

**WSR 08-17-002**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**

[Order 08-193—Filed August 6, 2008, 2:44 p.m., effective August 11, 2008, 12:01 a.m.]

Effective Date of Rule: August 11, 2008, 12:01 a.m.

Purpose: Amend personal use fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 232-28-62100C and 232-28-62100D; and amending WAC 232-28-621.

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 4,000 chinook harvest guideline for Area 9 is expected to be exceeded by Sunday night. The projected catch through Sunday will not increase the ESA impacts above allowed levels. 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Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 1, Amended 0, Repealed 2.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.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: August 6, 2008.

Phil Anderson  
for Jeff Koenings  
Director

NEW SECTION

**WAC 232-28-62100D Puget Sound salmon seasons—2008 North of Falcon.** Notwithstanding the provisions of WAC 232-28-621, effective 12:01 a.m. August 11, 2008 until further notice, it is unlawful to fish for salmon in Puget Sound except as provided for in this section, provided that unless otherwise amended, all permanent rules remain in effect:

**Area 9:**

(a) Salmon fishing open year-round from the Edmonds fishing pier. Daily limit 2 salmon, not more than one of which may be a Chinook, release chum.

(b) Effective immediately until further notice - All other waters of Area 9 open until further notice, daily limit 2 salmon, except release Chinook, chum and wild coho.

REPEALER

The following section of the Washington Administrative Code is repealed effective 12:01 a.m. August 11, 2008:

WAC 232-28-62100C	Exceptions to statewide rules—Puget Sound salmon seasons—2008 North of Falcon. (08-91)
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The following section of the Washington Administrative Code is repealed effective 12:01 a.m. August 16, 2008:

WAC 232-28-62100D	Exceptions to statewide rules—Puget Sound salmon seasons—2008 North of Falcon.
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**WSR 08-17-008**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**

[Order 08-194—Filed August 7, 2008, 1:55 p.m., effective August 8, 2008, 12:01 a.m.]

Effective Date of Rule: August 8, 2008, 12:01 a.m.

Purpose: Amend commercial fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-88C-04000G; and amending WAC 220-88C-040.

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: This rule was adopted by the Pacific Fisheries Management Council and is consistent with the Federal Register, Volume 73, Number 104. The pilchard-directed harvest allocation total for the second seasonal period (July 1 - September 14) is projected to be reached. 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: August 7, 2008.

Loreva M. Preuss  
for Jeff Koenings  
Director

### NEW SECTION

**WAC 220-88C-04000G Coastal pilchard fishery—Seasons and areas.** Notwithstanding the provisions of WAC 220-88C-040, effective 12:01 a.m. August 8 through September 14, 2008, it is unlawful to fish for, possess, retain, transport through the waters of the state, or land into any Washington port, pilchard; except pilchard caught incidental to other fisheries may be retained, provided the weight of pilchard does not exceed twenty percent of the weight of the total landing. This rule is established by the National Marine Fisheries Service and published in the Federal Register, Volume 73, Number 104.

### REPEALER

The following section of the Washington Administrative Code is repealed effective 12:01 a.m. September 15, 2008:

WAC 220-88C-04000G Coastal pilchard fishery—  
Seasons and areas.

**WSR 08-17-017**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**

[Order 08-195—Filed August 8, 2008, 11:59 a.m., effective August 8, 2008, 11:59 a.m.]

Effective Date of Rule: Immediately.

Purpose: Amend commercial fishing rules.

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

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 2008 state/tribal shrimp harvest management plans for the Strait of Juan de Fuca and north Puget Sound require adoption of harvest seasons and the prohibition on night time fishing contained in this emergency rule. This emergency rule closes the pot fishery season for shrimp in Catch Areas 23A-C, 23B and 26B-2 because the spot shrimp quotas will be harvested in those areas. 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: August 8, 2008.

Loreva M. Preuss  
for Jeff Koenings  
Director

### NEW SECTION

**WAC 220-52-05100C 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) All waters of Shrimp Management Areas 1B, 1C, 2E, 2W, 3, 4, and 6 are open to the harvest of all shrimp species effective immediately, until further notice, except as provided for in this section:

(i) All waters of Shrimp Management Areas 23A-E and 23A-W, Catch Area 26B-1 and the Discovery Bay Shrimp District are closed.

(ii) All waters of Shrimp Management Areas 1B, 1C, 2E and 2W are closed to the harvest of spot shrimp.

(iii) Effective 6:00 p.m., August 10, 2008, all waters of Catch Area 23A-C are closed to the harvest of all shrimp species.

(iv) Effective 6:00 p.m., August 13, 2008, all waters of Catch Areas 23B and 26B-2 are closed to the harvest of all shrimp species.

(b) The shrimp accounting week is Monday through Sunday.

(c) Effective 12:01 a.m. August 11, 2008, until 6:00 p.m., August 13, 2008, it is unlawful for the combined total harvest of spot shrimp by a fisher and/or the fisher's alternate operator to exceed 250 pounds in Catch Area 23B and 150 pounds in Catch Area 26B-2.

(d) Effective immediately, until further notice, it is unlawful for the combined total harvest of spot shrimp by a fisher and/or the fisher's alternate operator to exceed 600 pounds per week, except that any fisher whose weekly shrimp harvest activity is exclusively limited to Marine Fish-Shellfish Catch and Reporting Area 29 shall not be subject to the weekly spot shrimp trip limit for that week. It is unlawful to fish for any shrimp while in possession, on board the fishing vessel, of any spot shrimp from any previous accounting week.

(e) It is unlawful to fish for shrimp for commercial purposes in Puget Sound using shellfish pot gear in more than one Marine Fish-Shellfish Management and Catch Reporting Area per day. Fishers may move all of their shellfish pot gear

from one Marine Fish-Shellfish Management and Catch Reporting Area to another Marine Fish-Shellfish Management and Catch Reporting Area if a harvest report is made before the shellfish pot gear is moved. The harvest activity report must be made consistent with the provisions of WAC 220-52-075 and must also include the following additional information:

(i) The number of pots being moved to a new area, and the Marine Fish-Shellfish Management and Catch Reporting Area that the pots are being moved to.

(f) It is unlawful to set or pull shellfish pots in one Marine Fish-Shellfish Management and Catch Reporting Area while in possession of shrimp harvested from another Marine Fish-Shellfish Management and Catch Reporting Area, except shellfish pots may be set in a new fishing area subsequent to making a report as indicated in Section 1(e) above.

(2) Shrimp beam trawl gear:

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

(b) That portion of Catch Area 22A within Shrimp Management Area 1B is open immediately, until further notice.

(c) That portion of Catch Area 21A within Shrimp Management Area 1B is open immediately, until further notice.

(3) It is unlawful to set or pull shrimp beam trawl gear from one hour after official sunset to one hour before official sunrise.

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

#### REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 220-52-05100B Puget Sound shrimp pot and beam trawl fishery. (08-192)

**WSR 08-17-023**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**

[Order 08-196—Filed August 11, 2008, 4:29 p.m., effective August 12, 2008, 12:01 a.m.]

Effective Date of Rule: August 12, 2008, 12:01 a.m.

Purpose: Amend personal use fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 232-28-62100D and 232-28-62100E; and amending WAC 232-28-621.

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: Catch rates in Area 9 were less than projected and additional hatchery chinook are available for harvest while staying below preseason ESA impact guidelines and without exceeding the 7,000 fish quota for Area 9 and 10. 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 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: August 11, 2008.

Phil Anderson  
for Jeff Koenings  
Director

#### NEW SECTION

**WAC 232-28-62100E Puget Sound salmon seasons—2008 North of Falcon.** Notwithstanding the provisions of WAC 232-28-621, effective 12:01 a.m. August 12, 2008 until further notice, it is unlawful to fish for salmon in Puget Sound except as provided for in this section, provided that unless otherwise amended, all permanent rules remain in effect:

##### **Area 9:**

(a) Salmon fishing open year-round from the Edmonds fishing pier. Daily limit 2 salmon, not more than one of which may be a Chinook, release chum.

(b) Effective immediately until further notice - All other waters of Area 9 open until further notice, daily limit 2 salmon, except release chum, wild coho, and wild Chinook. Closed south of a line from Foulweather Bluff to Olele Point.

#### REPEALER

The following section of the Washington Administrative Code is repealed effective 12:01 a.m. August 12, 2008:

WAC 232-28-62100D Exceptions to statewide rules—Puget Sound salmon seasons—2008 North of Falcon. (08-193)

The following section of the Washington Administrative Code is repealed effective 12:01 a.m. August 16, 2008:

WAC 232-28-62100E Exceptions to statewide rules—Puget Sound salmon seasons—2008 North of Falcon.

**WSR 08-17-025**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**

[Order 08-198—Filed August 12, 2008, 2:55 p.m., effective August 12, 2008, 2:55 p.m.]

Effective Date of Rule: Immediately.

