

**WSR 12-18-055**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**SOCIAL AND HEALTH SERVICES**

(Aging and Disability Services Administration)

[Filed August 30, 2012, 12:22 p.m., effective September 1, 2012]

Effective Date of Rule: September 1, 2012.

Purpose: To amend and add new sections to chapter 388-845 WAC, DDD home and community based services waivers, to be in compliance with the requirements of SSB 6384 and related federal waivers recently renewed through Centers for Medicare and Medicaid Services (CMS). These changes add dental services as a waiver service and align this chapter with the changes being made to those in chapter 388-828 WAC for community services.

Citation of Existing Rules Affected by this Order: Amending WAC 388-845-0110, 388-845-0205, 388-845-0210, 388-845-0215, 388-845-0220, 388-845-0225, 388-845-0505, 388-845-0800, 388-845-0820, 388-845-1105, 388-845-1110, 388-845-1150, 388-845-1400, 388-845-1410, 388-845-2110, 388-845-2205, and 388-845-2210.

Statutory Authority for Adoption: RCW 71A.12.030 General authority of secretary—Rule adoption and RCW 34.05.350 (1)(c), emergency rules and amendments.

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; that state or federal law or federal rule or a federal deadline for state receipt of federal funds requires immediate adoption of a rule; and that in order to implement the requirements or reductions in appropriations enacted in any budget for fiscal year 2009, 2010, 2011, 2012 or 2013, 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 passing of SSB 6384 required coordination and timing with CMS to agree on waiver language before we could develop new WAC language. This emergency aligns the language in these changes with those related sections of chapter 388-828 WAC. This emergency filing also adds dental as a waiver service.

WAC needs to be adopted by emergency on September 1, 2012, to be in compliance with CMS changes to the waiver to take effect; to add an additional service, dental, to waiver services; and ensure continued funding. These changes are going through the permanent rule process but will not be completed by September 1, 2012.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

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

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

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

Date Adopted: August 28, 2012.

Katherine I. Vasquez  
Rules Coordinator

AMENDATORY SECTION (Amending WSR 07-20-050, filed 9/26/07, effective 10/27/07)

**WAC 388-845-0110 Are there limitations to the waiver services I can receive?** There are limitations to waiver services. In addition to the limitations to your access to nonwaiver services cited for specific services in WAC 388-845-0115, the following limitations apply:

(1) A service must be offered in your waiver and authorized in your plan of care or individual support plan.

(2) Mental health stabilization services may be added to your plan of care or individual support plan after the services are provided.

(3) Waiver services are limited to services required to prevent ICF/MR placement.

(4) The cost of your waiver services cannot exceed the average daily cost of care in an ICF/MR.

(5) Waiver services cannot replace or duplicate other available paid or unpaid supports or services.

(6) Waiver funding cannot be authorized for treatments determined by DSHS to be experimental.

(7) The Basic and Basic Plus waivers have yearly limits on some services and combinations of services. The combination of services is referred to as aggregate services (~~(or employment/day program services)~~).

(8) Your choice of qualified providers and services is limited to the most cost effective option that meets your health and welfare needs.

(9) Services provided out-of-state, other than in recognized bordering cities, are limited to respite care and personal care during vacations.

(a) You may receive services in a recognized out-of-state bordering city on the same basis as in-state services.

(b) The only recognized bordering cities are:

(i) Coeur d'Alene, Moscow, Sandpoint, Priest River and Lewiston, Idaho; and

(ii) Portland, The Dalles, Hermiston, Hood River, Rainier, Milton-Freewater and Astoria, Oregon.

(10) Other out-of-state waiver services require an approved exception to rule before DDD can authorize payment.

AMENDATORY SECTION (Amending WSR 08-20-033, filed 9/22/08, effective 10/23/08)

**WAC 388-845-0205 Basic waiver services.**

BASIC WAIVER	SERVICES	YEARLY LIMIT
	AGGREGATE SERVICES: Behavior management and consultation Community guide Environmental accessibility adaptations Occupational therapy Physical therapy Specialized medical equipment/supplies Specialized psychiatric services Speech, hearing and language services Staff/family consultation and training Transportation	May not exceed \$1454 per year on any combination of these services
	EMPLOYMENT( <del>(DAY)</del> ) PROGRAM SERVICES: <del>((Community access))</del> Person-to-person Prevocational services Supported employment	<del>((May not exceed \$6804 per year))</del> <u>Limits are determined by DDD assessment and employment status</u>
	<u>DAY PROGRAM SERVICES:</u> <u>Community access</u>	<u>Limits are determined by DDD assessment</u>
	Sexual deviancy evaluation	Limits are determined by DDD
	Respite care	Limits are determined by the DDD assessment
	Personal care	Limits are determined by the CARE tool used as part of the DDD assessment
	MENTAL HEALTH STABILIZATION SERVICES: Behavior management and consultation Mental health crisis diversion bed services Skilled nursing Specialized psychiatric services	Limits are determined by a mental health professional or DDD

BASIC WAIVER	SERVICES	YEARLY LIMIT
	Emergency assistance is only for aggregate services and/or employment/day program services contained in the Basic waiver	\$6000 per year; Preauthorization required

AMENDATORY SECTION (Amending WSR 08-20-033, filed 9/22/08, effective 10/23/08)

**WAC 388-845-0210 Basic Plus waiver services.**

BASIC PLUS WAIVER	SERVICES	YEARLY LIMIT
	AGGREGATE SERVICES: Behavior management and consultation Community guide Environmental accessibility adaptations Occupational therapy Physical therapy Skilled nursing Specialized medical equipment/supplies Specialized psychiatric services Speech, hearing and language services Staff/family consultation and training Transportation	May not exceed \$6192 per year on any combination of these services
	EMPLOYMENT( <del>(DAY)</del> ) PROGRAM SERVICES: <del>((Community access Person-to-person))</del> Prevocational services Supported employment  <u>Individual technical assistance</u>	<del>((May not exceed \$9944 per year))</del> <del>((This amount may be increased to a maximum of \$19,888 per year by exception to rule based on client need))</del> <u>Limits are determined by DDD assessment and employment status</u>
	<u>DAY PROGRAM SERVICES:</u> <u>Community Access</u> Adult foster care (adult family home) Adult residential care (boarding home)	<u>Limits are determined by DDD assessment</u>  Determined per department rate structure

BASIC PLUS WAIVER	SERVICES	YEARLY LIMIT
	MENTAL HEALTH STABILIZATION SERVICES: Behavior management and consultation Mental health crisis diversion bed services Skilled nursing Specialized psychiatric services	Limits determined by a mental health professional or DDD
	Personal care	Limits determined by the CARE tool used as part of the DDD assessment
	Respite care	Limits are determined by the DDD assessment
	Sexual deviancy evaluation	Limits are determined by DDD
	Emergency assistance is only for aggregate services ( <del>and/or employment/day program services</del> ) contained in the Basic Plus waiver <u>Adult dental services</u>	\$6000 per year; Preauthorization required  <u>Limits are determined by Chapter 182-535 WAC</u>

CORE WAIVER	SERVICES	YEARLY LIMIT
	Speech, hearing and language services Staff/family consultation and training Transportation Residential habilitation <u>Day program services</u> Community access ( <del>(Person-to-person)</del> ) <u>Employment program services</u> Prevocational services Supported employment <u>Individualized technical assistance</u>	Limits are determined by assessment Limits are determined by DDD assessment and employment status
	MENTAL HEALTH STABILIZATION SERVICES: Behavior management and consultation Mental health crisis diversion bed services Skilled nursing Specialized psychiatric services	Limits determined by a mental health professional or DDD
	Personal care Respite care <u>Adult dental services</u>	Limits determined by the CARE tool used as part of the DDD assessment Limits are determined by the DDD assessment <u>Limits are determined by chapter 182-535 WAC</u>

