

WSR 06-06-016
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 06-26—Filed February 17, 2006, 4:18 p.m., effective February 17, 2006]

Effective Date of Rule: Immediately.

Purpose: Amend commercial use fishing rules.

Citation of Existing Rules Affected by this Order:
 Amending WAC 220-33-010.

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 select area fisheries (SAFE) in Deep River and Blind Slough/Knappa Slough are part of an on-going BPA funded study to design fisheries in areas outside of the mainstem Columbia River. The increased time (Deep River) and area (Knappa Slough) for the winter/spring of 2006 will allow for additional opportunity to harvest salmon originating from the select areas. Several stocks of salmon have been released from net pens in these select areas to provide for fisheries. All salmon returning to these net pens are harvestable. Impacts to ESA-listed stocks in these fisheries are covered under the biological opinion for the interim management agreement. This rule is consistent with actions of the Columbia River compact hearings of January 26, 2006, and conforms Washington and Oregon state rules. There is insufficient time to promulgate permanent rules.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 1, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: February 17, 2006.

J. P. Koenings
 Director

NEW SECTION

WAC 220-33-01000W Columbia River gillnet seasons below Bonneville. Notwithstanding the provisions of WAC 220-33-010, WAC 220-33-020, and WAC 220-33-030, it is unlawful for a person to take or possess salmon, sturgeon, and shad, taken for commercial purposes from

Columbia River Salmon Management and Catch Reporting Areas 1A, 1B, 1C, 1D, and 1E except during the times and conditions listed:

1. Blind Slough/Knappa Slough Select Area

a) Area: Open waters of Blind Slough extend from markers at the mouth of Gnat Creek located approximately 1/2 mile upstream of the county road bridge, downstream to markers at the mouth of Blind Slough. Concurrent Washington/Oregon waters extend downstream of the railroad bridge

Knappa Slough is open to fishing in all waters bounded by a line from the northerly most marker at the mouth of Blind Slough westerly to a marker on Karlson Island downstream to a north-south line defined by a marker on the eastern end of Minaker Island to markers on Karlson Island and the Oregon shore.

b) Dates:

Winter Season: 7:00 p.m. Wednesdays to 7:00 a.m. Thursdays and 7:00 p.m. Sunday to 7:00 a.m. Mondays from February 22 through March 13, 2006

Spring Season: 7:00 p.m. Mondays to 7:00 a.m. Tuesdays and 7:00 p.m. Thursdays to 7:00 a.m. Fridays from April 20 until June 16, 2006.

Only Blind Slough is open through March 13. After March 13, both Blind Slough and Knappa Slough are open.

During May 1 through June 16, the lower boundary of the Knappa Slough fishing area is extended downstream to boundary lines defined by markers on the west end of Minaker Island to markers on the Karlson Island and the Oregon Shore (fall-season boundary).

c) Gear: 7-inch minimum mesh through March 13 and 8-inch maximum mesh thereafter. Monofilament nets are allowed. Nets restricted to 100 fathoms in length with no weight restriction on leadline. Use of additional weights or anchors attached directly to the leadline is allowed.

d) Allowable Sales: Salmon, sturgeon, shad. A maximum of three sturgeon (green or white in aggregate) may be possessed or sold by each participating vessel during each open period.

2. Deep River Select Area

a) Area: From the markers at USCG navigation marker #16 upstream to the Highway 4 Bridge.

b) Dates:

Winter season: 6:00 p.m. Mondays to 8:00 a.m. Tuesdays February 20 through March 14, 2006

Spring season: 7:00 p.m. Mondays to 7:00 a.m. Tuesdays and 7:00 p.m. Thursdays to 7:00 a.m. Fridays from April 20 through June 16, 2006

c) Gear: 7-inch maximum mesh size through March 14, 8" maximum thereafter. Monofilament nets are allowed. Nets restricted to a maximum length of 100 fathoms and no weight restriction on leadline. Use of additional weights or anchors attached directly to the leadline is allowed. Nets cannot be tied off of any stationary structures. Nets may not fully cross the navigation channel.

d) Allowable sale: salmon, sturgeon and shad. A maximum of three sturgeon (green or white in aggregate) may be possessed or sold by each participating vessel during each open period.

e) Miscellaneous: Transportation or possession of fish outside the fishing area is unlawful. An exception to the rule

would allow fishers to transport their catch out of the fishing area with a permit issued by an authorized agency employee after examining the catch.