Purpose: The purpose of this rule making is to allow fishing opportunity in the Columbia River while protecting salmon listed as threatened or endangered under the Endangered Species Act. 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 220-33-01000W.

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 2005-2007 Interim Management Agreement For Upriver Chinook, Sockeye, Steelhead, Coho & White Sturgeon (May 11, 2005) (Doc. No. 2407); *Northwest Gillnetters Ass'n v. Sandison*, 95 Wn.2d 638, 628 P.2d 800 (1981); Washington fish and wildlife commission policies concerning Columbia River fisheries; 40 Stat. 515 (Columbia River compact).

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

Reasons for this Finding: Rescinds the fifth fishing period previously scheduled for mainstem commercial fishing during the early August season. Chinook catch allocation for early August fisheries has been reached. The regulation is consistent with compact action of July 22 and August 11, 2008. There is insufficient time to promulgate permanent rules. Washington and Oregon jointly regulate Columbia River fisheries under the congressionally ratified Columbia River compact. Four Indian tribes have treaty fishing rights in the Columbia River. The treaties preempt state regulations that fail to allow the tribes an opportunity to take a fair share of the available fish, and the states must manage other fisheries accordingly. *Sohappy v. Smith*, 302 F. Supp. 899 (D. Or. 1969). A federal court order sets the current parameters for sharing between treaty Indians and others. *United States v. Oregon*, Civil No. 68-513-KI (D. Or.), Order Adopting 2005-2007 Interim Management Agreement For Upriver Chinook, Sockeye, Steelhead, Coho & White Sturgeon (May 11, 2005) (Doc. No. 2407). Some Columbia River Basin salmon and steelhead stocks are listed as threatened or endangered under the federal Endangered Species Act. The National Marine Fisheries Service has issued biological opinions under 16 U.S.C. § 1536 that allow for some incidental take of these species in treaty and nontreaty Columbia River fisheries. The Washington and Oregon fish and wildlife commissions have developed policies to guide the implementation of these biological opinions in the states' regulation of nontreaty fisher-

ies. Columbia River nontreaty fisheries are monitored very closely to ensure compliance with federal court orders, the Endangered Species Act, 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 0, Amended 0, Repealed 1; Federal Rules or Standards: New 0, 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 0, Amended 0, Repealed 1.

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

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

Date Adopted: August 12, 2008.

Phil Anderson  
for Jeff Koenings  
Director

**REPEALER**

The following section of the Washington Administrative Code is repealed:

WAC 220-33-01000W      Columbia River season  
below Bonneville. (08-180)

**WSR 08-17-032**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**

[Order 08-199—Filed August 13, 2008, 2:05 p.m., effective August 13, 2008, 2:05 p.m.]

Effective Date of Rule: Immediately.

Purpose: Amend fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-56-25500K and 220-56-25500L; and amending WAC 220-56-255.

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: This rule conforms to federal action taken by Pacific Fisheries Management Council. There is sufficient recreational quota to provide for these fishing days. 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 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: August 13, 2008.

Loreva M. Preuss  
for Jeff Koenings  
Director

NEW SECTION

**WAC 220-56-25500L Halibut—Seasons—Daily and possession limits.** (1) Notwithstanding the provisions of WAC 220-56-255, effective immediately until further notice, it is unlawful to fish for or possess halibut taken for personal use, except as provided in this section:

(a) Catch Record Card Area 1 - Open 12:01 a.m. August 22 through 11:59 p.m. August 23, 2008. It is unlawful during any vessel trip to bring into port or land bottomfish except sablefish or Pacific Cod if the vessel has brought halibut into port or landed halibut during that trip.

(b) Catch Record Card Area 2 - Closed - except waters from 47°25.00'N. latitude (Queets River) south to 46°58.00'N latitude and east of 124°30.00'W longitude, open until further notice, 12:01 a.m. through 11:59 p.m., Fridays and Saturdays.

(c) Daily limit one halibut. The possession limit is two daily limits of halibut in any form, except the possession limit aboard the fishing vessel is one daily limit.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 220-56-25500K Halibut—Seasons—Daily and possession limits. (08-171)

The following section of the Washington Administrative Code is repealed effective 12:01 a.m. October 1, 2008:

WAC 220-56-25500L Halibut—Seasons—Daily and possession limits.

**WSR 08-17-036  
EMERGENCY RULES  
DEPARTMENT OF  
FISH AND WILDLIFE**

[Order 08-201—Filed August 13, 2008, 4:11 p.m., effective August 16, 2008, 12:01 a.m.]

Effective Date of Rule: August 16, 2008, 12:01 a.m.

Purpose: Amend commercial fishing rules.

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

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 salmon remain on the North of Falcon quota for the troll fleet. These rules are adopted at the recommendation of the Pacific Fisheries Management Council, in accordance with preseason fishing plans. 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 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: August 13, 2008.

Lisa M. Veneroso  
for Jeff Koenings  
Director

NEW SECTION

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

(1) Salmon Management and Catch Reporting Areas 1, 2, 3, and that portion of Area 4 west of 125°05'00" W longitude and south of 48°23'00" N latitude, open:

August 16 through August 19, 2008;  
August 23 through August 26, 2008;  
August 30 through September 2, 2008;  
September 6 through September 9, 2008;  
September 13 through September 16, 2008.

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

(3) Landing and possession limit of 50 Chinook per boat per entire open period for openings through September 16 for catch areas 1, 2, 3, and 4.

(4) Landing and possession limit of 25 Coho per boat per entire open period for openings through September 16 for catch area 1, 2, 3, and 4.

(5) Minimum size for Chinook salmon is 28 inches in length. No minimum size for pink, sockeye or chum salmon. Minimum size for coho salmon is 16 inches in length. It is unlawful to possess coho salmon that do not have a healed adipose fin clip. No chum retention north of Cape Flattery in August and September.

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

(7) Fishers must land and deliver their catch within 24 hours of any fishery closure provided for in this section, and vessels fishing or in possession of salmon while fishing north of Leadbetter Point must land and deliver their fish within the area and North of Leadbetter point. Vessels fishing or in possession of salmon while fishing south of Leadbetter Point must land and deliver their fish within the area and south of Leadbetter Point.

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

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

(10) Mandatory Yelloweye Rockfish Conservation Area - The area is closed in Washington in Marine Catch Area 3 from 48°00.00' N latitude, 125°14.00' W longitude; to 48°02.00' N latitude, 125°14.00' W longitude; to 48°02.00' N latitude, 125°16.50' W longitude; to 48°00.00' N latitude, 125°16.50' W longitude; and connecting back to 48°00.00' N latitude, 125°14.00' W longitude.

(11) It is unlawful to fish in Salmon Management and Catch Reporting Areas 1, 2, 3 or 4 with fish on board taken south of Cape Falcon, Oregon; and all fish taken from Salmon Management and Catch Reporting Areas 1, 2, 3, and 4 must be landed before fishing south of Cape Falcon, Oregon.

(12) It is unlawful for wholesale dealers and trollers retailing their fish to fail to report their landing by 10:00 a.m. the day following landing. Ticket information can be telephoned in by calling 1-866-791-1279, faxing the information to (360) 902-2949, or e-mailing to trollfishtickets@dfw.wa.gov. Report the dealer name, the purchasing location, the date of purchase, the fish ticket numbers, the gear used, the catch area, the species, the total number for each species, and the total weight for each species, including halibut.

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

### REPEALER

The following section of the Washington Administrative Code is repealed effective 12:01 a.m. August 16, 2008:

WAC 220-24-04000M All-citizen commercial salmon troll. (08-188)

The following section of the Washington Administrative Code is repealed, effective 12:01 a.m. September 18, 2008:

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

### **WSR 08-17-042**

#### **EMERGENCY RULES**

#### **DEPARTMENT OF**

#### **FISH AND WILDLIFE**

[Order 08-200—Filed August 14, 2008, 1:48 p.m., effective August 15, 2008, 9:15 p.m.]

Effective Date of Rule: August 15, 2008, 9:15 p.m.

Purpose: Amend personal use fishing rules.

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

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 estimates that sockeye available for harvest (those in excess of the natural spawning escapement goal of 23,000 fish) will have been caught. 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 0, Amended 0, Repealed 1.

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

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

Date Adopted: August 14, 2008.

Lisa M. Veneroso  
for Jeff Koenings  
Director

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: August 14, 2008.

Lisa M. Veneroso  
for Jeff Koenings  
Director

## REPEALER

The following section of the Washington Administrative Code is repealed effective 9:15 p.m. August 15, 2008, one hour after official sunset:

WAC 232-28-61900T      Exceptions to statewide  
rules—Lake Wenatchee.  
(08-191)

### WSR 08-17-043 EMERGENCY RULES DEPARTMENT OF FISH AND WILDLIFE

[Order 08-203—Filed August 14, 2008, 2:23 p.m., effective August 14,  
2008, 2:23 p.m.]

Effective Date of Rule: Immediately.

Purpose: Amend commercial fishing rules.

