

WSR 09-18-004**EMERGENCY RULES****DEPARTMENT OF
FISH AND WILDLIFE**

[Order 09-173—Filed August 20, 2009, 9:09 a.m., effective August 20, 2009, 9:09 a.m.]

Effective Date of Rule: Immediately.

Purpose: The purpose of WAC 220-52-04000G, is to raise the price of crab pot buoy tags from \$.90 to \$1.25 per tag. RCW 77.70.430 allows the department to charge a fee to holders of a Dungeness crab - Puget Sound or coastal fishery license, in order to reimburse the department for the production of the tags and the administration of the buoy-tag program.

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: Despite raising the price of buoy tags last year from \$.70 per tag to \$.90 per tag, revenue was not enough to recover more than \$50,000 in buoy-tag program expenses. Buoy tags are made of petroleum byproducts, and the cost of oil has increased significantly. Staff, shipping, and handling costs are approximately \$50,242 each year. The department needs to increase the price of buoy tags from \$.90 per tag to \$1.25 per tag this year to meet budget expectations for the 2009-11 biennium. Department representatives met with members of the commercial crabbing industry on August 14, 2009, and received their approval for the price increase. There is insufficient time to adopt permanent rules.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 1, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: August 20, 2009.

Philip Anderson
Director

NEW SECTION

WAC 220-52-04000G 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) 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 one dollar and twenty-five cents (\$1.25) 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.

WSR 09-18-006**EMERGENCY RULES****DEPARTMENT OF
SOCIAL AND HEALTH SERVICES**

(Economic Services Administration)

[Filed August 20, 2009, 10:23 a.m., effective August 22, 2009]

Effective Date of Rule: August 22, 2009.

Purpose: The department is proposing to extend the emergency adoption of WAC 388-466-0120 and 388-466-0130 in order to allow special immigrants from Afghanistan to continue to be eligible for refugee cash assistance (RCA) and for refugee medical assistance (RMA) for up to eight months as allowed by federal law. The department perusing [pursuing] permanent adoption of these rules. The preproposal statement of inquiry was filed under WSR 09-11-103 and the department is currently in process of filing proposed rule making CR-102. This emergency rule extends the previous emergency filed as WSR 09-10-011 filed on April 24, 2009.

Citation of Existing Rules Affected by this Order: Amending WAC 388-466-0120 and 388-466-0130.

Statutory Authority for Adoption: RCW 74.04.050, 74.04.055, 74.04.057, 74.08A.320, and 74.08.090.

Other Authority: P.L. No. 11-08 Omnibus Appropriations Act of 2009, Office of Refugee Resettlement State Letter #09-17.

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

Reasons for this Finding: To extend the duration of eligibility of special immigrants from Afghanistan for public benefits from six to eight months from the date of entry into the United States or date of adjustment to special immigrant status, as required by the Office of Refugee Resettlement Letter #09-17 (under the Omnibus Appropriations Act of 2009).

It is essential to continue extension of emergency rule while department is pursuing normal rule adoption.

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

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

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

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

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 2, Repealed 0.

Date Adopted: August 17, 2009.

Don Goldsby, Manager
Rules and Policies
Assistance Unit

AMENDATORY SECTION (Amending WSR 08-14-116, filed 6/30/08, effective 8/1/08)

WAC 388-466-0120 Refugee cash assistance (RCA).

(1) Who can apply for refugee cash assistance (RCA)?

Anyone can apply to the department of social and health services (DSHS) for refugee cash assistance and have their eligibility determined within thirty days.

(2) How do I know if I qualify for RCA?

You may be eligible for RCA if you meet all of the following conditions:

(a) You have resided in the United States for less than eight months;

(b) You meet the immigration status requirements of WAC 388-466-0005;

(c) You meet the income and resource requirements under chapters 388-450 and 388-470 WAC;

(d) You meet the work and training requirements of WAC 388-466-0150; and

(e) You provide the name of the voluntary agency (VOLAG) which helped bring you to this country.

(3) What are the other reasons for not being eligible for RCA?

You may not get RCA if you:

(a) Are eligible for temporary assistance for needy families (TANF) or Supplemental Security Income (SSI); or

(b) Have been denied TANF due to your refusal to meet TANF eligibility requirements; or

(c) Are employable and have voluntarily quit or refused to accept a bona fide offer of employment within thirty consecutive days immediately prior to your application for RCA; or

(d) Are a full-time student in a college or university.

(4) If I am an asylee, what date will be used as an entry date?

If you are an asylee, your entry date will be the date that your asylum status is granted. For example: You entered the

United States on December 1, 1999 as a tourist, then applied for asylum on April 1, 2000, interviewed with the asylum office on July 1, 2000 and were granted asylum on September 1, 2000. Your entry date is September 1, 2000. On September 1, 2000, you may be eligible for refugee cash assistance.

(5) If I am a victim of human trafficking, what kind of documentation do I need to provide to be eligible for RCA?