WSR 06-06-017
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 06-28—Filed February 17, 2006, 4:19 p.m., effective February 17, 2006]

Effective Date of Rule: Immediately.

Purpose: Amend commercial use fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-44-05000I; and amending WAC 220-44-050.

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: These rules were adopted by the Pacific Fisheries Management Council and provide harvest of available stocks of bottom fish, while reserving brood stock for future fisheries. There is insufficient time to promulgate 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: February 17, 2006.

J. P. Koenings
Director

NEW SECTION

WAC 220-44-05000J Coastal bottom fish catch limits. Notwithstanding the provisions of WAC 220-44-050, effective immediately until further notice:

(1) It is unlawful to possess, transport through the waters of the state, or land into any Washington port bottom fish taken from Marine Fish-Shellfish Management and Catch Reporting Areas 58B, 59A-1, 59A-2, 60A-1, 60A-2, 61, 62, or 63 in excess of the amounts or less than the minimum sizes, or in violation of any gear, handling or landing require-

ment, established by the Pacific Fisheries Management Council and published in the Federal Register, Vol. 71, No. 33, published February 17, 2006. Therefore, persons must consult the federal regulations, which are incorporated by reference and made a part of Chapter 220-44 WAC. Where rules refer to the fishery management area, that area is extended to include Washington State waters coterminous with the Exclusive Economic Zone. A copy of the federal rules may be obtained by contacting Evan Jacoby at (360) 902-2930.

(a) Effective immediately until further notice, it is unlawful to possess, transport through the waters of the state, or land into any Washington port, walleye pollock taken with trawl gear from Marine Fish-Shellfish Management and Catch Reporting Areas 58B, 59A-1, 59A-2, 60A-1, 60A-2, 61, 62, or 63, except by trawl vessels participating in the directed Pacific whiting fishery and the directed coastal groundfish fishery.

(b) Effective immediately until further notice, it is unlawful for trawl vessels participating in the directed Pacific whiting and/or the directed coastal groundfish fishery to land incidental catches of walleye pollock greater than forty percent of their total landing by weight, not to exceed 10,000 pounds.

(2) At the time of landing of coastal bottom fish into a Washington port, the fish buyer receiving the fish is required to clearly mark on the fish receiving ticket, in the space reserved for dealer's use, all legally defined trawl gear aboard the vessel at the time of delivery. The three trawl gear types are: midwater trawl, roller trawl and small foot rope trawl (foot rope less than eight inches in diameter). The notation of the gear type(s) aboard the vessel is required prior to the signing of the fish receiving ticket by the vessel representative.

(3) Vessels engaged in chartered research for National Marine Fisheries Service (NMFS) may land and sell bottomfish caught during that research without the catch being counted toward any trip or cumulative limit for the participating vessel. Vessels that have been compensated for research work by NMFS with an Exempted Fishing Permit (EFP) to land fish as payment for such research may land and sell fish authorized under the EFP without the catch being counted toward any trip or cumulative limit for the participating vessel. Any bottomfish landed during authorized NMFS research or under the authority of a compensating EFP for past chartered research work must be reported on a separate fish receiving ticket and not included on any fish receiving ticket reporting bottomfish landed as part of any trip or cumulative limit. Bottomfish landed under the authority of NMFS research work or an EFP compensating research with fish must be clearly marked "NMFS Compensation Trip" on the fish receiving ticket in the space reserved for dealer's use. The NMFS scientist in charge must sign the fish receiving ticket in the area reserved for dealer's use if any bottomfish are landed during authorized NMFS research. If the fish are landed under the authority of an EFP as payment for research work, the EFP number must be listed in the dealer's use space.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 220-44-050001 Coastal bottomfish catch limits. (05-269)

**WSR 06-06-025
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE**

[Order 06-27—Filed February 22, 2006, 11:36 a.m., effective February 24, 2006, 12:01 p.m.]

Effective Date of Rule: February 24, 2006, 12:01 p.m.

Purpose: Amend personal use fishing rules.

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

Statutory Authority for Adoption: RCW 77.12.047.

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

Reasons for this Finding: Survey results show that adequate clams are available for harvest in Razor Clam Areas 1, 2 and those portions of Razor Clam Area 3 opened for harvest. Washington department of health has certified clams from these beaches to be safe for human consumption. There is insufficient time to promulgate 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: February 21, 2006.

