties to the original case, and a person with standing to challenge the legislation enacted in response to ((~~the~~) the board's final decision and order, may participate in the compliance hearing. The notice of compliance hearing shall set the scope of, and procedures for participation.

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

WAC 242-02-89201 Intent to participate in compliance hearings. Any person eligible to participate in a compliance proceeding based upon his or her participation in the proceedings to enact legislation in response to ((~~a board~~) the board's order shall abide by any briefing schedule set in the board's compliance order, as amended or extended, and provide the board and the parties of record with written notice of intent to participate no later than two weeks prior to the compliance hearing date set in that order.

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

WAC 242-02-894 Compliance—Hearing pursuant to motion—Rescinding invalidity. If a motion for a compliance hearing has been filed by a county or city subject to a

determination of invalidity, pursuant to RCW 36.70A.330(1), and the jurisdiction has enacted legislation amending the invalidated plan, regulation or part thereof, ((~~the~~) the board shall schedule and conduct a hearing to address rescinding the determination of invalidity. Within forty-five days of the filing of the motion, the board shall issue an order continuing, modifying, or rescinding the determination of invalidity depending upon whether the jurisdiction's legislative action has removed the basis for invalidity so that it no longer substantially interferes with the goals of the act. The board may rescind a determination of invalidity but find continuing non-compliance, in which case the board may establish a compliance schedule or new compliance date.

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

WAC 242-02-896 Continued noncompliance—Recommendation to the governor. If the board finds that the county or city continues to be in noncompliance with the act, the board shall transmit its findings to the governor. ((~~The~~) The board may recommend that sanctions authorized by the act be imposed. A jurisdiction's efforts to meet a compliance schedule shall be considered by the board in making a recommendation on sanctions to the governor.

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

WAC 242-02-898 Appeals of a board's final decision. (1) Any party aggrieved by a final decision of ((~~the~~) the board may appeal the decision to superior court as provided in RCW 34.05.514 or 36.01.050 within thirty days of service of the final decision of the board.

(2) ((~~The~~) The board shall follow the procedures established in RCW 34.05.518 in the event that direct appellate review is sought.

AMENDATORY SECTION (Amending WSR 09-21-040, filed 10/13/09, effective 11/13/09)

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

AMENDATORY SECTION (Amending WSR 09-21-040, filed 10/13/09, effective 11/13/09)

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

(2) ((~~"Joint boards" means the three independent boards meeting or acting jointly.~~) "Administrative officer" means the board member elected pursuant to RCW 36.70A.270(10).

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

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

(5) "Writing" means handwriting, typewriting, printing, photostating, photographing, and every other means of recording any form of communication or representation(;) including, but not limited to, letters, words, pictures, sounds, or symbols, or combination thereof, and all papers, maps, magnetic or paper tapes, photographic films and prints, motion pictures, film and video recordings, magnetic or punched cards, discs, drums, diskettes, sound recordings, and other documents, including existing data compilations from which information may be obtained or translated.

AMENDATORY SECTION (Amending WSR 09-21-040, filed 10/13/09, effective 11/13/09)

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

~~(2) The administrative chairpersons constitute the administrative committee of the joint boards.~~

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

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

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

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

~~(4)) shall annually elect one of its members to be the board administrative officer. The duties and responsibilities of the administrative officer include handling day-to-day administrative, budget, and personnel matters on behalf of the board, together with making case assignments to board members in accordance with the board's rules of procedure in order to achieve a fair and balanced workload among all board members. The administrative officer of the board may carry a reduced caseload to allow time for performing the administrative work functions.~~

~~(2) Regular meetings of the board will be held at the office, telephonically if desired, of the growth management hearings board, or a designated location on the first Wednesday of each month at 10:00 a.m. or following any scheduled hearing on that date.~~

~~(3) The ~~((joint))~~ board~~((s, comprised of the members of the three individual boards,))~~ shall meet at least annually at a time and location to be announced.~~

~~((5))~~ (4) The office of the growth management hearings board((s)) provides for the administrative operations of the ~~((three individual boards and the joint))~~ board((s)).

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

WAC 242-04-040 Public records available. All public records of ~~((each board and of))~~ the ~~((joint))~~ board((s)) are available for public inspection and copying pursuant to these rules, except as otherwise provided by RCW 42.17.310 and other laws.

AMENDATORY SECTION (Amending WSR 09-21-040, filed 10/13/09, effective 11/13/09)

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

~~((The))~~ Office of the Growth Management Hearings Board((s

~~((Insert name of appropriate board)))~~

319 - 7th Avenue S.E.

Olympia, WA 98501

P.O. Box 40953

Olympia, WA 98504-0953

360-586-0260

360-664-6975 fax

e-mail: eastern@ew.gmhba.wa.gov

western@wwgmhba.wa.gov

central@cps.gmhba.wa.gov

web site: ~~((www.gmhba.wa.gov))~~ www.gmhba.wa.gov

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

AMENDATORY SECTION (Amending WSR 09-21-040, filed 10/13/09, effective 11/13/09)

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

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

AMENDATORY SECTION (Amending WSR 09-21-040, filed 10/13/09, effective 11/13/09)

WAC 242-04-070 Office hours. Public records shall be available for inspection and copying during the customary

office hours of the ~~((office of the))~~ growth management hearings board~~((s))~~. For the purposes of this chapter, the customary office hours shall be from 8:00 a.m. to noon and from 1:00 p.m. to 5:00 p.m., Monday through Friday, excluding legal holidays.

AMENDATORY SECTION (Amending WSR 09-21-040, filed 10/13/09, effective 11/13/09)

WAC 242-04-080 Requests for public records. In accordance with the provisions of chapter 42.17 RCW, that agencies prevent unreasonable invasions of privacy, protect public records from damage or disorganization, and prevent excessive interference with essential functions of the agency, public records may be inspected or copied, or copies of such records may be obtained, by members of the public upon compliance with the following procedures:

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

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

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

(c) A description of the material requested;

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

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

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

AMENDATORY SECTION (Amending WSR 09-21-040, filed 10/13/09, effective 11/13/09)

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

(1) Providing the record;

(2) Acknowledging that the public records officer has received the request for ~~((an individual))~~ the board ~~((or the joint boards))~~ and providing a reasonable estimate of the time that the public records officer will require to respond to the request. Additional time required to respond to a request may be based upon the need to clarify the intent of the request, to locate and assemble the information requested, to notify third persons or agencies affected by the request, or to determine whether any of the information requested is exempt and that a denial should be made as to all or part of the request. In acknowledging receipt of a public record request that is

unclear, the public records officer may ask the requestor to clarify what information the requestor is seeking. If the requestor fails to clarify the request, the public records officer need not respond to it; or

(3) Denying the public record request.

AMENDATORY SECTION (Amending WSR 09-21-040, filed 10/13/09, effective 11/13/09)

WAC 242-04-100 Copying. No fee shall be charged for the inspection of public records. The public records officer, on behalf of ~~((either an individual))~~ the board ~~((or the joint boards))~~, shall charge a reasonable fee for providing copies of public records and for use of the office of the growth management hearings ~~((boards'))~~ board's photocopy equipment. The public records officer may charge a reasonable fee for electronic facsimile transmissions (fax). The charge is the amount necessary to reimburse the office of the growth management hearings board~~((s))~~ for its actual costs incident to such copying or transmission.

AMENDATORY SECTION (Amending WSR 09-21-040, filed 10/13/09, effective 11/13/09)

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

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

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

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

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

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

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

AMENDATORY SECTION (Amending WSR 09-21-040, filed 10/13/09, effective 11/13/09)

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

- (1) No public records shall be removed from the office;
- (2) Inspection of any public record shall be conducted in the presence of the public records officer or his/her designee;
- (3) No public record may be marked or defaced in any manner during inspection;
- (4) Public records which are maintained in the file jacket, or in chronological order, may not be dismantled except for purpose of copying, and then only by the public records officer or his/her designee;
- (5) Access to file cabinets, shelves, vaults, and other storage locations is restricted to the public records officer, board members, and staff.

AMENDATORY SECTION (Amending WSR 09-21-040, filed 10/13/09, effective 11/13/09)

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

- (a) Final orders, including concurring and dissenting opinions, made in the adjudication of cases;
- (b) Those statements of policy and interpretations of policy, statute, and the Constitution which have been adopted by ~~((an individual))~~ the board ((and/or the joint boards,));
- (c) Administrative staff manuals and instructions to staff that affect a member of the public;
- (d) ~~((Individual board and joint))~~ Board planning policies and goals, and interim and final planning decisions;
- (e) Factual staff reports and studies, a consultant's factual reports and studies, scientific reports and studies, and any other factual information derived from tests, studies, reports, or surveys, whether conducted by public employees or others; and
- (f) Correspondence, and materials referred to therein, by and with ~~((an individual))~~ a board, ((the joint boards,)) or the office of the growth management hearings boards relating to any regulations, supervisory or enforcement responsibilities of the growth management hearings board((s)), where ~~((an individual))~~ the board determines or is asked to determine the rights of the state, the public, a subdivision of state government, or of any private party.