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

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 2008 state/tribal shrimp harvest management plans for the Strait of Juan de Fuca and north Puget Sound require adoption of harvest seasons and the prohibition on nighttime fishing contained in this emergency rule. This emergency rule closes the pot fishery season for shrimp in Catch Areas 26D because the spot shrimp quota will be harvested in that area, reopens Shrimp Management Area 1B with a harvest limit, and opens Catch Area 20A to beam trawl fishing. 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.

## NEW SECTION

**WAC 220-52-05100D 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) All waters of Shrimp Management Areas 1B, 1C, 2E, 2W, 3 and 6 are open to the harvest of all shrimp species effective immediately, until further notice, except as provided for in this section:
    - (i) All waters of Catch Areas 23A-E, 23A-C, 23A-W and the Discovery Bay Shrimp District are closed.
    - (ii) All waters of Shrimp Management Areas 1C, 2E, 2W and Catch Area 23B are closed to the harvest of spot shrimp.
    - (iii) Effective 6:00 p.m. August 17, 2008, all waters of Shrimp Management Area 1B and Catch Area 26D are closed to the harvest of spot shrimp.
  - (b) The shrimp accounting week is Monday through Sunday.
  - (c) Effective immediately, until 6:00 p.m. August 17, 2008, it is unlawful for the combined total of spot shrimp by a fisher and/or the fisher's alternate operator to exceed 150 pounds in Shrimp Management Area 1B.
  - (d) Effective 12:01 a.m. August 18, 2008, until further notice, it is unlawful for the combined total harvest of spot shrimp by a fisher and/or the fisher's alternate operator to exceed 300 pounds in Catch Area 25A.
  - (e) Effective immediately, until further notice, it is unlawful for the combined total harvest of spot shrimp by a fisher and/or the fisher's alternate operator to exceed 600 pounds per week, except that any fisher whose weekly shrimp harvest activity is exclusively limited to Marine Fish-Shellfish Catch and Reporting Area 29 shall not be subject to the weekly spot shrimp trip limit for that week. It is unlawful to fish for any shrimp while in possession, on board the fishing vessel, of any spot shrimp from any previous accounting week.
  - (f) It is unlawful to fish for shrimp for commercial purposes in Puget Sound using shellfish pot gear in more than one Marine Fish-Shellfish Management and Catch Reporting Area per day. Fishers may move all of their shellfish pot gear from one Marine Fish-Shellfish Management and Catch Reporting Area to another Marine Fish-Shellfish Manage-

ment and Catch Reporting Area if a harvest report is made before the shellfish pot gear is moved. The harvest activity report must be made consistent with the provisions of WAC 220-52-075 and must also include the following additional information:

(i) The number of pots being moved to a new area, and the Marine Fish-Shellfish Management and Catch Reporting Area that the pots are being moved to.

(g) It is unlawful to set or pull shellfish pots in one Marine Fish-Shellfish Management and Catch Reporting Area while in possession of shrimp harvested from another Marine Fish-Shellfish Management and Catch Reporting Area, except shellfish pots may be set in a new fishing area subsequent to making a report as indicated in Section 1(e) above.

(2) Shrimp beam trawl gear:

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

(b) That portion of Catch Areas 21A and 22A within Shrimp Management Area 1B is open immediately, until further notice.

(c) Catch Area 20A is open immediately, until further notice.

(3) It is unlawful to set or pull shrimp beam trawl gear from one hour after official sunset to one hour before official sunrise.

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

#### REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 220-52-05100C Puget Sound shrimp pot and beam trawl fishery. (08-195)

**WSR 08-17-044**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**

[Order 08-204—Filed August 14, 2008, 2:39 p.m., effective August 14, 2008, 2:39 p.m.]

Effective Date of Rule: Immediately.

Purpose: The purpose of this rule making is to allow fishing opportunity in the Columbia River while protecting salmon listed as threatened or endangered under the Endangered Species Act. 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: 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 2005-2007 Interim Management Agreement For Upriver Chinook, Sockeye, Steelhead, Coho & White Sturgeon (May 11, 2005) (Doc. No. 2407); *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 additional mainstem commercial fishing periods for the early fall season. The season is consistent with the 2008-2017 interim management agreement and the 2008 non-Indian salmon allocation agreement. The regulation is consistent with compact action of July 22 and August 13, 2008. There is insufficient time to promulgate permanent rules.

Washington and Oregon jointly regulate Columbia River fisheries under the congressionally ratified Columbia River compact. Four Indian tribes have treaty fishing rights in the Columbia River. The treaties preempt state regulations that fail to allow the tribes an opportunity to take a fair share of the available fish, and the states must manage other fisheries accordingly. *Sohappy v. Smith*, 302 F. Supp. 899 (D. Or. 1969). A federal court order sets the current parameters for sharing between treaty Indians and others. *United States v. Oregon*, Civil No. 68-513-KI (D. Or.), Order Adopting 2005-2007 Interim Management Agreement For Upriver Chinook, Sockeye, Steelhead, Coho & White Sturgeon (May 11, 2005) (Doc. No. 2407).

Some Columbia River Basin salmon and steelhead stocks are listed as threatened or endangered under the federal Endangered Species Act. The National Marine Fisheries Service has issued biological opinions under 16 U.S.C. § 1536 that allow for some incidental take of these species in treaty and nontreaty Columbia River fisheries. The Washington and Oregon fish and wildlife commissions have developed policies to guide the implementation of these 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 Endangered Species Act, 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: August 14, 2008.

Lisa M. Veneroso  
for Jeff Koenings  
Director

## NEW SECTION

**WAC 220-33-0100N Columbia River season below Bonneville.** Notwithstanding the provisions of WAC 220-33-010, and WAC 220-33-020, it is unlawful for a person to take or possess salmon or sturgeon for commercial purposes from Columbia River Salmon Management and Catch Reporting Areas (SMCRA) 1A, 1B, 1C, 1D, and 1E, except as provided in the following subsections.

### **1. Mainstem Columbia River**

a. SEASON: 7:00 p.m. August 14 to 7:00 a.m. August 15, 2008

b. AREA: SMCRA 1B, 1C, 1D, 1E (Zones 2-5)

c. GEAR: 9-inch minimum mesh size. Drift gillnets only. Monofilament gear is allowed. Nets not specifically authorized for use in this fishery may be onboard the vessel if properly stored. A properly stored net is defined as a net on a drum that is fully covered by a tarp (canvas or plastic) and bound with a minimum of ten revolutions of rope with a diameter of 3/8 (0.375) inches or greater.

d. SANCTUARIES: Grays River, Elochomin-A, Abernathy, Cowlitz, Kalama-A, Lewis-B, Washougal and Sandy Rivers.

e. ALLOWABLE SALES: Salmon and white sturgeon. A maximum of ten (10) white sturgeon may be possessed or sold by each participating vessel during each calendar week (Sunday through Saturday) that the fishery is open. The sturgeon possession/sales limit applies only to mainstem fisheries. It is unlawful to fail to return immediately to the water any sturgeon taken in excess of any commercial catch or possession limits prescribed by department rule.

f. OTHER: 24 hour Quick reporting required for Washington wholesale dealers, WAC 220-69-240. When quick reporting is required, Columbia River reports must be submitted within 24 hours of closure of each fishing period.

### **2. Mainstem Columbia River**

a. SEASON: 8:00 p.m. August 19 to 6:00 a.m. August 20, 2008.

b. AREA: SMCRA 1D, 1E (Zones 4-5)

c. GEAR: 9-inch minimum mesh size. Drift gillnets only. Monofilament gear is allowed. Nets not specifically authorized for use in this fishery may be onboard the vessel if properly stored. A properly stored net is defined as a net on a drum that is fully covered by a tarp (canvas or plastic) and

bound with a minimum of ten revolutions of rope with a diameter of 3/8 (0.375) inches or greater.

d. SANCTUARIES: Lewis-B, Washougal and Sandy Rivers.

e. ALLOWABLE SALES: Salmon and white sturgeon. A maximum of three (3) white sturgeon may be possessed or sold by each participating vessel during each calendar week (Sunday through Saturday) that the fishery is open. The sturgeon possession/sales limit applies only to mainstem fisheries. It is unlawful to fail to return immediately to the water any sturgeon taken in excess of any commercial catch or possession limits prescribed by department rule.

f. OTHER: 24 hour Quick reporting required for Washington wholesale dealers, WAC 220-69-240. When quick reporting is required, Columbia River reports must be submitted within 24 hours of closure of each fishing period.

