

WSR 12-20-002
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 12-214—Filed September 19, 2012, 4:53 p.m., effective September 19, 2012, 8:00 p.m.]

Effective Date of Rule: September 19, 2012, 8:00 p.m.

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

Citation of Existing Rules Affected by this Order: Repealing WAC 220-33-01000Q; 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 three mainstem fishing periods. Select area sites remain open as scheduled. The seasons are consistent with the 2008-2017 interim management agreement. Salmon and sturgeon are available for harvest during fall season fisheries. The regulation is consistent with compact action of July 26, and September 17, 2012. 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 19, 2012.

Philip Anderson
 Director

NEW SECTION

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

1. Mainstem Columbia River

a. SEASON: 8 PM September 19 to 6 AM September 20, 2012

8 PM September 23 to 6 AM September 24, 2012

8 PM September 25 to 6 AM September 26, 2012

b. AREA: SMCRA 1D, 1E. The deadline at the lower end of SMCRA 1D is defined as a straight line projected from the Warrior Rock Lighthouse on the Oregon shore easterly through the green navigation buoy #1 and continuing to the Washington shore.

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

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. Nets not specifically authorized for use in this fishery may be onboard the vessel if properly stored. Nets not lawful for use at that time

and area may be onboard the boat if properly stored consistent with WAC 220-33-001.

d. SANCTUARIES: Washougal and Sandy Rivers.

e. ALLOWABLE POSSESSION: Salmon and white sturgeon. A maximum of five (5) white sturgeon may be possessed or sold by each participating vessel during each calendar week (Sunday through Saturday).

2. Blind Slough/Knappa Slough Select Area.

a. SEASON: Monday, Tuesday, Wednesday, and Thursday nights immediately through October 26, 2012. 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 in effect. Concurrent jurisdiction waters include all areas in Knappa Slough and downstream of the Railroad Bridge in Blind Slough.

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

Nets not specifically authorized for use in this fishery may be onboard the vessel if properly stored. Nets not lawful for use at that time and area may be onboard the boat if properly stored consistent with WAC 220-33-001.

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

d. ALLOWABLE POSSESSION: Salmon.

3. Tongue Point/South Channel Select Area.

a. SEASON: Monday, Tuesday, Wednesday, and Thursday nights immediately through October 26, 2012. Open 4 PM to 10 AM.

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

c. GEAR: Gillnet. 6-inch maximum mesh.

Tongue Point fishing area: Net length 250 fathoms maximum. Weight not to exceed two pounds on any one fathom. Fishers participating in the Tongue Point fishery may have onboard un-stored gillnets legal for the South Channel fishing area.

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

Nets not specifically authorized for use in this fishery may be onboard the vessel if properly stored consistent with WAC 220-33-001.

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

d. ALLOWABLE POSSESSION: Salmon.

4. Deep River Select Area.

a. SEASON: Monday, Tuesday, Wednesday and Thursday nights immediately through October 19, 2012. Open 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. It is unlawful to operate in any river, stream or channel any gill net gear longer than three-fourths the width of the river, stream, or channel. "River, stream, or channel width" is defined as bank-to-bank, where the water meets the banks, regardless of the time of tide or the water level. This emergency provision shall supersede the permanent regulation and all other regulations that conflict with it. All other provisions of the permanent regulation remain in effect (WAC 220-20-015(1)).

Nets not specifically authorized for use in this fishery may be onboard the vessel if properly stored consistent with WAC 220-33-001

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

d. ALLOWABLE POSSESSION: Salmon.

5. Quick Reporting: 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-reporting requirement applies to all seasons described above (Columbia River and Select 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.

REPEALER

The following section of the Washington Administrative Code is repealed effective 8:00 p.m. September 19, 2012:

WAC 220-33-01000Q Columbia River season
below Bonneville. (12-194)

WSR 12-20-003 EMERGENCY RULES DEPARTMENT OF FISH AND WILDLIFE

[Order 12-216—Filed September 19, 2012, 4:53 p.m., effective September 19, 2012, 4:53 p.m.]

Effective Date of Rule: Immediately.

Purpose: Amend commercial fishing rules.

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

Statutory Authority for Adoption: RCW 77.12.047 and 77.04.020.

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

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

Reasons for this Finding: Harvestable surplus of coho are available. Enough summer chum have reached the spawning areas to allow one day of nontreaty gillnet fishing for coho per the Summer Chum Salmon Conservations Initiative. 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 19, 2012.