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

AMENDATORY SECTION (Amending WSR 09-21-040, filed 10/13/09, effective 11/13/09)

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

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

Return to:

PUBLIC RECORDS OFFICER

OFFICE OF THE GROWTH MANAGEMENT HEARINGS BOARD~~((S ((INSERT APPROPRIATE BOARD'S NAME)))~~

REGIONAL PANEL:

REQUEST FOR INSPECTING AND/OR COPYING PUBLIC RECORDS

Date:

Name:

Address:

Day Phone Number:

Description of Record(s) Requested, including case number and document identification and date, if known:

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

Signature

Number of Copies

Number of Pages

Per Page Cost \$

Total Charge \$

WSR 10-19-006

EMERGENCY RULES

SECRETARY OF STATE

(Elections Division)

[Filed September 2, 2010, 10:56 a.m., effective September 2, 2010, 10:56 a.m.]

Effective Date of Rule: Immediately.

Purpose: The purpose of these rule changes is to implement the federal Military and Overseas Voter Empowerment (MOVE) Act. This legislation takes effect after the 2010 Primary Election but before the 2010 General Election.

Citation of Existing Rules Affected by this Order: Repealing WAC 434-208-070; and amending WAC 434-

208-060, 434-235-010, 434-235-020, 434-235-030, and 434-235-040.

Statutory Authority for Adoption: RCW 29A.04.611.

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

Reasons for this Finding: The federal MOVE Act passed congress in October 2009 and takes effect for the 2010 general election. These rules could not be adopted earlier in the year because they did not apply for the August 2010 primary.

Number of Sections Adopted in Order to Comply with Federal Statute: New 1, Amended 4, Repealed 1; 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 1, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 1, Amended 5, Repealed 1; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: September 2, 2010.

Steve Excell

Assistant Secretary of State

AMENDATORY SECTION (Amending WSR 08-15-052, filed 7/11/08, effective 8/11/08)

WAC 434-208-060 Electronic filings. (1) In addition to those documents specified by RCW 29A.04.255, the secretary of state or the county auditor shall accept and file in his or her office electronic transmissions of the following documents:

~~((+))~~ (a) The text of any proposed initiative, referendum, or recall measure and any accompanying documents required by law;

~~((2))~~ (b) Any minor party or independent candidate filing material for president and vice-president, except nominating petitions;

~~((3))~~ (c) Lists of presidential electors selected by political parties or independent candidates;

~~((4))~~ (d) Voted ballots (~~provided the voter agrees to waive the secrecy of his or her ballot~~) and signed affidavits received no later than 8:00 p.m. on election day, as long as hard copies are received prior to certification of the election. Consistent with WAC 434-250-080, it is the first ballot and affidavit received that may be processed and counted. Voted ballots received electronically no later than 8:00 p.m. on election day are timely even if the postmark on the return envelope is after election day;

~~((5))~~ (e) Resolutions from cities, towns, and other districts calling for a special election; and

~~((6))~~ (f) Voter registration forms.

(2) If payment of a fee is required, acceptance of an electronic filing is conditional until the fee is received.

(3) If the original document must be signed, acceptance of an electronic filing is conditional until receipt of the original document. Except for mail ballots, the original document must be received no later than seven calendar days after receipt of the electronic filing.

(4) No initiative, referendum, or recall petition signatures may be filed electronically.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 434-208-070 Electronic filings not accepted.

AMENDATORY SECTION (Amending WSR 07-20-074, filed 10/1/07, effective 11/1/07)

WAC 434-235-010 Scope. (1) This chapter implements the Uniformed and Overseas Citizens Absentee Voting Act, 42 U.S.C. Sec. 1973ff, and the provisions for service and overseas voters in Title 29A RCW.

(2) Uniformed service voter is defined in 42 U.S.C. Sec. 1973ff-6(1) as:

(a) A member of a uniformed service on active duty who, by reason of such active duty, is absent from the place of residence where the member is otherwise qualified to vote;

(b) A member of the merchant marine who, by reason of service in the merchant marine, is absent from the place of residence where the member is otherwise qualified to vote; or

(c) A spouse or dependent who, by reason of the active duty or service of the member, is absent from the place of residence where the spouse or dependent is otherwise qualified to vote.

(3) Service voter is defined in RCW 29A.04.163 as any elector of the state of Washington who:

(a) Is a member of the armed forces under 42 U.S.C. Sec. 1973ff-6 while in active service;

(b) Is a member of a reserve component of the armed forces;

(c) Is a student or member of the faculty at a United States military academy;

~~((e))~~ (d) Is a member of the merchant marine of the United States(;

~~(d) Is a program participant as defined in RCW 40.24.020); or~~

(e) Is a member of a religious group or welfare agency officially attached to and serving with the armed forces of the United States.

(4) Overseas voter is defined in 42 U.S.C. Sec. 1973ff-6(5) as:

(a) An absent uniformed services voter who, by reason of active duty or service is absent from the United States on the date of the election involved;

(b) A person who resides outside the United States and is qualified to vote in the last place in which the person was domiciled before leaving the United States; or

(c) A person who resides outside the United States and (but for such residence) would be qualified to vote in the last place in which the person was domiciled before leaving the United States.

(5) Overseas voter is defined in RCW 29A.04.109 as any elector of the state of Washington outside the territorial limits of the United States (~~(or the District of Columbia)~~).

AMENDATORY SECTION (Amending WSR 09-18-098, filed 9/1/09, effective 10/2/09)

WAC 434-235-020 Voter registration. (1) A uniformed, service, or overseas voter may register to vote by providing:

(a) A voter registration application issued by the state of Washington;

(b) A federal post card application issued by the federal voting assistance program;

(c) A federal write-in absentee ballot issued by the federal voting assistance program;

(d) A national mail voter registration form issued by the election assistance commission; or

(e) An absentee ballot with a valid signature on the return envelope oath.

(2) Pursuant to RCW 29A.40.010, a uniformed, service, or overseas voter does not have to be registered in order to request an absentee ballot. Consequently, a uniformed, service, or overseas voter may request a ballot and be registered after the registration deadlines of RCW 29A.08.140 have passed.

(a) If the voter is not currently registered, the county auditor must register the voter immediately. The voter must be flagged in the voter registration system (~~((accordingly))~~) as a service or overseas voter.

(b) A uniformed, service, or overseas voter must use his or her most recent residential address in Washington, or the most recent residential address in Washington of a family member.

(c) If the county auditor is unable to precinct the voter due to a missing or incomplete residential address on the application, the county auditor must attempt to contact the voter to clarify the application. If, in the judgment of the county auditor, there is insufficient time to correct the application before the next election or primary, the county auditor must issue the absentee ballot as if the voter had listed the county auditor's office as his or her residence. A special precinct for this purpose may be created. Upon its return, the ballot must be referred to the county canvassing board. The only offices and issues that may be tabulated are those common to the entire county and congressional races based on the precinct encompassing the auditor's office. (~~((Such registrations are only valid for the primary or election for which the ballot was issued. If the actual precinct is not determined before the next primary or election, the registration must be canceled.))~~)

(d) A voter who registers to vote by signing the return envelope of the absentee ballot is not required to provide a driver's license number, Social Security number or other form of identification as required in RCW 29A.08.107.

(3) The county auditor must offer a uniformed, service, or overseas voter the option of receiving blank ballots by e-

mail or postal mail. This requirement is satisfied if the uniformed, service, or overseas voter registers on an application that offers electronic ballot delivery as an option, or if the voter expresses a preference when registering, updating a registration, or requesting a ballot. The county auditor must attempt to contact the voter by phone, e-mail, postal mail, or other means. If the voter does not indicate a preference or does not respond, the county auditor must send ballots by postal mail.

AMENDATORY SECTION (Amending WSR 09-18-098, filed 9/1/09, effective 10/2/09)

WAC 434-235-030 Absentee voting. (1) A uniformed, service, or overseas voter may request or return an absentee ballot by:

(a) Any manner authorized by WAC 434-250-030;

(b) A federal post card application issued by the federal voting assistance program; or

(c) A federal write-in absentee ballot issued by the federal voting assistance program.

(2) Pursuant to RCW 29A.40.070, absentee ballots issued to registered uniformed, service, or overseas voters must be mailed at least thirty days prior to the election or primary. Requests for absentee ballots received after that day must be processed immediately.

(3) The county auditor (~~((may))~~) must issue an absentee ballot by mail, e-mail, or fax (~~((or other means as))~~) if specifically requested by the voter. A ballot does not have to be mailed if it is e-mailed or faxed to the voter. If an e-mail is returned as undeliverable and the voter has not provided an alternate e-mail address, then the ballot must be sent by postal mail.

(4) (~~((Pursuant to RCW 29A.40.061, the county auditor shall provide the appropriate web site information with the absentee ballot.))~~) Ballot materials must include the mailing address, phone number, fax number, e-mail address, and web site of the county auditor's office to enable a voter to contact the elections office for additional information about the election. Ballot materials must include instructions on how to confirm that the voted ballot has been received by the elections office. This information must be provided in a format that the voter can keep after the voted ballot has been returned.

(5) If the county auditor is unable to issue an absentee ballot due to insufficient information, the county auditor must attempt to contact the voter to clarify the request. If the county auditor is unable to obtain sufficient information to issue the absentee ballot, the county auditor must attempt to notify the voter of the reason that the ballot was not issued.