AMENDATORY SECTION (Amending WSR 07-20-050, filed 9/26/07, effective 10/27/07)

**WAC 388-845-0215 CORE waiver services.**

CORE WAIVER	SERVICES	YEARLY LIMIT
	Behavior management and consultation Community guide Community transition Environmental accessibility adaptations  Occupational therapy Sexual deviancy evaluation Skilled nursing Specialized medical equipment/supplies Specialized psychiatric services	Determined by the plan of care or individual support plan, not to exceed the average cost of an ICF/MR for any combination of services

AMENDATORY SECTION (Amending WSR 07-20-050, filed 9/26/07, effective 10/27/07)

**WAC 388-845-0220 Community protection waiver services.**

COMMUNITY PROTECTION WAIVER	SERVICES	YEARLY LIMIT
	Behavior management and consultation Community transition Environmental accessibility adaptations Occupational therapy Physical therapy	Determined by the plan of care or individual support plan, not to exceed the average cost of an ICF/MR for any combination of services
	Sexual deviancy evaluation Skilled nursing Specialized medical equipment and supplies Specialized psychiatric services Speech, hearing and language services Staff/family consultation and training Transportation Residential habilitation	<u>Limits determined by DDD assessment and employment status</u>
	<del>((Person to person))</del> <u>Employment Program Services:</u>  Prevocational services Supported employment <u>Individual technical assistance</u>	
	<u>Adult dental services</u>	<u>Limits are determined by chapter 182-535 WAC</u>
	MENTAL HEALTH STABILIZATION SERVICES: Behavioral management and consultation Mental health crisis diversion bed services Skilled nursing	Limits determined by a mental health professional or DDD

COMMUNITY PROTECTION WAIVER	SERVICES	YEARLY LIMIT
	Specialized psychiatric services	

AMENDATORY SECTION (Amending WSR 10-22-088, filed 11/1/10, effective 12/2/10)

**WAC 388-845-0225 Children's intensive in-home behavioral support (CIIBS) waiver services.**

CIIBS Waiver	Services	Yearly Limit
	<ul style="list-style-type: none"> <li>• Behavior management and consultation</li> <li>• Staff/family consultation and training</li> <li>• Environmental accessibility adaptations</li> <li>• Occupational therapy</li> <li>• Physical therapy</li> <li>• Sexual deviancy evaluation</li> <li>• Nurse delegation</li> <li>• Specialized medical equipment / supplies</li> <li>• Specialized psychiatric services</li> <li>• Speech, hearing and language services</li> <li>• Transportation</li> <li>• Assistive technology</li> <li>• Therapeutic equipment and supplies</li> <li>• Specialized nutrition and clothing</li> <li>• Vehicle modifications</li> </ul>	Determined by the individual support plan. Total cost of waiver services cannot exceed the average cost of \$4,000 per month per participant.
	Personal care	Limits determined by the DDD assessment. Costs are included in the total average cost of \$4000 per month per participant for all waiver services.
	Respite care	Limits determined by the DDD assessment. Costs are included in the total average cost of \$4000 per

CIIBS Waiver	Services	Yearly Limit
		month per participant for all waiver services.
	<u>Behavioral health Stabilization services:</u> <u>Behavioral support and consultation</u> <u>Crisis diversion bed services</u> <u>Specialized psychiatric services</u>	<u>Limits determined by mental health specialist</u>

AMENDATORY SECTION (Amending WSR 10-22-088, filed 11/1/10, effective 12/2/10)

**WAC 388-845-0505 Who is a qualified provider of behavior ((management)) support and consultation?**

Under the Basic, Basic Plus, Core, and Community Protection waivers, the provider of behavior ((management)) support and consultation must be one of the following professionals contracted with DDD and duly licensed, registered or certified to provide this service:

- (1) Marriage and family therapist;
- (2) Mental health counselor;
- (3) Psychologist;
- (4) Sex offender treatment provider;
- (5) Social worker;
- (6) Registered nurse (RN) or licensed practical nurse (LPN);
- (7) Psychiatrist;
- (8) Psychiatric advanced registered nurse practitioner (ARNP);
- (9) Physician assistant working under the supervision of a psychiatrist;
- (10) Counselors registered or certified in accordance with the requirements of chapter 18.19 RCW; ((or))
- (11) Polygrapher; or
- (12) State operated behavior support agency limited to behavioral health stabilization services.

NEW SECTION

**WAC 388-845-0780 What is adult dental services?**

Adult dental services are provided to individuals age twenty-one years and older. Dental services provide comprehensive dental coverage as defined in chapter 182-535 WAC. Adult dental service coverage is limited to individuals on the Basic Plus, Core and Community Protection waivers.

NEW SECTION

**WAC 388-845-0785 Who are qualified providers of adult dental services?**

Providers for adult dental services covered under the waiver program must have a current state license and have core provider agreement with the state medicaid agency.

AMENDATORY SECTION (Amending WSR 07-20-050, filed 9/26/07, effective 10/27/07)

**WAC 388-845-0800 What is emergency assistance?**

Emergency assistance is a temporary increase to the yearly aggregate services and ~~((or employment/day program services))~~ dollar limit specified in the Basic and Basic Plus waiver when additional waiver services are required to prevent ICF/MR placement. These additional services are limited to the services provided in your waiver.

AMENDATORY SECTION (Amending WSR 07-20-050, filed 9/26/07, effective 10/27/07)

**WAC 388-845-0820 Are there limits to my use of emergency assistance?** All of the following limitations apply to your use of emergency assistance:

(1) Prior approval by the DDD regional administrator or designee is required based on a reassessment of your plan of care or individual support plan to determine the need for emergency services;

(2) Payment authorizations are reviewed every thirty days and cannot exceed six thousand dollars per twelve months based on the effective date of your current plan of care or individual support plan;

(3) Emergency assistance services are limited to the aggregate services ~~((and employment/day program services))~~ in the Basic and Basic Plus waivers;

(4) Emergency assistance may be used for interim services until:

- (a) The emergency situation has been resolved; or
- (b) You are transferred to alternative supports that meet your assessed needs; or
- (c) You are transferred to an alternate waiver that provides the service you need.

AMENDATORY SECTION (Amending WSR 06-01-024, filed 12/13/05, effective 1/13/06)

**WAC 388-845-1105 Who is a qualified provider of mental health crisis diversion bed services?** Providers of mental health crisis diversion bed services must be:

- (1) DDD certified residential agencies per chapter 388-101 WAC; ((or))
- (2) Other department licensed or certified agencies; or
- (3) State operated agency.

AMENDATORY SECTION (Amending WSR 10-22-088, filed 11/1/10, effective 12/2/10)

**WAC 388-845-1110 What are the limits of mental health crisis diversion bed services?**

(1) Mental health crisis diversion bed services are intermittent and temporary. The duration and amount of services you need to stabilize your crisis is determined by a mental health professional and/or DDD.

(2) These services are available in the Basic, CIIBS, Basic Plus, Core, and Community Protection waivers administered by DDD as mental health stabilization services in accordance with WAC 388-845-1150 through 388-845-1160.

(3) The costs of mental health crisis diversion bed services do not count toward the dollar limits for aggregate services in the Basic and Basic Plus waivers.