Philip Anderson
Director

NEW SECTION

WAC 220-47-41100F Gillnet—Open periods. Notwithstanding the provisions of WAC 220-47-411, effective immediately it is unlawful to take, fish for, or possess salmon taken for commercial purposes with gill net gear in those waters of Puget Sound Salmon Management and Catch Reporting Area 12A, except as follows:

(1) Area 12A - Open for skiff gillnets Thursday, September 20, 2012, from 7:00 a.m. to 7:00 p.m. Closed south of a line from Point Whitney to Tabook Point.

REPEALER

The following section of the Washington Administrative Code is repealed effective 7:01 p.m. September 20, 2012:

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

**WSR 12-20-005
EMERGENCY RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES**

(Economic Services Administration)

(Community Services Division)

[Filed September 20, 2012, 12:40 p.m., effective October 1, 2012]

Effective Date of Rule: October 1, 2012.

Purpose: The department is amending the following sections 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?, to increase the standard deductions; WAC 388-450-0190 How does the department figure my shelter cost income deduction for Basic Food?, to raise the maximum shelter cost; and WAC 388-478-0060 What are the income limits and maximum benefit amounts for Basic Food?, to increase the maximum gross monthly income and maximum net monthly income; and to update the one hundred sixty-five percent poverty level income.

Citation of Existing Rules Affected by this Order: Amending WAC 388-450-0185, 388-450-0190, and 388-478-0060.

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, 74.08A.120.

Other Authority: Supplemental nutrition assistance program (SNAP) Administrative Notice 12-28 - Fiscal Year (FY) 2013 cost-of-living adjustments (COLAs) dated August 6, 2012.

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 2013 to comply with requirements of the United States Department of Agriculture (USDA), Food and Nutrition Service (FNS), SNAP USDA memo dated August 6, 2012, subject: SNAP FY 2013. The department is making these changes via the emergency rule filing process, effective October 1, 2012. The department is concurrently working on the permanent rule-making process and has filed a preproposal statement of inquiry, CR-101, as WSR 12-07-035 dated March 14, 2012. 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 3, 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 3, Repealed 0.

Date Adopted: September 12, 2012.

Katherine I. Vasquez
Rules Coordinator

AMENDATORY SECTION (Amending WSR 11-24-027, filed 12/1/11, effective 1/1/12)

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	\$ ((147)) <u>149</u>
2	\$ ((147)) <u>149</u>
3	\$ ((147)) <u>149</u>
4	\$ ((155)) <u>160</u>
5	\$ ((181)) <u>187</u>
6 or more	\$ ((208)) <u>214</u>

(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 11-24-027, filed 12/1/11, effective 1/1/12)

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:

EFFECTIVE ~~((10-1-2011))~~ 10-1-2012

Column A Number of Eligible AU Members	Column B Maximum Gross Monthly Income	Column C Maximum Net Monthly Income	Column D Maximum Allotment	Column E 165% of Poverty Level
1	\$ ((1,180)) <u>1,211</u>	\$ ((908)) <u>931</u>	\$200	\$ ((1,498)) <u>1,536</u>
2	\$ ((1,594)) <u>1,640</u>	\$ ((1,226)) <u>1,261</u>	367	\$ ((2,023)) <u>2,081</u>

(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))~~ sixty-nine 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))~~ sixty-nine dollars.

AMENDATORY SECTION (Amending WSR 11-24-027, filed 12/1/11, effective 1/1/12)

WAC 388-478-0060 What are the income limits and maximum benefit amounts for Basic Food? If your assistance unit (AU) meets all other eligibility requirements for Basic Food, your AU must have income at or below the limits in column B and C to get Basic Food, unless you meet one of the exceptions listed below. The maximum monthly food assistance benefit your AU could receive is listed in column D.

Column A Number of Eligible AU Members	Column B Maximum Gross Monthly Income	Column C Maximum Net Monthly Income	Column D Maximum Allotment	Column E 165% of Poverty Level
3	((2,008)) <u>2,069</u>	((1,545)) <u>1,591</u>	526	((2,548)) <u>2,625</u>
4	((2,422)) <u>2,498</u>	((1,863)) <u>1,921</u>	668	((3,074)) <u>3,170</u>
5	((2,836)) <u>2,927</u>	((2,181)) <u>2,251</u>	793	((3,599)) <u>3,714</u>
6	((3,249)) <u>3,356</u>	((2,500)) <u>2,581</u>	952	((4,124)) <u>4,259</u>
7	((3,663)) <u>3,785</u>	((2,818)) <u>2,911</u>	1,052	((4,649)) <u>4,803</u>
8	((4,077)) <u>4,214</u>	((3,136)) <u>3,241</u>	1,202	((5,175)) <u>5,348</u>
9	((4,491)) <u>4,643</u>	((3,455)) <u>3,571</u>	1,352	((5,701)) <u>5,893</u>
10	((4,905)) <u>5,072</u>	((3,744)) <u>3,901</u>	1,502	((6,227)) <u>6,438</u>
Each Additional Member	+((414)) <u>429</u>	+((319)) <u>330</u>	+150	+((526)) <u>545</u>

Exceptions:

(1) If your AU is categorically eligible as under WAC 388-414-0001, your AU does not have to meet the gross or net income standards in columns B and C. We do budget your AU's income to decide the amount of Basic Food your AU will receive.