You are eligible for RCA to the same extent as a refugee if you are:

(a) An adult victim, eighteen years of age or older, you provide the original certification letter from the U.S. Department of Health and Human Services (DHHS), and you meet eligibility requirements in subsections (2)(c) and (d) of this section. You do not have to provide any other documentation of your immigration status. Your entry date will be the date on your certification letter;

(b) A child victim under the age of eighteen, in which case you do not need to be certified. DHHS issues a special letter for children. Children also have to meet income eligibility requirement;

(c) A family member of a certified victim of human trafficking, you have a T-2, T-3, T-4, or T-5 Visa (Derivative T-Visas), and you meet the eligibility requirements in subsections (2)(c) and (d) of this section.

(6) Does getting a one time cash grant from a voluntary agency (VOLAG) affect my eligibility for RCA?

No. In determining your eligibility for RCA DSHS does not count a onetime resettlement cash grant provided to you by your VOLAG.

(7) What is the effective date of my eligibility for RCA?

The date DSHS has sufficient information to make eligibility decision is the date your RCA begins.

(8) When does my RCA end?

(a) Your RCA ends on the last day of the eighth month starting with the month of your arrival to the United States. Count the eight months from the first day of the month of your entry into the United States. For example, if you entered the United States on May 28, 2000, May is your first month and December 2000 is your last month of RCA.

~~(b) ((If you are from Afghanistan and were granted special immigrant status under section 101 (a)(27) of the Immigration and Nationality Act (INA), your RCA ends on the last day of the sixth month starting from the month of your arrival to the United States or from the month you received special immigrant status if this occurred after your entry.~~

~~(c))~~ If you get a job, your income will affect your RCA based on the TANF rules (chapter 388-450 WAC). If you earn more than is allowed by WAC 388-478-0035, you are no longer eligible for RCA. Your medical coverage may continue for up to eight months from your month of arrival in the United States (WAC 388-466-0130).

(9) Are there other reasons why RCA may end?

Your RCA also ends if:

(a) You move out of Washington state;

(b) Your unearned income and/or resources go over the maximum limit (WAC 388-466-0140); or

(c) You, without good cause, refuse to meet refugee employment and training requirements (WAC 388-466-0150).

(10) Will my spouse be eligible for RCA, if he/she arrives in the U.S. after me?

When your spouse arrives in the United States, DSHS determines his/her eligibility for RCA and/or other income assistance programs.

(a) Your spouse may be eligible for up to eight months of RCA based on his/her date of arrival into the United States. ~~((Spouses from Afghanistan who have been granted special immigrant status under section 101 (a)(27) of the INA, are eligible for RCA for up to six months from the date of their entry into the United States or from the month they received special immigrant status if this occurred after their U.S. entry.))~~

(b) If you live together you and your spouse are part of the same assistance unit and your spouse's eligibility for RCA is determined based on your and your spouse's combined income and resources (WAC 388-466-0140).

(11) Can I get additional money in an emergency?

If you have an emergency and need a cash payment to get or keep your housing or utilities, you may apply for the DSHS program called additional requirements for emergent needs (AREN). To receive AREN, you must meet the requirements in WAC 388-436-0002.

(12) What can I do if I disagree with a decision or action that has been taken by DSHS on my case?

If you disagree with a decision or action taken on your case by the department, you have the right to request a review of your case or a fair hearing (WAC 388-02-0090). Your request must be made within ninety days of the decision or action.

AMENDATORY SECTION (Amending WSR 08-14-116, filed 6/30/08, effective 8/1/08)

WAC 388-466-0130 Refugee medical assistance (RMA). (1) Who can apply for refugee medical assistance?

Anyone can apply for refugee medical assistance (RMA) and have eligibility determined by the department of social and health services (DSHS).

(2) Who is eligible for refugee medical assistance?

(a) You are eligible for RMA if you meet all of the following conditions:

(i) Immigration status requirements of WAC 388-466-0005;

(ii) Income and resource requirements of WAC 388-466-0140;

(iii) Monthly income standards up to two hundred percent of the federal poverty level (FPL). Spenddown is available for applicants whose income exceeds two hundred percent of FPL (see WAC 388-519-0110); and

(iv) Provide the name of the voluntary agency (VOLAG) which helped bring you to this country, so that DSHS can promptly notify the agency (or sponsor) about your application for RMA.

(b) You are eligible for RMA if you:

(i) Receive refugee cash assistance (RCA) and are not eligible for medicaid or children's healthcare programs as described in WAC 388-505-0210; or

(ii) Choose not to apply for or receive RCA and are not eligible for medicaid or children's healthcare programs as described in WAC 388-505-0210, but still meet RMA eligibility requirements.

(3) Who is not eligible for refugee medical assistance?