AMENDATORY SECTION (Amending WSR 10-22-088, filed 11/1/10, effective 12/2/10)

**WAC 388-845-1150 What are mental health stabilization services?** Mental health stabilization services assist persons who are experiencing a mental health crisis. These services are available in the Basic, Basic Plus, Core, CIIBS and Community Protection waivers to ~~((adults))~~ individuals determined by mental health professionals or DDD to be at risk of institutionalization in a psychiatric hospital without one of more of the following services:

- (1) Behavior management and consultation;
- (2) Specialized psychiatric services; or
- (3) Mental health crisis diversion bed services.

AMENDATORY SECTION (Amending WSR 10-22-088, filed 11/1/10, effective 12/2/10)

**WAC 388-845-1400 What are prevocational services?** (1) Prevocational services occur in a specialized or segregated settings and include monthly employment related activities in the community. Prevocational services are designed to prepare you for gainful employment in an integrated setting through training and skill development.

(2) Prevocational services are available in the Basic, Basic Plus, Core and Community Protection waivers.

AMENDATORY SECTION (Amending WSR 08-20-033, filed 9/22/08, effective 10/23/08)

**WAC 388-845-1410 Are there limits to the prevocational services I can receive?** The following limitations apply to your receipt of prevocational services:

(1) You must be age twenty and graduating from high school prior to your July or August twenty-first birthday, age twenty-one and graduated from high school, or age twenty-two or older to receive prevocational services.

(2) New referrals for prevocational services require prior approval by the DDD regional administrator and county coordinator or their designees.

(3) Prevocational services are a time limited step on the pathway toward individual employment and are dependent on your demonstrating steady progress toward gainful employment over time. Your annual vocational assessment will include exploration of integrated settings within your next service year. Criteria that would trigger a review of your need for these services include, but are not limited to:

- (a) Compensation at more than fifty percent of the prevailing wage;
- (b) Significant progress made toward your defined goals;
- (c) Your expressed interest in competitive employment; and/or
- (d) Recommendation by your individual support plan team.

(4) You will not be authorized to receive prevocational services in addition to community access services or supported employment services.

~~(5) ((The dollar limitations for employment/day program services in your Basic or Basic Plus waiver limit the amount of service you may receive.~~

~~(6))~~ Your service hours are determined by the assistance you need to reach your employment outcomes as described in WAC 388-828-9235.

AMENDATORY SECTION (Amending WSR 08-20-033, filed 9/22/08, effective 10/23/08)

**WAC 388-845-2110 Are there limits to the supported employment services I can receive?** The following limitations apply to your receipt of supported employment services:

(1) You must be age twenty and graduating from high school prior to your July or August twenty-first birthday, age twenty-one and graduated from high school, or age twenty-two or older to receive supported employment services.

(2) Payment will be made only for the employment support you require as a result of your disabilities.

(3) Payment for individual supported employment excludes the supervisory activities rendered as a normal part of the business setting.

(4) You will not be authorized to receive supported employment services in addition to community access or prevocational services.

~~(5) ((The dollar limitations for employment/day program services in your Basic or Basic Plus waiver limit the amount of supported employment service you may receive.~~

~~(6))~~ Your service hours are determined by the assistance you need to reach your employment outcomes as described in WAC 388-828-9235 and might not equal the number of hours you spend on the job or in job related activities.

AMENDATORY SECTION (Amending WSR 06-01-024, filed 12/13/05, effective 1/13/06)

**WAC 388-845-2205 Who is qualified to provide transportation services?** (1) The provider of transportation services can be an individual or agency contracted with DDD.

(2) For adult dental services only, provider can be contracted as a transportation broker through medicaid.

AMENDATORY SECTION (Amending WSR 08-20-033, filed 9/22/08, effective 10/23/08)

**WAC 388-845-2210 Are there limitations to the transportation services I can receive?** The following limitations apply to transportation services:

(1) Transportation to/from medical or medically related appointments is a medicaid transportation service and is to be considered and used first.

(2) Transportation is offered in addition to medical transportation but cannot replace medicaid transportation services.

(3) Transportation is limited to travel to and from a waiver service.

(4) Transportation does not include the purchase of a bus pass.

(5) Reimbursement for provider mileage requires prior approval by DDD and is paid according to contract.

(6) This service does not cover the purchase or lease of vehicles.

(7) Reimbursement for provider travel time is not included in this service.

(8) Reimbursement to the provider is limited to transportation that occurs when you are with the provider.

(9) You are not eligible for transportation services if the cost and responsibility for transportation is already included in your provider's contract and payment.

(10) The dollar limitations for aggregate services in your Basic or Basic Plus waiver limit the amount of service you may receive unless provided by a contracted transportation broker to access adult dental services.

(11) Transportation services require prior approval by the DDD regional administrator or designee, unless provided by transportation broker for adult dental services.

(12) If your individual personal care provider uses his/her own vehicle to provide transportation to you for essential shopping and medical appointments as a part of your personal care service, your provider may receive up to sixty miles per month in mileage reimbursement. If you work with more than one individual personal care provider, your limit is still a total of sixty miles per month. This cost is not counted toward the dollar limitation for aggregate services in the Basic or Basic Plus waiver.

**WSR 12-19-002  
EMERGENCY RULES  
DEPARTMENT OF  
FISH AND WILDLIFE**

[Order 12-201—Filed September 5, 2012, 3:51 p.m., effective September 5, 2012, 3:51 p.m.]

Effective Date of Rule: Immediately.

Purpose: Amend commercial fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-47-31100V and 220-47-41100D; and amending WAC 220-47-311 and 220-47-411.

Statutory Authority for Adoption: RCW 77.12.047 and 77.04.020.

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

Reasons for this Finding: The department identified a small error in WAC 220-47-311 and 220-47-411. This emergency rule amends the permanent rules so that they are correct. There is insufficient time to adopt a permanent rule to make these corrections.

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 5, 2012.

Philip Anderson  
Director

NEW SECTION

**WAC 220-47-31100V Purse seine—Open periods.** Notwithstanding the provisions of WAC 220-47-311, effective immediately until further notice, it is unlawful to retain coho salmon taken with purse seine gear through September 8, 2012, in Puget Sound Salmon Management and Catch Reporting Areas 7B and 7C.

NEW SECTION

**WAC 220-47-41100D Gillnet—Open periods.** Notwithstanding the provisions of WAC 220-47-411, effective immediately until further notice, it is permissible to take, fish for, or possess salmon taken with gillnet gear for commercial purposes from the following designated Puget Sound Salmon Management and Catch Reporting Areas during the times indicated below and with the minimum mesh size indicated below. Unless otherwise amended, all permanent rules remain in effect.

Open Area	Open Period	Minimum Mesh Size
7B, 7C	Immediately 9/5/12 through 7 AM 9/7/12	7 inches.

REPEALER

The following section of the Washington Administrative Code is repealed effective September 9, 2012:

WAC 220-47-31100V Purse seine—Open periods.

The following section of the Washington Administrative Code is repealed effective 7:01 a.m. September 7, 2012:

WAC 220-47-41100D Gillnet—Open periods.

**WSR 12-19-004  
EMERGENCY RULES  
DEPARTMENT OF  
FISH AND WILDLIFE**

[Order 12-202—Filed September 5, 2012, 4:09 p.m., effective September 5, 2012, 4:09 p.m.]

Effective Date of Rule: Immediately.