(6) Pursuant to RCW 29A.40.150, return envelopes must be printed to indicate that they may be returned postage-free.

AMENDATORY SECTION (Amending WSR 07-20-074, filed 10/1/07, effective 11/1/07)

WAC 434-235-040 Processing absentee ballots. (1) Any abbreviation, misspelling, or other minor variation in the form of the name of a candidate or a political party shall be disregarded in determining the validity of a federal write-in

absentee ballot or a special absentee ballot if the intention of the voter can be ascertained.

(2) ~~((The absentee ballots referred to in this section must be received prior to certification of the election or primary.))~~ The date on the envelope associated with the voter's signature, rather than the postmark on the envelope, determines the validity of the ballot. The signature on the oath must be dated no later than election day. ~~((An absentee ballot returned electronically is invalid until the original is received.))~~

(3) Voted ballots returned by fax or e-mail must meet the requirements of RCW 29A.40.150 and WAC 434-208-060.

(4) The county auditor must provide statistics on voting by uniformed, service and overseas voters in the certification report required by RCW 29A.60.235 and in response to requests by the federal election assistance commission.

NEW SECTION

WAC 434-235-050 On-line information. The secretary of state and each county auditor must provide information on-line that includes, at a minimum, how to:

- (1) Register to vote using a paper or on-line application;
- (2) Confirm a registration;
- (3) Request a ballot or replacement ballot;
- (4) Update a residential address or mailing address;
- (5) Contact the elections office by phone, fax, e-mail, mailing address, and physical address;
- (6) Find information about the next election;
- (7) Confirm via phone, e-mail or web site that a voted ballot has been received; and
- (8) Find election results.

WSR 10-19-008
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 10-228—Filed September 2, 2010, 2:25 p.m., effective September 3, 2010]

Effective Date of Rule: September 3, 2010.

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: The invasive species New Zealand mudsnail is present in the lake and mudsnails are easily transported on shoes, boots, and fishing gear to which they may attach themselves. It is necessary to close the lake. The lake has already been closed to salmon angling. 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: September 2, 2010.

Philip Anderson
Director

NEW SECTION

WAC 232-28-61900B Exceptions to statewide rules—Capitol Lake. Notwithstanding the provisions of WAC 232-28-619, effective September 3, 2010, until further notice, it is unlawful to fish in waters of Capitol Lake.

WSR 10-19-011
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 10-217—Filed September 3, 2010, 1:10 p.m., effective September 4, 2010]

Effective Date of Rule: September 4, 2010.

Purpose: The purpose of this rule making is to allow nontreaty recreational fishing opportunity in the Columbia River while protecting fish listed as threatened or endangered under the Endangered Species Act (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 232-28-61900V; and amending WAC 232-28-619.

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

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

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

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

Reasons for this Finding: Returns of hatchery and natural-origin summer-run steelhead to the upper Columbia River have exceeded the run criteria of 9,300 counted over Priest Rapids Dam required to open conservation-based fishery under the ESA. There is insufficient time adopt permanent rules.

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

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

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

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

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

Date Adopted: September 3, 2010.

Joe Stohr
for Philip Anderson
Director

NEW SECTION

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

(1) Effective September 4, through October 31, 2010, a person may fish for steelhead in waters of the Columbia River from the Highway 395 Bridge upstream to the Old Hanford townsite wooden powerline towers. Daily limit, two hatchery steelhead; minimum size is 20 inches in length. Mandatory retention of adipose fin-clipped hatchery origin steelhead.

(2) Effective September 4, through October 22, 2010, a person may fish for steelhead in waters of the Columbia River from the Hanford wooden powerline towers upstream to Priest Rapids Dam. Daily limit, two hatchery steelhead; minimum size is 20 inches in length. Mandatory retention of adipose fin-clipped hatchery origin steelhead.

REPEALER

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

WAC 232-28-61900V Exceptions to statewide rules—Columbia River.

WSR 10-19-012

EMERGENCY RULES

DEPARTMENT OF FISH AND WILDLIFE

[Order 10-221—Filed September 3, 2010, 1:10 p.m., effective September 8, 2010]

Effective Date of Rule: September 8, 2010.

Purpose: Amend personal use fishing rules.

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

Statutory Authority for Adoption: RCW 77.12.047 and 77.04.020.

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

Reasons for this Finding: This emergency regulation will allow anglers to retain incidentally caught sockeye and/or salmon during the steelhead fishery allowing additional fishing opportunity. 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: September 3, 2010.

Joe Stohr
for Philip Anderson
Director

NEW SECTION

WAC 232-28-61900X Exceptions to statewide rules—Columbia River. Notwithstanding the provisions of WAC 232-28-619, effective September 8 through October 15, 2010, it is permissible to fish for salmon in waters of the Columbia River from Wells Dam to Brewster. Daily limit six salmon, minimum size 20 inches in length. Up to three adult Chinook may be retained, of which no more than one may be a wild adult. Release all coho. Selective gear rules and night closure in effect. Except, bait is allowed.

REPEALER

The following section of the Washington Administrative Code is repealed effective October 16, 2010:

WAC 232-28-61900X Exceptions to statewide rules—Columbia River.

**WSR 10-19-013
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE**

[Order 10-222—Filed September 3, 2010, 1:10 p.m., effective September 8, 2010]

Effective Date of Rule: September 8, 2010.

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: The fishery will reduce the number of excess hatchery-origin steelhead and increase the proportion of natural-origin steelhead on the spawning grounds. Higher proportions of naturally produced spawners are expected to improve stock recruitment of upper Columbia River steelhead. 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: September 3, 2010.

Joe Stohr
for Philip Anderson
Director

NEW SECTION

WAC 232-28-61900Y Exceptions to statewide rules—Columbia, Entiat, Methow, Okanogan, Similka-

meen, and Wenatchee rivers Notwithstanding the provisions of WAC 232-28-619, it is unlawful to violate the following provisions, provided that unless otherwise amended, all permanent rules remain in effect:

(1) In the river sections modified below mandatory retention of adipose fin-clipped hatchery origin steelhead. Release any steelhead with one or more round holes punched in the caudal (tail) fin. Current salmon and all other game fish gear rules do not apply during steelhead season.

(2) Effective September 8, 2010, until further notice, a person may fish for steelhead in the Columbia River from Priest Rapids Dam to 400 feet below Chief Joseph Dam. Selective gear rules, except bait allowed. Night closure in effect. Daily limit may contain up to four adipose fin clipped steelhead; minimum size 20 inches.

(a) A person may fish for and possess floy tagged rainbow trout. No daily or minimum size limits.

(3) Effective September 8, 2010, until further notice, a person may fish for steelhead in the Entiat River upstream from the Alternate Highway 97 Bridge near the mouth of the Entiat River to 800 feet downstream of the Entiat National Fish Hatchery outfall. Daily limit may contain up to four adipose fin clipped steelhead; minimum size 20 inches. Night closure and selective gear rules apply.

(4) Effective September 8, 2010, until further notice, a person may fish for steelhead in waters of the Methow River from the mouth to the confluence with the Chewuch River in Winthrop. Fishing from a floating device is prohibited from the second powerline crossing to the first Highway 153 bridge. Daily limit may contain up to four adipose fin clipped steelhead; minimum size 20 inches. Night closure and selective gear rules apply.

(5) Effective October 1, 2010, until further notice, a person may fish for steelhead in the Okanogan River from the mouth to the Highway 97 Bridge in Oroville. Daily limit may contain up to four adipose fin clipped steelhead; minimum size 20 inches. Night closure and selective gear rules apply.

(6) Effective November 1, 2010, until further notice, a person may fish for steelhead in waters of the Similkameen River from the mouth to 400 feet below Enloe Dam. Daily limit may contain up to four adipose fin clipped steelhead; minimum size 20 inches. Night closure and selective gear rules apply.

(7) Effective September 8, 2010, until further notice, a person may fish for steelhead in waters of the Wenatchee River from the mouth to the Icicle River Road Bridge. Daily limit may contain up to four adipose fin clipped steelhead; minimum size 20 inches. Night closure and selective gear rules apply.

**WSR 10-19-014
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE**

[Order 10-232—Filed September 3, 2010, 2:14 p.m., effective September 4, 2010, 5:00 a.m.]

Effective Date of Rule: September 4, 2010, 5:00 a.m.

Purpose: Amend commercial fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-47-50100B; 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: September 3, 2010.

Joe Stohr
for Philip Anderson
Director

NEW SECTION

WAC 220-47-50100B 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:

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	9/4, 9/5, 9/6, 9/7

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

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

(3) 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.

"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 8, 2010:

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

**WSR 10-19-016
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE**

[Order 10-233—Filed September 7, 2010, 1:59 p.m., effective September 8, 2010, 5:00 a.m.]

Effective Date of Rule: September 8, 2010, 5:00 a.m.

Purpose: Amend commercial fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-47-50100C; 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: September 7, 2010.