(2) If your AU includes a member who is sixty years of age or older or has a disability, your income must be at or below the limit in column C only.

(3) If you are sixty years of age or older and cannot buy and cook your own meals because of a permanent disability, we will use column E to decide if you can be a separate AU.

(4) If your AU has zero income, your benefits are the maximum allotment in column D, based on the number of eligible members in your AU.

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 closes SMA 1A, 1B and 1C to nonspot shrimp fishing, as the quota has been taken. 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 20, 2012.

Philip Anderson
Director

WSR 12-20-007

EMERGENCY RULES

DEPARTMENT OF

FISH AND WILDLIFE

[Order 12-217—Filed September 20, 2012, 3:10 p.m., effective September 22, 2012, 6:00 p.m.]

Effective Date of Rule: September 22, 2012, 6:00 p.m.

Purpose: Amend commercial fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-52-05100U; 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

NEW SECTION

WAC 220-52-05100V 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) All waters are closed.
 - (b) Shrimp species other than spot shrimp:
 - i) Effective immediately until further notice, all waters of Shrimp Management Areas (SMA) 2W, 3 and 6 are open, except as provided for in this section:
 - a. All waters of Discovery Bay Shrimp District are closed.
 - b. It is unlawful to pull shellfish pots in more than one catch area per day.
- (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 6:00 p.m. September 22, 2012:

WAC 220-52-05100U Puget Sound shrimp beam trawl fishery—Season. (12-208)

**WSR 12-20-008
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE**

[Order 12-218—Filed September 20, 2012, 3:12 p.m., effective September 20, 2012, 3:12 p.m.]

Effective Date of Rule: Immediately.

Purpose: Amend recreational fishing rules.

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

Statutory Authority for Adoption: RCW 77.12.047 and 77.04.020.

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

Reasons for this Finding: This emergency rule is needed to comply with the new federal Americans with Disabilities Act rules. 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 20, 2012.

Philip Anderson
Director

NEW SECTION

WAC 232-28-61900I Exceptions to statewide rules—Wishkah River. (1) Notwithstanding the provisions of WAC 232-28-619, effective immediately through December 31, 2012, closed waters from 150 feet downstream of the Hatchery outfall structure to 150 feet upstream of the Hatchery outfall structure, except that disabled anglers having a designated harvester companion card, and meeting WAC 220-55-065 and who are not ambulatory over natural terrain without a prosthesis or assistive device, or a person who is totally blind or visually impaired, will be allowed to fish in the new ADA access area. All other rules for the river remain in effect.

(2) The ADA access area is the area from 150 feet upstream to 150 feet downstream of the Wishkah adult attraction channel/outfall structure within the posted fishing boundary.

(3) Daily limit of two trout, minimum size 14 inches. Other game fish, statewide size and daily limits. Salmon: Open October 1 through December 31, 2012; daily limit of six fish, of which up to two may be adults. Minimum size 12 inches. Release Chinook, wild coho, and chum.

REPEALER

The following section of the Washington Administrative Code is repealed effective January 1, 2013:

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

WSR 12-20-009
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 12-219—Filed September 21, 2012, 12:22 p.m., effective October 1, 2012]

Effective Date of Rule: October 1, 2012.

Purpose: Amend commercial fishing rules.

Citation of Existing Rules Affected by this Order:
 Repealing WAC 220-52-07100T and 220-52-07300A; and
 amending WAC 220-52-071 and 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 sea cucumbers are available in sea cucumber districts listed. Daily landings limits for sea cucumbers have been requested by the industry in an effort to conserve harvest quota and maximize market opportunities. Also, harvestable amounts of red and green sea urchins exist in the areas described. By harvest management agreement, the legal size limits for red sea urchins have changed for the 2012-2013 harvest management period from those listed in the permanent sea urchin regulation. 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 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 21, 2012.

Philip Anderson
 Director

NEW SECTION

WAC 220-52-07100U Sea cucumbers. Notwithstanding the provisions of WAC 220-52-071, effective October 1, 2012, 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 and Tuesday of each week.

(2) The maximum cumulative landing of sea cucumbers for each two-day fishery opening period is 1,600 pounds per valid designated sea cucumber harvest license. It is permissible for all or any fraction of the maximum 1,600 pound total to be harvested during any legal harvest date so long as the cumulative total for the two-day opening does not exceed the maximum.

