

WSR 10-20-005
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 10-254—Filed September 22, 2010, 3:01 p.m., effective October 1, 2010]

Effective Date of Rule: October 1, 2010.

Purpose: Amend personal use fishing rules.

Citation of Existing Rules Affected by this Order:
 Repealing WAC 220-56-25500A.

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: Federal regulations allow the northern nearshore halibut fishery to remain open until the quota is taken or until September 30, 2010, whichever occurs first. There is sufficient quota to allow the northern nearshore area to remain open through September. 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Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 0, Repealed 1.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.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 22, 2010.

Philip Anderson
 Director

REPEALER

The following section of the Washington Administrative Code is repealed effective October 1, 2010:

WAC 220-56-25500A Halibut—Seasons—Daily
 and possession limits. (10-
 192)

WSR 10-20-006
EMERGENCY RULES
OFFICE OF
INSURANCE COMMISSIONER

[Insurance Commissioners Docket No. R 2010-13—Filed September 22, 2010, 3:32 p.m., effective September 22, 2010, 3:32 p.m.]

Effective Date of Rule: Immediately.

Purpose: Explain the requirements that carriers must follow for persons under age nineteen who apply for coverage under an individual health benefit plan on or after September 23, 2010.

Statutory Authority for Adoption: RCW 48.02.060, 48.18.120(2), 48.20.450, 48.44.050, 48.46.200.

Other Authority: RCW 48.18.120(2), 48.20.450, 48.43.-012, 48.43.015, 48.43.018, P.L. 111-148, sec. 2704.

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 Patient Protection and Affordable Care Act (P.L. 111-148) establishes specific requirements that health carriers must follow when they receive an application for individual coverage from a person under age nineteen, and making the enrollment process available to persons in that age group. These requirements go into effect for policy years beginning on or after September 23, 2010. The commissioner received a petition from a health plan asking for rule making to address the guaranteed issue, special and open enrollment period requirements in that rule so that all carriers understood the way they are expected to implement the federal requirements in Washington state. These rules help prevent disruption in the individual health insurance marketplace by promoting a uniform approach to new regulatory requirements.

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

Date Adopted: September 22, 2010.

Mike Watson
 Chief Deputy
 Insurance Commissioner

SUBCHAPTER J

HEALTH PLAN ENROLLMENT AND COVERAGE
REQUIREMENTSNEW SECTION

WAC 284-43-1001 Purpose and scope. Health carriers may require any person applying for an individual health benefit plan to complete the standard health questionnaire designated under chapter 48.41.RCW, and may reject an individual for an individual health benefit plan based upon preexisting conditions under certain circumstances described in RCW 48.43.012, 48.43.015 and 48.43.018. Section 2704 of the Patient Protection and Affordable Care Act, P.L. 111-148 and the interim final regulations interpreting it, 45 C.F.R. Sec. 145.103 and 147.108, restrict a carrier's application of preexisting condition exclusions to the coverage of and enrollment of persons under age nineteen. These rules explain the requirements that are in effect in Washington as a result of these federal changes applicable to policy years beginning on or after September 23, 2010.

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

NEW SECTION

WAC 284-43-1005 Definitions. As used in this section, unless the context requires otherwise:

"Applicant" means a person who applies for enrollment in an individual health plan as the subscriber or an enrollee, or the dependent or spouse of a subscriber or enrollee.

"Carrier" has the same meaning as its definition in RCW 48.43.005(16) and includes "issuers" as that term is used in the Patient Protection and Affordable Care Act, P.L. 111-148.

"Open enrollment" means a period of time as defined in these rules, held at the same time each year, during which applicants may enroll in the carrier's individual health benefit plan without being subject to health screening or otherwise required to provide evidence of insurability as a condition for enrollment.

"Special enrollment" means a defined period of time of not less than thirty-one days, triggered by a specific qualifying event experienced by the applicant, during which applicants may enroll in the carrier's individual health benefit plan without being subject to health screening or otherwise required to provide evidence of insurability as a condition for enrollment.

"Standard health questionnaire" means the standard health questionnaire designated under chapter 48.41 RCW.

NEW SECTION

WAC 284-43-1010 Preexisting conditions. For any individual health benefit plan, a carrier must waive any exclusion of benefits, including a denial of coverage, and may not otherwise limit coverage based upon a preexisting condition waiting period if the applicant or enrollee is a person under age 19. This requirement:

(1) Does not apply to an individual grandfathered plan under P.L. 111-148, the Patient Protection and Affordable Care Act;

(2) Includes those persons under age nineteen with a pre-existing condition who seek coverage as the primary insured or as a dependent or as a spouse under individual health benefit plans that permit the enrollment of dependents, and enrolled persons under age nineteen who seek benefits for which they are otherwise eligible.

NEW SECTION

WAC 284-43-1015 Enrollment of persons under age nineteen. (1) If a carrier offers an individual health benefit plan, for policy years beginning on January 1, 2011, for any individual health benefit plan, a carrier must offer an open enrollment period for persons under age nineteen that begins November 1, 2010, and extends through December 1, 2010. Both during the initial open enrollment period of November 1, 2010 through December 15, 2010, any special enrollment period or any other enrollment period, a carrier must not require a person under age nineteen applying for an individual health benefit plan to complete the standard health questionnaire designated under chapter 48.41 RCW or provide other evidence of insurability.

(2) A carrier may offer enrollment in an individual health benefit plan outside the open or special enrollment period, but must not require any evidence of insurability or completion of the standard health questionnaire.

(3) For individual health plan policy years beginning on or after September 23, 2010, a carrier must offer a special open enrollment period to a person under age 19 who experiences a qualifying event. The special enrollment period must continue for at least thirty-one days from the date of a qualifying event. The prohibitions against requiring evidence of insurability or completion of the standard questionnaire apply. A qualifying event means the occurrence of one of the following:

(a) The person under age nineteen or the person under whose policy they were enrolled loses employer sponsored insurance;

(b) The person under age nineteen loses eligibility under medicaid or other public program providing health benefits;

(c) The person under age nineteen or the person under whose policy they were enrolled loses coverage as the result of dissolution of marriage;

(d) The person under age nineteen or the person under whose policy they were enrolled changes residence, and the health plan under which they were covered does not provide coverage in that service area;

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 10-20-032
EMERGENCY RULES
DEPARTMENT OF
EARLY LEARNING

[Filed September 24, 2010, 2:56 p.m., effective October 1, 2010]

Effective Date of Rule: October 1, 2010.

Purpose: Amending working connections child care (WCCC) and seasonal child care (SCC) program rules in chapter 170-290 WAC. The department of early learning (DEL) is changing the countable income limit for families to be eligible for WCCC and SCC subsidies, to one hundred seventy-five percent of the federal poverty guidelines (FPG). The current income limit is two hundred percent of the FPG. The change will mean families with countable income between one hundred seventy-five percent up to two hundred percent of the FPG will no longer be eligible for WCCC or SCC subsidies.

Citation of Existing Rules Affected by this Order: Amending WAC 170-290-0005, 170-290-0075, 170-290-0085, 170-290-3520, and 170-290-3640.

Statutory Authority for Adoption: RCW 43.215.060 and 43.215.070.

Other Authority: Chapter 43.215 RCW.

Under RCW 34.05.350 the agency for good cause finds that immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest; 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: An emergency rule is necessary to amend the WCCC and SCC WAC to prevent these programs from running out of funds in state fiscal year 2011, which ends on June 30, 2011, and to avert a broad termination of benefits to all families receiving child care subsidies. Continuing these programs at the current maximum eligibility level would result in the programs becoming overburdened due to insufficient funds and increased caseloads. The governor has determined that a shortfall is imminent and has directed agencies to implement cuts by October 1.

The state budget is faced with significant challenges now and for the foreseeable future. Revenue forecasts for Washington state government continue to show projected general fund revenue down for the two-year period ending June 30, 2011. This follows a \$9 billion shortfall, representing about twenty seven percent of the state's general fund operating budget. The September state revenue forecast released on September 16, 2010, projects an additional drop in tax collections between September and the end of state fiscal year 2013. The projected shortfall in the 2011-2013 budget is anticipated to be between \$3 and \$4 billion dollars.