### **3. Blind Slough/Knappa Slough Select Area.**

a. SEASON: Tuesday, Wednesday, and Thursday nights from September 2-16, 2008. AND Monday, Tuesday, Wednesday, and Thursday nights from September 15 through October 31, 2008. . Open hours are 7:00 p.m. to 7:00 a.m. from September 2-19, and 6 p.m. to 8 a.m. thereafter.

b. AREA: Blind Slough fishing area includes all waters from markers at the mouth of Gnat Creek located approximately 0.5 mile upstream of the county road bridge, downstream to markers at the mouth of Blind Slough. Concurrent waters extend downstream of the railroad bridge in Blind Slough. The Knappa Slough fishing area includes all waters bounded by a line from the north marker at the mouth of Blind Slough, westerly to a marker on Karlson Island, downstream to boundary lines defined by markers on the west end of Minaker Island, to markers on Karlson Island and the Oregon shore. An area closure of about a 100-foot radius at the mouth of Big Creek defined by markers. All waters in Knappa Slough are under concurrent jurisdiction.

c. GEAR: 8-inch maximum mesh size through September 5 and a 6-inch maximum mesh size thereafter. Gillnet. Monofilament gear is allowed.. 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.

### **4. Tongue Point/South Channel Select Area.**

a. SEASON: Tuesday, Wednesday, and Thursday nights from September 2-12, 2008. AND Monday, Tuesday, Wednesday, and Thursday nights from September 15 through October 26, 2008. Open hours are 7 p.m. to 7 a.m. from September 2-19 and 4:00 p.m. to 8:00 a.m. thereafter.

b. AREA: Tongue Point fishing area includes all waters bounded by a line from a marker midway between the red USCG navigation light #2 at the tip of Tongue Point and the downstream (northern most) pier (#8) at the Tongue Point Job Corps facility, to the flashing green USCG navigation light #3 on the rock jetty at the west end of Mott Island, a line from a marker at the southeast end of Mott Island northeasterly to a marker on the northwest tip of Lois Island, and a line from a marker on the southwest end of Lois Island westerly to a marker on the Oregon shore. All waters are under concurrent jurisdiction. South Channel area includes all waters bounded by a line from a marker on John Day Point through the green USCG buoy #7 to a marker on the southwest end of

Lois Island upstream to an upper boundary line from a marker on Settler Point northwesterly to the flashing red USCG marker #10, northwesterly to a marker on Burnside Island defining the upstream terminus of South Channel. All waters are under concurrent jurisdiction.

c. GEAR: 6-inch maximum mesh. Gillnet. Monofilament gear is allowed. In the Tongue Point area: Net length maximum of 250 fathoms, and weight not to exceed two pounds on any one fathom on the lead line. Participants in the Tongue Point fishery may have stored onboard their boats gill nets of legal mesh size but with leadline in excess of two pounds per any one fathom. In the South Channel area: Net length maximum of 100 fathoms, and no weight restriction on lead line. Use of additional weights or anchors attached directly to the lead line is allowed.

#### 5. Deep River Select Area.

a. SEASON: Monday, Tuesday, Wednesday, and Thursday nights from September 1 through October 31, 2008. Open hours are 7 p.m. to 7 a.m. from September 1-19, and 4:00 p.m. to 8:00 a.m. thereafter.

b. AREA: Deep River fishing area includes all waters downstream of the town of Deep River to the mouth, defined by a line from USCG navigation marker #16 southwest to a marker on the Washington shore. Concurrent waters extend downstream of the Highway 4 bridge.

c. GEAR: 6-inch maximum mesh. Gill net. Monofilament gear is allowed. Net length maximum of 100 fathoms, and 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.

6. ALLOWABLE SALES: Applies to all seasons stated in items 3-5 (Select Areas): Salmon and White sturgeon. A maximum of three (3) white sturgeon may be possessed or sold by each participating vessel during each calendar week (Sunday through Saturday) that the fishery is open. The sturgeon possession/sales limit applies only to SAFE fisheries. It is unlawful to fail to return immediately to the water any sturgeon taken in excess of any commercial catch or possession limits prescribed by department rule.

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

**WSR 08-17-054**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**

[Order 08-206—Filed August 15, 2008, 10:30 a.m., effective August 19, 2008, 6:00 a.m.]

Effective Date of Rule: August 19, 2008, 6:00 a.m.

Purpose: The purpose of this rule making is to provide for treaty Indian fishing opportunity in the Columbia while protecting salmon listed as threatened or endangered under the Endangered Species Act. 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 2005-2007 Interim Management Agreement For Upriver Chinook, Sockeye, Steelhead, Coho & White Sturgeon (May 11, 2005) (Doc. No. 2407); *Puget Sound Gillnetters Ass'n v. Moos*, 92 Wn.2d 939, 603 P.2d 819 (1979); 40 Stat. 515 (Columbia River compact).

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

Reasons for this Finding: Sets the first three weeks of commercial gillnet fishing for treaty tribes. Continues to allow the sale of fish harvested during Yakama Nation fisheries. Harvestable numbers of fish are available under ESA guidelines. 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 compacts on July 24 and August 13, 2008. Conforms state rules with tribal rules. There is insufficient time to promulgate permanent regulations.

New regulations for 2008 include fisheries that are described in the MOA between Washington state and Yakama Nation. Yakama Nation tribal members will be allowed to fish for subsistence purposes within a specific area of the Washington shoreline below Bonneville Dam when open for enrolled Yakama Nation members under lawfully enacted Yakama Nation tribal subsistence fisheries. Sales will be allowed when the open fishery is concurrent with either commercial gillnet openings or platform gear in Zone 6 (SMCRA 1F, 1G, 1H). Sales of fish caught in this fishery are consistent with mainstem Zone 6 (SMCRA 1F, 1G, 1H) allowable sales, with the exception of sturgeon (which may not be sold or kept for subsistence purposes).

The Yakama, Warm Springs, Umatilla, and Nez Perce Indian tribes have treaty fishing rights in the Columbia River and inherent sovereign authority to regulate their fisheries. Washington and Oregon also have some authority to regulate fishing by treaty Indians in the Columbia River, authority that the states exercise jointly under the congressionally ratified Columbia River compact. *Sohappy v. Smith*, 302 F. Supp. 899 (D. Or. 1969). The tribes and the states adopt parallel regulations for treaty Indian fisheries under the supervision of the federal courts. Some salmon and steelhead stocks in the Columbia River are listed as threatened or endangered under the federal Endangered Species Act.

Columbia River fisheries are monitored very closely to ensure consistency with court orders and Endangered Species Act guidelines. Because conditions change rapidly, the fisheries are managed almost exclusively by emergency rule. As required by court order, the Washington (WDFW) and Oregon (ODFW) departments of fish and wildlife convene public hearings and invite tribal participation when considering proposals for new emergency rules affecting treaty fishing

rights. *Sohappy*, 302 F. Supp. at 912. WDFW and ODFW then adopt regulations reflecting agreements reached. There is insufficient time to promulgate permanent rules.

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

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

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

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

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

Date Adopted: August 15, 2008.

Phil Anderson  
for Jeff Koenings  
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, and WAC 220-32-058, effective immediately until further notice, it is unlawful for a person to take or possess salmon, steelhead, shad, carp, walleye or sturgeon for commercial purposes in Columbia River Salmon Management Catch Reporting Areas (SMCRA) 1E, 1F, 1G, and 1H, (except as provided in the following subsections) and the Wind River, White Salmon River, Klickitat River, and Drano Lake, except that individuals possessing treaty fishing rights under the Yakima, Warm Springs, Umatilla, and Nez Perce treaties may fish for salmon, shad, carp, or sturgeon under the following provisions, pursuant to lawfully enacted tribal rules:

### **1. Mainstem Columbia River**

a) SEASON: 6:00 a.m. August 19 to 6:00 p.m. August 22, 2008.

6:00 a.m. August 26 to 6:00 p.m. August 29, 2008.

6:00 a.m. September 2 to 6:00 p.m. September 6, 2008

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

c) GEAR: 8-inch minimum mesh-size restriction on gill-nets.

### **2. Mainstem Columbia River**

a) SEASON: Immediately until further notice.

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

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

### **3. Columbia River Tributaries above Bonneville Dam**

a) SEASON: Immediately until further notice, 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, and have either commercial gillnet openings or allow platform gear in Zone 6. (SMCRA 1F, 1G, 1H).

b) AREA: White Salmon, and Klickitat rivers.

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

### **4. Mainstem Columbia River below Bonneville Dam**

a) SEASON: Immediately until further notice and only under the conditions in the Memo of Agreement (MOA) titled "2007 Memorandum of Agreement Between the Yakama Nation and Washington Department of Fish and Wildlife Regarding Tribal Fishing Below Bonneville Dam." and only for enrolled Yakama Nation members, and have either commercial gillnet openings or allow platform gear in Zone 6. (SMCRA 1F, 1G, 1H).

b) AREA: (SMCRA) 1E On the Washington shoreline from 600 feet below the fish ladder at the Bonneville Dam North shore powerhouse, downstream to Beacon Rock (bank fishing only).

c) GEAR: hoop nets, dip bag nets, and rod and reel with hook-and-line, consistent with Yakama Nation regulations.