You are not eligible to receive RMA if you are:

(a) Already eligible for medicaid or children's healthcare programs as described in WAC 388-505-0210;

(b) A full-time student in an institution of higher education unless the educational activity is part of a department-approved individual responsibility plan (IRP);

(c) A nonrefugee spouse of a refugee.

(4) If I have already received a cash assistance grant from voluntary agency (VOLAG), will it affect my eligibility for RMA?

No. A cash assistance payment provided to you by your VOLAG is not counted in determining eligibility for RMA.

(5) If I get a job after I have applied but before I have been approved for RMA, will my new income be counted in determining my eligibility?

No. Your RMA eligibility is determined on the basis of your income and resources on the date of the application.

(6) Will my sponsor's income and resources be considered in determining my eligibility for RMA?

Your sponsor's income and resources are not considered in determining your eligibility for RMA unless your sponsor is a member of your assistance unit.

(7) How do I find out if I am eligible for RMA?

DSHS will send you a letter in both English and your primary language informing you about your eligibility. DSHS will also let you know in writing every time there are any changes or actions taken on your case.

(8) Will RMA cover my medical expenses that occurred after I arrived in the U.S. but before I applied for RMA?

You may be eligible for RMA coverage of your medical expenses for three months prior to the first day of the month of your application. Eligibility determination will be made according to medicaid rules.

(9) If I am a victim of human trafficking, what kind of documentation do I need to provide to be eligible for RMA?

You are eligible for RMA to the same extent as a refugee, if you are:

(a) An adult victim, eighteen years of age or older, and you provide the original certification letter from the U.S. Department of Health and Human Services (DHHS). You also have to meet eligibility requirements in subsections (2)(a) and (b) of this section. You do not have to provide any other documentation of your immigration status. Your entry date will be the date on your certification letter.

(b) A child victim under the age of eighteen, in which case you do not need to be certified. DHHS issues a special letter for children. Children also have to meet income eligibility requirements.

(c) A family member of a certified victim of human trafficking, you have a T-2, T-3, T-4, or T-5 Visa (Derivative T-

Visas), and you meet eligibility requirements in subsections (2)(a) and (b) of this section.

(10) If I am an asylee, what date will be used as an entry date?

If you are an asylee, your entry date will be the date that your asylum status is granted. For example, if you entered the United States on December 1, 1999 as a tourist, then applied for asylum on April 1, 2000, interviewed with the asylum office on July 1, 2000 and granted asylum on September 1, 2000, your date of entry is September 1, 2000. On September 1, 2000 you may be eligible for refugee medical assistance.

(11) When does my RMA end?

(a) Your refugee medical assistance will end on the last day of the eighth month from the month of your entry into the United States. Start counting the eight months with the first day of the month of your entry into the U.S. For example, if you entered the U.S. on May 28, 2000, your last month is December 2000.

~~((b) If you are from Afghanistan and were granted Special Immigrant status under section 101 (a)(27) of the Immigration and Nationality Act (INA), your RMA ends on the last day of the sixth month starting with the month of your arrival to the United States or from the month you received Special Immigrant status if this occurred after your U.S. entry.))~~

(12) What happens if my earned income goes above the income standards?

(a) If you are getting RMA, your medical eligibility will not be affected by the amount of your earnings;

(b) If you were getting medicaid and it was terminated because of your earnings, we will transfer you to RMA for the rest of your RMA eligibility period. You will not need to apply.

(13) Will my spouse also be eligible for RMA, if he/she arrives into the U.S. after me?

When your spouse arrives in the U.S., we will determine his/her eligibility for medicaid and other medical programs.

(a) Your spouse may be eligible for RMA; if so, he/she would have a maximum of eight months of RMA starting on the first day of the month of his/her arrival.

~~((b) Spouses from Afghanistan who have been granted special immigrant status under section 101 (a)(27) of the Immigration and Nationality Act (INA), are eligible for RMA for a maximum of six months from the date of entry into the United States or from the month they received special immigrant status if this occurred after their U.S. entry.))~~

(14) What do I do if I disagree with a decision or action that has been taken by DSHS on my case?

If you disagree with the decision or action taken on your case by department you have the right to request a review of your case or request a fair hearing (see WAC 388-02-0090). Your request must be made within ninety days of the decision or action).

(15) What happens to my medical coverage after my eligibility period is over?

We will determine your eligibility for other medical programs. You may have to complete an application for another program.

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

WSR 09-18-014

EMERGENCY RULES

DEPARTMENT OF

FISH AND WILDLIFE

[Order 09-154—Filed August 21, 2009, 10:22 a.m., effective August 21, 2009, 10:22 a.m.]

Effective Date of Rule: Immediately.

Purpose: The purpose of the emergency rule is to amend hunting rules by removing Game Management Unit (GMU) 330 West Bar from the general elk hunting season, as described in WAC 232-28-352.

Citation of Existing Rules Affected by this Order: Repealing WAC 232-28-35200F; and amending WAC 232-28-352.