Purpose: Amend commercial fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-52-05100S; 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 2012 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: (1) Opens up a twenty-four hour "clean up" fishery with one hundred pound limits in SMA 1A and Catch Area 23A-S, 23D and 25A; (2) reopens Catch Areas 23A-W and 26D, as there is remaining quota available; and (3) lowers the weekly limit in Catch Area 23A-W. 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 5, 2012.

Philip Anderson  
Director

#### NEW SECTION

**WAC 220-52-05100T 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) Spot shrimp:

i) Effective immediately until further notice, all waters of Catch Areas 23A-W, 23C, 26D, 28A, 28B, 28C and 29 are open, except as provided for in this section:

a. All waters of Catch Area 23A-W east of the W 123° 03' longitude line are closed.

ii) Effective 6:00 a.m., September 6, 2012, until 6:00 p.m. September 7, 2012, all waters of SMA 1A and Catch Areas 23A-S, 23D and 25A are open.

(b) Shrimp species other than spot shrimp:

i) Effective immediately until further notice, all waters of Shrimp Management Areas (SMA) 1A, 1B, 1C, 2W, 3 and 6 are open, except as provided for in this section:

a. All waters of the Discovery Bay Shrimp District are closed.

b. All waters of SMA 1A are closed, except that those waters of SMA 1A south of line projected at 48°.31.5' N latitude are open.

(c) The shrimp catch accounting week is Wednesday through Tuesday.

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

i) It is unlawful for the total harvest of spot shrimp by a fisher and/or the fisher's alternate operator to exceed 300 pounds per week in Catch Area 23A-W.

ii) Effective 6:00 a.m., September 6, 2012, until 6:00 p.m. September 7 2012, it is unlawful for the total harvest of spot shrimp by a fisher and/or the fisher's alternate operator to exceed 100 pounds per week in SMA 1A and Catch Areas 23A-S, 23D and 25A.

(e) It is unlawful to pull shellfish pots in more than one catch area per day.

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

(2) Shrimp beam trawl gear:

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

(b) Those portions of Catch Areas 21A and 22A within SMA 1B are open, effective immediately until further notice.

(c) All waters of Catch Area 20A are open, effective immediately until further notice.

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

#### REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 220-52-05100S	Puget Sound shrimp beam trawl fishery—Season. (12-195)
-------------------	--



**WSR 12-19-009**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**

[Order 12-204—Filed September 6, 2012, 11:06 a.m., effective September 6, 2012, 11:06 a.m.]

Effective Date of Rule: Immediately.

Purpose: Amend commercial fishing rules.

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

Statutory Authority for Adoption: RCW 77.12.047 and 77.04.020.

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

Reasons for this Finding: A harvestable quota of salmon is available for the troll fleet. Coho catch rates have been lower than expected. A switch to a nonselective coho fishery is needed to ensure the coastal salmon troll fishery meets the season objectives. These rules are adopted at the recommendation of the Pacific Fisheries Management Council, in accordance with preseason fishing plans and the National Marine Fisheries Service from an in-season call. 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 6, 2012.

Philip Anderson  
Director

**NEW SECTION**

**WAC 220-24-04000Q All-citizen commercial salmon troll.** Notwithstanding the provisions of WAC 220-24-040, effective immediately until further notice, it is unlawful to fish for salmon with troll gear or to land salmon taken with troll gear into a Washington port except during the seasons provided for in this section:

(1) Salmon Management and Catch Reporting Areas 1, 2 and 3, open:

September 7 through September 11, 2012; and  
September 14 through September 17, 2012.

(2) Landing and possession limit of 150 Chinook and 50 coho per boat per each entire open period for the entire catch areas 1, 2 and 3.

(3) The Cape Flattery and Columbia River Control Zones are closed. Mandatory Yelloweye Rockfish Conservation Area is closed.

(4) Minimum size for Chinook salmon is 28 inches in length. Minimum size for coho salmon is 16 inches in length. No minimum size for pink, sockeye, or chum salmon, except no chum retention north of Cape Alava, Washington, in August and September. It is unlawful to possess wild coho salmon and halibut.

(5) Lawful troll gear is restricted to all legal troll gear with single point, single shank barbless hooks.

(6) Fishers must land and deliver their catch within 24 hours of any closure of a fishery provided for in this section, and vessels fishing or in possession of salmon while fishing north of Leadbetter Point must land and deliver their fish within the area and North of Leadbetter Point. It is legal to land fish from this fishery caught in the area north of Leadbetter Point in Area 4. Vessels fishing or in possession of salmon while fishing south of Leadbetter Point must land and deliver their fish within the area and south of Leadbetter Point.

(7) The Cape Flattery Control Zone is defined as the area from Cape Flattery (48°23'00" N latitude) to the northern boundary of the U.S. Exclusive Economic Zone, and the area from Cape Flattery south to Cape Alava, 48°10'00" N latitude, and East of 125°05'00" W longitude.

(8) Columbia Control Zone - This is defined as an area at the Columbia River mouth, bounded on the west by a line running northeast/southwest between the red lighted Buoy #4 (46°13'35" N. Lat., 124°06'50" W. long.) and the green lighted Buoy #7 (46°15'09" N. lat., 124°06'16" W. long.); on the east, by the Buoy #10 line, which bears north/south at 357° true from the south jetty at 46°14'00" N. lat., 124°03'07" W. long, to its intersection with the north jetty; on the north, by a line running northeast/southwest between the green lighted Buoy #7 to the tip of the north jetty (46°14'48" N. lat., 124°05'20" W. long.), and then along the north jetty to the point of intersection with the Buoy #10 line; and, on the south, by a line running northeast/southwest between the red lighted Buoy #4 and tip of the south jetty (46°14'03" N. lat., 124°04'05" W. long.), and then along the south jetty to the point of intersection with the Buoy #10 line.

(9) Mandatory Yelloweye Rockfish Conservation Area - This is defined as the area in Washington Marine Catch Area 3 from 48°00.00' N latitude; 125°14.00' W longitude to 48°02.00' N latitude; 125°14.00' W longitude to 48°02.00' N latitude; 125°16.50' W longitude to 48°00.00' N latitude; 125°16.50' W longitude and connecting back to 48°00.00' N latitude; 125°14.00' W longitude.

(10) It is unlawful to fish in Salmon Management and Catch Reporting Areas 1, 2 and 3 with fish on board taken south of Cape Falcon, Oregon; and all fish taken from Salmon Management and Catch Reporting Areas 1, 2 and 3 must be landed before fishing south of Cape Falcon, Oregon.

(11) It is unlawful for wholesale dealers and trollers retailing their fish to fail to report their landing by 10:00 a.m. the day following landing. Ticket information can be tele-

phoned in by calling 1-866-791-1279, or faxing the information to (360) 902-2949, or e-mailing to trollfishtickets@dfw.wa.gov. Report the dealer name, the dealer license number, the purchasing location, the date of purchase, the fish ticket numbers, the gear used, the catch area, the species, the total number for each species, and the total weight for each species, including halibut.

**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 220-24-04000P All-citizen commercial salmon troll. (12-198)

The following section of the Washington Administrative Code is repealed effective September 19, 2012:

WAC 220-24-04000Q All-citizen commercial salmon troll.

### **WSR 12-19-012**

#### **EMERGENCY RULES**

#### **DEPARTMENT OF**

#### **FISH AND WILDLIFE**

[Order 12-203—Filed September 6, 2012, 3:40 p.m., effective September 8, 2012]

Effective Date of Rule: September 8, 2012.

Purpose: Amend recreational fishing rules.

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

Statutory Authority for Adoption: RCW 77.12.047 and 77.04.020.