NEW SECTION

WAC 220-52-07300B Sea urchins Notwithstanding the provisions of WAC 220-52-073, effective October 1, 2012, 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 Sunday through Wednesday of each week. Sea Urchin Districts 3, 4, 6 and 7 are open Monday through Friday of each week.

(2) Red sea urchins: Sea Urchin Districts 1, 2 and 4 are open Monday through Friday of each week. In Sea Urchin Districts 1, 2 and 4 it is unlawful to harvest red sea urchins smaller than 3.25 inches or larger than 5.0 inches (size is largest test diameter exclusive of spines).

(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.

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 sections of the Washington Administrative Code are repealed effective October 1, 2012:

WAC 220-52-07100T Sea cucumbers. (12-168)

WAC 220-52-07300A Sea urchins. (12-200)

WSR 12-20-011
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 12-220—Filed September 21, 2012, 4:33 p.m., effective September 21, 2012, 4:33 p.m.]

Effective Date of Rule: Immediately.

Purpose: Amend commercial fishing rules.

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

Statutory Authority for Adoption: RCW 77.12.047 and 77.04.020.

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

Reasons for this Finding: Harvestable surplus of coho are available. Enough summer chum have reached the spawning areas to allow one day of nontreaty gillnet fishing for coho per the Summer Chum Salmon Conservations Initiative. 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 21, 2012.

Joe Stohr
for Philip Anderson
Director

NEW SECTION

WAC 220-47-41100G Gillnet—Open periods. Notwithstanding the provisions of WAC 220-47-411, effective immediately it is unlawful to take, fish for, or possess salmon taken for commercial purposes with gill net gear in those waters of Puget Sound Salmon Management and Catch Reporting Area 12A, except as follows:

(1) Area 12A - Open for skiff gillnets from 7:00 p.m. Wednesday, September 26, 2012 to 7:00 p.m. Thursday, September 27, 2012. Closed south of a line from Point Whitney to Tabook Point.

REPEALER

The following section of the Washington Administrative Code is repealed effective 7:01 p.m. September 27, 2012:

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

WSR 12-20-023
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 12-221—Filed September 25, 2012, 4:26 p.m., effective September 26, 2012, 6:00 a.m.]

Effective Date of Rule: September 26, 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 220-32-05100Z; 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 sixth weekly treaty commercial fishing period for the 2012 fall season. 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 25, 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 25, 2012.

Lori Preuss
for Philip Anderson
Director

NEW SECTION

WAC 220-32-05100A 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: 6:00 a.m. September 26 until 6:00 PM September 28, 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 sub-

sistence 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 6:00 a.m. September 26, 2012:

WAC 220-32-05100Z Columbia River salmon seasons above Bonneville Dam. (12-215)

**WSR 12-20-028
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE**

[Order 12-223—Filed September 26, 2012, 4:12 p.m., effective October 1, 2012, 8:00 a.m.]

Effective Date of Rule: October 1, 2012, 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 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 provisions of this rule are in conformity with agreed plans with applicable tribes as required by court order. The Puget Sound commercial season is structured to meet harvest allocation objectives negotiated with applicable treaty tribes. 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 26, 2012.

Philip Anderson
Director

NEW SECTION

WAC 220-52-04000Q 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 starting at 8:00 a.m. October 1, 2012, and 7:00 p.m. October 2, 2012, 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. Crab pots can only be deployed during daylight hours.

(2) The licensed owner must leave a telephone message at the Mill Creek annex office, (425) 379-2315, or by email to crabreport@dfw.wa.gov, 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 1, 2012, 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 Regions 1, 2 East, 2 West, and sub-area 3-1. These regions include Marine Fish-Shellfish Catch Reporting Areas 20A, 20B, 21A, 21B, 22A, 22B, 23A, 23B, 24A, 24B, 24C, 24D, 25B, 25D, 26AE and 26AW.

(5) Effective 8:00 a.m. October 1, 2012, until further notice, it is unlawful for any person to fish for crabs for commercial purposes with more than 75 pots per license per buoy tag number in Crab Management sub-area 3-2, which includes Marine Fish-Shellfish Catch Reporting Areas 23D, 25A, and 25E.

(6) The remaining buoy tags per license per region must be onboard the designated vessel and available for inspection.

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.

NEW SECTION

WAC 220-52-04600Z Puget Sound crab fishery—Seasons and areas. Notwithstanding the provisions of WAC 220-52-046:

(1) Effective 8:00 a.m. October 1, 2012, until further notice, it is permissible to fish for Dungeness crab for commercial purposes in the following areas:

(a) 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.