Joe Stohr
for Philip Anderson
Director

NEW SECTION

WAC 220-47-50100C 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	9/8

(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
8:15 AM - Midnight	9/8

(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	9/8, 9/9, 9/10

(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 11, 2010:

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

WSR 10-19-031

EMERGENCY RULES

DEPARTMENT OF

FISH AND WILDLIFE

[Order 10-231—Filed September 9, 2010, 3:19 p.m., effective September 9, 2010, 3:19 p.m.]

Effective Date of Rule: Immediately.

Purpose: Amend commercial fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-24-04000Z; and amending WAC 220-24-040.

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: It is projected that the harvestable quota of salmon will have been taken by the commercial troll fleet. 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: September 9, 2010.

Philip Anderson
Director

REPEALER

The following section of the Washington Administrative code is repealed:

WAC 220-24-04000Z All-citizen commercial salmon troll. (10-203)

WSR 10-19-032
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 10-234—Filed September 9, 2010, 3:20 p.m., effective September 9, 2010, 3:20 p.m.]

Effective Date of Rule: Immediately.

Purpose: Amend commercial fishing rules.

Citation of Existing Rules Affected by this Order: Amending WAC 220-52-073.

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: Harvestable amounts of red and green sea urchins exist in the areas described. Prohibiting all diving from licensed sea urchin harvest vessels within Sea Urchin District 3 when those vessels have red sea urchin on-board discourages the taking of red urchins from the district (currently closed to red urchin harvest) and reporting the catch to the adjacent harvest district. Prohibiting transport of urchins from Districts 1 and 2 to other districts will prevent spoiling of product, promote accurate catch accounting, and provide for an orderly 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: September 9, 2010.

Philip Anderson
Director

NEW SECTION

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

(1) Green sea urchins: Sea Urchin Districts 3, 4, 6 and 7 are open seven days-per-week.

(2) Red sea urchins: Sea Urchin Districts 1, 2 and 4 are open seven days-per-week.

(3) It is unlawful to dive for any purpose from a commercially licensed sea urchin fishing vessel in Sea Urchin District 3 when the vessel has red sea urchins on-board.

(4) Red sea urchins harvested in Sea Urchin Districts 1 and 2 must be landed within Sea Urchin Districts 1 and 2.

WSR 10-19-033
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 10-235—Filed September 9, 2010, 3:21 p.m., effective September 13, 2010, 6:00 a.m.]

Effective Date of Rule: September 13, 2010, 6:00 a.m.

Purpose: Amend commercial fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-52-05100N; 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 opens the spot shrimp pot fishery season in SMA 1A, 1B and Catch Areas 23A-C, 23A-E, 23B and 25A for two days with catch limits to harvest the relatively small amount of quota remaining in

those areas. In addition, this emergency rule closes the spot shrimp pot fishery season in the remaining open areas of Puget Sound on September 15 to protect egg bearing females as per the Puget Sound shrimp management plans. 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: September 9, 2010.

Philip Anderson
Director

NEW SECTION

WAC 220-52-05100P 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 (SMA) 1A, 1B, 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 SMA 1A, 1B, Marine Fish-Shellfish Management and Catch Reporting Area (Catch Area) 23A-C, 23A-E, 23A-W and the Discovery Bay Shrimp District are closed with the following exceptions:

a. Effective 6:00 a.m. September 13, 2010, until 6:00 p.m. September 15, 2010, SMA 1A, 1B, Catch Areas 23A-C and 23A-E are open to the harvest of spot shrimp.

(ii) All waters of SMA 2W, Catch Areas 23B, 25A and 26D are closed to the harvest of spot shrimp with the following exceptions:

a. Effective 6:00 a.m. September 13, 2010, until 6:00 p.m. September 15, 2010, Catch Areas 23B and 25A are open to the harvest of all shrimp species.

(iii) Effective 6:00 p.m. September 15, 2010, all waters of Catch Areas 23C, 23D, 23A-S, 29 and SMA 6 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 min-

imum 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) Effective 6:00 a.m. September 13, 2010, until 6:00 p.m. September 15, 2010, it is unlawful for the total harvest of spot shrimp by a fisher and/or the fisher's alternate operator to exceed 270 pounds in SMA 1A, or to exceed 190 pounds in SMA 1B or Catch Area 25A, or to exceed 200 pounds in Catch Area 23A-C or Catch Area 23B, or to exceed 120 pounds in Catch Area 23A-E.

(f) 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.

(g) 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)(f) 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 13, 2010:

WAC 220-52-05100N	Puget Sound shrimp pot and beam trawl fishery—Season. (10-227)
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WSR 10-19-036
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 10-230—Filed September 10, 2010, 11:34 a.m., effective September 10, 2010, 11:34 a.m.]

Effective Date of Rule: Immediately.

Purpose: Amend personal use fishing rules.

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

Statutory Authority for Adoption: RCW 77.12.047 and 77.04.020.

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

Reasons for this Finding: There are large numbers of upriver bright hatchery fall chinook returning to the Snake River. Retention of hatchery fall chinook is not expected to increase impacts to Endangered Species Act listed wild fall chinook. Therefore, a limited retention fishery on adipose clipped hatchery fall chinook is authorized. This regulation is compatible with regulations authorized by Oregon and Idaho management agencies allowing harvest of hatchery fall chinook in the Idaho and Oregon boundary waters of the Snake River. 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: September 10, 2010.

Joe Stohr
for Philip Anderson
Director

NEW SECTION

WAC 232-28-61900D Exceptions to statewide rules—Snake River. Notwithstanding the provisions of WAC 232-28-619, effective immediately through October 31, 2010, it is unlawful to violate the following provisions, provided that unless otherwise amended, all permanent rules remain in effect:

(1) A person may fish for salmon in waters of the Snake River from the Highway 12 Bridge south bound lane to Lower Granite Dam. Daily limit of two hatchery Chinook jacks, less than 24 inches in length. Minimum size for Chinook is 10 inches in length. Barbless hooks required.

(2) A person may fish for salmon in waters of the Snake River from Lower Granite Dam to the Oregon state line. Daily limit of two hatchery Chinook, of which only one may be an adult 24 inches or greater. Minimum size for Chinook is 10 inches in length. Barbless hooks required, and anglers must stop fishing for salmon once an adult salmon has been retained.

REPEALER

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

WAC 232-28-61900D Exceptions to statewide rules—Snake River,

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

WSR 10-19-037
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 10-236—Filed September 10, 2010, 12:28 p.m., effective September 12, 2010, 12:01 a.m.]

Effective Date of Rule: September 12, 2010, 12:01 a.m.

Purpose: The purpose of this rule making is to allow nontreaty commercial fishing opportunity in the Columbia River while protecting fish listed as threatened or endangered under the Endangered Species Act (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 220-33-01000H; 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: Discontinues sales of white sturgeon in select area fisheries. The sturgeon harvest guideline has been met for select areas. 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 September 9, 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: September 10, 2010.

Joe Stohr
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. Blind Slough/Knappa Slough Select Area.

a. SEASON: Monday, Tuesday, Wednesday, and Thursday nights immediately through October 29, 2010. Open hours are 7 PM to 7 AM through September 17, 2010, 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.

2. Tongue Point/South Channel Select Area.

a. SEASON: Monday, Tuesday, Wednesday, and Thursday nights immediately through October 30, 2010. Open 7 PM - 7 AM through September 18, 2010, 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.

3. Deep River Select Area.

a. SEASON: Monday, Tuesday, Wednesday and Thursday nights immediately through October 29, 2010. Open 7 PM - 9 AM through September 17, 2010, 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.

4. 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). Sturgeon retention and sales are prohibited effective September 12, 2010.

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 12:01 a.m. September 12, 2010:

WAC 220-33-01000H Columbia River season
below Bonneville. (10-210)

**WSR 10-19-038
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE**

[Order 10-237—Filed September 10, 2010, 12:29 p.m., effective September 10, 2010, 12:29 p.m.]

Effective Date of Rule: Immediately.

Purpose: The purpose of this rule making is to provide for treaty Indian fishing opportunity in the Columbia River while protecting salmon listed as threatened or endangered

under the Endangered Species Act (ESA). This rule making implements federal court orders governing Washington's relationship with treaty Indian tribes and federal law governing Washington's relationship with Oregon.

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

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

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

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

Reasons for this Finding: Extends the weekly fishing period currently in place for twenty-four additional hours (through September 11, 2010). Sets the fourth weekly commercial fishing period 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 September 9, 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: September 10, 2010.

Joe Stohr
for Philip Anderson
Director

NEW SECTION

WAC 220-32-05100P Columbia River salmon seasons above Bonneville Dam. Notwithstanding the provisions of WAC 220-32-050, WAC 220-32-051, WAC 220-32-052, and WAC 220-32-058, effective immediately until further notice, it is unlawful for a person to take or possess salmon, steelhead, 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: Immediately through 6:00 PM Saturday, September 11, 2010; and

6:00 AM September 13 to 6:00 PM September 17, 2010:

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 sub-

sistence 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 through 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:

WAC 220-32-05100N Columbia River salmon seasons above Bonneville Dam. (10-212)

**WSR 10-19-040
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE**

[Order 10-240—Filed September 10, 2010, 4:52 p.m., effective September 11, 2010, 5:00 a.m.]

Effective Date of Rule: September 11, 2010, 5:00 a.m.