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

Reasons for this Finding: These lakes are scheduled to be treated with the piscicide rotenone for fish management purposes. Licensed anglers may harvest remaining game fish prior to rehabilitation. There is insufficient time to adopt permanent rules.

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

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

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

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

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

Date Adopted: September 6, 2012.

Philip Anderson  
Director

### NEW SECTION

**WAC 232-28-61900E Exceptions to statewide rules** Notwithstanding the provisions of WAC 232-28-619, it is unlawful to violate the provisions below. Unless otherwise amended all permanent rules remain in effect:

#### **(1) Fish Lake (Spokane Co.)**

Effective September 8 through October 21, 2012 open to fishing. Size and daily limit for game fish or northern pike: none. (prohibited species: must be dead before leaving the riparian zone of Fish Lake). Closed to fishing from October 22, 2012, until further notice.

#### **(2) Little Beaver Lake (Okanogan Co.)**

Effective September 8 through October 28, 2012 open to fishing. Size and daily limit for game fish: none. Closed to fishing from October 29, 2012, until further notice.

### **WSR 12-19-017**

#### **EMERGENCY RULES**

#### **DEPARTMENT OF**

#### **FISH AND WILDLIFE**

[Order 12-206—Filed September 7, 2012, 3:13 p.m., effective September 7, 2012, 3:13 p.m.]

Effective Date of Rule: Immediately.

Purpose: To amend elk hunting rules described in WAC 232-28-360.

Citation of Existing Rules Affected by this Order: Repealing WAC 232-28-36000A; and amending WAC 232-28-360.

Statutory Authority for Adoption: RCW 77.12.047.

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

Reasons for this Finding: With regard to the Green River, Toutle, and Margaret modern firearm special permit hunts, the hunt dates originally adopted in the WAC would have resulted in overlaps between archers and modern firearm hunters or were outside of the timeframe desired by the landowners who provide recreational access to hunters. Corrections to the dates were provided to the public via alternate means (agency web site). These corrections will help to avoid confusion for the more than sixty thousand Washington citizens who take part in the special permit application process.

The hunt dates for the quality, modern firearm, Quinault hunt were changed from September 16 through September 20, 2012, as originally filed in the notice of proposed rule making (CR-102) dated February 1, 2012, to September 24 through September 28, 2012, at the April 13-14, 2012, fish and wildlife commission meeting. However, due to an oversight, this date change was not included in the permanent rule-making order. This emergency change revises the WAC to make it consistent with hunt dates adopted by the fish and wildlife commission.

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

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

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

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

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

Date Adopted: September 7, 2012.

Philip Anderson  
Director

#### NEW SECTION

**WAC 232-28-36000B 2012 Elk special permits.** Notwithstanding the provisions of WAC 232-28-360, effective immediately until further notice:

Under the Quality elk section, the dates for the Green River modern firearm (WF) hunt should be changed from Nov. 12-18 to Oct. 27-Nov. 2.

Under the Quality elk section, the dates for the Toutle modern firearm (WF) hunt should be changed from Sept. 17-30 and Nov. 3-14 to Sept. 24-28 and Nov. 3-14.

Under the Quality elk section, the dates for the Quinault modern firearm (WF) hunt should be changed from Sept. 16-20 to Sept. 24-28.

Under the Bulls section, the dates for the Margaret modern firearm (WF) hunt with 4 permits should be changed from Sept. 17-30 and Nov. 3-14 to Sept. 24-30 and Nov. 3-14.

#### REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 232-28-36000A 2012 Elk special permits.

**WSR 12-19-018**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**

[Order 12-205—Filed September 7, 2012, 3:59 p.m., effective September 11, 2012, 6:00 a.m.]

Effective Date of Rule: September 11, 2012, 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 220-32-05100X; 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); *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 the fourth weekly treaty commercial fishing period for the 2012 fall season. Platform hook and line as well as tributary fisheries remain in place, and the five-inch mesh minimum restriction on platform gear is removed. Sockeye retention remains prohibited. Fisheries are expected to remain within the impact limits set for ESA-listed salmonids. 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 July 26 and September 6, 2012. There is insufficient time to promulgate permanent regulations.

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. A court order sets the current parameters. *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 salmon and steelhead stocks in the Columbia River 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 allow for some

incidental take of these species in the fisheries as described in the 2008-2017 *U.S. v. Oregon* Management Agreement. 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.

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 7, 2012.

Joe Stohr  
for Philip Anderson  
Director

## NEW SECTION

**WAC 220-32-05100Y Columbia River salmon seasons above Bonneville Dam.** Notwithstanding the provisions of WAC 220-32-050, WAC 220-32-051, WAC 220-32-052, WAC 220-32-055 and WAC 220-32-058, effective immediately until further notice, it is unlawful for a person to take or possess salmon, steelhead, sturgeon, shad, carp, catfish, walleye, bass, or yellow perch taken for commercial purposes in Columbia River Salmon Management and Catch Reporting Areas (SMCRA) 1E, 1F, 1G, and 1H, and in the Klickitat River and Drano Lake, except as provided in the following subsections. However, those individuals possessing treaty fishing rights under the Yakama, Warm Springs, Umatilla, and Nez Perce treaties may fish for salmon, steelhead, sturgeon, shad, carp, catfish, walleye, bass, or yellow perch under the following provisions:

### **1. Mainstem Columbia River Commercial Gillnet**

- Open Area: SMCRA 1F, 1G, 1H (Zone 6).
- Season: 6:00 AM Tuesday, September 11, through 6:00 PM Friday, September 14, 2012.
- Gear: Gillnets only. 8-inch minimum mesh size.
- Allowable sale: Chinook, coho, steelhead, shad, carp, catfish, walleye, bass, or yellow perch. Sturgeon between 38-54 inches in fork length in the Bonneville Pool, and between 43-54 inches in fork length in The Dalles and John Day pools, may be retained for subsistence purposes. Sales

of fish landed during the open period are allowed after the period concludes. No sockeye retention.

e. Standard river mouth sanctuaries in effect for this gear type.

### **2. Mainstem Columbia River Platform and Hook and Line upstream of Bonneville Dam**

- Open Area: SMCRA 1F, 1G, 1H (Zone 6).
- Season: Immediately until further notice.
- Gear: Hoop nets and dip bag nets, and rod and reel with hook and line.
- Allowable sale: Chinook, coho, steelhead, shad, carp, catfish, walleye, bass, or yellow perch. Sturgeon between 38-54 inches in fork length in the Bonneville Pool, and between 43-54 inches in fork length in The Dalles and John Day pools, may be retained for subsistence purposes. No sockeye retention.

e. Standard sanctuaries in effect for this gear type.

### **3. Mainstem Columbia River Platform and Hook and Line downstream of Bonneville Dam**

a. Open Area: SMCRA 1E. Each of the four Columbia River treaty tribes has an MOA or MOU with the Washington Department of Fish and Wildlife regarding tribal fisheries in the area just downstream of Bonneville Dam. Tribal fisheries in this area may only occur in accordance with the appropriate MOA or MOU specific to each tribe.

b. Participants: Tribal members may participate under the conditions described in the 2007 Memorandum of Agreement (MOA) with the Yakama Nation (YN), in the 2010 Memorandum of Understanding (MOU) with the Confederated Tribes of the Umatilla Indian Reservation (CTUIR), in the 2010 MOU with the Confederated Tribes of the Warm Spring Reservation (CTWS), and in the 2011 MOU with the Nez Perce Tribe. Tribal members fishing below Bonneville Dam must carry an official tribal enrollment card.

c. Season: Immediately until further notice.

d. Gear: Hoop nets and dip bag nets, and rod and reel with hook and line, or as defined by each tribe's MOU or MOA.

e. Allowable Sales: Chinook, coho, steelhead, shad, carp, catfish, walleye, bass, or yellow perch. No sockeye retention. Sturgeon retention is prohibited; sturgeon may not be sold or retained for ceremonial or subsistence purposes. Sale of platform or hook-and-line-caught fish is allowed. Sales may not occur on USACE property.