The legislature projected potential shortfall in the WorkFirst budget. The 2010-2011 supplemental operating budget

bill (ESSB 6444) anticipated that federal revenues in the WorkFirst "TANF box" may fall short of estimates.

As of August 2010, Washington's temporary assistance for needy families (TANF) program, WorkFirst, faced a \$51 million budget shortfall for fiscal year 2011. The shortfall is the result of increased demand for the program due to the economic recession, together with declining resources. In the last two years, the WorkFirst caseload has grown by more than thirty percent, from 51,106 cases in July 2008 to 66,634 cases in June 2010.

On August 12, 2010, the governor directed agencies that form the WorkFirst subcabinet to take measures to reduce WorkFirst expenditures. As part of those measures across multiple programs, DEL revised the income limit for WCCC subsidy eligibility, from two hundred percent of the FPG to one hundred seventy-five percent of FPG. DEL is also applying the income limit to families in the SCC program.

It is anticipated that reducing eligibility to one hundred seventy-five percent of FPG effective October 1, 2010, will save \$14.78 million, and is expected to impact about two thousand five hundred families who would no longer qualify for a WCCC subsidy, which represents about six percent of the current WCCC caseload. Each month that the department waits to implement this change will result in more families who are impacted by the budget shortfall. Reducing the FPG level sooner may help to avoid or delay additional budget cuts and the broad termination of child care subsidy benefits later on.

In addition, the governor has determined that a budget shortfall is imminent and has directed agencies to implement cuts by October 1 to avoid running out of state general funds. In particular, the Governor's Executive Order 10-04 (Ordering Expenditure Reductions in Allotments of State General Fund Appropriations), signed on September 13, 2010, found that:

- Revenues have fallen short of projections;
- The current official state economic and revenue forecast of general fund revenues is less than the official estimate upon which the state's 2009-2011 biennial operating budget and supplemental operating budget were enacted; and
- The anticipated revenues combined with the beginning cash balance of the general fund are insufficient to meet anticipated expenditures from this fund for the remainder of the current fiscal period.

Accordingly, the governor ordered the allotment of each appropriation from the state general fund to be reduced effective October 1, 2010, by an amount necessary to avoid a cash deficit in the state general fund.

Failure to amend the WCCC and SCC rules by October 1, 2010, will result in these programs becoming oversubscribed because of insufficient funds to pay program benefits, since the state will run out of funds for these programs in fiscal year 2011. The legislature's anticipated shortfall in the WorkFirst TANF box, combined with the governor's executive order making across-the-board revisions effective October 1, demonstrates that observing the time requirements of notice and opportunity to comment upon adoption of a per-

manent rule would be contrary both to the public interest and to the state's fiscal needs and requirements.

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 5, 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 5, Repealed 0.

Date Adopted: September 24, 2010.

Elizabeth M. Hyde
Director

AMENDATORY SECTION (Amending WSR 09-22-043, filed 10/28/09, effective 12/1/09)

WAC 170-290-0005 Consumers. (1) In WCCC, an eligible consumer has parental control of one or more children, lives in the state of Washington, and is the child's:

- (a) Parent, either biological or adopted;
- (b) Stepparent;
- (c) Legal guardian verified by a legal or court document;
- (d) Adult sibling or step-sibling;
- (e) Nephew or niece;
- (f) Aunt;
- (g) Uncle;
- (h) Grandparent; or
- (i) Any of the relatives in (f), (g), or (h) of this subsection with the prefix great (for example, great-aunt).

(2) Consumers may be eligible for WCCC benefits if they:

- (a) Meet eligibility requirements for WCCC described under part II of this chapter;
- (b) Participate in an approved activity under WAC 170-290-0040, 170-290-0045, 170-290-0050, or have been approved per WAC 170-290-0055;
- (c) Comply with any special circumstances that might affect WCCC eligibility under WAC 170-290-0020; and
- (d) Have countable income at or below ~~((two hundred percent of the federal poverty guidelines (FPG) (under WAC 170-290-0065)))~~ one hundred seventy-five percent of the federal poverty guidelines.

(3) A consumer is not eligible for WCCC benefits when he or she:

- (a) Is the only parent in the family and will be away from the home for more than thirty days in a row; or
- (b) Has a monthly copayment that is higher than the rate the state will pay for all eligible children in care.

AMENDATORY SECTION (Amending WSR 09-22-043, filed 10/28/09, effective 12/1/09)

WAC 170-290-0075 Determining income eligibility and copayment amounts. (1) DSHS takes the following steps to determine a consumer's eligibility and copayment:

- (a) Determine the consumer's family size (under WAC 170-290-0015); and
 - (b) Determine the consumer's countable income (under WAC 170-290-0065).
- (2) If the consumer's family's countable monthly income falls within the range below, then his or her copayment is:

IF A CONSUMER'S INCOME IS:	THEN THE CONSUMER'S COPAYMENT IS:
(a) At or below 82% of the federal poverty guidelines (FPG)	\$15
(b) Above 82% of the FPG up to 137.5% of the FPG	\$50
(c) Above 137.5% of the FPG through ((200)) 175% of the FPG	The dollar amount equal to subtracting 137.5% of FPG from countable income, multiplying by 44%, then adding \$50
(d) Above ((200)) 175% of the FPG, a consumer is not eligible for WCCC benefits.	

(3) DSHS does not prorate the copayment when a consumer uses care for part of a month.

(4) The FPG is updated every year on April 1. The WCCC eligibility level is updated at the same time every year to remain current with the FPG.

AMENDATORY SECTION (Amending WSR 09-22-043, filed 10/28/09, effective 12/1/09)

WAC 170-290-0085 Change in copayment. (1) Once DSHS determines that a consumer is eligible for WCCC benefits, his or her copayment may change when:

- (a) The consumer's monthly income decreases;
- (b) The consumer's family size increases;
- (c) DSHS makes an error in the consumer's copayment computation;
- (d) The consumer did not report all income, activity and household information at the time of eligibility determination or application/reapplication;
- (e) The consumer is no longer eligible for the minimum copayment under WAC 170-290-0090;
- (f) DEL makes a mass change in benefits due to a change in law or program funding;
- (g) The consumer is approved for a new eligibility period; or
- (h) The consumer is approved for the fourteen-day wait period or twenty-eight-day gap period as provided in WAC 170-290-0055.

(2) If a consumer's copayment changes during his or her eligibility period, the change is effective on the first day of the month following DSHS becoming aware of the change.

(3) DSHS does not increase a consumer's copayment during his or her current eligibility period when his or her countable income remains at or below ~~((two hundred percent~~

~~of the FPG)) the maximum eligibility limit as provided in WAC 170-290-0005 (2)(d), and:~~

- (a) The consumer's monthly countable income increases;
or
(b) The consumer's family size decreases.

AMENDATORY SECTION (Amending WSR 09-22-043, filed 10/28/09, effective 12/1/09)

WAC 170-290-3520 Eligible consumers. (1) In SCC, an eligible consumer is not currently receiving temporary aid for needy families (TANF), lives in the state of Washington, has parental control of one or more children, and is the child's:

- (a) Parent, either biological or adopted;
(b) Stepparent;
(c) Legal guardian as verified by a legal or court document;
(d) Adult sibling or step-sibling;
(e) Aunt;
(f) Uncle;
(g) Niece or nephew;
(h) Grandparent; or
(i) Any of the above relatives in (e), (f), or (h) of this subsection, with the prefix "great," such as great-aunt.

(2) Consumers may be eligible for SCC benefits if they:

- (a) Meet eligibility requirements in this chapter;
(b) Participate in an approved activity under WAC 170-290-3555; and
(c) Have countable income at or below ~~((two hundred percent of the federal poverty guidelines (FPG)))~~ the maximum eligibility limit described in WAC ~~((170-290-3640))~~ 170-290-0005 (2)(d).

(3) Consumers are not eligible for SCC benefits if they:

- (a) Have a copayment, under WAC 170-290-0075, that is higher than the maximum monthly state rate for all of the consumer's children in care;
(b) Were employed with one employer more than eleven months in the previous twelve months;
(c) Are receiving TANF benefits; or
(d) Are the only parent in the household and will be away from the home for more than thirty days in a row.