Purpose: Amend commercial fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-47-50100D; 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 Mak-

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

Date Adopted: September 10, 2010.

Joe Stohr
for Philip Anderson
Director

NEW SECTION

WAC 220-47-50100D 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:

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, daily	9/11 through 9/17

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

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

(3) 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.

"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 18, 2010:

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

WSR 10-19-041
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 10-239—Filed September 10, 2010, 4:52 p.m., effective September 15, 2010, 9:00 p.m.]

Effective Date of Rule: September 15, 2010, 9:00 p.m.

Purpose: Amend personal use fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-56-32500U and 220-56-32500V; and amending WAC 220-56-325.

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 is needed to ensure an orderly fishery, manage within court ordered sharing requirements, and ensure conservation. The spot shrimp fishery will be closed on September 15, 2010, in Marine Areas 4 and 5 to protect spot shrimp during the onset of the egg-bearing period. 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: September 10, 2010.

Joe Stohr
for Philip Anderson
Director

NEW SECTION

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

1) Effective immediately until further notice, all waters equal to or less than 200 feet in depth in Marine Area 6 are open to the harvest of all shrimp species except spot shrimp. All spot shrimp caught must be immediately returned to the water unharmed. It is unlawful to set or pull shrimp gear in waters greater than 200 feet deep.

2) Effective immediately until further notice, it is unlawful to fish for or possess shrimp taken for personal use in all

waters of Marine Areas 7 and 13, except as provided for in this section;

a. Marine Area 7 north of a line from the Biz Point on Fidalgo Island to Cape Saint Mary on Lopez Island, then north of a line from Davis Point on Lopez Island to Cattle Point on San Juan Island, then north of a line due west from Lime Kiln Point light to the international boundary:

i. Open to the harvest of all shrimp species except spot shrimp. It is unlawful to possess spot shrimp, and all spot shrimp must immediately be returned to the water unharmed.

ii. It is unlawful to set or pull shrimp gear in waters greater than 200 feet deep.

3) Marine Area 13 is open to the harvest of all shrimp species except spot shrimp. It is unlawful to possess spot shrimp, and all spot shrimp must immediately be returned to the water unharmed.

4) Effective immediately until further notice, all waters equal to or less than 150 feet in depth in Marine Areas 8-1, 8-2, 9 and 11 are open to the harvest of all shrimp species except spot shrimp. All spot shrimp caught must be immediately returned to the water unharmed. It is unlawful to set or pull shrimp gear in waters greater than 150 feet deep.

5) Effective immediately until further notice, all waters of Marine Area 4 east of the Bonilla-Tatoosh line and Marine Area 5 are open to the harvest of all shrimp species except spot shrimp. It is unlawful to possess spot shrimp, and all spot shrimp must be immediately returned to the water unharmed.

REPEALER

The following section of the Washington Administrative Code is repealed effective 9:00 p.m. September 15, 2010:

WAC 220-56-32500U Shrimp—Areas and seasons
(10-175)

The following section of the Washington Administrative Code is repealed effective October 16, 2010:

WAC 220-56-32500V Shrimp—Areas and seasons.

WSR 10-19-049
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 10-244—Filed September 13, 2010, 2:50 p.m., effective September 13, 2010, 2:50 p.m.]

Effective Date of Rule: Immediately.

Purpose: The purpose of this rule making is to allow nontreaty commercial fishing opportunity in the Columbia River while protecting fish listed as threatened or endangered under the Endangered Species Act (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 220-33-01000H; 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: Discontinues sales of white sturgeon in select area fisheries. The sturgeon harvest guideline has been met for select areas. 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 September 9, 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: September 13, 2010.

Joe Stohr
for Philip Anderson
Director

NEW SECTION

WAC 220-33-01000I 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. Blind Slough/Knappa Slough Select Area.

a. SEASON: Monday, Tuesday, Wednesday, and Thursday nights immediately through October 29, 2010. Open hours are 7 PM to 7 AM through September 17, 2010, 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.

2. Tongue Point/South Channel Select Area.

a. SEASON: Monday, Tuesday, Wednesday, and Thursday nights immediately through October 30, 2010. Open 7 PM - 7 AM through September 18, 2010, 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.

3. Deep River Select Area.

a. SEASON: Monday, Tuesday, Wednesday and Thursday nights immediately through October 29, 2010. Open 7 PM - 9 AM through September 17, 2010, 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.

4. 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). Sturgeon retention and sales are prohibited effective September 12, 2010.

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:

WAC 220-33-01000H Columbia River season below Bonneville. (10-236)

WSR 10-19-050 EMERGENCY RULES DEPARTMENT OF FISH AND WILDLIFE

[Order 10-238—Filed September 13, 2010, 3:15 p.m., effective September 14, 2010]

Effective Date of Rule: September 14, 2010.

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: These lakes are scheduled for rehabilitation using rotenone to eradicate undesirable fish species. Licensed anglers may harvest remaining game fish prior to rehabilitation. 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: September 13, 2010.

Philip Anderson
Director

NEW SECTION

WAC 232-28-61900E Freshwater exceptions to state-wide rules. Notwithstanding the provisions of WAC 232-28-619:

(1) Canal, Heart, June, North-North Windmill, Windmill, and Pit Lakes

Effective September 14 through October 3, 2010, size and daily limit for game fish: none.

Effective October 4, 2010, until further notice, closed to fishing.

(3) North and South Teal Lakes

Effective September 14 through October 3, 2010, a person may fish in North and South Teal Lakes. Size and daily limits for gamefish: none. Effective October 4, 2010, until further notice, closed to fishing.

(4) Martha, Lower Caliche, Upper Caliche, and West Caliche Lakes

Effective September 14 through October 10, 2010, a person may fish in Martha, Lower Caliche, Upper Caliche and West Caliche Lakes. Size and daily limit for gamefish: none. Effective October 11, 2010, until further notice, closed to fishing.

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

WSR 10-19-056
EMERGENCY RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES

[Filed September 14, 2010, 2:05 p.m., effective September 14, 2010, 2:05 p.m.]

Effective Date of Rule: Immediately.

Purpose: To provide a correct physical address for the department's board of appeals (BOA). The BOA moved to Office Building 2 on June 18, 2010.

Citation of Existing Rules Affected by this Order: Amending WAC 388-02-0030.

Statutory Authority for Adoption: RCW 34.05.020.

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: Parties who appeal an administrative law judge's decision in a case before the department may need to physically serve petitions or responses on the BOA. The rule will give them the correct physical location for service of those pleadings. This emergency rule will supersede the emergency rule filed as WSR 10-15-112 on July 21, 2010. This emergency rule corrects the zip code erroneously provided in the July 21, 2010, filing.

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

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

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

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

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

Date Adopted: September 10, 2010.

Katherine I. Vasquez
Rules Coordinator

AMENDATORY SECTION (Amending WSR 00-18-059, filed 9/1/00, effective 10/2/00)

WAC 388-02-0030 ((Where is the board of appeals located)) How do I contact the board of appeals? (1) ((The mailing address of the DSHS board of appeals (BOA) is:

DSHS Board of Appeals

P.O. Box 45803

Olympia, WA 98504-5803;

(2) The general telephone numbers of the BOA are:

(360) 664-6100

1-877-351-0002 (toll free)

(360) 664-6178 (TTD)

(360) 664-6187 (fax);

(3) The physical location of the DSHS Board of Appeals (BOA) is:

Blake Office Bldg. East, 2nd Floor

4500 10th Ave. SE

Lacey, WA 98503)) The information included in this

section is current at this time of rule adoption, but may change. Current information and additional contact information are available on the department's internet site, in person at the board of appeals office, or by a telephone call to the board of appeal's main public number.

Table with 2 columns: Label (Location, Mailing address, Telephone, Fax, Toll free, Internet web site) and Value (Office Building 2 (OB-2) First Floor Information, 1115 Washington Street, Olympia, Washington, P.O. Box 45803, Olympia, WA 98504-5803, (360) 664-6100, (360) 664-6187, 1-877-351-0002, www.dshs.wa.gov/boa)

WSR 10-19-059
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 10-243—Filed September 14, 2010, 2:47 p.m., effective September 14, 2010, 2:47 p.m.]

Effective Date of Rule: Immediately.

Purpose: Amend commercial fishing rules.

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

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: For harvest logistical purposes, the commercial sea cucumber industry has requested a harvest schedule change for Sea Cucumber Management District 1. Harvestable amounts of sea cucumbers are available in the sea cucumber districts listed. 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: September 14, 2010.

Philip Anderson
Director

NEW SECTION

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

(1) Sea cucumber harvest using shellfish diver gear is allowed in Sea Cucumber Districts 1 and 5 on Monday through Friday of each week.

(2) Sea cucumber harvest using shellfish diver gear is allowed in Sea Cucumber Districts 2 and 3 on Monday and Tuesday of each week.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 220-52-07100C Sea cucumbers. (10-126)

WSR 10-19-077

EMERGENCY RULES DEPARTMENT OF FISH AND WILDLIFE

[Order 10-250—Filed September 16, 2010, 3:10 p.m., effective September 16, 2010, 3:10 p.m.]

Effective Date of Rule: Immediately.

Purpose: Amend commercial fishing rules.