### **4. Yakama Nation Tributary Fisheries**

a. Open Area: Columbia River Tributaries above Bonneville Dam.

b. Season: Immediately until further notice, and only during those days and hours when the tributaries listed below are open under lawfully enacted Yakama Nation tribal subsistence fishery regulations for enrolled Yakama Nation members.

c. Area: Drano Lake and Klickitat River.

d. Gear: Hoop nets, dip bag nets, and rod and reel with hook and line. Gillnets may only be used in Drano Lake.

e. Allowable Sales: Chinook, coho, steelhead, shad, carp, catfish, walleye, bass, or yellow perch. No sockeye retention.

5. 24-hour quick reporting required for Washington wholesale dealers, WAC 220-69-240, for all areas.

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

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

**REPEALER**

The following section of the Washington Administrative Code is repealed effective 6:00 a.m. September 11, 2012:

WAC 220-32-05100X Columbia River salmon seasons above Bonneville Dam. (12-181)

**WSR 12-19-019  
EMERGENCY RULES  
DEPARTMENT OF  
FISH AND WILDLIFE**

[Order 12-207—Filed September 7, 2012, 4:39 p.m., effective September 7, 2012, 4:39 p.m.]

Effective Date of Rule: Immediately.

Purpose: To amend commercial fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-47-41100E; and amending WAC 220-47-411.

Statutory Authority for Adoption: RCW 77.04.020, 77.12.045, and 77.12.047.

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

Reasons for this Finding: The department identified an error in the wording of WAC 220-47-411. This emergency rule amends the permanent rules so that they are correct. There is insufficient time to adopt a permanent rule to make these corrections.

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

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

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

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

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

Date Adopted: September 7, 2012.

Lori Preuss  
for Philip Anderson  
Director

**NEW SECTION**

**WAC 220-47-41100E Gillnet—Open periods.** Notwithstanding the provisions of WAC 220-47-411, effective immediately until further notice, it is permissible to take, fish for, or possess salmon taken with gillnet gear for commercial purposes from the following designated Puget Sound Salmon Management and Catch Reporting Areas during the times indicated below and with the minimum mesh size indicated below. Unless otherwise amended, all permanent rules remain in effect.

Open Area	Open Period	Minimum Mesh Size
7B	7 AM 9/9 - 7 AM 9/14 7 AM 9/16 - 7 AM 9/21	5 inches

**REPEALER**

The following section of the Washington Administrative Code is repealed effective 7:01 a.m. September 21, 2012:

WAC 220-47-41100E Gillnet—Open periods.

**WSR 12-19-029  
EMERGENCY RULES  
DEPARTMENT OF  
FISH AND WILDLIFE**

[Order 12-208—Filed September 11, 2012, 3:54 p.m., effective September 12, 2012, 12:01 a.m.]

Effective Date of Rule: September 12, 2012, 12:01 a.m.

Purpose: Amend commercial fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-52-05100T; 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 2012 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 (1) closes Catch Area 23A-W to spot shrimp fishing, as the quota has been taken; and (2) closes Catch Areas 23C, 28A-D and 29 to protect female spot shrimp at the onset of the egg-bearing period. There is insufficient time to adopt permanent rules.

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

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

Number of Sections Adopted on the Agency's Own Initiative: New 1, Amended 0, Repealed 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 11, 2012.

Philip Anderson  
Director

#### NEW SECTION

**WAC 220-52-05100U 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) Spot shrimp:

i) Effective immediately until 6:00 p.m. September 15, 2012, all waters of Catch Areas 23C, 26D, 28A, 28B, 28C, 28D and 29 are open.

(b) Shrimp species other than spot shrimp:

i) Effective immediately until further notice, all waters of Shrimp Management Areas (SMA) 1A, 1B, 1C, 2W, 3 and 6 are open, except as provided for in this section:

a. All waters of the Discovery Bay Shrimp District are closed.

b. All waters of SMA 1A are closed, except that those waters of SMA 1A south of line projected at 48° 31.5' N latitude are open.

(c) The shrimp catch accounting week is Wednesday through Tuesday.

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

(e) It is unlawful to pull shellfish pots in more than one catch area per day.

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

(2) Shrimp beam trawl gear:

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

(b) Those portions of Catch Areas 21A and 22A within SMA 1B are open, effective immediately until further notice.

(c) All waters of Catch Area 20A are open, effective immediately until further notice.

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

#### REPEALER

The following section of the Washington Administrative Code is repealed effective 12:01 a.m. September 12, 2012:

WAC 220-52-05100T Puget Sound shrimp beam trawl fishery—Season. (12-202)

#### **WSR 12-19-030 EMERGENCY RULES DEPARTMENT OF FISH AND WILDLIFE**

[Order 12-209—Filed September 11, 2012, 4:22 p.m., effective September 13, 2012, 12:01 a.m.]

Effective Date of Rule: September 13, 2012, 12:01 a.m.  
Purpose: Amend recreational fishing rules.

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

Statutory Authority for Adoption: RCW 77.12.047 and 77.04.020.

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

Reasons for this Finding: Sufficient quota and guidelines remain in ocean areas to allow expended salmon angling opportunity. There is insufficient time to adopt permanent rules.

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

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

Number of Sections Adopted on the Agency's Own Initiative: New 1, Amended 0, Repealed 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 11, 2012.

Philip Anderson  
Director

#### NEW SECTION

**WAC 232-28-62000T Coastal salmon—Saltwater seasons and daily limits.** Notwithstanding the provisions of WAC 232-28-620, effective September 13, 2012, until further notice, it is unlawful to violate the provisions below. Unless otherwise amended, all permanent rules remain in effect:

**(1) Catch Record Card Area 1:**

(a) Open through September 30 - Daily limit of 2 salmon.

(b) Closed in the Columbia River Mouth Control Zone 1 during all open periods. See WAC 220-56-195.

**(2) Catch Record Card Area 2:**

(a) Open through September 23 - Daily limit of 2 salmon.

(b) Open through September 23 - Grays Harbor Control Zone, described in WAC 220-56-195(11) - Open concurrent with Area 2 when Area 2 is open for salmon angling. Area 2 rules apply.

**(3) Willapa Bay (Catch Record Card Area 2-1):**

(a) Open until further notice - Daily limit of six salmon, not more than three of which may be adult salmon. Release chum and wild Chinook. Anglers in possession of a valid two-pole endorsement may use up to two lines while fishing.

**(4) Grays Harbor (Catch Record Card Area 2-2 west of the Buoy 13 line):** Immediately through September 23 - Open concurrent with Area 2 when Area 2 is open for salmon angling. Area 2 rules apply.

**(5) Grays Harbor (Catch Record Card Area 2-2 east of the Buoy 13 line):**

(a) Immediately through September 15 - Closed.

(b) Open September 16 until further notice - Daily limit 3 salmon, of which not more than one may be a Chinook salmon and not more than two may be wild coho salmon. Release chum.