Statutory Authority for Adoption: RCW 77.12.047, 77.12.020, 77.12.570, 77.12.210, 77.12.150, 77.12.240.

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: GMU 330 was inadvertently included in the general season; this was not the intention of the agency. In the past when this GMU was open for general season elk hunting, groups of elk have crossed the Columbia River in response to hunting activity. Elk crossing the river occupy private land that is developed for housing, agriculture, and golf courses. When this happens, the situation deteriorates into a wildlife nuisance and agricultural damage scenario. In addition, allowing elk on the "wrong" side of the river creates an attractive nuisance and public hunting is a less appropriate tool in this area than it is in other damage situations. To protect public welfare, this error in the hunting regulations needs to be resolved and there is insufficient time to create rules to correct this error outside the emergency rule process.

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 18, 2009.

Philip Anderson
Interim Director

NEW SECTION

WAC 232-28-35200F 2009-2011 Elk general seasons and definitions. Notwithstanding the provisions of WAC 232-28-352, effective immediately until November 9, 2009, remove Game Management Unit 330 West Bar from the general elk hunting season.

REPEALER

The following section of the Washington Administrative Code is repealed effective 11:59 p.m. November 8, 2009.

WAC 232-28-35200F 2009-2011 Elk general seasons and definitions.

WSR 09-18-015
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 09-155—Filed August 21, 2009, 10:24 a.m., effective September 1, 2009, 12:01 a.m.]

Effective Date of Rule: September 1, 2009, 12:01 a.m.

Purpose: To amend permit and licensing requirements for hunting pheasant in western Washington.

Citation of Existing Rules Affected by this Order: Repealing WAC 232-28-34200C; and amending WAC 232-28-342.

Statutory Authority for Adoption: RCW 77.12.047, 77.12.020, 77.12.570, 77.12.210, 77.12.150, 77.12.240.

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 2009 Washington state legislature passed new legislation, effective July 26, 2009, that changed the licensing requirements for western Washington pheasant hunting. The time between the effective date of the new legislation and the beginning of the western Washington pheasant hunting season was insufficient to complete the permanent rule-making process.

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 Mak-

ing: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: August 18, 2009.

Philip Anderson
Interim Director

NEW SECTION

WAC 232-28-34200C 2009-10, 2010-11, 2011-12 Small game seasons. Notwithstanding the provisions of WAC 232-28-342, effective immediately through December 15, 2009, the following changes replace the previous permit requirements for hunting western Washington pheasant:

(1) A Western Washington Pheasant Permit is required to hunt pheasant in Western Washington.

There are three permit options available:

(a) Full Season Option;

(b) Youth Option; and

(c) 3-Day Option.

(2) For the 2009 season, a western Washington pheasant permit OR the combination of a small game license and a 2009 western Washington pheasant punch card are considered a full season permit.

(3) Only a western Washington pheasant permit is required to train dogs on wild pheasants in western Washington.

SPECIAL RESTRICTION: Western Washington pheasant hunters must choose to hunt on either odd-numbered or even-numbered weekend days from 8:00 - 10:00 a.m. at all units of Lake Terrell, Tennant Lake, Snoqualmie, Skagit, Skookumchuck, and Scatter Creek Wildlife Areas, all hunting sites on Whidbey Island, and at the Dungeness Recreation Area. Also, these hunters must indicate their choice on the Western Washington Pheasant Permit by choosing "odd" or "even." Hunters who select the 3-day option, hunters 65 years of age or older, and youth hunters may hunt during either weekend day morning. Youth hunters must be accompanied by an adult at least 18 years old who must have an appropriately marked pheasant permit if hunting.

REPEALER

The following section of the Washington Administrative Code is repealed effective 11:59 p.m. December 15, 2009.

WAC 232-28-34200C 2009-10, 2010-11, 2011-12
Small game seasons.

WSR 09-18-019
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 09-178—Filed August 21, 2009, 4:25 p.m., effective August 21, 2009, 4:25 p.m.]

Effective Date of Rule: Immediately.

Purpose: Amend commercial fishing rules.

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

Statutory Authority for Adoption: RCW 77.12.047 and 77.04.020.

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

Reasons for this Finding: This emergency rule is needed to add vessels to the limited participation salmon net fisheries to harvest available surplus of pink salmon. There is insufficient time to adopt permanent rules.

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

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

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

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

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

Date Adopted: August 21, 2009.

Philip Anderson
Director

NEW SECTION

WAC 220-47-31100A Puget Sound purse seine fishery. Notwithstanding the provisions of WAC 220-47-311 and WAC 220-47-500, it is lawful for the vessels "New Oregon" and "DC Cole", to participate in the Purse seine fishery in Salmon Management and Catch Reporting Area 10 on August 25, 27 and 31, 2009.