AMENDATORY SECTION (Amending WSR 09-22-043, filed 10/28/09, effective 12/1/09)

WAC 170-290-3640 Determining income eligibility and copayment. (1) For the SCC program, DEL determines a consumer's family's income eligibility and copayment by:

- (a) The consumer's family size as defined under WAC 170-290-3540;
(b) The consumer's average monthly income as calculated under WAC 170-290-3620;
(c) The consumer's family's average monthly income as compared to the federal poverty guidelines (FPG); and
(d) The consumer's family's average monthly income as compared to the copayment chart defined in WAC 170-290-0075.

(2) If a consumer's family's income is above ~~((two hundred percent of the FPG as defined in WAC 170-290-0075))~~ the maximum eligibility limit as provided in WAC 170-290-

0005 (2)(d), his or her family is not eligible for the SCC program.

(3) SCC does not prorate the copayment when a consumer uses care for part of a month.

(4) The FPG is updated every year on April 1. The SCC eligibility level is updated at the same time every year to remain current with the FPG.

(5) SCC shall assign a copayment amount based on the family's countable income. The copayment amount will be on the consumer's child care plan. The consumer pays the copayment directly to the provider.

WSR 10-20-033

EMERGENCY RULES

DEPARTMENT OF FISH AND WILDLIFE

[Order 10-257—Filed September 24, 2010, 3:20 p.m., effective September 27, 2010]

Effective Date of Rule: September 27, 2010.

Purpose: Amend commercial fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-47-31100E; and amending WAC 220-47-311.

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: Per preseason agreement with affected tribes a limited participation purse seine fishery in Area 8A was authorized for two boats. The participants were drawn in a raffle post August 31, 2010. These emergency rules are necessary to allow participation by the winners of the drawing in fisheries targeting a harvestable amount of coho salmon available at this time. There is insufficient time to adopt permanent rules.

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

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

Number of Sections Adopted on the Agency's Own Initiative: New 1, Amended 0, Repealed 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 24, 2010.

Philip Anderson
Director

NEW SECTION

WAC 220-47-31100E Puget Sound purse seine fishery. Notwithstanding the provisions of WAC 220-47-311 and WAC 220-47-500, it is permissible for the vessels "Polarland" and "Josie J" to participate in the Purse seine fishery in Puget Sound Salmon Management and Catch Reporting Area 8A on September 27 and October 4, 2010.

REPEALER

The following section of the Washington Administrative Code is repealed effective October 5, 2010:

WAC 220-47-31100E Puget Sound purse seine fishery.

WSR 10-20-034
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 10-259—Filed September 24, 2010, 3:21 p.m., effective September 24, 2010, 3:21 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 220-33-01000K; 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: Rescinds the mainstem commercial fishing period scheduled for the evening on September 27. Select area commercial fishing sites remain open for

salmon sales; however, sturgeon sales are prohibited because the harvest guideline has been met. 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 24, 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 24, 2010.

Philip Anderson
Director

NEW SECTION

WAC 220-33-01000L 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 30, 2010. Open hours are 6 PM to 8 AM.

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.

2. Tongue Point/South Channel Select Area.**3.**

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 30, 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 only.

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:

WAC 220-33-01000K Columbia River season below Bonneville. (10-255)

WSR 10-20-035
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 10-260—Filed September 24, 2010, 3:23 p.m., effective September 27, 2010, 6:00 a.m.]

Effective Date of Rule: September 27, 2010, 6:00 a.m.

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

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

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

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

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

Reasons for this Finding: Sets the fifth 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 24, 2010. Conforms state rules with tribal rules.

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 24, 2010.

Philip Anderson
Director

NEW SECTION

WAC 220-32-05100Q Columbia River salmon seasons above Bonneville Dam. Notwithstanding the provisions of WAC 220-32-050, WAC 220-32-051, WAC 220-32-052, and WAC 220-32-058, effective immediately until further notice, it is unlawful for a person to take or possess salmon, steelhead, sturgeon, shad, walleye, carp, yellow perch, catfish or bass for commercial purposes in Columbia River Salmon Management and Catch Reporting Areas (SMCRA) 1E, 1F, 1G, and 1H, and in the White Salmon

River, Klickitat River, and Drano Lake, except as provided in the following subsections, and except that individuals possessing treaty fishing rights under the Yakama, Warm Springs, Umatilla, and Nez Perce treaties may fish for salmon, steelhead, walleye, shad, yellow perch, bass carp, or sturgeon under the following provisions, pursuant to lawfully enacted tribal rules and MOUs:

1. Mainstem Columbia River above Bonneville Dam

a) SEASON: 6:00 a.m. September 27 to 6:00 p.m. September 29, 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. 8-inch minimum mesh restriction.

2. Mainstem Columbia River above Bonneville Dam

a) SEASON: Immediately until further notice.

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

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

3. Columbia River Tributaries above Bonneville Dam

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

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

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

4. Mainstem Columbia River below Bonneville Dam

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

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

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

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

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

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

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

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

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

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

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

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

REPEALER

The following section of the Washington Administrative code is repealed effective 6:00 a.m. September 27, 2010:

WAC 220-32-05100P Columbia River salmon seasons above Bonneville Dam. (10-237)

**WSR 10-20-036
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE**

[Order 10-256—Filed September 24, 2010, 3:34 p.m., effective October 5, 2010, 8:00 a.m.]

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

Purpose: Amend commercial fishing rules.

Citation of Existing Rules Affected by this Order: Amending WAC 220-52-040, 220-52-046, and 220-69-240.

Statutory Authority for Adoption: RCW 77.12.047, 77.04.020, and 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: The provisions of this rule are in conformity with agreed plans with applicable tribes, which have been entered as required by court order. The Puget Sound commercial season is structured to meet harvest allocation objectives. There is insufficient time to adopt permanent rules.

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

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

Number of Sections Adopted on the Agency's Own Initiative: New 3, Amended 0, Repealed 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 24, 2010.

Philip Anderson
Director

NEW SECTION

WAC 220-52-04000U Commercial crab fishery— Lawful and unlawful gear, methods, and other unlawful acts. Notwithstanding the provisions of WAC 220-52-040:

(1) Dungeness crab pots may be deployed between 8:00 a.m. October 5, 2010 and 7:59 a.m. October 7, 2010, in Puget Sound waters from a vessel not designated on a person's Puget Sound crab license, provided that the primary or alternate operator designated on the license is on board the non-designated vessel ("barge" vessel), and provided prior notice has been given as indicated below.

(2) The licensed owner must leave a telephone message at the Mill Creek annex office, (425) 379-2315, with the following information:

a) Name and license number of licensed owner.

b) Name of designated primary operator if different from licensed owner.

c) Name of alternate operator if used to deploy pots from a non-designated vessel.

d) Buoy brand number and number of pots to be deployed from a non-designated vessel.

e) Name and identification numbers (WN and/or Coast Guard) of the non-designated vessel.

(3) Additional area gear limits. The following Marine Fish-Shellfish Management and Catch Reporting Areas are restricted in the number of pots fished, operated, or used by a person or vessel, and it is unlawful for any person to use, maintain, operate, or control pots in excess of the following limits:

(a) No commercial gear is allowed in that portion of Marine Fish-Shellfish Management and Catch Reporting Area 25A west of the 123° 7.0' longitude line projected from the new Dungeness light due south to the shore of Dungeness Bay.

(4) Effective 8:00 a.m. October 5, 2010, until further notice, it is unlawful for any person to fish for crabs for commercial purposes with more than 50 pots per license per buoy tag number in Crab Management Region 1 (which includes Marine Fish-Shellfish Catch Reporting Areas 20A, 20B, 21A, 21B, 22A and 22B), and Crab Management Region 2 East (which includes Marine Fish-Shellfish Catch Reporting Areas 24A, 24B, 24C, 24D, and 26A-E).

(5) The remaining buoy tags per license per region must be onboard the designated vessel and available for inspection in Crab Management Areas 1 and 2E.