**(6) Catch Record Card Area 3:** Open until further notice - Daily limit of 2 salmon. Release wild coho.

**(7) Catch Record Card Area 4:** Open until further notice - Daily limit of 2 salmon. Release chum and wild coho salmon. Release Chinook salmon caught east of the Bonilla-Tatoosh line.

#### REPEALER

The following section of the Washington Administrative Code is repealed 12:01 a.m. September 13, 2012:

WAC 232-28-62000S Coastal salmon—Saltwater seasons and daily limits. (12-197)

The following section of the Washington Administrative Code is repealed 12:01 a.m. October 1, 2012:

WAC 232-28-62000T Coastal salmon—Saltwater seasons and daily limits.

**WSR 12-19-047  
EMERGENCY RULES  
DEPARTMENT OF  
FISH AND WILDLIFE**

[Order 12-211—Filed September 12, 2012, 4:40 p.m., effective September 12, 2012, 4:40 p.m.]

Effective Date of Rule: Immediately.

Purpose: Amend commercial fishing rules.

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

Statutory Authority for Adoption: RCW 77.12.047 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 permitted gear recovery is allowed by permanent regulation fifteen days following the close of the commercial season to allow fish and wildlife officers time to enforce rules relative to fishing during the closed season. An earlier start to the permitted gear recovery gives participants more time to recover lost gear before weather conditions become prohibitive. There is insufficient time to adopt permanent rules.

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

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

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

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

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

Date Adopted: September 12, 2012.

Philip Anderson  
Director

#### NEW SECTION

**WAC 220-52-04000P Coastal crab fishery—Coastal crab gear recovery permit.** Notwithstanding the provisions of WAC 220-52-040: Effective immediately until further

notice, five days after the close of the primary coastal commercial crab season, a coastal crab gear recovery permit may be granted by the director or his or her designee for licensed coastal Dungeness crab fishers to recover crab pots that remain in the ocean and belong to state licensed fishers.

**WSR 12-19-048**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**

[Order 12-210—Filed September 12, 2012, 4:46 p.m., effective September 16, 2012]

Effective Date of Rule: September 16, 2012.

Purpose: Amend recreational fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 232-28-61900H; 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 necessary to comply with agreed-to management plans, and is interim until permanent rules take effect. This regulation was agreed upon to protect Endangered Species Act listed summer chum salmon.

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 12, 2012.

Philip Anderson  
Director

**NEW SECTION**

**WAC 232-28-61900H Exceptions to statewide rules—Skokomish River.** Notwithstanding the provisions of WAC 232-28-619, effective September 16 through September 30, it is unlawful to violate the following provisions, provided that unless otherwise amended, all permanent rules remain in effect:

**(1) Skokomish River (Mason Co.) from mouth to Highway 106 Bridge:** Open for salmon: Daily limit 6 salmon, of which no more than 4 adult fish may be retained. Release Chinook and chum salmon.

**REPEALER**

The following section of the Washington Administrative Code is repealed effective 12:01 a.m. October 1, 2012:

WAC 232-28-61900H      Exceptions to statewide rules—Skokomish River.

**WSR 12-19-049**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**

[Order 12-212—Filed September 12, 2012, 5:02 p.m., effective September 12, 2012, 5:02 p.m.]

Effective Date of Rule: Immediately.

Purpose: To prevent the spread of chronic wasting disease in Washington, this rule adds Missouri and Texas to the list of states from which it is unlawful to harvest and then import into or possess in Washington deer, elk, or moose, or parts thereof.

Citation of Existing Rules Affected by this Order: Amending WAC 232-12-021.

Statutory Authority for Adoption: RCW 77.04.020 and 77.12.047.

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

Reasons for this Finding: The department will begin the process for creating a permanent rule to incorporate these changes. However, the changes are needed immediately, to prevent the spread of chronic wasting disease into Washington.

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

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

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

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

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



Date Adopted: September 12, 2012.

James B. Scott, Jr.  
for Philip Anderson  
Director

NEW SECTION

**WAC 232-12-01200C Importation and retention of dead nonresident wildlife** (1) Notwithstanding the provisions of WAC 220-12-021, effective immediately until further notice, it is unlawful to import or possess deer, elk, or moose, or parts thereof, harvested in Missouri, Texas, Colorado, Wyoming, Utah, New Mexico, Wisconsin, Illinois, South Dakota, Nebraska, Kansas, New York, West Virginia, Virginia, North Dakota, Alberta, Maryland, Minnesota, and Saskatchewan, with the following exceptions:

- (a) Meat that has been deboned in the state or province where it was harvested and is imported as boned out meat;
  - (b) Skulls and antlers, antlers attached to the skull plate, or upper canine teeth (buglers, whistlers, ivories) from which all soft tissue has been removed;
  - (c) Hides or capes without heads attached;
  - (d) Tissue imported for use by a diagnostic or research laboratory;
  - (e) Finished taxidermy mounts.
- (2) Unless otherwise amended, all permanent rules remain in effect.

**Reviser's note:** The section above appears as filed by the agency pursuant to RCW 34.08.040; however, the reference to WAC 232-12-01200C is probably intended to be WAC 232-12-02100C.

**WSR 12-19-073  
EMERGENCY RULES  
DEPARTMENT OF  
FISH AND WILDLIFE**

[Order 12-213—Filed September 17, 2012, 4:49 p.m., effective September 17, 2012, 4:49 p.m.]

Effective Date of Rule: Immediately.

Purpose: To prevent new and multiple wildfires during this period of extreme danger; and to prevent the severe deterioration of air quality, which exacerbates the risk to life, health, and property.

Citation of Existing Rules Affected by this Order: Amending WAC 232-13-070 and 232-13-130.

Statutory Authority for Adoption: RCW 77.12.210.

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: Fire danger is exceedingly high at this time. Numerous fires in the central part of the state have threatened extensive damage to homes, public facilities, businesses, public utilities, and infrastructure, impacting the life and health of our citizens throughout eastern Washington. Fires also have created an air pollution problem affecting citizens statewide. The department must

thwart new and multiple fires by prohibiting many activities that could cause wildfires.

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 6, Amended 0, Repealed 0.

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

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

Date Adopted: September 17, 2012.

Joe Stohr  
for Philip Anderson  
Director

NEW SECTION

**WAC 232-13-07000A Fires and campfires** (1) Notwithstanding the provisions of WAC 232-13-070, effective immediately until further notice, it is unlawful to build, start, or maintain fires or campfires on wildlife areas and access sites owned or controlled by the department of fish and wildlife without a permit or approval from the director. However, it is permissible to use personal camp stoves or lanterns that are fueled by liquid petroleum, liquid petroleum gas, or propane.

(2) A violation of this section is an infraction punished under RCW 77.15.160 (4)(b).

NEW SECTION

**WAC 232-13-07500A Smoking** (1) Effective immediately until further notice, it is unlawful to smoke on wildlife areas and access sites owned or controlled by the department of fish and wildlife, except in an enclosed vehicle, a building, or within a 3-foot diameter that is cleared down to mineral soil.

(2) A violation of this section is an infraction punished under RCW 77.15.160 (4)(b).

NEW SECTION

**WAC 232-13-13000A Firearms and target practicing** (1) Notwithstanding the provisions of WAC 232-13-130, effective immediately until further notice, it is unlawful on wildlife areas and access sites owned or controlled by the department of fish and wildlife to discharge firearms for purposes of target practicing, except in designated target-shooting areas.

(2) A violation of this section is an infraction punished under RCW 77.15.160 (4)(b).