5. SANCTUARIES: Spring Creek.

6. ALLOWABLE SALES: Chinook, coho, sockeye, steelhead, walleye, shad, and carp. Sturgeon may not be sold. Sturgeon between 42 inches and 60 inches in length may be retained in the Bonneville Pool (SMCRA 1F) for subsistence purposes only. Sturgeon between 4 feet and 5 feet in length may be retained in The Dalles and John Day pools (SMCRA 1G, 1H) for subsistence purposes only. EXCEPT Sturgeon below Bonneville Dam many NOT be retained for subsistence purposes and may NOT be sold.

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

8. Notwithstanding the provisions of WAC 220-32-058, the closed area at the mouth of:

a) **Hood River** are those waters along the Oregon side of the Columbia River, and they extend to mid-stream at right angles to the thread of the Columbia River between markers located approximately 0.85 miles downriver from the west bank at the end of the break wall at the west end of the port of Hood River, and 1/2-mile upriver from the east bank.

b) **Herman Creek** are those waters upstream from a line between deadline markers near the mouth. One marker is located on the east bank piling, and the other is located on the west bank to the north of the boat ramp.

c) **Deschutes River** are those waters of the Columbia River extending to midstream at right angles to the thread of the Columbia River between points 1/2-mile upstream from the eastern shoreline to one mile downstream from the western shoreline.

d) **Umatilla River** are those waters of the Columbia River extending to midstream at right angles to the thread of the Columbia River between points 1/2-mile upstream from the eastern shoreline to one mile downstream from the western shoreline.

e) **Big White Salmon River** are those waters of the Columbia River extending to midstream at right angles to the thread of the Columbia River between a marker located 1/2-mile downstream from the west bank, upstream to Light "35."

f) **Wind River** are those waters of the Columbia River extending to midstream at right angles to the thread of the Columbia River between markers located 1-1/4 miles downstream from the west bank and 1/2-mile upstream from the east bank.

g) **Klickitat River** are those waters of the Columbia River extending to midstream at right angles to the thread of the Columbia River between the downstream margin of Lyle Landing, downstream to a marker located near the railroad tunnel approximately 1/8-miles downstream from the west bank.

h) **Little White Salmon River** are those waters of the Columbia River extending to midstream at right angles to the thread of the Columbia River between Light "27," upstream to a marker located approximately 1/2-mile upstream from the eastern shoreline.

9. Notwithstanding the provisions of WAC 220-22-010, during the open periods described above:

a) **Area 1F** (Bonneville Pool) includes those waters of the Columbia River upstream from the Bridge of the Gods, and downstream from the west end of the 3 Mile Rapids located approximately 1.8 miles below the Dalles Dam.

b) **Area 1G** includes those waters of the Columbia River upstream from a line drawn between a deadline marker on the Oregon shore located approximately 3/4 miles above The Dalles Dam fishway exit, thence at a right angle to the thread of the river to a point in mid-river, then downstream to Light "1" on the Washington shore, and downstream from Preacher's Eddy Light below John Day Dam.

c) **Area 1H** includes those waters of the Columbia River upstream from a fishing boundary marker approximately 1/2-mile above the John Day River, Oregon, extending at a right angle across the thread of the river to a point in mid-river, then downstream to a fishing boundary marker on the Washington shore approximately opposite the mouth of the John Day River, and downstream from a line at a right angle across the thread of the river one mile downstream from McNary Dam.

**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. August 19, 2008:

WAC 220-32-05100Z	Columbia River salmon seasons above Bonneville Dam. (08-183)
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**WSR 08-17-057  
EMERGENCY RULES  
DEPARTMENT OF  
FISH AND WILDLIFE**

[Order 08-205—Filed August 15, 2008, 2:28 p.m., effective August 17, 2008, 2:00 p.m.]

Effective Date of Rule: August 17, 2008, 2:00 p.m.

Purpose: Amend personal use fishing rules.

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

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 harvestable quota of recreational salmon has been taken in Catch Record Card Area 1. 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: August 15, 2008.

Phil Anderson  
for Jeff Koenings  
Director

## NEW SECTION

**WAC 232-28-62000Q Coastal salmon seasons.** Notwithstanding the provisions of WAC 232-28-620, effective 2:00 p.m. August 17, 2008 until further notice, it is unlawful to fish for salmon in coastal waters except as provided for in this section, provided that unless otherwise amended, all permanent rules remain in effect:

(1) **Area 1:** Closed.

(2) **Areas 2, 2-1, and 2-2:**

(a) **Area 2:**

(i) Open until further notice: Open Sunday through Thursday of each week, daily limit 2 salmon, except release wild coho.

(b) **Area 2-1:**

(i) Open August 16 until further notice, daily limit 6 salmon, not more than three of which may be adult salmon, of which only 2 may be Chinook.

(c) **Area 2-2 west of the Buoy 13 line:** closed.

(d) Those waters within a line from the lighthouse 1 mile south of the south jetty to Buoy No. 2, then to Buoy No. 3, then to the tip of the north jetty, then to the exposed end of the south jetty, are closed until further notice.

**(3) Area 3:**

(a) Open until further notice: Open Tuesday through Saturday of each week, daily limit 2 salmon, except release wild coho.

**(4) Area 4:**

(a) Open until further notice, with the following area rules, limits, and species restrictions: Open Tuesday through Saturday of each week, daily limit 2 salmon, except release wild coho.

(i) Release Chinook east of the Bonilla-Tatoosh Line.

(ii) Release chum.

**REPEALER**

The following section of the Washington Administrative Code is repealed, effective 2:00 p.m. August 17, 2008:

WAC 232-28-62000P Coastal salmon seasons—  
2008 North of Falcon. (08-  
151)

**WSR 08-17-070**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**

[Order 08-202—Filed August 19, 2008, 9:12 a.m., effective August 19,  
2008, 9:12 a.m.]

Effective Date of Rule: Immediately.

Purpose: The purpose of this rule, WAC 220-52-04000Z, is to raise the price of crab pot buoy tags from \$.70 to \$.90 per tag. RCW 77.70.430 allows the department to charge a fee to holders of a Dungeness crab - Puget Sound fishery license in order to reimburse the department for the production of the tags and the administration of the buoy-tag program. Rising gas prices this year caused the vendor to increase the cost per tag to the department to \$.90. By charging license holders \$.90 per tag, the program costs will remain neutral.

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

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

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

Reasons for this Finding: The vendor sent its invoice to the department for crab-pot buoy tags on August 7, 2008. The invoice reflects an increase in cost from last year from \$.70 per tag to \$.90 per tag. The department needs to be able to charge license holders \$.90 per tag in order for the cost of the buoy-tag program to remain neutral. Otherwise, the department will suffer a significant financial loss.

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: August 18, 2008.

Phil Anderson  
for Jeff Koenings  
Director

**[NEW SECTION]**

**WAC 220-52-04000Z Commercial crab fishery— Lawful and unlawful gear, methods, and other unlawful acts.** Notwithstanding the provisions of WAC 220-52-040, effective immediately until further notice:

(1) **Net fishing boats shall not have crab aboard.** It is unlawful for any vessel geared or equipped with commercial net fishing gear to have aboard any quantity of crab while it is fishing with the net gear or when it has other food fish or shellfish aboard for commercial purposes.

(2) **Area must be open to commercial crabbing.** Unless otherwise provided, it is unlawful to set, maintain, or operate any baited or unbaited shellfish pots or ring nets for taking crabs for commercial purposes in any area or at any time when the location is not opened for taking crabs for commercial purposes by permanent rule or emergency rule of the department: Provided, That following the close of a commercial crab season, permission may be granted by the director or his or her designee on a case-by-case basis for crab fishers to recover shellfish pots that were irretrievable due to extreme weather conditions at the end of the lawful opening. Crab fishers must notify and apply to department enforcement for such permission within twenty-four hours prior to the close of season.

(3) **Crabs must be male and 6-1/4 inches.** It is unlawful for any person acting for commercial purposes to take, possess, deliver, or otherwise control:

(a) Any female Dungeness crabs; or

(b) Any male Dungeness crabs measuring less than 6-1/4 inches, caliper measurement, across the back immediately in front of the tips.

(4) **Each person and each Puget Sound license limited to 100 pots.** It is unlawful for any person to take or fish for crab for commercial purposes in the Puget Sound licensing district using, operating, or controlling any more than an aggregate total of 100 shellfish pots or ring nets. This limit shall apply to each license. However, this shall not preclude a person holding two Puget Sound crab licenses from designating and using the licenses from one vessel as authorized by RCW 77.65.130.

(5) **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) 10 pots in Marine Fish-Shellfish Management and Catch Reporting Area 25E.

(b) 10 pots in all waters of Marine Fish-Shellfish Management and Catch Reporting Area 25A south of a line projected true west from Travis Spit on Miller Peninsula.

(c) 20 pots in that portion of Marine Fish-Shellfish Management and Catch Reporting Area 25A west of a line projected from the new Dungeness Light to the mouth of Cooper Creek and east of a line projected from the new Dungeness Light to the outermost end of the abandoned dock at the Three Crabs Restaurant on the southern shore of Dungeness Bay.