J. P. Koenings
Director
by Larry Peck

NEW SECTION

WAC 220-56-36000R Razor clams—Areas and seasons. Notwithstanding the provisions of WAC 220-56-360, it is unlawful to dig for or possess razor clams taken for per-

sonal use from any beach in Razor Clam Areas 1, 2, or 3, except as provided for in this section:

1. Effective 12:01 p.m. February 24 through 11:59 p.m. February 26, 2006, razor clam digging is allowed in Razor Clam Area 1 and Razor Clam Area 2. Digging is allowed from 12:01 p.m. to 11:59 p.m. each day only.

2. Effective 12:01 p.m. February 24 through 11:59 p.m. February 26, 2006, razor clam digging is allowed in that portion Razor Clam Area 3 that is between the Grays Harbor North Jetty and the southern boundary of the Quinault Indian Nation (Grays Harbor County) and that portion of Razor Clam Area 3 that is between Olympic National Park South Beach Campground access road (Kalaloch area, Jefferson County) and Browns Point (Kalaloch area, Jefferson County). Digging is allowed from 12:01 p.m. to 11:59 p.m. each day only.

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

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 12:01 a.m. February 27, 2006:

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

**WSR 06-06-026
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE**

[Order 06-30—Filed February 22, 2006, 11:36 a.m., effective February 27, 2006, 6:00 a.m.]

Effective Date of Rule: February 27, 2006, 6:00 a.m.

Purpose: Amend commercial use fishing rules.

Citation of Existing Rules Affected by this Order: Amending WAC 220-52-071.

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: Harvestable amounts of sea cucumbers are available in sea cucumber districts listed. Prohibition of all diving within two days of scheduled sea cucumber openings discourages the practice of fishing on closed days and hiding the unlawful catch underwater until the legal opening. There is insufficient time to promulgate permanent rules.

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

Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

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

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

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

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

Date Adopted: February 21, 2006.

J. P. Koenings
Director
by Larry Peck

NEW SECTION

WAC 220-52-07100V Sea cucumbers. Notwithstanding the provisions of WAC 220-52-071, effective 6:00 a.m. February 27, 2006 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, Tuesday, and Wednesday of each week. Sea cucumber harvest using shellfish diver gear is allowed in Sea Cucumber District 2 on Monday and Tuesday of each week.

(2) It is unlawful to dive for any purpose from a commercially licensed sea cucumber fishing vessel on Saturdays and Sundays of each week, except by written permission from the Director.

**WSR 06-06-027
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE**

[Order 06-29—Filed February 22, 2006, 11:37 a.m., effective February 24, 2006, 11:59 p.m.]

Effective Date of Rule: February 24, 2006, 11:59 p.m.

Purpose: Amend commercial use fishing rules.

Citation of Existing Rules Affected by this Order: Amending WAC 220-69-240.

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 state may not authorize commercial shellfish harvests absent agreed planning or compliance with a process. The provisions of this rule are in conformity with agreed plans with applicable tribes which have been entered as required by court order. The quick-

reporting requirement of commercial purchasers and receivers of Dungeness crab is being terminated for the remainder of the season because of the need to upgrade the aging WDFW phone system. Since there is sufficient harvest share remaining in each open region until the end of the season, monitoring of commercial crab landings with the use of fish tickets instead of quick reports will be sufficient. There is insufficient time to promulgate permanent rules.

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

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

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

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

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

Date Adopted: February 21, 2006.

J. P. Koenings
Director
by Larry Peck

NEW SECTION

WAC 220-69-24000H Duties of commercial purchasers and receivers. Notwithstanding the provisions of WAC 220-69-240, effective 11:59 p.m. February 24, 2006 through 11:59 p.m. April 15, 2006, it is not mandatory for any wholesale dealer acting in the capacity of an original receiver of Dungeness crab taken by nontreaty fishers from Puget Sound to report to the department the previous day's purchases by 10:00 a.m. the following business day. The fish receiving ticket reporting requirement of WAC 220-69-240 remains in effect.

REPEALER

The following section of the Washington Administrative Code is repealed effective 11:59 p.m. April 15, 2006:

WAC 220-69-24000H Duties of commercial purchasers and receivers. (06-21)

**WSR 06-06-029
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE**

[Order 06-31—Filed February 23, 2006, 10:21 a.m., effective February 23, 2006, 12:00 p.m.]