REPEALER

The following section of the Washington Administrative Code is repealed effective September 1, 2009:

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

NEW SECTION

WAC 220-47-41100F Puget Sound gill net fishery. Notwithstanding the provisions of WAC 220-47-411 and WAC 220-47-500, it is lawful for the vessel "Demon Spawn", to participate in the Gill net fishery in Salmon Management and Catch Reporting Area 10 on August 24, 25, and 31, 2009.

REPEALER

The following section of the Washington Administrative Code is repealed effective September 1, 2009:

WAC 220-47-41100F Puget Sound gill net fishery.

WSR 09-18-020 EMERGENCY RULES DEPARTMENT OF FISH AND WILDLIFE

[Order 09-176—Filed August 21, 2009, 4:25 p.m., effective August 21, 2009, 4:25 p.m.]

Effective Date of Rule: Immediately.

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

Citation of Existing Rules Affected by this Order: Repealing WAC 220-33-01000I and 220-33-01000J; and amending WAC 220-33-010.

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

Other Authority: *United States v. Oregon*, Civil No. 68-513-KI (D. Or.), Order Adopting 2008-2017 *United States v. Oregon Management Agreement* (Aug. 12, 2008) (Doc. No. 2546); *Northwest Gillnetters Ass'n v. Sandison*, 95 Wn.2d 638, 628 P.2d 800 (1981); Washington fish and wildlife commission policies concerning Columbia River fisheries; 40 Stat. 515 (Columbia River compact).

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

Reasons for this Finding: Rescinds the August 23-24 fishing period. Chinook landings have been higher than expected. The seasons are consistent with the 2008-2017 interim management agreement, the 2009 non-Indian salmon allocation agreement and the 2006-2009 sturgeon accord. Salmon and sturgeon are available for harvest during fall season fisheries. The regulation is consistent with compact action of August 21, 2009. 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 2008-2017 *United States v. Oregon Management Agreement* (Aug. 12, 2008) (Doc. No. 2546).

Some Columbia River Basin salmon and steelhead stocks are listed as threatened or endangered under the federal ESA. On May 5, 2008, the National Marine Fisheries Service issued a biological opinion under 16 U.S.C. § 1536 that allows for some incidental take of these species in treaty and nontreaty Columbia River fisheries governed by the 2008-2017 *U.S. v. Oregon Management Agreement*. The Washington and Oregon fish and wildlife commissions have developed policies to guide the implementation of such biological opinions in the states' regulation of nontreaty fisheries.

Columbia River nontreaty fisheries are monitored very closely to ensure compliance with federal court orders, the ESA, and commission guidelines. Because conditions change rapidly, the fisheries are managed almost exclusively by emergency rule. Representatives from the Washington (WDFW) and Oregon (ODFW) departments of fish and wildlife convene public hearings and take public testimony when considering proposals for new emergency rules. WDFW and ODFW then adopt regulations reflecting agreements reached. There is insufficient time to adopt permanent rules.

Number of Sections Adopted in Order to Comply with Federal Statute: New 1, Amended 0, Repealed 2; Federal Rules or Standards: New 1, Amended 0, Repealed 2; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

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

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

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

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

Date Adopted: August 21, 2009.

Philip Anderson
Director

NEW SECTION

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

1. Mainstem Columbia River

a. SEASON: 8:00 p.m. August 25 to 6:00 a.m. August 26, 2009

8:00 p.m. August 27 to 6:00 a.m. August 28, 2009

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

e. ALLOWABLE SALES: Salmon and white sturgeon (43-54 inch fork length). A maximum of nine (9) 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.

2. Blind Slough/Knappa Slough Select Area.

a. SEASON: 7 p.m. August 25 to 7 a.m. August 26, 2009
7 p.m. August 26 to 7 a.m. August 27, 2009

And Monday, Tuesday, Wednesday, and Thursday nights from August 31 through October 30, 2009.

Open hours are 7 PM - 7 AM from August 25 through September 18 and 6 PM - 8 AM thereafter.

b. AREA: Blind Slough and Knappa Slough. An area closure of an approximately 100-foot radius at the mouth of Big Creek is defined by markers. Concurrent jurisdiction waters include all areas in Knappa Slough and downstream of the Railroad Bridge in Blind Slough.

c. GEAR: 9 3/4-inch maximum mesh size. 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. 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. ALLOWABLE SALES: Salmon and white sturgeon (43-54 inch fork length). A maximum of three white sturgeon may be possessed or sold by each vessel participating each calendar week (Sunday through Saturday). The white sturgeon possession and sales limit includes Select Area fisheries only.

3. Tongue Point/South Channel Select Area.

a. SEASON: Monday, Tuesday, Wednesday, and Thursday nights from August 31 through October 30, 2009. Open 7 PM - 7 AM from August 31 - September 18 and 4 PM - 8 AM thereafter.