(b) 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.

(c) 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.

(d) 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).

(e) Port Gardner: That portion of Marine Fish-Shellfish Management and 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.

(f) 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.

(g) 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.

(2) Effective 8:00 a.m. October 1, 2012, until further notice, 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 220-69-24000A Duties of commercial purchasers and receivers. Notwithstanding the provisions of WAC 220-69-240, effective October 1, 2012, 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.

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.

WSR 12-20-031 EMERGENCY RULES DEPARTMENT OF FISH AND WILDLIFE

[Order 12-222—Filed September 27, 2012, 1:11 p.m., effective September 27, 2012, 7:00 p.m.]

Effective Date of Rule: September 27, 2012, 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 220-33-01000R; 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 three mainstem fishing periods for the late fall season. The first season is ten hours with the large "B" sanctuaries in effect. The remaining two periods are twelve hours each with the standard "A" sanctuaries in effect. Sturgeon sales from mainstem fisheries are discontinued effective October 2, 2012. The "multi-net rule" (WAC 220-33-001) is no longer in effect for mainstem fisheries. Select area sites remain open as scheduled. The seasons are consistent with the 2008-2017 interim management agreement. Salmon are available for harvest during fall season fisheries. The regulation is consistent with compact action of July 26, and September 25, 2012. 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 27, 2012.

Philip Anderson
Director

NEW SECTION

WAC 220-33-01000S 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 PM September 27 to 5 AM September 28, 2012

b. AREA: SMCRA 1A, 1B, 1C, 1D, 1E (Zones 1-5).

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

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

d. SANCTUARIES: Elokomin-B, Cowlitz River, Kalama-B, Lewis-B, Washougal River and Sandy River.

e. ALLOWABLE POSSESSION: Salmon and white sturgeon. A maximum of five (5) white sturgeon may be possessed or sold by each participating vessel during each calendar week (Sunday through Saturday).

2. Mainstem Columbia River

a. SEASON: 7 PM September 30 to 7 AM October 1, 2012
7 PM October 2 to 7 AM October 3, 2012

b. AREA: SMCRA 1A, 1B, 1C, 1D, 1E (Zones 1-5).

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

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

d. SANCTUARIES: Elokomin-A, Cowlitz River, Kalama-A, Lewis-A, Washougal River and Sandy River.

e. ALLOWABLE POSSESSION: Salmon. White sturgeon sales prohibited.

3. Blind Slough/Knappa Slough Select Area.

a. SEASON: Monday, Tuesday, Wednesday, and Thursday nights immediately through October 26, 2012. 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 in effect. Concurrent jurisdiction waters include all areas in Knappa Slough and downstream of the Railroad Bridge in Blind Slough.

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

Nets not specifically authorized for use in this fishery may be onboard the vessel if properly stored consistent with WAC 220-33-001.

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

d. ALLOWABLE POSSESSION: Salmon.

4. Tongue Point/South Channel Select Area.

a. SEASON: Monday, Tuesday, Wednesday, and Thursday nights immediately through October 26, 2012. Open 4 PM to 10 AM.

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

c. GEAR: Gillnet. 6-inch maximum mesh.

Tongue Point fishing area: Net length 250 fathoms maximum. Weight not to exceed two pounds on any one fathom. Fishers participating in the Tongue Point fishery may have onboard un-stored gillnets legal for the South Channel fishing area.

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

Nets not specifically authorized for use in this fishery may be onboard the vessel if properly stored consistent with WAC 220-33-001. **Except:** Vessels participating in the Tongue Point fishery may have on-board the vessel an unauthorized net that is not stored **only** when the un-stored net configurations are consistent with those described above for the South Channel fishing area

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

d. ALLOWABLE POSSESSION: Salmon.

5. Deep River Select Area.

a. SEASON: Monday, Tuesday, Wednesday and Thursday nights immediately through October 19, 2012. Open 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. It is unlawful to operate in any river, stream or channel any gill net gear longer than three-fourths the width of the river, stream, or channel. "River, stream, or channel width" is defined as bank-to-bank, where the water meets the banks, regardless of the time of tide or the water level. This emergency provision shall supersede the permanent regulation and all other regulations that conflict with it. All other provisions of the permanent regulation remain in effect (WAC 220-20-015(1)).

Nets not specifically authorized for use in this fishery may be onboard the vessel if properly stored consistent with WAC 220-33-001

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

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

d. ALLOWABLE POSSESSION: Salmon

6. Quick Reporting: 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-reporting requirement applies to all seasons described above (Columbia River and Select 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.