Effective Date of Rule: February 23, 2006, 12:00 p.m.

Purpose: Amend commercial use fishing rules.

Citation of Existing Rules Affected by this Order:
Amending WAC 220-33-010.

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: Sets first winter salmon directed fishery. Season is consistent with the 2006 sturgeon fishery management plan. Impacts to ESA-listed stocks in these fisheries are covered under the biological opinion for the interim management agreement. This rule is consistent with actions of the Columbia River compact hearings of January 26 and February 22, 2006, and conforms Washington and Oregon state rules. The select area fisheries (SAFE) in Deep River and Blind Slough/Knappa Slough are part of an on-going BPA funded study to design fisheries in areas outside of the mainstem Columbia River. The increased time (Deep River) and area (Knappa Slough) for the winter/spring of 2006 will allow for additional opportunity to harvest salmon originating from the select areas. Several stocks of salmon have been released from net pens in these select areas to provide for fisheries. All salmon returning to these net pens are harvestable. Impacts to ESA-listed stocks in these fisheries are covered under the biological opinion for the interim management agreement. This rule is consistent with actions of the Columbia River compact hearings of January 26, 2006. There is insufficient time to promulgate permanent rules.

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

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

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

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

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

Date Adopted: February 23, 2006.

J. P. Koenings
Director
by Larry Peck

NEW SECTION

WAC 220-33-01000X Columbia River seasons below Bonneville. Notwithstanding the provisions of WAC 220-33-010, WAC 220-33-020, and WAC 220-33-030, it is unlawful for a person to take or possess salmon, sturgeon, and shad, taken for commercial purposes from Columbia River Salmon

Management and Catch Reporting Areas 1A, 1B, 1C, 1D, and 1E except during the times and conditions listed:

1. Area: SMCRA 1A, 1B, 1C, and 1D upstream to Kelley Point.

a) Season: 12:00 p.m. (noon) February 23 through 6:00 a.m. February 24, 2006.

b) Gear: Drift gill nets only. 8-inch minimum and 9 3/4 inch maximum mesh. Gill nets that are fished at any time between official sunset and official sunrise must have lighted buoys on both ends of the net unless the net is attached to the boat then one lighted buoy on the opposite end of the net from the boat is required. Net length not to exceed 150 fathoms.

c) Allowable Sale: Adipose fin-clipped salmon, sturgeon, and shad. An adipose fin-clipped salmon is defined as a hatchery salmon with a clipped adipose fin and having a healed scar at the location of the fin.

d) Sanctuaries: Grays River, Gnat Creek, Elokom-B, Abernathy Creek, Cowlitz River, Kalama-B, Lewis-B.

e) Miscellaneous Regulations:

i. Quick reporting is in effect for Washington wholesale dealers, WAC 220-69-240.

ii. At least one fisher on each boat must possess a tangle net certificate issued by either WDFW or ODFW. The certificate must be displayed to WDFW or ODFW employees, fish and wildlife enforcement officers, or other peace officers upon request.

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

iv. Red corks are required at 25 fathom intervals and red corks must be in contrast to the corks used in the remainder of the net.

v. Each boat will be required to have two operable recovery boxes or one box with two chambers, on board. Each box and chamber shall be operating during any time that the net is being retrieved or picked. The flow in the recovery box will be a minimum of 16 gallons per minute in each chamber of the box, not to exceed 20 gallons per minute. Each chamber of the recovery box must meet the following dimensions as measured from within the box; the inside length measurement must be at or within 39 1/2 inches to 48 inches, the inside width measurements must be at or within 8 to 10 inches, and the inside height measurement must be at or within 14 to 16 inches. Each chamber of the recovery box must include a water inlet hole between 3/4 inch and 1 inch in diameter, centered horizontally across the door or wall of chamber and 1 3/4 inches from the floor of the chamber. Each chamber of the recovery box must include a water outlet hole opposite the inflow that is a least 1 1/2 inches in diameter. The center of the outlet hole must be located a minimum of 12 inches above the floor of the box or chamber. The fisher must demonstrate to WDFW and ODFW employees, fish and wildlife enforcement officers, or other peace officers, upon request, that the pumping system is delivering the proper volume of fresh river water into each chamber

vi. All non-legal sturgeon, non-adipose fin-clipped salmon, and steelhead must be released immediately to the river with care and the least possible injury to the fish or placed into an operating recovery box. Any fish that is bleed-

ing or lethargic must be placed in the recovery box prior to being released. All fish placed in recovery boxes must be released to the river prior to landing or docking.