(d) 10 pots in 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 I77 Rayonier Dock.

(6) **Groundline gear is unlawful.** No crab pot or ring net may be attached or connected to other crab pot or ring net by a common groundline or any other means that connects crab pots together.

(7) **Crab buoys and pots tagging requirements.**

(a) It is unlawful to place in the water, pull from the water, possess on the water, or transport on the water any crab buoy or crab pot without attached buoy and pot tags that meets the requirements of this subsection.

(b) Coastal crab pot tags: Each shellfish pot used in the coastal Dungeness crab fishery must bear a tag that identifies either the name of the vessel being used to operate the pot or the Dungeness crab fishery license number of the owner of the pot, and the telephone number of a contact person.

(c) Puget Sound crab pot tags: In Puget Sound, all crab pots must have a durable, nonbiodegradable tag securely attached to the pot and permanently and legibly marked with the license owner's name or license number, and telephone number. If the tag information is illegible, or if the tag is lost for any reason, the pot is not in compliance with law.

(d) Crab buoy tags: The department will issue crab pot buoy tags to the owner of each commercial crab fishery license upon payment of an annual buoy tag fee of ninety cents per crab pot buoy tag. Prior to setting gear, each Puget Sound crab license holder must purchase 100 tags, and each coastal crab fisher must purchase 300 or 500 tags, depending on the crab pot limit assigned to the license. Only department-issued crab buoy tags may be used, and each crab pot is required to have a buoy tag.

(e) Puget Sound replacement crab buoy tags: Additional tags to replace lost tags will only be issued to owners of Puget Sound commercial crab fishery licenses who obtain, complete, and sign a declaration under penalty of perjury in the presence of an authorized department employee. The declaration shall state the number of buoy tags lost, the location and date where lost gear or tags were last observed, and the presumed cause of the loss.

(f) Coastal replacement crab buoy tags: Coastal crab license holders with a 300 pot limit will be able to replace up to fifteen lost tags by January 15th, up to a total of thirty lost tags by February 15th, and up to a total of forty-five lost tags

after March 15th of each season. Coastal crab license holders with a 500 pot limit will be able to replace up to twenty-five lost tags by January 15th, up to a total of fifty lost tags by February 15th, and up to a total of seventy-five lost tags after March 15th of each season. In the case of extraordinary loss of crab pot gear, the department may, on a case-by-case basis, issue replacement tags in excess of the amount set out in this subsection. Replacement buoy tags for the coastal crab fishery will only be issued after a signed affidavit is received by the department.

(8) **No person can possess or use gear with other person's crab pot tag or crab buoy tag.** No person may possess, use, control, or operate any crab pot not bearing a tag identifying the pot as that person's, or any buoy not bearing tags issued by the department to that person, except that an alternate operator designated on a primary license may possess and operate crab buoys and crab pots bearing the tags of the license holder.

(9) **Cannot tamper with pot tags.** No person shall remove, damage, or otherwise tamper with crab buoy or pot tags except when lawfully applying or removing tags on the person's own buoys and pots.

(10) **Thirty-day period when it is unlawful to buy or land crab from ocean without crab vessel inspection.** It is unlawful for any fisher or wholesale dealer or buyer to land or purchase Dungeness crab taken from Grays Harbor, Willapa Bay, Columbia River, Washington coastal or adjacent waters of the Pacific Ocean during the first thirty days following the opening of a coastal crab season from any vessel which has not been issued a Washington crab vessel inspection certificate. The certificate will be issued to vessels made available for inspection in a Washington coastal port and properly licensed for commercial crab fishing if no Dungeness crabs are aboard. Inspections will be performed by authorized department personnel not earlier than twelve hours prior to the opening of the coastal crab season and during the following thirty-day period.

(11) **Grays Harbor pot limit of 200.** It is unlawful for any person to take or fish for crab for commercial purposes in Grays Harbor (catch area 60B) with more than 200 shellfish pots in the aggregate. It shall be unlawful for any group of persons using the same vessel to take or fish for crab for commercial purposes in Grays Harbor with more than 200 shellfish pots.

(12) **Coastal crab pot limit.**

(a) It is unlawful for a person to take or fish for Dungeness crab for commercial purposes in Grays Harbor, Willapa Bay, the Columbia River, or waters of the Pacific Ocean adjacent to the state of Washington unless a shellfish pot limit has been assigned to the Dungeness crab-coastal fishery license held by the person, or to the equivalent Oregon or California Dungeness crab fishery license held by the person.

(b) It is unlawful for a person to deploy or fish more shellfish pots than the number of shellfish pots assigned to the license held by that person, and it is unlawful to use any vessel other than the vessel designated on a license to operate or possess shellfish pots assigned to that license.

(c) It is unlawful for a person to take or fish for Dungeness crab or to deploy shellfish pots unless the person is in

possession of valid documentation issued by the department that specifies the shellfish pot limit assigned to the license.

**(13) Determination of coastal crab pot limits.**

(a) The number of shellfish pots assigned to a Washington Dungeness crab-coastal fishery license, or to an equivalent Oregon or California Dungeness crab fishery license will be based on documented landings of Dungeness crab taken from waters of the Pacific Ocean south of the United States/Canada border and west of the Bonilla-Tatoosh line, and from coastal estuaries in the states of Washington, Oregon and California. Documented landings may be evidenced only by valid Washington state shellfish receiving tickets, or equivalent valid documents from the states of Oregon and California, that show Dungeness crab were taken between December 1, 1996, and September 16, 1999. Such documents must have been received by the respective states no later than October 15, 1999.

(b) The following criteria shall be used to determine and assign a shellfish pot limit to a Dungeness crab-coastal fishery license, or to an equivalent Oregon or California Dungeness crab fishery license:

(i) The three "qualifying coastal Dungeness crab seasons" are from December 1, 1996, through September 15, 1997, from December 1, 1997, through September 15, 1998, and from December 1, 1998, through September 15, 1999. Of the three qualifying seasons, the one with the most poundage of Dungeness crab landed on a license shall determine the crab pot limit for that license. A crab pot limit of 300 shall be assigned to a license with landings that total from zero to 35,999 pounds and a crab pot limit of 500 shall be assigned to a license with landings that total 36,000 pounds or more.

(ii) Landings of Dungeness crab made in the states of Oregon or California on valid Dungeness crab fisheries licenses during a qualifying season may be used for purposes of assigning a shellfish pot limit to a Dungeness crab fishery license, provided that documentation of the landings is provided to the department by the Oregon Department of Fish and Wildlife and/or the California Department of Fish and Game. Landings of Dungeness crab made in Washington, Oregon, and California on valid Dungeness crab fishery licenses during a qualifying season may be combined for purposes of assigning a shellfish pot limit, provided that the same vessel was named on the licenses, and the same person held the licenses. A shellfish pot limit assigned as a result of combined landings is invalidated by any subsequent split in ownership of the licenses. No vessel named on a Dungeness crab fishery license shall be assigned more than one shellfish pot limit.

**(14) Appeals of coastal crab pot limits.** An appeal of a shellfish pot limit by a coastal commercial license holder shall be filed with the department on or before October 18, 2001. The shellfish pot limit assigned to a license by the department shall remain in effect until such time as the appeal process is concluded.

**(15) Coastal - Barging of crab pots by undesignated vessels.** It is lawful for a vessel not designated on a Dungeness crab-coastal fishery license to be used to deploy shellfish pot gear provided that:

(a) Such a vessel may not carry aboard more than 250 shellfish pots at any one time.

(b) Such a vessel may deploy shellfish pot gear only during the 64-hour period immediately preceding the season opening date and during the 48-hour period immediately following the season opening date.

(c) The lawful owner of the shellfish pot gear must be aboard the vessel when the gear is being deployed.

**(16) Coastal crab buoys - Registration and use of buoy brands and colors.**

(a) It is unlawful for any coastal Dungeness crab fishery license holder to fish for crab unless the license holder has registered the buoy brand and buoy color(s) to be used with the license. A license holder shall be allowed to register with the department only one, unique buoy brand and one buoy color scheme per license. Persons holding more than one license state shall register buoy color(s) for each license that are distinctly different. The buoy color(s) shall be shown in a color photograph.

(b) It is unlawful for a coastal Dungeness crab fishery license holder to fish for crab using any other buoy brand or color(s) than those registered with and assigned to the license by the department.

**Reviser's note:** The bracketed material preceding the section above was supplied by the code reviser's office.

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

**WSR 08-17-082**

**EMERGENCY RULES**

**DEPARTMENT OF**

**FISH AND WILDLIFE**

[Order 08-211—Filed August 19, 2008, 2:02 p.m., effective August 19, 2008, 2:02 p.m.]

Effective Date of Rule: Immediately.

Purpose: Amend commercial fishing rules.