REPEALER

The following section of the Washington Administrative Code is repealed effective 7:00 p.m. September 27, 2012:

WAC 220-33-01000R Columbia River season
below Bonneville. (12-214)

WSR 12-20-034

EMERGENCY RULES

DEPARTMENT OF

FISH AND WILDLIFE

[Order 12-225—Filed September 27, 2012, 3:04 p.m., effective September 27, 2012, 3:04 p.m.]

Effective Date of Rule: Immediately.

Purpose: Amend commercial fishing rules.

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

Statutory Authority for Adoption: RCW 77.12.047 and 77.04.020.

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

Reasons for this Finding: Harvestable surplus of coho are available for a gill net fishery in Puget Sound Management and Catch Reporting Area 8A. 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, 2012.

Philip Anderson
Director

NEW SECTION

WAC 220-47-41100H Gill net—Open periods. Notwithstanding the provisions of WAC 220-47-411, effective immediately, it is unlawful to take, fish for, or possess salmon taken for commercial purposes with gill net gear in those waters of Puget Sound Salmon Management and Catch Reporting Area 8A, except as follows:

(1) Area 8A - Open to gill nets from 6:00 p.m. Thursday, September 27, 2012, to 8:00 a.m. Friday, September 28, 2012.

REPEALER

The following section of the Washington Administrative Code is repealed effective 8:01 a.m. September 28, 2012:

WAC 220-47-41100H Gill net—Open periods.

WSR 12-20-036
EMERGENCY RULES
HEALTH CARE AUTHORITY
(Medicaid Program)

[Filed September 28, 2012, 9:35 a.m., effective October 1, 2012]

Effective Date of Rule: October 1, 2012.

Purpose: To amend TAKE CHARGE rule sections (WAC 182-532-700 and 182-532-720) so they comply with the special terms and conditions of the federal waiver renewal for the TAKE CHARGE medicaid program. Amendments revise the income requirement to: Allow incomes at or below two hundred fifty percent of the federal poverty level; and change third-party liability requirements, allowing clients with health insurance to apply for TAKE CHARGE.

Citation of Existing Rules Affected by this Order: Amending WAC 182-532-700 and 182-532-720.

Statutory Authority for Adoption: RCW 41.05.021.

Other Authority: RCW 74.09.659.

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

Reasons for this Finding: Amending the TAKE CHARGE rule sections (WAC 182-532-700 and 182-532-720) is needed to immediately comply with the special terms and conditions of the federal waiver renewal for the TAKE

CHARGE medicaid program. This emergency rule is necessary as the health care authority proceeds with regular rule making, initiated by filing a CR-101 under WSR 12-16-100.

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 28, 2012.

Kevin M. Sullivan
Rules Coordinator

AMENDATORY SECTION (Amending WSR 11-14-075, filed 6/30/11, effective 7/1/11)

WAC 182-532-700 TAKE CHARGE program—Purpose. TAKE CHARGE is a family planning demonstration and research program approved by the federal government under a medicaid program waiver. The purpose of the TAKE CHARGE program is to make family planning services available to men and women with incomes at or below two hundred fifty percent of the federal poverty level. See WAC 388-532-710 for a definition of TAKE CHARGE.

AMENDATORY SECTION (Amending WSR 11-14-075, filed 6/30/11, effective 7/1/11)

WAC 182-532-720 TAKE CHARGE program—Eligibility. (1) The TAKE CHARGE program is for men and women. To be eligible for the TAKE CHARGE program, an applicant must:

(a) Be a United States citizen, U.S. National, or "qualified alien" as described in chapter 388-424 WAC and provide proof of citizenship or qualified alien status, and identity;

(b) Be a resident of the state of Washington as described in WAC 388-468-0005;

(c) Have income at or below two hundred fifty percent of the federal poverty level as described in WAC ((388-478-0075)) 182-505-0100;

(d) Need family planning services;

(e) Apply voluntarily for family planning services with a TAKE CHARGE provider; and

(f) Not be currently covered through another medical assistance program for family planning ((or have any health insurance that covers family planning, except as provided in WAC 388-530-790)).

(2) A client who is pregnant or sterilized is not eligible for TAKE CHARGE.

(3) A client is authorized for TAKE CHARGE coverage for one year from the date the department determines eligibility or for the duration of the demonstration and research program, whichever is shorter, as long as the criteria in subsection (1) and (2) of this section continue to be met. Upon reapplication for TAKE CHARGE by the client, the department may renew the coverage for additional periods of up to one year each, or for the duration of the demonstration and research program, whichever is shorter.

WSR 12-20-043
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 12-226—Filed September 28, 2012, 4:41 p.m., effective September 28, 2012, 4:41 p.m.]

Effective Date of Rule: Immediately.