vii. As a condition of fishing, owners or operators of commercial fishing vessels must cooperate with Department observers or observers collecting data for the Department, when notified by the observer of their intent to board the commercial vessel for observation and sampling during an open fishery.

viii. Columbia River tangle net certification: Any individual meeting the qualifications of RCW 77.65.040(2) and obtained a tangle net certificate by attending and completing a WDFW/ODFW sponsored workshop concerning live captive commercial fishing techniques.

ix. Nothing in this section sets any precedent for any fishery after the 2006 spring Chinook fishery. The fact that an individual received a Columbia River tangle net certificate does not entitle the certificate holder to participate in any other fishery. If WDFW authorizes a tangle net fishery in any other time, WDFW may establish qualifications and requirements that are different from those established for 2006. In particular, WDFW may consider an individual's compliance with these rules in determining that individual's eligibility to participate in any future tangle net fisheries.

2. Blind Slough/Knappa Slough Select Area

a) Area: Open waters of Blind Slough extend from markers at the mouth of Gnat Creek located approximately 1/2 mile upstream of the county road bridge, downstream to markers at the mouth of Blind Slough. Concurrent Washington/Oregon waters extend downstream of the railroad bridge

Knappa Slough is open to fishing in all waters bounded by a line from the northerly most marker at the mouth of Blind Slough westerly to a marker on Karlson Island downstream to a north-south line defined by a marker on the eastern end of Minaker Island to markers on Karlson Island and the Oregon shore.

b) Dates:

Winter Season: 7:00 p.m. Wednesdays to 7:00 a.m. Thursdays and 7:00 p.m. Sunday to 7:00 a.m. Mondays from February 22 through March 13, 2006

Spring Season: 7:00 p.m. Mondays to 7:00 a.m. Tuesdays and 7:00 p.m. Thursdays to 7:00 a.m. Fridays from April 20 until June 16, 2006.

Only Blind Slough is open through March 13. After March 13, both Blind Slough and Knappa Slough are open.

During May 1 through June 16, the lower boundary of the Knappa Slough fishing area is extended downstream to boundary lines defined by markers on the west end of Minaker Island to markers on the Karlson Island and the Oregon Shore (fall-season boundary).

c) Gear: 7-inch minimum mesh through March 13 and 8-inch maximum mesh thereafter. Monofilament nets are allowed. Nets restricted to 100 fathoms in length with no weight restriction on leadline. Use of additional weights or anchors attached directly to the leadline is allowed.

d) Allowable Sales: Salmon, sturgeon, shad. A maximum of three sturgeon (green or white in aggregate) may be possessed or sold by each participating vessel during each open period.

3. Deep River Select Area

a) Area: From the markers at USCG navigation marker #16 upstream to the Highway 4 Bridge.

b) Dates:

Winter season: 6:00 p.m. Mondays to 8:00 a.m. Tuesdays February 20 through March 14, 2006

Spring season: 7:00 p.m. Mondays to 7:00 a.m. Tuesdays and 7:00 p.m. Thursdays to 7:00 a.m. Fridays from April 20 through June 16, 2006

c) Gear: 7-inch maximum mesh size through March 14, 8" maximum thereafter. Monofilament nets are allowed. Nets restricted to a maximum length of 100 fathoms and no weight restriction on leadline. Use of additional weights or anchors attached directly to the leadline is allowed. Nets cannot be tied off of any stationary structures. Nets may not fully cross the navigation channel.

d) Allowable sale: salmon, sturgeon and shad. A maximum of three sturgeon (green or white in aggregate) may be possessed or sold by each participating vessel during each open period.

e) Miscellaneous: Transportation or possession of fish outside the fishing area is unlawful. An exception to the rule would allow fishers to transport their catch out of the fishing area with a permit issued by an authorized agency employee after examining the catch.

WSR 06-06-039

EMERGENCY RULES

DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Health and Recovery Services Administration)

[Filed February 23, 2006, 4:31 p.m., effective February 23, 2006]

Effective Date of Rule: Immediately.