Citation of Existing Rules Affected by this Order: Amending WAC 220-52-040.

Statutory Authority for Adoption: RCW 77.12.047, 77.04.020, 77.70.430.

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

Reasons for this Finding: Washington department of fish and wildlife permitted gear recovery is allowed by permanent regulation fifteen days following the close of the commercial season to allow fish and wildlife officers time to enforce rules relative to fishing during the closed season. An earlier start to the permitted gear recovery gives participants more time to recover lost gear before weather conditions becomes prohibitive to safe gear recovery efforts. 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: September 16, 2010.

Philip Anderson
Director

NEW SECTION

WAC 220-52-04000T Coastal crab fishery—Coastal crab gear recovery permit. Notwithstanding the provisions of WAC 220-52-040: effective immediately until further notice, five days after the close of the primary coastal commercial crab season, a coastal crab gear recovery permit may be granted by the director or his or her designee for licensed coastal Dungeness crab fishers to recover crab pots belonging to state licensed fishers that remain in the ocean.

WSR 10-19-078
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 10-245—Filed September 16, 2010, 3:12 p.m., effective September 16, 2010, 3:12 p.m.]

Effective Date of Rule: Immediately.

Purpose: Amend personal use fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 232-28-62000B and 232-28-62000C; 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: This emergency rule is needed to stay consistent with the original intent of the Pacific Fisheries Management Council by allowing Marine Areas 3 and 4 to stay open through September 19. 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: September 16, 2010.

Philip Anderson
 Director

NEW SECTION

WAC 232-28-62000C 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: Effective immediately through September 30, 2010, open seven days per week. Daily limit 2 salmon, except release wild coho.

(2) Area 2: Effective immediately through September 19, 2010, open seven days per week. Daily limit 2 salmon, except release wild coho.

(3) Area 3: Effective immediately through September 19, 2010, open seven days per week. Daily limit 2 salmon, except release wild coho.

(4) Area 4:

(a) Effective immediately through September 19, 2010, open seven days per week. 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 232-28-62000B Coastal salmon seasons. (10-225)

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

WAC 232-28-62000C Coastal salmon seasons.

WSR 10-19-079
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 10-246—Filed September 16, 2010, 3:18 p.m., effective September 18, 2010]

Effective Date of Rule: September 18, 2010.

Purpose: Amend personal use fishing rules.

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

Statutory Authority for Adoption: RCW 77.12.047 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: An unexpected abundance of hatchery-produced fall chinook that have not been marked with a missing adipose fin are returning to the Cowlitz River this season. This action will increase fishing opportunity this season and allow for a transition before a season-long mark-selective fishery for hatchery salmon is expected to begin next year, when all hatchery fall chinook salmon returning to the Cowlitz river will be marked with a missing adipose fin. This action does not affect Washington department of fish and wildlife's ability to meet conservation objectives for wild salmon. 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: September 16, 2010.

Philip Anderson
Director

NEW SECTION

WAC 232-28-61900F Exceptions to statewide rules—Cowlitz River. Notwithstanding the provisions of WAC 232-28-619, it is unlawful to violate the following provisions, provided that unless otherwise amended, all permanent rules remain in effect:

(1) Effective September 18, through December 31, 2010, in waters of the Cowlitz River from boundary markers at the mouth to 400 feet below Mayfield Dam Powerhouse, it is permissible to retain one wild adult Chinook as part of the two adult Chinook daily limit.

REPEALER

The following section of the Washington Administrative Code is repealed effective January 1, 2011:

WAC 232-28-61900F Exceptions to statewide rules—Cowlitz River.

**WSR 10-19-080
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE**

[Order 10-251—Filed September 16, 2010, 4:30 p.m., effective September 18, 2010, 5:00 a.m.]

Effective Date of Rule: September 18, 2010, 5:00 a.m.

Purpose: Amend commercial fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-47-50100E; 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 fish-

eries 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: September 16, 2010.

Philip Anderson
Director

NEW SECTION

WAC 220-47-50100E 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:

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, daily	9/18

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

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

(3) 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 19, 2010:

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

WSR 10-19-083
EMERGENCY RULES
DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Aging and Disability Services Administration)

[Filed September 17, 2010, 11:09 a.m., effective September 17, 2010, 11:09 a.m.]

Effective Date of Rule: Immediately.

Purpose: The department is amending chapter 388-71 WAC, Home and community services and programs; and chapter 388-106 WAC, Long-term care services. Amendments are necessary to implement adult day health (ADH) changes required by federal directive, which requires the program to be offered [offered] under a different federal statutory authority - 1915(i) of the Social Security Act. The 1915(i) option has different financial eligibility requirement[s] than the current program. ADH transportation will no longer be provided by the medicaid transportation broker. Transportation will be the responsibility of the ADH center to provide or arrange.

Citation of Existing Rules Affected by this Order: Repealing WAC 388-71-0734; and amending WAC 388-71-0720, 388-71-0724, 388-71-0726, and 388-106-0815.

Statutory Authority for Adoption: RCW 74.08.090, 74.09.520.

Other Authority: Section 1915(i) of the Social Security Act.

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: Federal funds for this program ended December 31, 2009, due to a federal directive requiring ADH services to be removed from the rehabilitative services section of the medicaid state plan. In order to continue ADH services, the aging and disability services administration (ADSA) will provide ADH services under Section 1915(i) of the Social Security Act. The 1915(i) option has different financial eligibility rules that require nonexcluded income to be at or below one hundred fifty percent of the federal poverty level (FPL). ADSA will no longer pay for transportation to ADH by the medicaid transportation broker. ADSA will increase the ADH rate and ADH providers can provide transportation [transportation] directly or through an arrangement with a third party. This emergency rule superseded emergency rules previously filed as WSR 09-20-037 on September 30, 2009, WSR 10-02-044 filed on December 30, 2009, and WSR 10-10-056 filed on April 29, 2010. A CR-101 was also filed on May 27, 2009, under WSR 09-12-

042. The department is awaiting federal direction in order to align this rule amendment with the Patient Protection and Affordable Care Act, Section 2402.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 1, Amended 4, 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 0, Amended 0, Repealed 0.

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

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 1, Amended 4, Repealed 1.

Date Adopted: September 13, 2010.

Katherine I. Vasquez
Rules Coordinator

AMENDATORY SECTION (Amending WSR 05-11-082, filed 5/17/05, effective 6/17/05)

WAC 388-71-0720 Adult day health—Assessment and service plan. (1) The department or an authorized case manager must perform a CARE assessment to determine a client's need for a referral to adult day health, per WAC 388-106-0065. Based on the assessment, the case manager determines whether the client should be referred for day health services or whether the client's needs can be met in other ways.

(2) If the client **has** a department or area agency on aging case manager, the adult day health center or other referral source must notify the case manager of the client's potential adult day health service need. The case manager must ~~((assess))~~ determine the client's need for a referral to ADH skilled nursing or skilled rehabilitative therapy within the department's normal time frames for client reassessments.

(3) If the client does not have a department or area agency on aging case manager, the adult day health center or other referral source must notify the department of the referral and the client's potential adult day health service need, or refer the client to the department for intake. The department's assigned case manager must assess the client's need for a referral to adult day health services within the department's normal time frames for initial client eligibility assessments.

(4) The case manager may consult with the client's practitioner, department or area agency on aging nursing services staff, or other pertinent collateral contacts, concerning the client's need for a referral to ADH skilled nursing or rehabilitative therapy.

(5) If the department or area agency on aging case manager determines ~~((and documents a potential unmet))~~ a need for ~~((day health services))~~ a referral to skilled nursing or skilled rehabilitative therapy, the case manager works with the client and/or the client's representative to develop a service plan that documents the potential unmet needs and ~~((the~~

~~anticipated number of days per week that the services are needed))~~ whether the client wants a referral to ADH or another service provider.

(6) The case manager refers the client to a department contracted day health center for evaluation and the development of a preliminary negotiated plan of care.

~~((6))~~ (7) The department or area agency on aging case manager must reassess adult day health clients at least annually. Clients must also be reassessed if they have a break in service of more than thirty days. The adult day center must inform the case manager of the break in service so payment authorization can be discontinued.

~~((7))~~ (8) Recipients of adult day health services must be assessed by the department or an authorized case manager for continued or initial eligibility as follows:

- (a) Annual reassessment for department clients;
- (b) Adult day health quarterly review for current nondepartmental clients as resources allow; and
- (c) New referrals for adult day health services are to be forwarded to local department offices for intake and assessment for eligibility.

~~((8))~~ (9) The department or area agency on aging case manager must review a client's continued eligibility for adult day health services every ninety days, coinciding with the quarterly review completed by the adult day health program. At the case manager's discretion, additional information will be gathered through face to face, collateral or other contact methods to determine continued eligibility. Services will be continued, adjusted, or terminated based upon the case manager's determination during the eligibility review.

AMENDATORY SECTION (Amending WSR 03-06-024, filed 2/24/03, effective 7/1/03)

WAC 388-71-0724 Adult day services—Contracting and rates. (1) The department, or an area agency on aging (or other department designee) as authorized by the department, must determine that the adult day care or day health center meets the applicable adult day care or day health requirements and any additional requirements for contracting with the area agency on aging through a COPES contract or with the department through a medicaid provider contract. If a center is contracting for both day care and day health, requirements of both adult day services must be met.