NEW SECTION

WAC 220-52-04600X Puget Sound crab fishery—Seasons and areas. Notwithstanding the provisions of WAC 220-52-046, effective 8:00 a.m. October 5, 2010, until further notice:

(1) It is permissible to fish for Dungeness crab for commercial purposes in the following areas:

(a) Port Gardner: That portion of Marine Fish-Shellfish Catch Reporting Area 26A east of a line projected from the outermost tip of the ferry dock at Mukilteo, projected to the green #3 buoy at the mouth of the Snohomish River, and west of a line projected from that #3 buoy southward to the oil boom pier on the shoreline.

(b) Possession Point to Glendale: That portion of Marine Fish-Shellfish Management and Catch Reporting Area 26A east of a line that extends true north from the green #1 buoy at Possession Point to Possession Point, and west of a line from the green #1 buoy at Possession Point extending northward along the 200-foot depth contour to the Glendale dock.

(c) Langley: That portion of Marine Fish-Shellfish Management and Catch Reporting Area 24C shoreward of the 400-foot depth contour within an area described by two lines projected northeasterly from Sandy Point and the entrance to the marina at Langley.

(d) Those waters of Marine Fish-Shellfish Management and Catch Reporting Area 20A between a line from the boat ramp at the western boundary of Birch Bay State Park to the western point of the entrance of the Birch Bay Marina and a line from the same boat ramp to Birch Point.

(e) Those waters of Marine Fish-Shellfish Management and Catch Reporting Area 26A-W in Useless Bay north and east of a line from the south end of the Double Bluff State Park seawall (47°58.782'N, 122°30.840'W) projected 110 degrees true to the boulder on shore (47°57.690'N, 122°26.742'W).

(f) Those waters of Marine Fish-Shellfish Management and Catch Reporting Area 22B in Fidalgo Bay south of a line projected from the red number 4 entrance buoy at Cape Sante Marina to the northern end of the eastern most oil dock.

(g) Those waters of Marine Fish-Shellfish Management and Catch Reporting Area 22A in Deer Harbor north of a line projected from Steep Point to Pole Pass.

(2) The following areas are closed to commercial crab fishing:

(a) That portion of Marine Fish-Shellfish Management and Catch Reporting Area 25A west of the 123° 7.0' longitude line projected from the new Dungeness light due south to the shore of Dungeness Bay.

(b) That portion of Marine Fish-Shellfish Management and Catch Reporting Area 23D west of a line from the eastern tip of Ediz Hook to the ITT Rayonier Dock.

(c) Those waters of Marine Fish-Shellfish Management and Catch Reporting Area 24A east of a line projected due north from the most westerly tip of Skagit Island and extending south to the most westerly tip of Hope Island, thence southeast to Seal Rocks, thence southeast to the green can buoy at the mouth of Swinomish Channel, thence easterly to the west side of Goat Island.

NEW SECTION

WAC 220-69-24000U Duties of commercial purchasers and receivers. Notwithstanding the provisions of WAC 220-69-240, effective October 5, 2010, until further notice, it is unlawful for any wholesale dealer acting in the capacity of an original receiver of Dungeness crab taken by non-treaty fishers from Puget Sound, to fail to report to the department the previous day's purchases by 10:00 a.m. the following business day. Reports must be made by fax to (425) 338-1066 or by e-mail at crabreport@dfw.wa.gov, and must specify the dealer name, dealer phone number, date of delivery of crab to the original receiver, and the total number of pounds of crab caught by non-treaty fishers, by Crab Management Region or by Marine Fish-Shellfish Management and Catch Reporting Area.

WSR 10-20-060

EMERGENCY RULES

DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Economic Services Administration)

[Filed September 27, 2010, 3:34 p.m., effective October 1, 2010]

Effective Date of Rule: October 1, 2010.

Purpose: The department is amending WAC 388-432-0005 Can I get help from DSHS for a family emergency without receiving cash assistance?, 388-310-0100 WorkFirst—Purpose, 388-310-0800 WorkFirst—Support services, 388-310-1800 WorkFirst—Post employment services, 388-310-1600 WorkFirst—Sanctions, 388-310-0200 WorkFirst—Activities, 388-310-0400 WorkFirst—Entering the WorkFirst program as a mandatory participant, 388-310-1300 Community jobs, and 388-310-2100 Career services program.

These amendments will:

- Decrease the diversion cash assistance expenditures by reducing maximum allotment from \$1500 to \$1250;
- Reduce child care cost by allowing qualifying two-parent families to have the option of excluding one parent from WorkFirst participation requirements;

- No longer provide career services, tuition assistance and support services payments to former TANF families; and
- Eliminate administrative costs associated with the external three-person sanction review panel.

These changes in addition to other administrative reductions are necessary to contain costs and ensure program's fiscal stability. These adjustments are necessary for the program to stay within the budget and to prevent more severe cuts.

Citation of Existing Rules Affected by this Order: Repealing WAC 388-310-2100; and amending WAC 388-310-0100, 388-310-0800, 388-310-1800, 388-310-1600, 388-310-0200, 388-310-0400, 388-310-1300, and 388-432-0005.

Statutory Authority for Adoption: RCW 74.04.050, 74.04.055, 74.08.090, chapters 74.08A and 74.12 RCW.

Under RCW 34.05.350 the agency for good cause finds that immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest; 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: The department needs to make immediate cuts to TANF-related programs in order to stay within the current budget. Based on the current rate of expenditures (SP to Budget Bill 9-27-10), the TANF/WorkFirst biennial budget faces a shortfall of no less than ninety-three million dollars for the remainder of the 09-11 biennium. In part, this shortfall is the result of increased demand for TANF benefits due to the economic recession. In the last two years, the WorkFirst caseload has grown by more than thirty percent, from 51,106 cases in July 2008 to 66,634 cases in June of this year.

In addition, revenue forecasts for Washington state government show decreased general fund revenue for the two-year period ending June 30, 2011. The governor has determined that a budget shortfall is imminent and has directed agencies to implement cuts by October 1 to avoid running out of state general funds. In particular, the governor's Executive Order 10-04 (Ordering Expenditure Reductions in Allotments of State General Fund Appropriations), signed on September 13, 2010, found that:

- Revenues have fallen short of projections;
- The current official state economic and revenue forecast of general fund revenues is less than the official estimate upon which the state's 2009-2011 biennial operating budget and supplemental operating budget were enacted; and
- The anticipated revenues combined with the beginning cash balance of the general fund are insufficient to meet

anticipated expenditures from this fund for the remainder of the current fiscal period.

Accordingly, the governor has ordered across-the-board reductions of state general fund allotments by 6.287%, effective October 1, 2010. The revenue shortfall will add an additional nineteen million dollars for a possible total shortfall of one hundred twelve million dollars.

In addition to this budget shortfall, the department does not expect to receive sixty-two million dollars in federal ARRA contingency funds. This is likely to have a significant increase to the shortfall that is specific to the TANF/WorkFirst budget for fiscal year 2011.

The timing of the proposed budget reductions will lessen the adverse impact on families. If immediate budget reductions are not realized, the department will have to make additional cuts in the future to TANF/WorkFirst assistance programs to stay within budget. Additional cuts could include greater reduction in services than those currently proposed, and/or eliminating benefits rather than reducing them. These reductions would have a much greater detrimental effect on vulnerable families with children in need.

The department is concurrently working on the permanent rule-making process and has filed preproposal statement of inquiries, CR-101, as WSR 10-16-144, 10-16-145, 10-16-147, 10-17-115, and 10-17-116. The department started filing proposed rule-making notices on [in] September and plans to complete all notices by the first week of October.

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 8, 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 8, Repealed 1.

Date Adopted: September 27, 2010.

Katherine I. Vasquez
Rules Coordinator

Reviser's note: The material contained in this filing exceeded the page-count limitations of WAC 1-21-040 for appearance in this issue of the Register. It will appear in the 10-21 issue of the Register.

WSR 10-20-062
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 10-262—Filed September 27, 2010, 4:05 p.m., effective September 27, 2010, 4:05 p.m.]

Effective Date of Rule: Immediately.

Purpose: Amend commercial fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-47-42800E; and amending WAC 220-47-428.