Purpose: To comply with the requirements of the 2005 legislature, the department is adding new WAC 388-550-2650, to adopt two separate base community psychiatric hospital payments. One is for Medicaid clients and the other is for non-Medicaid clients. The new rule also clarifies that both Involuntary Treatment Act (ITA)-certified hospitals and hospitals that have ITA-certified beds that have been used to treat ITA patients are included in the base community psychiatric hospitalization payment method for Medicaid and non-Medicaid clients.

This emergency rule replaces the emergency filing for WAC 388-550-2800 Inpatient payment methods and limits, under WSR 05-22-038.

Statutory Authority for Adoption: RCW 74.08.090, 74.09.500.

Other Authority: Part II, section 204, chapter 518, Laws of 2005 (ESSB 6090).

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 legislature appropriated funds for fiscal year 2006 and 2007 to establish a separate base community psychiatric hospitalization payment rate for

Medicaid and non-Medicaid clients at hospitals that accept commitments under the Involuntary Treatment Act (ITA) and free-standing psychiatric hospitals that accept commitments under the ITA and also hospitals that have ITA-certified beds that have been used to treat ITA patients. This rule replaces the emergency rule that is currently in effect under WSR 05-22-038. The new rule carries out the legislature's directive while the department completes the permanent rule-making process begun under WSR 05-14-145 and filed on July 5, 2005.

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 1, Amended 0, Repealed 0.

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

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

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

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

Date Adopted: February 21, 2006.

Andy Fernando, Manager
Rules and Policies Assistance Unit

NEW SECTION

WAC 388-550-2650 Base community psychiatric hospitalization payment method for Medicaid and non-Medicaid clients. (1) Effective July 1, 2005 and in accordance with legislative directive, the department implemented two separate base community psychiatric hospitalization payment rates, one for Medicaid clients and one for non-Medicaid clients. (For the purpose of this section, a "non-Medicaid client" is defined as a client eligible under the general assistance unemployable (GAU) program, the Alcoholism and Drug Addiction Treatment and Support Act (ADATSA), the psychiatric indigent inpatient (PII) program, or other state-administered programs, as determined by the department.)

(a) The Medicaid base community psychiatric hospitalization payment rate is a minimum per diem allowable calculated for claims for psychiatric services provided to Medicaid covered patients, to pay hospitals that accept commitments under the involuntary treatment act (ITA).

(b) The non-Medicaid base community psychiatric hospitalization payment rate is a minimum per diem allowable calculated for claims for psychiatric services provided to indigent patients to pay hospitals that accept commitments under the ITA.

(2) A client's inpatient psychiatric hospitalization must have a root cause that is psychiatric in nature. The department:

(a) Defines "root cause" as the reason the client was admitted based on the principal diagnosis and the department's review of the client's medical record; and

(b) Does not consider detoxification to be psychiatric in nature.

(3) All inpatient hospital psychiatric admissions require regional support network (RSN) prior authorization. The RSN-approved length of stay (LOS) is based on a client's discharge diagnosis.

(a) The number of department-covered days that are linked to claims paid under the DRG payment method becomes the RSN-approved LOS for those claims. If the case is a transfer case, the DRG average LOS becomes the LOS that is used to determine the allowable on the claim. See WAC 388-550-3600.

(b) The RSN-approved LOS for claims paid using a non-DRG payment method is established by the RSN in conjunction with the mental health division.

(4) Payment for claims is based on covered days within a client's approved LOS, subject to client eligibility and department-covered services.

(5) The Medicaid base community psychiatric hospitalization payment rate applies only to a Medicaid client admitted to a nonstate-owned free-standing psychiatric hospital located in Washington state.

(6) The non-Medicaid base community psychiatric hospitalization payment rate applies only to a non-Medicaid client admitted to a hospital:

(a) Designated by the department as an Involuntary Treatment Act (ITA)-certified hospital; or

(b) That has a department certified ITA bed that has been used to provide ITA services at the time of the non-Medicaid admission.

(7) For inpatient hospital psychiatric services provided to eligible clients on and after July 1, 2005, the department pays:

(a) A hospital's DOH-certified distinct psychiatric unit, as follows:

(i) For Medicaid clients, the department pays inpatient hospital psychiatric claims using the department-specific non-DRG payment method.