NEW SECTION

**WAC 232-13-14300A Chainsaws and other power equipment** (1) Effective immediately until further notice, on wildlife areas and access sites owned or controlled by the department of fish and wildlife, it is unlawful without a permit or approval from the director to operate a chainsaw or other equipment powered by an internal combustion engine.

(2) A violation of this section is an infraction punished under RCW 77.15.160 (4)(b).

NEW SECTION

**WAC 232-13-14500A Welding or operating an acetylene or other torch with open flame.** (1) Effective immediately until further notice, it is unlawful without a permit or approval from the director to weld or operate an acetylene torch or other open flame on wildlife areas and access sites owned or controlled by the department of fish and wildlife.

(2) A violation of this section is an infraction punished under RCW 77.15.160 (4)(b).

NEW SECTION

**WAC 232-13-15500A Operating a motor vehicle off developed roadways.** (1) Effective immediately until further notice, it is unlawful on wildlife areas and access sites owned or controlled by the department of fish and wildlife to operate a motor vehicle off developed roadways. However, it is permissible to park in an area devoid of vegetation within 10 feet of the roadway, and to park overnight in developed campgrounds and at trailheads.

(2) A violation of this section is an infraction punished under RCW 77.15.160 (4)(b).

**WSR 12-19-077  
EMERGENCY RULES  
DEPARTMENT OF  
FISH AND WILDLIFE**

[Order 12-215—Filed September 18, 2012, 9:37 a.m., effective September 18, 2012, 10:00 a.m.]

Effective Date of Rule: September 18, 2012, 10:00 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 220-32-05100Y; 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); *Northwest Gillnetters Ass'n v. Sandison*, 95 Wn.2d

638, 628 P.2d 800 (1981); Washington fish and wildlife commission policies concerning Columbia River fisheries; 40 Stat. 515 (Columbia River compact).

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

Reasons for this Finding: The regulation sets the fifth weekly treaty commercial fishing period for the 2012 fall season. The four Columbia River treaty tribes adopted a season scheduled to begin at 6:00 a.m., September 18. Because state regulations cannot be implemented as quickly as tribal regulations, sales of gillnet-caught fish are not allowed until 10:00 a.m. on opening day (four hours after the fishery opens). This approach allows Washington time to process the regulation. Platform hook and line as well as tributary fisheries remain in place. Sockeye retention remains prohibited. Fisheries are expected to remain within the impact limits set for ESA-listed salmonids. 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 July 26 and September 17, 2012. There is insufficient time to promulgate permanent regulations.

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. A court order sets the current parameters. *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 salmon and steelhead stocks in the Columbia River 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 allow for some incidental take of these species in the fisheries as described in the 2008-2017 *U.S. v. Oregon* Management Agreement. 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.

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 18, 2012.

Joe Stohr  
for Philip Anderson  
Director

## NEW SECTION

**WAC 220-32-05100Z Columbia River salmon seasons above Bonneville Dam.** Notwithstanding the provisions of WAC 220-32-050, WAC 220-32-051, WAC 220-32-052, WAC 220-32-055 and WAC 220-32-058, effective immediately until further notice, it is unlawful for a person to take or possess salmon, steelhead, sturgeon, shad, carp, catfish, walleye, bass, or yellow perch taken for commercial purposes in Columbia River Salmon Management and Catch Reporting Areas (SMCRA) 1E, 1F, 1G, and 1H, and in the Klickitat River and Drano Lake, except as provided in the following subsections. However, those individuals possessing treaty fishing rights under the Yakama, Warm Springs, Umatilla, and Nez Perce treaties may fish for salmon, steelhead, sturgeon, shad, carp, catfish, walleye, bass, or yellow perch under the following provisions:

### **1. Mainstem Columbia River Commercial Gillnet**

- a. Open Area: SMCRA 1F, 1G, 1H (Zone 6)
- b. Season: Immediately until 6:00 PM September 21, 2012
- c. Gear: Gillnets only. 8-inch minimum mesh size.
- d. Allowable sales: Chinook, coho, steelhead, shad, carp, catfish, walleye, bass, or yellow perch. Sturgeon between 38-54 inches in fork length in the Bonneville Pool, and between 43-54 inches in fork length in The Dalles and John Day pools may be retained for subsistence purposes. Sales of fish landed during the open period are allowed after the period concludes. No sockeye retention.
- e. Standard river mouth sanctuaries in effect for this gear type, except the Spring Creek Hatchery sanctuary is defined as those waters of the Columbia River within a radius of 150 feet of the Spring Creek Hatchery ladder.

### **2. Mainstem Columbia River Platform and Hook and Line upstream of Bonneville Dam**

- a. Open Area: SMCRA 1F, 1G, 1H (Zone 6)
- b. Season: Immediately until further notice.
- c. Gear: Hoop nets and dip bag nets, and rod and reel with hook and line.
- d. Allowable sale: Chinook, coho, steelhead, shad, carp, catfish, walleye, bass, or yellow perch. Sturgeon between 38-54 inches in fork length in the Bonneville Pool, and between 43-54 inches in fork length in The Dalles and John

Day pools may be retained for subsistence purposes. No sockeye retention.

- e. Standard sanctuaries in effect for this gear type.

### **3. Mainstem Columbia River Platform and Hook and Line downstream of Bonneville Dam**

a. Open Area: SMCRA 1E. Each of the four Columbia River treaty tribes has an MOA or MOU with the Washington Department of Fish and Wildlife regarding tribal fisheries in the area just downstream of Bonneville Dam. Tribal fisheries in this area may only occur in accordance with the appropriate MOA or MOU specific to each tribe.

b. Participants: Tribal members may participate under the conditions described in the 2007 Memorandum of Agreement (MOA) with the Yakama Nation (YN), in the 2010 Memorandum of Understanding (MOU) with the Confederated Tribes of the Umatilla Indian Reservation (CTUIR), in the 2010 MOU with the Confederated Tribes of the Warm Spring Reservation (CTWS), and in the 2011 MOU with the Nez Perce Tribe. Tribal members fishing below Bonneville Dam must carry an official tribal enrollment card.

- c. Season: immediately until further notice.

d. Gear: Hoop nets and dip bag nets, and rod and reel with hook and line, or as defined by each tribe's MOU or MOA.

e. Allowable Sales: Chinook, coho, steelhead, shad, carp, catfish, walleye, bass, or yellow perch. No sockeye retention. Sturgeon retention is prohibited; sturgeon may not be sold or retained for ceremonial or subsistence purposes. Sale of platform or hook-and-line-caught fish is allowed. Sales may not occur on USACE property.

### **4. Yakama Nation Tributary Fisheries**

a. Open Area: Columbia River Tributaries above Bonneville Dam.

b. Season: Immediately until further notice, and only during those days and hours when the tributaries listed below are open under lawfully enacted Yakama Nation tribal subsistence fishery regulations for enrolled Yakama Nation members.

- c. Area: Drano Lake and Klickitat River.

d. Gear: Hoop nets, dip bag nets, and rod and reel with hook and line. Gillnets may only be used in Drano Lake.

e. Allowable Sales: Chinook, coho, steelhead, shad, carp, catfish, walleye, bass, or yellow perch. No sockeye retention.

**5. 24-hour quick reporting required for Washington wholesale dealers, WAC 220-69-240, for all areas.**

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

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

## REPEALER

The following section of the Washington Administrative Code is repealed effective 10:00 a.m. September 18, 2012:

WAC 220-32-05100Y Columbia River salmon seasons above Bonneville Dam. (12-205)