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 rule closes commercial salmon fishing in Marine Area 12A. Hatchery escapement to the Quilcene National Fish Hatchery is low. Closing fishing is necessary to ensure escapement needs are met. 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 27, 2010.

Lori Preuss
for Philip Anderson
Director

NEW SECTION

WAC 220-47-42800E Puget Sound beach seine fishery. Notwithstanding the provisions of WAC 220-47-428, effective immediately until further notice, it is unlawful to take, possess, or fish for salmon taken for commercial purposes with beach seine gear in Puget Sound Management and Catch Reporting Area 12A.

REPEALER

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

WAC 220-47-42800E Puget Sound beach seine fishery.

WSR 10-20-063

EMERGENCY RULES

DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Economic Services Administration)

[Filed September 28, 2010, 8:37 a.m., effective October 1, 2010]

Effective Date of Rule: October 1, 2010.

Purpose: The department is amending the following WACs to implement annual adjustments to standards for the Washington Basic Food program: WAC 388-450-0185 What income deductions does the department allow when determining if I am eligible for food benefits and the amount of my monthly benefits? and 388-450-0190 How does the department figure my shelter cost income deduction for Basic Food?

The amendments increase the standard deduction for Basic Food household's for one, two, and three persons, and decreases the maximum shelter deduction.

Citation of Existing Rules Affected by this Order: Amending WAC 388-450-0185 and 388-450-0190.

Statutory Authority for Adoption: RCW 74.04.005, 74.04.050, 74.04.055, 74.04.057, 74.04.500, 74.04.510, 74.08.090.

Other Authority: 7 C.F.R. 273.9.

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 amendments update Basic Food standards for federal fiscal year 2011 to comply with requirements of the United States Department of Agriculture, Food and Nutrition Service (FNS), SNAP Administrative Notice 10-33. The department is making these changes via the emergency rule-filing process, effective October 1, 2010. The department is concurrently working on the permanent rule-making process and has filed a preproposal statement of inquiry, CR-101, as WSR 10-08-009 dated March 26, 2010. The department plans to file a proposed rule-making notice by the end of September.

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

Date Adopted: September 22, 2010.

Katherine I. Vasquez
Rules Coordinator

AMENDATORY SECTION (Amending WSR 10-16-104, filed 8/2/10, effective 9/2/10)

WAC 388-450-0185 What income deductions does the department allow when determining if I am eligible for food benefits and the amount of my monthly benefits?

We determine if your assistance unit (AU) is eligible for Basic Food and calculate your monthly benefits according to requirements of the Food and Nutrition Act of 2008 and federal regulations related to the supplemental nutrition assistance program (SNAP).

These federal laws allow us to subtract **only** the following amounts from your AU's total monthly income to determine your countable monthly income under WAC 388-450-0162:

(1) A standard deduction based on the number of eligible people in your AU under WAC 388-408-0035:

Eligible AU members	Standard deduction
1	\$ ((141)) <u>142</u>
2	\$ ((141)) <u>142</u>
3	\$ ((141)) <u>142</u>
4	\$153
5	\$179
6 or more	\$205

(2) Twenty percent of your AU's gross earned income (earned income deduction);

(3) Your AU's expected monthly dependent care expense needed for an AU member to:

(a) Keep work, look for work, or accept work;

(b) Attend training or education to prepare for employment; or

(c) Meet employment and training requirements under chapter 388-444 WAC.

(4) Medical expenses over thirty-five dollars a month owed or anticipated by an elderly or disabled person in your AU as allowed under WAC 388-450-0200.

(5) A portion of your shelter costs as described in WAC 388-450-0190.

AMENDATORY SECTION (Amending WSR 09-24-001, filed 11/18/09, effective 12/19/09)

WAC 388-450-0190 How does the department figure my shelter cost income deduction for Basic Food? The department calculates your shelter cost income deduction as follows:

(1) First, we add up the amounts your assistance unit (AU) must pay each month for shelter. We do not count any overdue amounts, late fees, penalties or mortgage payments you make ahead of time as an allowable cost. We count the following expenses as an allowable shelter cost in the month the expense is due:

(a) Monthly rent, lease, and mortgage payments;

(b) Property taxes;

(c) Homeowner's association or condo fees;

(d) Homeowner's insurance for the building only;

(e) Utility allowance your AU is eligible for under WAC 388-450-0195;

(f) Out-of-pocket repairs for the home if it was substantially damaged or destroyed due to a natural disaster such as a fire or flood;

(g) Expense of a temporarily unoccupied home because of employment, training away from the home, illness, or abandonment caused by a natural disaster or casualty loss if your:

(i) AU intends to return to the home;

(ii) AU has current occupants who are not claiming the shelter costs for Basic Food purposes; and

(iii) AU's home is not being leased or rented during your AU's absence.

(2) Second, we subtract all deductions your AU is eligible for under WAC 388-450-0185 (1) through (5) from your AU's gross income. The result is your AU's net income.

(3) Finally, we subtract one-half of your AU's net income from your AU's total shelter costs. The result is your excess shelter costs. Your AU's shelter cost deduction is the excess shelter costs:

(a) Up to a maximum of four hundred (~~(fifty-nine)~~) fifty-eight dollars if no one in your AU is elderly or disabled; or

(b) The entire amount if an eligible person in your AU is elderly or disabled, even if the amount is over four hundred (~~(fifty-nine)~~) fifty-eight dollars.

WSR 10-20-066

EMERGENCY RULES

DEPARTMENT OF

FISH AND WILDLIFE

[Order 10-258—Filed September 28, 2010, 4:00 p.m., effective September 28, 2010, 4:00 p.m.]

Effective Date of Rule: Immediately.

Purpose: Amend commercial fishing rules.

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

Statutory Authority for Adoption: RCW 77.12.047 and 77.04.020.

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

Reasons for this Finding: The 2010 state/tribal shrimp harvest management plans for the Strait of Juan de Fuca and Puget Sound require adoption of harvest seasons contained in this emergency rule. This emergency rule closes the beam trawl fishery in Shrimp Management Area 1B, as the quota has been reached. In addition, this emergency rule closes the nonspot shrimp pot fishery season in the remaining open areas of Puget Sound, and the beam trawl fishery in Catch Area 20A, on October 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 28, 2010.

Joe Stohr
for Philip Anderson
Director

NEW SECTION

WAC 220-52-05100Q 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, until 6:00 p.m. October 15, 2010, all waters of Shrimp Management Areas (SMA) 2W, 3 and 6 are open to the harvest of all shrimp species except spot shrimp, except as provided for in this section:

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

(b) Effective immediately until 6:00 p.m. October 10, 2010, all waters of SMA 1B, 1C and 2E are open to the harvest of all species except spot shrimp. It is unlawful for the combined total harvest of shrimp by a fisher and/or the fisher's alternate operator to exceed 1,200 pounds in SMA 1B and 1C, or to exceed 600 pounds in SMA 2E during this open period.

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

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

(e) It is unlawful to set or pull shellfish pots in one Catch Reporting Area while in possession of shrimp harvested from

another Catch Reporting Area, except that shellfish pots may be set in a new fishing area subsequent to making a report as indicated in Section (1)(d) above.

(2) Shrimp beam trawl gear:

(a) SMA 3 (outside of the Discovery Bay Shrimp District, Sequim Bay and Catch Reporting Area 23D) is open immediately until further notice. Sequim Bay includes those waters of Catch Reporting Area 25A south of a line projected west from Travis Spit on the Miller Peninsula.

(b) All waters of Catch Area 20A are open, effective immediately, until 6:00 p.m. October 15, 2010.

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

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

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 220-52-05100P Puget Sound shrimp pot and beam trawl fishery—Season. (10-235)

**WSR 10-20-067
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE**

[Order 10-263—Filed September 29, 2010, 9:32 a.m., effective October 2, 2010]

Effective Date of Rule: October 2, 2010 [2010].

Purpose: Amend personal use fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 232-28-61900K and 232-28-62100J; and amending WAC 232-28-619 and 232-28-621.