(a) A prospective provider desiring to provide adult day services shall be provided an application form from the department or the area agency on aging.

(b) The prospective provider will provide the area agency on aging with evidence of compliance with, or administrative procedures to comply with, the adult day service rules under this chapter.

(c) The area agency on aging will conduct a site inspection of the adult day center and review of the requirements for contracting.

(d) Within thirty days of completing the site visit, the area agency on aging will advise the prospective provider in writing of any deficiencies in meeting contracting requirements.

(e) The area agency on aging will verify correction of any deficiencies within thirty days of receiving notice from

the prospective provider that deficiencies have been corrected, before contracting can take place.

(f) The area agency on aging will provide the department with a written recommendation as to whether or not the center meets contracting requirements.

(2) Minimum application information required to apply for contract with the department, or an area agency on aging includes:

(a) Mission statement, articles of incorporation, and bylaws, as applicable;

(b) Names and addresses of the center's owners, officers, and directors as applicable;

(c) Organizational chart;

(d) Total program operating budget including all anticipated revenue sources and any fees generated;

(e) Program policies and operating procedure manual;

(f) Personnel policies and job descriptions of each paid staff position and volunteer position functioning as staff;

(g) Policies and procedures meeting the requirements of mandatory reporting procedures as described in chapter 74.34 RCW to adult protective services for vulnerable adults and local law enforcement for other participants;

(h) Audited financial statement;

(i) Floor plan of the facility;

(j) Local building inspection, fire department, and health department reports;

(k) Updated TB test for each staff member according to local public health requirements;

(l) Sample client case file including all forms that will be used; and

(m) Activities calendar for the month prior to application, or a sample calendar if the day service provider is new.

(3) The area agency on aging or other department designee monitors the adult day center at least annually to determine continued compliance with adult day care and/or adult day health requirements and the requirements for contracting with the department or the area agency on aging.

(a) The area agency on aging will send a written notice to the provider indicating either compliance with contracting requirements or any deficiencies based on the annual monitoring visit and request a corrective action plan. The area agency on aging will determine the date by which the corrective action must be completed

(b) The area agency on aging will notify the department of the adult day center's compliance with contracting requirements or corrected deficiencies and approval of the corrective action plan for continued contracting.

(4) Adult day care services are reimbursed on an hourly basis up to four hours per day. Service provided four or more hours per day will be reimbursed at the daily rate.

(5) ~~(Payment rates are established on an hourly and daily basis for adult day care centers as may be adopted in rule.)~~ Rate adjustments are determined by the state legislature. ~~(Providers seeking current reimbursement rates can refer to SSPS billing instructions)~~ Information on current reimbursement rates is available at <http://www.adsa.dshs.wa.gov/professional/> under the "office of rates management" section.

(6) ~~((Rates as of July 1, 2002, are as follows:))~~

((Counties	COPES Adult Day Care	
	Daily Rate	Hourly Rate
King	\$36.48	\$9.10
Benton, Clark, Franklin, Island, Kitsap, Pierce, Snohomish, Spokane, Thurston, Whatcom, & Yakima	\$32.45	\$8.11
All other counties	\$30.75	\$7.69))

((7)) Payment rates are established on a daily basis for adult day health centers ((as may be adopted in rule)). Rate adjustments are determined by the state legislature. ((Providers seeking)) Information on current reimbursement rates ((can refer to MAA billing instructions or <http://maa.dshs.wa.gov>)) is available at <http://www.adsa.dshs.wa.gov/professional/> under the "office of rates management" section.

((8)) (7) ((Rates as of July 1, 2002, are as follows:))

((Counties	Day Health Daily
King	\$47.48
Benton, Clark, Franklin, Island, Kitsap, Pierce, Snohomish, Spokane, Thurston, Whatcom, & Yakima	\$43.06
All other counties	\$40.68))

A one-time only initial intake evaluation provided by an adult day health center, including development of a negotiated care plan, is reimbursed at an established rate ((as may be adopted in rule)). ((The rate as of July 1, 2002 is eighty-nine dollars and thirty-eight cents)) Information on current reimbursement rates is available at <http://www.adsa.dshs.wa.gov/professional/> under the "office of rates management" section. Rate adjustments are determined by the state legislature. Separate reimbursement is not available for subsequent evaluations.

((9)) (8) Transportation to and from the program site is not reimbursed under the adult day care rate. Transportation arrangements are made with locally available transportation providers or informal resources.

((10)) (9) ((Transportation to and from the program site is not reimbursed under the adult day health rate. Transportation arrangements for eligible medicaid clients are made with local medicaid transportation brokers, informal providers, or other available resources per chapter 388-546 WAC)) Adult day health providers must arrange or provide transportation within the daily rate.

AMENDATORY SECTION (Amending WSR 03-06-024, filed 2/24/03, effective 7/1/03)

WAC 388-71-0726 Adult day health transportation. ((The following rules apply if medicaid transportation services are requested:

(1) The day health center must refer the client to a local medicaid transportation broker. The broker may consult with the client, the client's physician, family, case manager, or day health center as needed in making any transportation arrangements.

(2) In referring the client to a day health center, the case manager may consider: The frailty and endurance of the client, the client's skilled nursing or rehabilitative therapy needs, and a reasonable round-trip travel time that may not exceed two hours, unless there is no closer center that can meet the client's skilled care needs. Documentation of language barriers may be considered on an exception to rule basis by the case manager.

(3) All brokered transportation under this subsection is subject to the requirements of chapter 388-546 WAC or its successors. In the case of any conflicts, the provisions of chapter 388-546 WAC take precedence)) (1) Adult day health providers must coordinate or provide transportation as necessary to assure client access to service.

(2) Adult day health providers must arrange or provide transportation within the daily rate.

AMENDATORY SECTION (Amending WSR 05-11-082, filed 5/17/05, effective 6/17/05)

WAC 388-106-0815 Am I eligible for adult day health? (1) You are eligible for adult day health services if you meet all of the following criteria. You are:

- (a) Age eighteen years or older.
- (b) Enrolled in ((one of the following)) a categorically needy (CNP) medical assistance ((programs:
 - (i) Categorically needy (CNP);
 - (ii) Categorically needy qualified medicare beneficiaries (CNP-QMB);
 - (iii) General assistance—Expedited medicaid disability (GA-X); or
 - (iv) Alcohol and Drug Abuse Treatment and Support Act (ADATSA)) program as defined in WAC 388-500-0005.

(c) Your nonexcluded income does not exceed one hundred fifty percent of the federal poverty level (FPL).

(d) Assessed as having an unmet need for skilled nursing under WAC 388-71-0712 or skilled rehabilitative therapy under WAC 388-71-0714((;)) and;

(i) There is a reasonable expectation that these services will improve, restore or maintain your health status, or in the case of a progressive disabling condition, will either restore or slow the decline of your health and functional status or ease related pain or suffering; and

(ii) You are at risk for deteriorating health, deteriorating functional ability, or institutionalization; and

(iii) You have a chronic or acute health condition that you are not able to safely manage due to a cognitive, physical, or other functional impairment.

((11)) (e) Assessed as having needs for personal care or other core services, whether or not those needs are otherwise met.

(2) You are not eligible for adult day health if you:

(a) Can independently perform or obtain the services provided at an adult day health center;

(b) Have referred care needs that:

(i) Exceed the scope of authorized services that the adult day health center is able to provide;

- (ii) Do not need to be provided or supervised by a licensed nurse or therapist;
 - (iii) Can be met in a less structured care setting; or
 - (iv) In the case of skilled care needs, are being met by paid or unpaid caregivers.
- (c) Live in a nursing home or other institutional facility; or
- (d) Are not capable of participating safely in a group care setting.

NEW SECTION

WAC 388-106-0820 Is there a wait list for adult day health? The department may maintain a wait list when the number of participants reaches federally approved capacity. Wait list clients will gain access in the following priority:

(1) Residents of nursing homes, or ICFs/MR, or hospital patients who are waiting for discharge will be ranked first on the wait list by date of application for services.

(2) All other applicants, in order of date and time the referral request is received by aging and disability services administration.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 388-71-0734 Limiting expenditures.

**WSR 10-19-084
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE**

[Order 10-252—Filed September 17, 2010, 2:15 p.m., effective September 17, 2010, 2:15 p.m.]

Effective Date of Rule: Immediately.

Purpose: Amend commercial fishing rules.

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

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: Harvestable amounts of sea cucumbers are available in the sea cucumber districts listed. 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: September 17, 2010.

Lori Preuss
for Philip Anderson
Director

NEW SECTION

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

(1) Sea cucumber harvest using shellfish diver gear is allowed in Sea Cucumber Districts 1 and 5 on Monday through Friday of each week.

(2) Sea cucumber harvest using shellfish diver gear is allowed in Sea Cucumber District 3 on Monday and Tuesday of each week.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 220-52-07100D Sea cucumbers. (10-243)

**WSR 10-19-086
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE**

[Order 10-241—Filed September 17, 2010, 2:59 p.m., effective September 17, 2010, 2:59 p.m.]