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

c. GEAR: 6-inch maximum mesh. Gillnet. Monofilament gear is allowed. In the Tongue Point area: Net length maximum of 250 fathoms. 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. South Channel area: Net length maximum of 100 fathoms. No weight restriction on lead line. Use of additional weights or anchors attached directly to the lead line is allowed.

d. ALLOWABLE SALES: Salmon and white sturgeon (43-54 inch fork length). A maximum of three white sturgeon may be possessed or sold by each vessel participating each calendar week (Sunday through Saturday). The white sturgeon possession and sales limit includes Select Area fisheries only.

4. Deep River Select Area.

a. SEASON: Monday, Tuesday, Wednesday, Thursday, and Friday nights from August 31 through October 31, 2009. Open 7 PM - 9 AM from August 31 through September 19 and 4 PM - 9 AM thereafter

b. AREA: The Deep River Select Area. Concurrent jurisdiction 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.

d. ALLOWABLE SALES: Salmon and white sturgeon (43-54 inch fork length). A maximum of three white sturgeon may be possessed or sold by each vessel participating each calendar week (Sunday through Saturday). The white sturgeon possession and sales limit includes Select Area fisheries only.

5. **Quick Report:** 24-hour quick reporting required for Washington wholesale dealers, pursuant to WAC 220-69-240. When quick reporting is required, Columbia River reports must be submitted within 24 hours of the closure of each fishing period. This Quick report requirement applies to all seasons described above (Columbia River and Select Areas).

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 220-33-01000I Columbia River season below Bonneville. (09-176)

The following section of the Washington Administrative Code is repealed effective November 1, 2009:

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

WSR 09-18-037 EMERGENCY RULES DEPARTMENT OF FISH AND WILDLIFE

[Order 09-180—Filed August 25, 2009, 4:06 p.m., effective August 25, 2009, 4:06 p.m.]

Effective Date of Rule: Immediately.

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

Citation of Existing Rules Affected by this Order: Repealing WAC 220-33-01000J and 220-33-01000K; and amending WAC 220-33-010.

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

Other Authority: *United States v. Oregon*, Civil No. 68-513-KI (D. Or.), Order Adopting 2008-2017 *United States v. Oregon Management Agreement* (Aug. 12, 2008) (Doc. No. 2546); *Northwest Gillnetters Ass'n v. Sandison*, 95 Wn.2d 638, 628 P.2d 800 (1981); Washington fish and wildlife commission policies concerning Columbia River fisheries; 40 Stat. 515 (Columbia River compact).

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

Reasons for this Finding: Reduces the area for the final two late August fishing periods. Chinook landings have been higher than expected, and the stock composition includes an increased proportion of lower river hatchery (LRH) stock. Moving the area upstream of the lower river tributaries will greatly reduce the risk of additional LRH encounters. Impacts to upper-river bright stock remain within expectations. Reduces the weekly landing limit of sturgeon in the mainstem. The seasons are consistent with the 2008-2017 interim management agreement, the 2009 non-Indian salmon allocation agreement and the 2006-2009 sturgeon accord. Salmon and sturgeon are available for harvest during fall season fisheries. The regulation is consistent with compact action of August 24, 2009. 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 2008-2017 *United States v. Oregon Management Agreement* (Aug. 12, 2008) (Doc. No. 2546).

Some Columbia River Basin salmon and steelhead stocks are listed as threatened or endangered under the federal ESA. On May 5, 2008, the National Marine Fisheries Service issued a biological opinion under 16 U.S.C. § 1536 that allows for some incidental take of these species in treaty and nontreaty Columbia River fisheries governed by the 2008-2017 *U.S. v. Oregon Management Agreement*. The Washington and Oregon fish and wildlife commissions have developed policies to guide the implementation of such biological opinions in the states' regulation of nontreaty fisheries.

Columbia River nontreaty fisheries are monitored very closely to ensure compliance with federal court orders, the ESA, and commission guidelines. Because conditions change rapidly, the fisheries are managed almost exclusively by emergency rule. Representatives from the Washington (WDFW) and Oregon (ODFW) departments of fish and wildlife convene public hearings and take public testimony when considering proposals for new emergency rules. WDFW and ODFW then adopt regulations reflecting agreements reached. There is insufficient time to adopt permanent rules.

Number of Sections Adopted in Order to Comply with Federal Statute: New 1, Amended 0, Repealed 2; Federal Rules or Standards: New 1, Amended 0, Repealed 2; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

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

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

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

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

Date Adopted: August 25, 2009.

Philip Anderson
Director

NEW SECTION

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

1. Mainstem Columbia River

a. SEASON: 8:00 p.m. August 25 to 6:00 a.m. August 26, 2009

8:00 p.m. August 27 to 6:00 a.m. August 28, 2009

b. AREA: SMCRA 1E (Zone 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: No river sanctuaries applicable

e. ALLOWABLE SALES: Salmon and white sturgeon (43-54 inch fork length). 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 to mainstem fisheries and Select Area 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.