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: Coho runs are low and hatcheries have not collected enough fish to meet egg-take goals. The fisheries will reopen if egg-take needs are met. 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 2, 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 29, 2010.

Philip Anderson
Director

NEW SECTION

WAC 232-28-62100K Exceptions to statewide rules—Quilcene River, Lakes Washington and Sammamish. 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) Quilcene River (Jefferson County): Effective October 2 through October 31, 2010, it is unlawful to fish in waters of the Quilcene River from the mouth to the electric weir at the Quilcene National Fish Hatchery.

(2) Lake Washington (King County): Effective October 2 through October 31, 2010, it is unlawful to fish for salmon.

(3) Lake Sammamish (King): Effective October 2 through November 30, 2010, it is unlawful to fish for salmon.

NEW SECTION

WAC 232-28-62100J Puget Sound salmon—Saltwater seasons and daily limits. Notwithstanding the provisions of WAC 232-28-621, effective October 2 through October 15, 2010, it is unlawful to fish for salmon in Puget Sound except as provided for in this section, provided that unless otherwise amended, all permanent rules remain in effect: Waters of Quilcene Bay north of a true east line from Whitney Point to the Toandos Peninsula - closed.

REPEALER

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

WAC 232-28-61900K Exceptions to statewide rules—Quilcene River, Lake Washington and Lake Sammamish.

The following section of the Washington Administrative Code is repealed effective October 16, 2011:

WAC 232-28-62100J Puget Sound salmon—Saltwater seasons and daily limits.

WSR 10-20-069

RESCISSION OF EMERGENCY RULES OFFICE OF INSURANCE COMMISSIONER

[Filed September 29, 2010, 10:22 a.m.]

The insurance commissioner is rescinding Insurance Commissioner Matter No. R 2010-13 regarding open enrollment. This rescission is effective September 29, 2010. This matter was filed on September 22, 2010, and published by the code reviser in WSR 10-20-006.

Mike Kreidler

WSR 10-20-070

EMERGENCY RULES OFFICE OF INSURANCE COMMISSIONER

[Insurance Commissioner Docket No. R 2010-14—Filed September 29, 2010, 10:30 a.m., effective September 29, 2010, 10:30 a.m.]

Effective Date of Rule: Immediately.

Purpose: These rules explain the requirements for health carriers when enrolling and covering persons under age nineteen.

Statutory Authority for Adoption: RCW 48.02.060, 48.18.120(2), 48.20.450, 48.44.050, 48.46.200.

Other Authority: RCW 48.18.120(2), 48.20.450, 48.43.-012, 48.43.015, 48.43.018, Pub. Law 111-148, sec. 2704.

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 Patient Protection and Affordable Care Act (P.L. 111-148) establishes specific requirements that health carriers must follow when they receive an application for individual coverage from a person under age nineteen. Guidance from the United States Department of Health and Human Services, and their interim final regulations require carriers to make the enrollment process available to persons in that age group. These requirements go into effect for policy years beginning on or after September 23, 2010. The commissioner received a petition from a health plan asking for rule making to address the guaranteed issue, special and open enrollment period requirements in rule so that all carriers understand the way they are expected to implement the federal requirements in Washington state. These rules help prevent disruption in the individual health insurance marketplace by promoting a uniform approach to new regulatory requirements.

Number of Sections Adopted in Order to Comply with Federal Statute: New 2, Amended 0, Repealed 0; Federal Rules or Standards: New 2, 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 4, 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 [2], Amended 2 [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 29, 2010.

Mike Kreidler
Insurance Commissioner

SUBCHAPTER J

HEALTH PLAN ENROLLMENT AND COVERAGE REQUIREMENTS

NEW SECTION

WAC 284-43-1001 Purpose and scope. Health carriers may require some applicants for an individual health benefit plan to complete the standard health questionnaire designated under chapter 48.41 RCW, and may reject an individual for an individual health benefit plan based upon preexisting conditions under certain circumstances described in RCW 48.43.012, 48.43.015 and 48.43.018. Section 2704 of the Patient Protection and Affordable Care Act, Pub. L. 111-148, and the interim final regulations interpreting it, 45 C.F.R. Sec. 145.103 and 147.108, provide that a carrier may not apply preexisting condition exclusions for persons under age nineteen. These rules explain the requirements that are in effect in Washington as a result of these federal changes, applicable to policy years beginning on or after September 23, 2010.

NEW SECTION

WAC 284-43-1005 Definitions. As used in this section, unless the context requires otherwise:

"Applicant" means a person who applies for enrollment in an individual health plan as the subscriber or an enrollee, or the dependent or spouse of a subscriber or enrollee.

"Carrier" has the same meaning as its definition in RCW 48.43.005(16) and includes "issuers" as that term is used in the Patient Protection and Affordable Care Act, Pub. L. 111-148.

"Open enrollment" means a period of time as defined in these rules held at the same time each year, during which applicants may enroll in a carrier's individual health benefit plan without being subject to health screening or otherwise required to provide evidence of insurability as a condition for enrollment.

"Special enrollment" means a defined period of time of not less than thirty-one days, triggered by a specific qualifying event experienced by the applicant, during which applicants may enroll in the carrier's individual health benefit plan without being subject to health screening or otherwise required to provide evidence of insurability as a condition for enrollment.

"Standard health questionnaire" means the standard health questionnaire designated under chapter 48.41 RCW.

NEW SECTION

WAC 284-43-1010 Preexisting conditions. For any individual health benefit plan, a carrier must waive any exclusion of benefits, including a denial of coverage, and may not otherwise limit coverage based upon a preexisting condition waiting period if the applicant or enrollee is a person under age 19. This requirement:

(1) Does not apply to an individual grandfathered plan under the Patient Protection and Affordable Care Act, Pub. Law 111-148; and

(2) Includes those persons under age nineteen with a preexisting condition who seek coverage as the primary insured or as a dependent or as a spouse under individual health benefit plans that permit the enrollment of dependents, and enrolled persons under age nineteen who seek benefits for which they are otherwise eligible.

NEW SECTION

WAC 284-43-1015 Enrollment of persons under age 19. (1) If a carrier offers an individual health benefit plan, for policy years beginning on January 1, 2011, a carrier must offer an open enrollment period for persons under age nineteen that begins November 1, 2010 and extends through December 15, 2010. During the initial open enrollment period of November 1, 2010 through December 15, 2010, any special enrollment period or any other enrollment period, a carrier must not require a person under age nineteen applying for an individual health benefit plan to complete the standard health questionnaire designated under chapter 48.41 RCW or provide other evidence of insurability.

(2) A carrier may offer enrollment in an individual health benefit plan outside the open or special enrollment period, but must not require any evidence of insurability or completion of the standard health questionnaire for applicants under age 19.

(3) For individual health plan policy years beginning on or after September 23, 2010, a carrier must offer a special open enrollment period to a person under age 19 who experiences a qualifying event. The special enrollment period must continue for at least thirty-one days from the date of a qualifying event. The prohibition against requiring evidence of insurability or completion of the standard questionnaire applies. A qualifying event means the occurrence of one of the following:

(a) The person under age nineteen or the person under whose policy they were enrolled loses employer sponsored insurance;

(b) The person under age nineteen loses eligibility under medicaid or other public program providing health benefits;

(c) The person under age nineteen or the person under whose policy they were enrolled loses coverage as the result of dissolution of marriage;

(d) The person under age nineteen or the person under whose policy they were enrolled changes residence, and the health plan under which they were covered does not provide coverage in that service area.

(4) A carrier may either accept currently pended applications for a person under age 19 on a guaranteed issue basis or may return the application with instructions to resubmit it

during the open enrollment period that begins November 1, 2010.

WSR 10-20-087
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 10-264—Filed September 30, 2010, 8:52 a.m., effective October 1, 2010]

Effective Date of Rule: October 1, 2010.

Purpose: Amend personal use fishing rules.

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

Statutory Authority for Adoption: RCW 77.12.047 and 77.04.020.

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

Reasons for this Finding: Washington department of fish and wildlife has initiated a fish counting project in the upper section of the lower Elwha River, and the area is also needed for collection of chinook broodstock. The number of Endangered Species Act listed chinook returning to the Elwha River is down this year, making broodstock collection more difficult. Closing this section of river will help minimize disturbances to the spawning fish and facilitate more efficient broodstock collection. 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 30, 2010.