(ii) For non-Medicaid clients, the department uses as the allowable for inpatient hospital psychiatric claims, the greater of:

(A) The state-only diagnostic-related group (DRG) allowable (including the high cost outlier allowable, of applicable), or the department-specified non-DRG payment method if no relative weight exists for the DRG in the department's payment system; or

(B) The non-Medicaid base community psychiatric hospitalization payment rate multiplied by the covered days.

(b) A hospital without a DOH-certified distinct psychiatric unit, as follows:

(i) For Medicaid clients, the department pays inpatient hospital psychiatric claims using:

(A) The DRG payment method; or

(B) The department-specified non-DRG payment method if no relative weight exists for the DRG in the department's payment system.

(ii) For non-Medicaid clients, the department uses as the allowable for inpatient hospital psychiatric claims, the greater of:

(A) The state-only diagnostic-related group (DRG) allowable (including the high cost outlier allowable, if applicable), or the department-specified non-DRG payment method if no relative weight exists for the DRG in the department's payment system; or

(B) The non-Medicaid base community psychiatric hospitalization payment rate multiplied by the covered days.

(c) A non-state-owned free-standing psychiatric hospital, as follows:

(i) For Medicaid clients, the department uses as the allowable for inpatient hospital psychiatric claims, the greater of:

(A) The RCC allowable; or

(B) The Medicaid base community psychiatric hospitalization payment rate multiplied by covered days.

(ii) For non-Medicaid clients, the department pays inpatient hospital psychiatric claims the same as for Medicaid clients, except the base community psychiatric hospitalization payment rate is the non-Medicaid rate, and the RCC allowable is the state-only RCC allowable.

(d) A hospital, or a distinct psychiatric unit of a hospital, that is participating in the CPE payment program, as follows:

(i) For Medicaid clients, the department pays inpatient hospital psychiatric claims using the methods identified in WAC 388-550-4650.

(ii) For non-Medicaid clients, the department pays inpatient hospital psychiatric claims using the methods identified in WAC 388-550-4650, except that the allowable to which the federal financial participation (FFP) percentage is applied is the greater of:

(A) The RCC allowable; or

(B) The non-Medicaid base community psychiatric hospitalization payment rate multiplied by covered days.

(e) A hospital, or a distinct psychiatric unit of a hospital that is participating in the CAH program, as follows:

(i) For Medicaid clients, the department pays inpatient hospital psychiatric claims using the department-specified non-DRG payment method.

(ii) For non-Medicaid clients, the department pays inpatient hospital psychiatric claims using the department-specified non-DRG payment method.

WSR 06-06-070

EMERGENCY RULES

DEPARTMENT OF

FISH AND WILDLIFE

[Order 06-32—Filed February 28, 2006, 2:37 p.m., effective February 28, 2006, 6:00 p.m.]

Effective Date of Rule: February 28, 2006, 6:00 p.m.

Purpose: Amend commercial use fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-52-04600J; and amending WAC 220-52-046.

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: These closures comply with state/treaty management agreements which have established closure periods to protect crab during softshell periods. There is insufficient time to promulgate 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: February 28, 2006.

J. P. Koenings
Director

NEW SECTION

WAC 220-52-04600K Crab fishery—Seasons and areas. Notwithstanding the provisions of WAC 220-52-046:

1) Effective immediately until further notice, it is unlawful to fish for Dungeness Crab for commercial purposes in Marine Fish-Shellfish Management and Catch Reporting Areas 23C, 24A, 24B, 24C, 24D, 25B, 25D, 26A-W, 26A-E and 29.

2) Effective 6:00 p.m. March 3, 2006, until further notice, it is unlawful to fish for or possess Dungeness crab taken for commercial purposes from Marine Fish Shellfish Management and Catch Reporting Areas 23A and 23B, except that crab fishers may continue to remove their gear from the grounds until 6:00 p.m. March 10, 2006. No crab may be landed from or possessed from these areas after 6:00 p.m. March 3, 2006.

3) Effective 6:00 p.m. March 15, 2006, until further notice, it is unlawful to fish for Dungeness Crab for commercial purposes in Marine Fish-Shellfish Management and Catch Reporting Areas 23D, 25A, and 25E.

REPEALER

The following section of the Washington Administrative Code is repealed effective 6:00 p.m. February 28, 2006:

WAC 220-52-04600J Crab fishery—Seasons and areas. (06-21)