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

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 2008 state/tribal shrimp harvest management plans for the Strait of Juan de Fuca and north Puget Sound require adoption of harvest seasons and the prohibition on nighttime fishing contained in this emergency rule. This emergency rule closes the pot fishery season for shrimp in Catch Areas 25A because the spot shrimp quota will be harvested in that area, and closes Catch Areas 23A-E, 23B and 25A to beam trawl fishing. 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: August 19, 2008.

Phil Anderson  
for Jeff Koenings  
Director

#### NEW SECTION

**WAC 220-52-05100E 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) All waters of Shrimp Management Areas 1B, 1C, 2E, 2W, 3 and 6 are open to the harvest of all shrimp species effective immediately, until further notice, except as provided for in this section:

(i) All waters of Catch Areas 23A-E, 23A-C, 23A-W and the Discovery Bay Shrimp District are closed.

(ii) All waters of Shrimp Management Areas 1B, 1C, 2E, 2W and Catch Areas 23B, 25A and 26D are closed to the harvest of spot shrimp.

(b) The shrimp accounting week is Monday through Sunday.

(c) Effective 12:01 a.m. August 25, 2008, until further notice, it is unlawful for the combined total harvest of spot shrimp by a fisher and/or the fisher's alternate operator to exceed 300 pounds in Catch Areas 23A-S/23D or Catch Area 23C.

(d) Effective immediately, until further notice, it is unlawful for the combined total harvest of spot shrimp by a fisher and/or the fisher's alternate operator to exceed 600 pounds per week, except that any fisher whose weekly shrimp harvest activity is exclusively limited to Marine Fish-Shellfish Catch and Reporting Area 29 shall not be subject to the weekly spot shrimp trip limit for that week. It is unlawful to fish for any shrimp while in possession, on board the fishing vessel, of any spot shrimp from any previous accounting week.

(e) It is unlawful to fish for shrimp for commercial purposes in Puget Sound using shellfish pot gear in more than one Marine Fish-Shellfish Management and Catch Reporting Area per day. Fishers may move all of their shellfish pot gear from one Marine Fish-Shellfish Management and Catch Reporting Area to another Marine Fish-Shellfish Management and Catch Reporting Area if a harvest report is made

before the shellfish pot gear is moved. The harvest activity report must be made consistent with the provisions of WAC 220-52-075 and must also include the following additional information:

(i) The number of pots being moved to a new area, and the Marine Fish-Shellfish Management and Catch Reporting Area that the pots are being moved to.

(f) It is unlawful to set or pull shellfish pots in one Marine Fish-Shellfish Management and Catch Reporting Area while in possession of shrimp harvested from another Marine Fish-Shellfish Management and Catch Reporting Area, except shellfish pots may be set in a new fishing area subsequent to making a report as indicated in Section 1(e) above.

(2) Shrimp beam trawl gear:

(a) Shrimp Management Area 3 is open immediately, until further notice, except as provided for in this section.

(i) Catch Areas 23A-E, 23B, 23D, 25A and the Discovery Bay shrimp district are closed

(b) That portion of Catch Areas 21A and 22A within Shrimp Management Area 1B is open immediately, until further notice.

(c) Catch Area 20A is open immediately, until further notice.

(3) It is unlawful to set or pull shrimp beam trawl gear from one hour after official sunset to one hour before official sunrise.

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

#### REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 220-52-05100D Puget Sound shrimp pot and beam trawl fishery. (08-203)

**WSR 08-17-088  
EMERGENCY RULES  
DEPARTMENT OF  
FISH AND WILDLIFE**

[Order 08-207—Filed August 19, 2008, 3:45 p.m., effective August 19, 2008, 3:45 p.m.]

Effective Date of Rule: Immediately.

Purpose: Amend hunting rules.

Citation of Existing Rules Affected by this Order: Amending WAC 232-28-273.

Statutory Authority for Adoption: RCW 77.12.047, 77.12.020, 77.12.570, 77.12.210.

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

Reasons for this Finding: To reduce recreational conflicts between hikers and hunters on Mount Baker.



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 1, Repealed 0.

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

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

Date Adopted: August 19, 2008.

Phil Anderson  
for Jeff Koenings  
Director

**NEW SECTION**

**WAC 232-28-27300C 2006-2008 Moose, bighorn sheep, and mountain goat seasons and permit quotas** Notwithstanding the provisions of WAC 232-28-273, effective immediately, change the permit area boundary description for "Goat Unit 4-7 Avalanche Gorge" to limit goat hunting to areas with low recreation use by hikers. The new permit area boundary description should read, "Goat Unit 4-7 Avalanche Gorge: Permit Area: Whatcom County within the following described boundary: Beginning at the intersection of the Baker Lake Road (USFS Road 394) and Park Creek; then northwest up Park Creek to Park Glacier; then continue westerly up Park Glacier to the summit of Mount Baker; then northerly down Mazama Glacier to Bar Creek; then northeast down Bar Creek to the confluence of Wells Creek; then southeast up Wells Creek to west tributary of Wells Creek at waypoint 592795 E 5409530 N (NAD27); then south along west tributary to Coleman Pinnacle; then south along ridge to waypoint 592390 E 5407450 N; then east to western most tributary of Swift Creek at waypoint 592775 E 5407440 N; then east to the confluence with Swift Creek at waypoint 595690 E 5407970 N; then south and southeast down Swift Creek to the Baker Lake Road (USFS Road 394); then west along the Baker Lake Road (USFS Road 394) to Park Creek and the point of beginning."

**WSR 08-17-091  
EMERGENCY RULES  
DEPARTMENT OF  
FISH AND WILDLIFE**

[Order 08-208—Filed August 19, 2008, 3:47 p.m., effective August 19, 2008, 3:47 p.m.]

Effective Date of Rule: Immediately.  
Purpose: Amend hunting rules.

Citation of Existing Rules Affected by this Order: Amending WAC 232-28-295.

Statutory Authority for Adoption: RCW 77.12.047, 77.12.020, 77.12.570, 77.12.210.

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

Reasons for this Finding: When developing landowner hunting permit season recommendations, the department intends to have season dates that are mutually agreeable with the landowner and that benefit the public. The current rule does not meet this intent. Since the time requirements for notice and opportunity to comment on adoption of a permanent rule are too long for a mutually agreeable season date to be established, an emergency change to WAC 232-28-295 is needed. The amendment will serve the greater good of the landowner, and the hunting public.

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 1, Repealed 0.

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

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

Date Adopted: August 19, 2008.

Phil Anderson  
for Jeff Koenings  
Director

**NEW SECTION**

**WAC 232-28-29500B Landowner hunting permits** Notwithstanding the provisions of WAC 232-28-295, effective immediately, change the access season dates for the 2008 Teanaway Landowner Hunting Permits and the 2008 Teanaway Special Hunting Permits to the following:

**2008 Teanaway Landowner Hunting Permits**

Hunt Name	Quota	Access Season	Special Restrictions	Boundary Description
Teanaway Ranch	1	Oct. 1 - Jan. 31	Any Bull	Teanaway Ranch

**2008 Teanaway Special Hunting Permits**

Hunt Name	Quota	Access Season	Special Restrictions	Boundary Description
Teanaway Ranch	1	Oct. 1 - Jan. 31	Any Bull	Teanaway Ranch

**WSR 08-17-105**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**SOCIAL AND HEALTH SERVICES**

(Health and Recovery Services Administration)

(Mental Health Division)

[Filed August 20, 2008, 9:24 a.m., effective August 23, 2008]

Effective Date of Rule: August 23, 2008.

Purpose: The mental health division (MHD) is codifying its policy on how it administers community mental health services in the event of a nonparticipating regional support network.

Citation of Existing Rules Affected by this Order: Amending WAC 388-865-0105, 388-865-0410, 388-865-0484, 388-865-0511, and 388-865-0526.

Statutory Authority for Adoption: RCW 71.05.560, 71.24.035, 71.34.380, and 74.08.090.

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 Pierce County Regional Support Network (RSN) no longer administers medicaid and other department-funded mental health services as of January 1, 2008. This required MHD to assume the duties of the RSN in order to continue to provide access for Pierce County consumers to mental health services. This rule-making action continues the emergency rule that is currently in effect under WSR 08-10-017 while MHD completes the permanent rule-making process. MHD had intended to adopt this rule as part of a complete revision of chapter 388-865 WAC, but that project will not be completed until 2009. A CR-101 was filed under WSR 08-01-107 and MHD anticipates filing a CR-102 in 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 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 1, Amended 5, 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 5, Repealed 0.

Date Adopted: August 11, 2008.

Stephanie E. Schiller  
 Rules Coordinator

AMENDATORY SECTION (Amending WSR 06-17-114, filed 8/18/06, effective 9/18/06)

**WAC 388-865-0105 What the mental health division does and how it is organized.** (1) The department of social and health services is designated by the legislature as the state mental health authority, and has designated the mental health division to administer the state mental health program.