Philip Anderson
Director

NEW SECTION

WAC 232-28-61900L Exceptions to statewide rules—Elwha River. Notwithstanding the provisions of WAC 232-28-619, effective October 1 through November 15, 2010, it is unlawful to fish in those waters of the Elwha

River from the lower Elwha Dam downstream to the new bridge on Elwha River Road.

REPEALER

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

WAC 232-28-61900L Exceptions to statewide rules—Elwha River.

WSR 10-20-097
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 10-261—Filed September 30, 2010, 1:55 p.m., effective September 30, 2010, 6:01 p.m.]

Effective Date of Rule: September 30, 2010, 6:01 p.m.

Purpose: Amend commercial fishing rules.

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

Statutory Authority for Adoption: RCW 77.12.047 and 77.04.020.

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

Reasons for this Finding: This emergency regulation is needed to meet the original intent of the regulations developed through the 2010 North of Falcon process. The fishery was meant to be continuous from September 12 through October 2, 2010. There is insufficient time to adopt permanent rules.

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

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

Number of Sections Adopted on the Agency's Own Initiative: New 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 30, 2010.

Philip Anderson
Director

NEW SECTION

WAC 220-40-02700M Salmon—Willapa Bay fall fishery. Notwithstanding the provisions of WAC 220-40-027 and 220-40-020, effective 6:01 p.m. September 30, through November 30, 2010, it is unlawful to fish for salmon in Willapa Bay for commercial purposes or to possess salmon or white sturgeon taken from those waters for commercial purposes, except as provided in this section:

Fishing periods and areas:

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

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

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

3. Landing limitations

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

Gear

4. Gill net gear restrictions - All areas:

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

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

c. It is unlawful to use a gill net to fish for salmon if the lead line weighs more than two pounds per fathom of net as

measured on the cork line, provided that it is permissible to have a gill net with a lead line weighing more than two pounds per fathom aboard a vessel when the vessel is fishing in or in transiting through Willapa Bay.

d. Immediately through October 15, 2010, mesh size must not exceed six and one-half inch maximum mesh.

e. Effective November 6 through November 30, 2010, mesh size must not exceed nine inch minimum mesh.

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

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

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

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

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

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

Other

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

6. Quick reporting is required for wholesale dealers and fishers retailing their catch under a "direct retail endorsement." According to WAC 220-69-240(12), reports must be made by 10:00 a.m. the day following landing.

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

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

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

Specific date and time of permit fishery opening will be described in permit. Those dates will be restricted to, and occur within October 10-12, 2010.

Sub-areas for permit fishery:

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

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

11. When an observer is not on-board, Chinook catch is limited to 100 hatchery Chinook, identified by having a clipped adipose fin and a healed scar in the location of the fin. All legal white sturgeon and hatchery coho, identified by having a clipped adipose fin and a healed scar in the location of the fin, may be retained, except all fishing must cease once 100 hatchery Chinook are brought on-board. No chum may be retained.

12. When an observer is on-board, up to 100 hatchery Chinook, identified by having a clipped adipose fin and a healed scar in the location of the fin, or that are identified as having a coded wire tag by the observer, using a coded wire tag detector, may be retained. All legal white sturgeon and

hatchery coho, identified by having a clipped adipose fin and a healed scar in the location of the fin, may be retained, except all fishing must cease once 100 Chinook that have a clipped adipose fin or have a coded wire tag are brought on-board. No chum may be retained.

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

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

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

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

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

REPEALER

The following section of the Washington Administrative Code is repealed effective 6:01 p.m. September 30, 2010:

WAC 220-40-02700L Salmon—Willapa Bay fall fishery. (10-215)

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

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

WSR 10-20-098

EMERGENCY RULES

DEPARTMENT OF

FISH AND WILDLIFE

[Order 10-265—Filed September 30, 2010, 1:55 p.m., effective October 1, 2010]

Effective Date of Rule: October 1, 2010.

Purpose: Amend personal use fishing rules.

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

Statutory Authority for Adoption: RCW 77.12.047 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 promote and maintain a safe and 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 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 30, 2010.

Philip Anderson
Director

NEW SECTION

WAC 232-28-61900M Exceptions to statewide rules—Tilton River. Notwithstanding the provisions of WAC 232-28-619, effective October 1 through December 31, 2010, it is unlawful to fish in waters of the Tilton River from the mouth to West Fork from one hour after official sunset to one hour before official sunrise.

REPEALER

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

WAC 232-28-61900M Exceptions to statewide rules—Tilton River.

**WSR 10-20-099
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE**

[Order 10-266—Filed September 30, 2010, 2:23 p.m., effective October 4, 2010]

Effective Date of Rule: October 4, 2010.

Purpose: Amend personal use fishing rules.

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

Statutory Authority for Adoption: RCW 77.12.047 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 coho run is low and the hatchery has not collected enough fish to meet egg-take goals. There is insufficient time to adopt permanent rules.

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

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

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

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

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

Date Adopted: September 30, 2010.

Lori Preuss
for Philip Anderson
Director

NEW SECTION

WAC 232-28-61900P Exceptions to statewide rules—Puyallup and Carbon rivers. Notwithstanding the provisions of WAC 232-28-619:

(1) Effective October 4 through October 31, 2010, it is unlawful to fish for salmon in waters of the Puyallup River from the mouth (11th Street Bridge) upstream to the mouth of the Carbon River.

(2) Effective October 4 through November 30, 2010, it is unlawful to fish for salmon in waters of the Carbon River from the mouth upstream to the mouth of Voights Creek.

REPEALER

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

WAC 232-28-61900P Exceptions to statewide rules—Puyallup and Carbon rivers.

WSR 10-20-103
EMERGENCY RULES
DEPARTMENT OF REVENUE

[Filed October 1, 2010, 10:10 a.m., effective October 1, 2010, 10:10 a.m.]

Effective Date of Rule: Immediately.

Purpose: WAC 458-20-194 (Rule 194) explains the apportionment requirements of persons entitled to apportion income under RCW 82.04.460(1). It also describes Washington nexus standards for business activities subject to apportionment under RCW 82.04.460(1). Rule 194 applies to persons subject to the service and other activities, international investment income, licensed boarding home, and low-level radioactive waste disposal business and occupation (B&O) tax classifications, and who are not required to apportion their income under another statute or rule.

WAC 458-20-14601 (Rule 14601) provides tax reporting instructions for financial institutions doing business both inside and outside the state of Washington.

Chapter 23, Laws of 2010 1st sp. sess. (2ESSB 6143) changed the apportionment and nexus provisions addressed in these rules, effective June 1, 2010. The department is amending these rules to recognize that the guidance provided in the rules does not apply after May 31, 2010.

Citation of Existing Rules Affected by this Order: Amending WAC 458-20-194 Doing business inside and outside the state and 458-20-14601 Financial institutions—Income apportionment.

Statutory Authority for Adoption: RCW 82.32.300 and 82.01.060(2).

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 emergency adoption is necessary because permanent rules cannot be adopted at this time. This is the second emergency adoption of these rules. These drafts are the same as the previously adopted emergency rules, except that typographical errors noted by the code reviser have been corrected.

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

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

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 2, 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: October 1, 2010.

Alan R. Lynn
Rules Coordinator

Reviser's note: The material contained in this filing exceeded the page-count limitations of WAC 1-21-040 for appearance in this issue of the Register. It will appear in the 10-22 issue of the Register.

WSR 10-20-104
EMERGENCY RULES
DEPARTMENT OF REVENUE

[Filed October 1, 2010, 10:34 a.m., effective October 1, 2010, 10:34 a.m.]

Effective Date of Rule: Immediately.

Purpose: Part I of chapter 23, Laws of 2010 1st sp. sess. (2ESSB 6143) changed the apportionment and nexus requirements for apportionable activities, effective June 1, 2010. The department has adopted the following emergency rules to explain how these requirements apply: WAC 458-20-19401 Minimum nexus thresholds for apportionable activities, 458-20-19402 Single factor receipts apportionment—Generally, 458-20-19403 Single factor receipts apportionment—Royalties, and 458-20-19404 Financial institutions—Income apportionment.