Purpose: Amend commercial fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-47-41100I and 220-47-42800F; and amending WAC 220-47-411 and 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: Harvestable surplus of coho are available for gill net and beach seine fisheries in Puget Sound Management and Catch Reporting Area 12A. 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 28, 2012.

Joe Stohr
for Philip Anderson
Director

NEW SECTION

WAC 220-47-41100I Gill net—Open periods. Notwithstanding the provisions of WAC 220-47-411, effective immediately, it is unlawful to take, fish for, or possess salmon taken for commercial purposes with gill net gear in those waters of Puget Sound Salmon Management and Catch Reporting Area 12A, except as follows:

(1) Area 12A - Open for skiff gillnets 8 AM Tuesday, October 2 through 8 AM Thursday, October 4. Closed south of a line from Point Whitney to Tabook Point.

NEW SECTION

WAC 220-47-42800F Beach seine—Open periods. Notwithstanding the provisions of WAC 220-47-428, effective immediately, it is unlawful to take, fish for, or possess salmon taken for commercial purposes with beach seine gear in those waters of Puget Sound Salmon Management and Catch Reporting Area 12A, except as follows:

(1) Area 12A - Open to beach seines 7 AM to 7 PM daily Monday, October 1 through Friday, October 5.

REPEALER

The following section of the Washington Administrative code is repealed effective 8:01 a.m. October 4, 2012:

WAC 220-47-41100I Gill net—Open periods.

The following section of the Washington Administrative Code is repealed effective 7:01 p.m. October 5, 2012:

WAC 220-47-42800F Beach seine—Open periods.

WSR 12-20-051
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 12-224—Filed October 1, 2012, 5:28 p.m., effective October 1, 2012, 5:28 p.m.]

Effective Date of Rule: Immediately.

Purpose: To amend cougar hunting rules described in WAC 232-28-297.

Citation of Existing Rules Affected by this Order: Amending WAC 232-28-297.

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: To correct an error that establishes contradictory rules governing areas open for hunting cougar. The seasons for cougar hunting have started so there is not time for standard rule-making timeframes and this correction will help prevent hunters from jeopardy of hunting illegally.

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: October 1, 2012.

Philip Anderson
Director

NEW SECTION

WAC 232-28-29700A 2012-2013, 2013-2014, and 2014-2015 Cougar hunting seasons and regulations. Notwithstanding the provisions of WAC 232-28-297, effective immediately until further notice:

General cougar seasons in Game Management Units (GMUs) 157 and 522 are closed.

**WSR 12-20-057
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE**

[Order 12-227—Filed October 2, 2012, 11:59 a.m., effective October 2, 2012, 12:00 p.m.]

Effective Date of Rule: October 2, 2012, 12:00 p.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 220-32-05100A; 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 seventh 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., October 2. Because state regulations cannot be implemented as quickly as tribal regulations, sales and possession of gillnet-caught fish are not allowed until noon (12:00 p.m.) on opening day (six 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. Harvest/ESA limits are expected to remain within the limits and guidelines of the 2008-2017 management agreement. Rule is consistent with action of the Columbia River compact on July 26 and October 1, 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: October 2, 2012.

Philip Anderson
Director

NEW SECTION

WAC 220-32-05100B 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 October 4, 2012
- c. Gear: Gillnets only. 8-inch minimum mesh size.
- d. Allowable sales: salmon, steelhead, shad, carp, catfish, walleye, bass, and 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.
- 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: salmon, steelhead, shad, carp, catfish, walleye, bass, and 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.
- 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: Salmon, steelhead, shad, carp, catfish, walleye, bass, and yellow perch. 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: Salmon, steelhead, shad, carp, catfish, walleye, bass, and yellow perch.

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 12:00 p.m. October 2, 2012:

WAC 220-32-05100A Columbia River salmon seasons above Bonneville Dam. (12-221)

WSR 12-20-065

EMERGENCY RULES DEPARTMENT OF FISH AND WILDLIFE

[Order 12-229—Filed October 2, 2012, 5:27 p.m., effective October 2, 2012, 5:27 p.m.]

Effective Date of Rule: Immediately.

Purpose: To amend WAC 232-28-273 to change the applicant requirements for the Huckleberry Range B moose

hunt; and to change the superscript designation from "Huckleberry Range B^c" (applicants must be eligible to purchase a sixty-five years of age or older permit application) to "Huckleberry Range B^b" (applicants must possess a disabled hunter permit).

Citation of Existing Rules Affected by this Order: Repealing WAC 232-28-27300D; and amending WAC 232-28-273.