(2) Local services are administered by regional support networks or by the mental health division.

(3) Telephone numbers for the mental health division or regional support networks are located in the local telephone directory and can also be obtained by calling the mental health division at the telephone number in subsection (4) of this section.

(4) To request an organizational chart, contact the mental health division at 1-888-713-6010 or (360) 902-8070, or write to the Mental Health Division Director, P.O. Box 45320, Olympia, WA 98504.

~~((3) Local services are administered by regional support networks (RSN), whose telephone number is located in the local telephone directory and can also be obtained by calling the mental health division at the above telephone number.))~~

NEW SECTION

**WAC 388-865-0106 When local services are administered by the mental health division.** (1) The mental health division administers local services if:

(a) A regional support network fails to meet state minimum standards or refuses to exercise responsibilities under RCW 71.24.045; or

(b) The DSHS secretary assumes the duties assigned to a nonparticipating regional support network under RCW 71.24.035(16).

(2) Within available resources as defined in RCW 71.24.025(2), consumers residing within the boundaries of a nonparticipating regional support network may receive services from any community support service provider that is contracted with the department under the provisions of chapter 388-502 WAC and licensed by or certified by the mental health division;

(3) When the DSHS secretary assumes the duties assigned to a nonparticipating regional support network, the following standards and services continue to apply:

(a) WAC 388-865-0217, psychiatric indigent inpatient program;

(b) WAC 388-865-0222, advisory board;

(c) WAC 388-865-0225, resource management;

(d) WAC 388-865-0229, inpatient services;

(e) WAC 388-865-0230, community support services;

(f) WAC 388-865-0235, residential and housing services;

(g) WAC 388-865-0240, consumer employment services;

(h) WAC 388-865-0245, administration of ITA;

(i) WAC 388-865-0250, ombuds services; and

(j) WAC 388-865-0284, standards for contractors and subcontractors.

AMENDATORY SECTION (Amending WSR 01-12-047, filed 5/31/01, effective 7/1/01)

**WAC 388-865-0410 Consumer rights.** (1) The provider must document that consumers, prospective consumers, or legally responsible others are informed of consumer rights at admission to community support services in a manner that is understandable to the individual. Consumer rights must be written in alternative format for consumers who are blind or deaf, and must also be translated to the most commonly used languages in the service area consistent with WA 388-865-0260(3);

(2) The provider must post a written statement of consumer rights in public areas, with a copy available to consumers on request. Providers of telephone only services (e.g., crisis lines) must post the statement of consumer rights in a location visible to staff and volunteers during working hours;

(3) The provider must develop a statement of consumer rights that incorporates the following statement or a variation approved by the mental health division: "You have the right to:

- (a) Be treated with respect, dignity and privacy;
- (b) Develop a plan of care and services which meets your unique needs;
- (c) The services of a certified language or sign language interpreter and written materials and alternate format to accommodate disability consistent with Title VI of the Civil Rights Act;
- (d) Refuse any proposed treatment, consistent with the requirements in chapters 71.05 and 71.34 RCW;
- (e) Receive care which does not discriminate against you, and is sensitive to your gender, race, national origin, language, age, disability, and sexual orientation;
- (f) Be free of any sexual exploitation or harassment;
- (g) Review your clinical record and be given an opportunity to make amendments or corrections;
- (h) Receive an explanation of all medications prescribed, including expected effect and possible side effects;
- (i) Confidentiality, as described in chapters 70.02, 71.05, and 71.34 RCW and regulations;
- (j) All research concerning consumers whose cost of care is publicly funded must be done in accordance with all applicable laws, including DSHS rules on the protection of human research subjects as specified in chapter 388-04 WAC;
- (k) Make an advance directive, stating your choices and preferences regarding your physical and mental health treatment if you are unable to make informed decisions;
- (l) Appeal any denial, termination, suspension, or reduction of services and to continue to receive services at least until your appeal is heard by a fair hearing judge;
- (m) If you are Medicaid eligible, receive all services which are medically necessary to meet your care needs. In the event that there is a disagreement, you have the right to a second opinion from:
  - (i) A provider within the regional support network about what services are medically necessary; or
  - (ii) For consumers not enrolled in a prepaid health plan, a provider under contract with the mental health division.
- (n) Lodge a complaint with the ombuds, regional support network, or provider if you believe your rights have been violated. If you lodge a complaint or grievance, you must be free

of any act of retaliation. The ombuds may, at your request, assist you in filing a grievance. The ombuds' phone number is: \_\_\_\_\_."

(o) Ask for an administrative hearing if you believe that any rule in this chapter was incorrectly applied in your case.

**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.

AMENDATORY SECTION (Amending WSR 01-12-047, filed 5/31/01, effective 7/1/01)

**WAC 388-865-0484 Process to certify providers of involuntary services.** In order to be certified to provide services to consumers on an involuntary basis, the provider must comply with the following process:

(1) Be licensed as a community support provider consistent with this section or licensed as a community hospital by the department of health;

(2) Complete and submit an application for certification to the regional support network or the mental health division if the DSHS secretary has assumed the duties assigned to the nonparticipating regional support network;

(3) The regional support network selects providers for certification and makes a request to the mental health division for certification;

(4) The mental health division conducts an on-site review to examine agency policies and procedures, personnel records, clinical records, financial documents, and any other information that may be necessary to confirm compliance with minimum standards of this section;

(5) The mental health division grants certification based on compliance with the minimum standards of this section and chapter 71.05 RCW;

(6) The certificate may be renewed annually ~~((at the request of))~~ if:

(a) Requested by the regional support network or those providers contracted with the mental health division directly; and

(b) The provider(~~'s continued compliance~~) continues to comply with the minimum standards of this section;

(7) The procedures to suspend or revoke a certificate are the same as outlined WAC 388-865-0468;

(8) The appeal process to contest a decision of the mental health decision is the same as outlined in WAC 388-865-0482.

**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.

AMENDATORY SECTION (Amending WSR 04-07-014, filed 3/4/04, effective 4/4/04)

**WAC 388-865-0511 Evaluation and treatment facility certification.** To obtain and maintain certification to provide inpatient evaluation and treatment services under chapter 71.05 and 71.34 RCW, a facility must meet the following requirements:

(1) Be licensed by the department of health as:

(a) A hospital as defined in chapter 70.41 RCW;

(b) A psychiatric hospital as defined in chapter 246-322 WAC;

(c) A mental health inpatient evaluation and treatment facility consistent with chapter 246-337 WAC; or

(d) A mental health child long-term inpatient treatment facility consistent with chapter 246-337 WAC.

(2) Be approved by the regional support network, or the mental health division ~~((in the case of mental health))~~. Child long-term inpatient treatment facilities~~((; and))~~ can only be approved by the mental health division.

(3) Successfully complete a provisional and annual on-site review by the mental health division to determine facility compliance with the minimum standards of this section and chapters 71.05 and 71.34 RCW.

AMENDATORY SECTION (Amending WSR 04-07-014, filed 3/4/04, effective 4/4/04)

**WAC 388-865-0526 Single bed certification.** At the discretion of the mental health division, an exception may be granted to allow treatment to an adult on a seventy-two hour detention or fourteen-day commitment in a facility that is not certified under WAC 388-865-0500; or for a maximum of thirty days to allow a community facility to provide treatment to an adult on a ninety- or one hundred eighty-day inpatient involuntary commitment order. For involuntarily detained or committed children, the exception may be granted to allow treatment in a facility not certified under WAC 388-865-0500 until the child's discharge from that setting to the community, or until they transfer to a bed in a children's long-term inpatient program (CLIP).

(1) The regional support network or its designee must submit a written request for a single bed certification to the mental health division prior to the commencement of the order. In the case of a child, the facility must submit the written request directly to the mental health division. If the DSHS secretary has assumed the duties assigned to a nonparticipating regional support network, a single bed certification may be requested by a mental health division designee contracted to provide inpatient authorization or designated crisis response services.

(2) The facility receiving the single bed certification must meet all requirements of this section unless specifically waived by the mental health division.

(3) The request for single bed certification must describe why the consumer meets at least one of the following criteria:

(a) The consumer requires services that are not available at a facility certified under this chapter or a state psychiatric hospital; or

(b) The consumer is expected to be ready for discharge from inpatient services within the next thirty days and being at a community facility would facilitate continuity of care, consistent with the consumer's individual treatment needs.

(4) The mental health division director or the director's designee makes the decision and gives written notification to the requesting ~~((regional support network))~~ entity in the form of a single bed certification. The single bed certification must not contradict a specific provision of federal law or state statute.

(5) The mental health division may make site visits at any time to verify that the terms of the single bed certification are being met. Failure to comply with any term of this exception may result in corrective action. If the mental health division determines that the violation places consumers in imminent jeopardy, immediate revocation of this exception can occur.

(6) Neither consumers nor facilities have fair hearing rights as defined under chapter 388-02 WAC regarding single bed certification decisions by mental health division staff.