2. Blind Slough/Knappa Slough Select Area.

a. SEASON: 7 p.m. August 25 to 7 a.m. August 26, 2009
7 p.m. August 26 to 7 a.m. August 27, 2009

And Monday, Tuesday, Wednesday, and Thursday nights from August 31 through October 30, 2009.

Open hours are 7 PM - 7 AM from August 25 through September 18 and 6 PM - 8 AM thereafter.

b. AREA: Blind Slough and Knappa Slough. An area closure of an approximately 100-foot radius at the mouth of Big Creek is defined by markers. Concurrent jurisdiction waters include all areas in Knappa Slough and downstream of the Railroad Bridge in Blind Slough.

c. GEAR: 9 3/4-inch maximum mesh size. 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. 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. ALLOWABLE SALES: Salmon and white sturgeon (43-54 inch fork length). A maximum of three white sturgeon may be possessed or sold by each vessel participating each calendar week (Sunday through Saturday). The sturgeon possession/sales limit applies to mainstem fisheries and Select Area fisheries.

3. Tongue Point/South Channel Select Area.

a. SEASON: Monday, Tuesday, Wednesday, and Thursday nights from August 31 through October 30, 2009. Open 7 PM - 7 AM from August 31 - September 18 and 4 PM - 8 AM thereafter.

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

c. GEAR: 6-inch maximum mesh. Gillnet. Monofilament gear is allowed. In the Tongue Point area: Net length maximum of 250 fathoms. 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. South Channel area: Net length maximum of 100 fathoms. No weight restriction on lead line.

Use of additional weights or anchors attached directly to the lead line is allowed.

d. ALLOWABLE SALES: Salmon and white sturgeon (43-54 inch fork length). A maximum of three white sturgeon may be possessed or sold by each vessel participating each calendar week (Sunday through Saturday). The sturgeon possession/sales limit applies to mainstem fisheries and Select Area fisheries

4. Deep River Select Area.

a. SEASON: Monday, Tuesday, Wednesday, Thursday, and Friday nights from August 31 through October 31, 2009. Open 7 PM - 9 AM from August 31 through September 19 and 4 PM - 9 AM thereafter

b. AREA: The Deep River Select Area. Concurrent jurisdiction 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.

d. ALLOWABLE SALES: Salmon and white sturgeon (43-54 inch fork length). A maximum of three white sturgeon may be possessed or sold by each vessel participating each calendar week (Sunday through Saturday). The sturgeon possession/sales limit applies to mainstem fisheries and Select Area fisheries

5. Quick Report: 24-hour quick reporting required for Washington wholesale dealers, pursuant to WAC 220-69-240. When quick reporting is required, Columbia River reports must be submitted within 24 hours of the closure of each fishing period. This Quick report requirement applies to all seasons described above (Columbia River and Select Areas).

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 220-33-01000J Columbia River season below Bonneville. (09-176)

The following section of the Washington Administrative Code is repealed effective November 1, 2009:

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

**WSR 09-18-038
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE**

[Order 09-179—Filed August 25, 2009, 4:08 p.m., effective August 25, 2009, 4:08 p.m.]

Effective Date of Rule: Immediately.
Purpose: Amend commercial fishing rules.

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

Statutory Authority for Adoption: RCW 77.12.047 and 77.04.020.

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

Reasons for this Finding: The 2009 state/tribal shrimp harvest management plans for Puget Sound require adoption of harvest seasons contained in this emergency rule. This emergency rule closes the pot fishery season in Catch Areas 23A-S, 23C and 23D because the spot shrimp quotas there have been harvested, and opens the pot fishery season in Shrimp Management Area 1B and Catch Areas 23A-C, 23A-E and 23B for 60 hours with catch limits to harvest the relatively small amount of quota remaining in those areas. In addition, the weekly spot shrimp limits have been altered in several catch areas to reduce catch rates and help prevent overharvest of the quotas. There is insufficient time to adopt permanent rules.

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

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

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

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

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

Date Adopted: August 25, 2009.

Philip Anderson
Director

NEW SECTION

WAC 220-52-05100X 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 1A, 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, except as provided for in this section:

a. Effective 6:00 a.m. August 31, 2009, until 6:00 p.m. September 2, 2009, Catch Areas 23A-E and 23A-C are open to the harvest of all shrimp species.

(ii) Effective immediately, until further notice, 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, except as provided for in this section:

a. Effective 6:00 a.m. August 31, 2009, until 6:00 p.m. September 2, 2009, Shrimp Management Area 1B and Catch Area 23B open to the harvest of all shrimp species

(iii) Effective 11:59 p.m. August 30, 2009, until further notice, all waters of Catch Areas 23A-S, 23C and 23D are closed to the harvest of spot shrimp.

(iv) Effective immediately, until further notice all waters of Shrimp Management Area 1A are closed to the harvest of all shrimp species, except that those waters of Shrimp Management Area 1A south of line projected at 48°31.5' N latitude are open to the harvest of all species except spot shrimp.