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: The department has provided antlerless moose hunting opportunity to seniors as well as to hunters with disabilities. This particular hunt, Huckleberry Range B, has been provided to both groups in the past. There was some confusion by the department this year, and the information published in the hunting pamphlet was different than what was adopted in the WAC. This amendment makes the WAC consistent with the hunting pamphlet and, therefore, consistent with the special permit hunt that hunters applied for during May 2012. This change preserves the general welfare of the public by aligning the hunt they applied for with the rule.

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 2, 2012.

Philip Anderson
Director

NEW SECTION

WAC 232-28-27300E 2012-2014 Moose, bighorn sheep, and mountain goat seasons and permit quotas. Notwithstanding the provisions of WAC 232-28-273, effective immediately, until further notice:

The applicant requirements for the Huckleberry Range B moose hunt changes from the superscript designation of "Huckleberry Range B^c" (applicants must be eligible to purchase a 65 years of age or older permit application) to "Huckleberry Range B^b" (applicants must possess a Disabled Hunter Permit).

REPEALER

The following section of the Washington Administrative Code is repealed effective on October 2, 2012, at 11:59 p.m.:

WAC 232-28-27300D 2012-2014 Moose, bighorn sheep, and mountain goat seasons and permit quotas.

WSR 12-20-066 EMERGENCY RULES DEPARTMENT OF FISH AND WILDLIFE

[Order 12-228—Filed October 2, 2012, 5:27 p.m., effective October 2, 2012, 5:27 p.m.]

Effective Date of Rule: Immediately.

Purpose: To amend deer hunting rules described in WAC 232-28-359.

Citation of Existing Rules Affected by this Order: Repealing WAC 232-28-35900A; and amending WAC 232-28-359.

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: The special permit season dates contained in the adopted rule would have resulted in overlaps between muzzleloader hunters and modern firearm hunters. Corrections to these dates were provided to the public via alternate means (agency web site). These corrections will help avoid confusion for the more than sixty thousand Washington citizens who take part in the special permit application process and rely on the department to provide orderly hunts.

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 2, 2012.

Philip Anderson
Director

NEW SECTION

WAC 232-28-35900B 2012 Deer special permits. Notwithstanding the provisions of WAC 232-28-359, effective immediately until further notice:

Under the Youth deer section, for the Skookumchuck modern firearm, Antlerless hunt, the dates should be changed from Oct. 6-31 to Oct. 13-31.

Under the Youth deer section, for the Skookumchuck modern firearm, Any buck hunt, the dates should be changed from Oct. 6-31 to Sept. 29-Oct. 5.

REPEALER

The following section of the Washington Administrative Code is repealed effective on October 2, 2012, at 11:59 p.m.:

WAC 232-28-35900A 2012 Deer special permits.

WSR 12-20-078
EMERGENCY RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES

[Filed October 3, 2012, 9:31 a.m., effective October 5, 2012]

Effective Date of Rule: October 5, 2012.

Purpose: To establish hearing rules related to medicaid funded services to implement the requirements of 2E2SBH [2E2SHB] 1738 section 53, effective July 1, 2011, for the transition of the single state medicaid agency to the Washington health care authority.

Citation of Existing Rules Affected by this Order:
Repealing WAC 388-526-2610.

Statutory Authority for Adoption: RCW 41.05.021.

Other Authority: 2E2SHB 1738 section 53.

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

Reasons for this Finding: 2E2SHB 1738 section 53(10) states that the authority "shall adopt any rules it deems necessary to implement this section" dealing with hearing rights. Further, in section 130, the bill states that "this act is necessary for the *immediate* preservation of the public peace, health, or safety of the state government and its existing public institution, and takes effect July 1, 2011.["] Delaying this adoption could jeopardize the agency's ability to provide general hearing rules and procedures that apply to the resolution of disputes between medical assistance clients and the various medical services programs established under chapter 74.09 RCW. This emergency rule is necessary to continue the current emergency rule adopted under WSR 12-13-033 [12-13-003] while the permanent rule-making process is completed. This emergency rule does not differ from the cur-

rent emergency rule. The agency filed a CR-101 under WSR 11-19-004, filed September 7, 2011, and began the permanent rule-making process. The agency withdrew WSR 11-19-004 on February 8, 2012, and refiled a CR-101 under WSR 12-05-026 on February 8, 2012. The agency conducted several stakeholder meetings, completed the internal review process, completed the external review process, filed a CR-102 under WSR 12-16-115, and held a public hearing on Tuesday, September 4, 2012. The agency is reviewing the public hearing comments and plans to file the permanent rules for an anticipated December 1, 2012, effective date.

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 137, Amended 0, Repealed 1.

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 137, Amended 0, Repealed 1.

Date Adopted: September 19, 2012.

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 12-22 issue of the Register.