Statutory Authority for Adoption: RCW 82.32.300 and 82.01.060(2).

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 emergency adoption of these new rules is necessary because permanent rules cannot be adopted at this time. This is the second emergency adoption of these rules. These drafts are the same as the previously adopted emergency rules, except that typographical errors noted by the code reviser have been corrected.

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 4, 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 4, 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: October 1, 2010.

Alan R. Lynn
Rules Coordinator

Reviser's note: The material contained in this filing exceeded the page-count limitations of WAC 1-21-040 for appearance in this issue of the Register. It will appear in the 10-21 issue of the Register.

WSR 10-20-113
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 10-267—Filed October 1, 2010, 1:42 p.m., effective October 1, 2010, 1:42 p.m.]

Effective Date of Rule: Immediately.

Purpose: Amend commercial fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-52-07300P; and 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. Daily landing limits for green sea urchins in Sea Urchin Districts 1 and 2 have been requested by the industry in an effort to conserve harvest quota and maximize market opportunities. 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 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: October 1, 2010.

Philip Anderson
Director

NEW SECTION

WAC 220-52-07300Q 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 1 and 2 are open only on Monday and Tuesday of each week. The maximum daily landing of green sea urchins allowed in Sea Urchin Districts 1 and 2 is 1,000 pounds per valid designated sea urchin harvest license. 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 and green sea urchins harvested in Sea Urchin Districts 1 and 2 must be landed within Sea Urchin Districts 1 and 2.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 220-52-07300P Sea urchins. (10-234)

WSR 10-20-114
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 10-268—Filed October 1, 2010, 1:42 p.m., effective October 1, 2010, 1:42 p.m.]

Effective Date of Rule: Immediately.

Purpose: Amend commercial fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-52-07100E; 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. Limiting daily landing amounts for harvest dates in Sea Cucumber District 2 is necessary to insure that the area harvest quota share amount is not exceeded. 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: October 1, 2010.

Philip Anderson
Director

NEW SECTION

WAC 220-52-07100F 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.

(3) Sea cucumber harvest using shellfish diver gear is allowed in Sea Cucumber District 2 on October 4, 5, 13 and 14, 2010 only. The maximum daily landing of sea cucumbers allowed in Sea Cucumber District 2 is 400 pounds per valid designated sea cucumber harvest license.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 220-52-07100E Sea cucumbers. (10-252)

**WSR 10-20-118
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE**

[Order 10-269—Filed October 4, 2010, 1:47 p.m., effective October 7, 2010, 12:01 p.m.]

Effective Date of Rule: October 7, 2010, 12:01 p.m.

Purpose: Amend personal use fishing rules.

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

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: Survey results show that adequate clams are available for harvest in Razor Clam Areas 1,

2 and those portions of Razor Clam Area 3 opened for harvest. Washington department of health has certified clams from these beaches to be safe for human consumption. There is insufficient time to adopt permanent rules.

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

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

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

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

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

Date Adopted: October 4, 2010.

Joe Stohr
for Philip Anderson
Director

NEW SECTION

WAC 220-56-36000I Razor clams—Areas and seasons. Notwithstanding the provisions of WAC 220-56-360, it is unlawful to dig for or possess razor clams taken for personal use from any beach in Razor Clam Areas 1, 2, or 3, except as provided for in this section:

1. Effective 12:01 p.m. October 8 through 11:59 p.m. October 9, 2010, razor clam digging is allowed in Razor Clam Area 1. Digging is allowed from 12:01 p.m. to 11:59 p.m. each day only.

2. Effective 12:01 p.m. October 7 through 11:59 p.m. October 10, 2010, razor clam digging is allowed in Razor Clam Area 2. Digging is allowed from 12:01 p.m. to 11:59 p.m. each day only.

3. Effective 12:01 p.m. October 8 through 11:59 p.m. October 9, 2010, razor clam digging is allowed in that portion of Razor Clam Area 3 that is between the Grays Harbor North Jetty and the southern boundary of the Quinalt Indian Nation (Grays Harbor County) and that portion of Razor Clam Area 3 that is between Olympic National Park South Beach Campground access road (Kalaloch area, Jefferson County) and Browns Point (Kalaloch area, Jefferson County). Digging is allowed from 12:01 p.m. to 11:59 p.m. each day only.

4. It is unlawful to dig for razor clams at any time in Long Beach, Twin Harbors Beach or Copalis Beach Clam sanctuaries defined in WAC 220-56-372.

REPEALER

The following section of the Washington Administrative Code is repealed effective 12:01 a.m. October 11, 2010:

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

WSR 10-20-141
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 10-270—Filed October 5, 2010, 1:17 p.m., effective October 5, 2010, 7:00 p.m.]

Effective Date of Rule: October 5, 2010, 7:00 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 220-33-01000L and 220-33-01000M; 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 four commercial fishing periods for non-Indian mainstem fisheries. Select area commercial fishing sites remain open for salmon sales; however, sturgeon sales are prohibited because the harvest guideline has been met for select areas. Clarifies WAC 220-20-015 for Deep River. 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 October 4, 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 2; Federal Rules or Standards: New 1, Amended 0, Repealed 2; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

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

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

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

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

Date Adopted: October 5, 2010.

Philip Anderson
Director

NEW SECTION

WAC 220-33-01000M 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: 7:00 p.m. October 5 through 7:00 a.m. October 6, 2010;

7:00 p.m. October 7 through 7:00 a.m. October 8, 2010;

7:00 p.m. October 10 through 7:00 a.m. October 11, 2010; and 6:00 a.m. through 6:00 p.m. October 12, 2010.

b. AREA: SMCRA 1A-1E (Zones 1-5) through October 11, 2010 and SMCRA 1A-1C (Zones 1-3) on October 12, 2010.

c. GEAR: Drift gillnets only. 8-inch minimum mesh size through October 11. 6-inch maximum mesh size and un-slackened floater drift gillnet on October 12, 2010.

2. Blind Slough/Knappa Slough Select Area.

a. SEASON: Monday, Tuesday, Wednesday, and Thursday nights immediately through October 30, 2010. Open hours are 6 PM to 8 AM.

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.

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 30, 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. In addition, according to WAC 220-20-015, (1) it is unlawful to operate in any river, stream or channel any gill net gear longer than three-fourths the width of the stream.

5. ALLOWABLE SALES: Salmon. Sturgeon sales allowed in mainstem fisheries only. A maximum of EIGHT (8) white sturgeon may be possessed or sold by each vessel participating each calendar week (Sunday through Saturday). Sturgeon retention and sales are prohibited in all Select Area sites (Blind Slough/Knappa Slough, Tongue Point/South Channel, Deep River).

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.

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

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 220-33-01000L Columbia River season below Bonneville. (10-259)

The following section of the Washington Administrative code is repealed effective October 31, 2010:

WAC 220-33-01000M Columbia River season below Bonneville.

WSR 10-20-167

EMERGENCY RULES DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Aging and Disability Services Administration)

[Filed October 6, 2010, 10:52 a.m., effective October 8, 2010]

Effective Date of Rule: October 8, 2010.

Purpose: The department will create new chapter 388-816 WAC to address agency certification and implementation of the problem and pathological gambling treatment program. Without these rules, counselors within the division of behavioral health and recovery (DBHR) certified agencies will no longer be able to provide problem and pathological treatment services effective July 1, 2010.

Statutory Authority for Adoption: RCW 43.20A.890.

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 filing is necessary to continue the emergency rules that are currently in effect under WSR 10-13-041. The department filed the permanent rule proposal (CR-102) on September 1, 2010, under WSR 10-18-102. The public hearing for the permanent rules is scheduled for October 26, 2010.

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 35, 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 35, Amended 0, Repealed 0.

Date Adopted: September 30, 2010.

Katherine I. Vasquez
Rules Coordinator

Reviser's note: The material contained in this filing exceeded the page-count limitations of WAC 1-21-040 for appearance in this issue of the Register. It will appear in the 10-21 issue of the Register.