Effective Date of Rule: Immediately.

Purpose: Amend commercial fishing rules.

Citation of Existing Rules Affected by this Order: Amending WAC 220-36-023.

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 is needed to change a date due to a scheduling conflict with the Quinault Indian Nation. Retention of chinook salmon was inadver-

tently missed in the permanent filing. 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: September 17, 2010.

Philip Anderson
Director

NEW SECTION

WAC 220-36-02300J Salmon—Grays Harbor fall fishery. Notwithstanding the provisions of WAC 220-36-023, it is unlawful to violate the following provisions, provided that unless otherwise amended, all permanent rules remain in effect:

(1) Effective 7:30 a.m. October 14 through 7:30 p.m. October 14, 2010, it is unlawful to fish in that portion of Area 2A upstream from the Highway 101 Bridge at Aberdeen, to a line projected from the Lakeside Industries asphalt plant tower at a right angle to the thread of the stream to the opposite shore. However, it is permissible to fish in these waters effective 7:30 a.m. October 15 through 7:30 p.m. October 15, 2010.

(2) Effective 7:30 a.m. October 14 through 7:30 p.m. October 14, 2010, it is unlawful to fish in that portion of Area 2D lying easterly of a north-south line from the confluence of the Hoquiam and Chehalis Rivers to Renney Island, then easterly to Range Marker G, then to the eastern boundary of Area 2D at the Highway 101 Bridge. However, it is permissible to fish in these waters effective 7:30 a.m. October 15 through 7:30 p.m. October 15, 2010.

(3) All Chinook, nonlegal sturgeon, chum, 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 Areas 2A and 2D.

WSR 10-19-087
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 10-247—Filed September 17, 2010, 3:03 p.m., effective September 19, 2010, 8:15 p.m.]

Effective Date of Rule: September 19, 2010, 8:15 p.m.
Purpose: Amend personal use fishing rules.

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

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: Most of the sockeye currently in the lake have migrated toward or into spawning areas and are no longer available 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: September 17, 2010.

Philip Anderson
Director

REPEALER

The following section of the Washington Administrative Code is repealed effective 8:15 p.m. September 19, 2010:

WAC 232-28-61900J	Exceptions to statewide rules—Baker Lake (Whatcom Co.) (10-181)
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WSR 10-19-089
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 10-253—Filed September 17, 2010, 4:42 p.m., effective September 20, 2010]

Effective Date of Rule: September 20, 2010.

Purpose: Amend personal use fishing rules.

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

Statutory Authority for Adoption: RCW 77.12.047 and 77.04.020.

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

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

Reasons for this Finding: The closure of chinook retention is necessary because the hatchery is not expected to meet broodstock needs. 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: September 17, 2010.

Philip Anderson
Director

NEW SECTION

WAC 232-28-61900I Exceptions to statewide rules—Kalama River. Notwithstanding the provisions of WAC 232-28-619, effective September 20 through December 31, 2010, it is unlawful to retain Chinook salmon in waters of the Kalama River from boundary markers at the mouth to 1000 feet below the fishway at the upper salmon hatchery.

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

REPEALER

The following section of the Washington Administrative Code is repealed effective January 1, 2011:

WAC 232-28-61900I Exceptions to statewide
rules—Kalama River.

**WSR 10-19-116
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE**

[Order 10-248—Filed September 21, 2010, 2:15 p.m., effective September 22, 2010, 8:00 p.m.]

Effective Date of Rule: September 22, 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 220-33-01000I; 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 two commercial fishing periods for the mainstem Columbia River. Continues to prohibit retention and sales of white sturgeon in select area fisheries (the sturgeon harvest guideline has been met for select areas). The seasons are consistent with the 2008-2017 interim management agreement, the 2010 non-Indian salmon allocation agreement and the 2010 sturgeon accord. The regulation is consistent with compact action of July 29 and September 20, 2010.

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 wild-life convene public hearings and take public testimony when considering proposals for new emergency rules. 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 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: September 21, 2010.

Philip Anderson
Director

NEW SECTION

WAC 220-33-01000J 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 PM Wednesday, September 22, to 6 AM Thursday, September 23, 2010.

8 PM Sunday, September 26, to 6 AM Monday, September 27, 2010

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

c. GEAR: Drift gillnet. 8-inch minimum mesh size restriction.

2. Blind Slough/Knappa Slough Select Area.

a. SEASON: Monday, Tuesday, Wednesday, and Thursday nights immediately through October 29, 2010. Open hours are 6 PM to 8 AM.

b. AREA: Blind Slough and Knappa Slough. An area closure of 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.

3. Tongue Point/South Channel Select Area.

a. SEASON: Monday, Tuesday, Wednesday, and Thursday nights immediately through October 30, 2010. Open hours are 4 PM to 8 AM

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.

4. Deep River Select Area.

a. SEASON: Monday, Tuesday, Wednesday and Thursday nights immediately through October 29, 2010. Open hours 4 PM to 8 AM.

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.

5. ALLOWABLE SALES: Salmon and white sturgeon. Sturgeon retention and sales are prohibited in all Select Area fishing sites. **For mainstem Columbia River fisheries,** a maximum of six white sturgeon may be possessed or sold by each participating vessel each calendar week (Sunday through Saturday).

6. 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).

7. Additional Rules: Nets not specifically authorized for use in these areas may be onboard a 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.

REPEALER

The following section of the Washington Administrative Code is repealed effective 8:00 p.m. September 22, 2010:

WAC 220-33-01000I Columbia River season below Bonneville. (10-244)

WSR 10-19-117
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 10-249—Filed September 21, 2010, 2:15 p.m., effective September 22, 2010]

Effective Date of Rule: September 22, 2010.

Purpose: The purpose of this rule making is to allow nontreaty recreational fishing opportunity in the Columbia River while protecting fish listed as threatened or endangered under the Endangered Species Act (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 232-28-61900J; and amending WAC 232-28-619.

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

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

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

Reasons for this Finding: Increases the daily bag limit for adult chinook. Two adult chinook may be kept in the area from Warrior Rock upstream to Bonneville Dam. Harvestable numbers of upriver bright fall chinook remain within the ESA impact limit, based on the current in-season chinook run size. There is insufficient time to adopt permanent rules.

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

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

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

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

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

Date Adopted: September 21, 2010.

Philip Anderson
Director

NEW SECTION

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

Columbia River

1. From the Warrior Rock Lighthouse (defined as a line projected from the Warrior Rock Lighthouse through red buoy #4 to the orange marker atop Dolphin on the Washington shore) upstream to Bonneville Dam: Effective September 22 through December 31, 2010: Release all salmon other than Chinook and hatchery coho. Salmon minimum size limit is 12 inches. Daily limit six fish. Up to two may be adult salmon or hatchery steelhead, or one of each.

2. From Beacon Rock to Bonneville Dam, closed to fishing for salmon November 1 through December 31, 2010.

REPEALER

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

WAC 232-28-61900J	Exceptions to statewide rules—Columbia River.
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WSR 10-19-149
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 10-255—Filed September 22, 2010, 11:45 a.m., effective September 22, 2010, 8:00 p.m.]

Effective Date of Rule: September 22, 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 220-33-01000J; 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: The last emergency rule on this fishery had an error in the closing time for Deep River. The closing time should have been 9 a.m. instead of 8 a.m. for the fishery. The sturgeon harvest guideline has been met for Select Areas and sturgeon sales are not allowed. 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 September 9, 2010. There is insufficient time to adopt permanent rules.

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

Some Columbia River Basin salmon and steelhead stocks are listed as threatened or endangered under the federal 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: September 22, 2010.

Lori Preuss
for Philip Anderson
Director

NEW SECTION

WAC 220-33-01000K 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 PM Wednesday, September 22, to 6 AM Thursday, September 23, 2010.

8 PM Sunday, September 26, to 6 AM Monday, September 27, 2010

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

c. GEAR: Drift gillnet. 8-inch minimum mesh size restriction.

2. Blind Slough/Knappa Slough Select Area.

a. SEASON: Monday, Tuesday, Wednesday, and Thursday nights immediately through October 29, 2010. Open hours are 6 PM to 8 AM.

b. AREA: Blind Slough and Knappa Slough. An area closure of 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.

3. Tongue Point/South Channel Select Area.

a. SEASON: Monday, Tuesday, Wednesday, and Thursday nights immediately through October 30, 2010. Open hours are 4 PM to 8 AM

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.

4. Deep River Select Area.

a. SEASON: Monday, Tuesday, Wednesday and Thursday nights immediately through October 29, 2010. Open hours 4 PM to 9 AM.

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.

5. ALLOWABLE SALES: Salmon and white sturgeon. Sturgeon retention and sales are prohibited in all Select Area fishing sites. **For mainstem Columbia River fisheries,** a maximum of six white sturgeon may be possessed or sold by each participating vessel each calendar week (Sunday through Saturday).

6. 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).

7. Additional Rules: Nets not specifically authorized for use in these areas may be onboard a 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.

REPEALER

The following section of the Washington Administrative Code is repealed effective 8:00 p.m. September 22, 2010:

WAC 220-33-01000J	Columbia River season below Bonneville. (10-248)
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