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

(c) Effective 6:00 a.m. August 31, 2009, until 6:00 p.m. September 2, 2009, it is unlawful for the total harvest of spot shrimp by a fisher and/or the fisher's alternate operator to exceed 136 pounds per week in Shrimp Management Area 1B, or to exceed 123 pounds per week in Catch Area 23A-C, or to exceed 163 pounds per week in Catch Area 23A-E, or to exceed 122 pounds per week in Catch Area 23B.

(d) Effective immediately, until 11:59 p.m. August 30, 2009, it is unlawful for the total harvest of spot shrimp by a fisher and/or the fisher's alternate operator to exceed 450 pounds per week in Catch Areas 23A-S/23D, or to exceed 150 lbs per week in Catch Area 23C.

(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. 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 pull shellfish pots for commercial purposes 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

(ii) 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(f) above.

(2) Shrimp beam trawl gear:

(a) Shrimp Management Area (SMA) 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 SMA 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.

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

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

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 220-52-05100W Puget Sound shrimp pot and beam trawl fishery—Season. (09-174)

WSR 09-18-039

EMERGENCY RULES

DEPARTMENT OF

FISH AND WILDLIFE

[Order 09-182—Filed August 25, 2009, 4:24 p.m., effective August 26, 2009, 5:00 a.m.]

Effective Date of Rule: August 26, 2009, 5:00 a.m.

Purpose: Amend commercial fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-47-50100M.

Statutory Authority for Adoption: RCW 77.12.047 and 77.04.020.

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

Reasons for this Finding: This regulation provides for Pacific Salmon Commission authorized fisheries in Areas 7 and 7A. These emergency rules are necessary to initiate fisheries targeting a harvestable surplus of pink salmon available. There is insufficient time to adopt permanent rules.

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

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

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

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

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

Date Adopted: August 25, 2009.

Philip Anderson
Director

NEW SECTION

WAC 220-47-50100M Puget Sound all-citizen commercial salmon fishery—Open periods. (1) Notwithstanding the provisions of Chapter 220-47 WAC, it is unlawful to take, fish for, or possess salmon taken with reef net gear for commercial purposes in Puget Sound, except in the following designated Puget Sound Salmon Management and Catch Reporting Areas, during the periods provided for in each respective area. Unless otherwise amended, all permanent rules remain in effect:

AREA	TIME	DATE(S)
7, 7A	5 AM - 9 PM Daily	8/26 through 8/28

(a) It is unlawful to retain wild coho, wild Chinook, all chum and sockeye.

"Quick Reporting Fisheries":

All fisheries opened under this section, and any fishery opening under authority of the Fraser Panel for sockeye or pink salmon in Puget Sound Salmon Management and Catch Reporting Areas (WAC 220-22-030), are designated as "Quick Reporting Required" per WAC 220-47-001.

REPEALER

The following section of the Washington Administrative Code is repealed effective 9:01 p.m. August 28, 2009:

WAC 220-47-50100M	Puget Sound all-citizen commercial salmon fishery—Open periods.
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**WSR 09-18-041
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE**

[Order 09-177—Filed August 26, 2009, 11:54 a.m., effective August 26, 2009, 11:54 a.m.]

Effective Date of Rule: Immediately.

Purpose: Amend personal use fishing rules.

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

Statutory Authority for Adoption: RCW 77.12.047 and 77.04.020.

Under RCW 34.05.350 the agency for good cause finds that immediate adoption, amendment, or repeal of a rule is

necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.

Reasons for this Finding: These lakes are scheduled for rehabilitation utilizing rotenone. There is insufficient time to adopt permanent rules.

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

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

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

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

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

Date Adopted: August 26, 2009.

Philip Anderson
Director

NEW SECTION

WAC 232-28-61900A Washington game fish—Freshwater exceptions to statewide rules. Notwithstanding the provisions of WAC 232-28-619:

(1) **Beda Lake (Grant Co.)** Effective immediately through September 13, 2009, a person may fish in Beda Lake. Size and daily limit for game fish: none. Statewide gear rules are not in effect. Fishing from a floating device equipped with a motor allowed. Effective September 14, 2009, until further notice - closed to fishing.

(2) **Brookies Lake (Grant Co.)** Effective immediately through September 13, 2009, a person may fish in Brookies Lake. Size and daily limit for game fish: none. Statewide gear rules are not in effect. Fishing from a floating device equipped with a motor allowed. Effective September 14, 2009, until further notice - closed to fishing.

(3) **Desert Wildlife Area Ponds (Grant Co.)** Effective immediately through September 13, 2009, a person may fish in Desert Wildlife Area Ponds. Size and daily limit for game fish: none. Effective September 14, 2009, until further notice - closed to fishing.

(4) **Dune Lake (Grant Co.)** Effective immediately through September 13, 2009, a person may fish in Dune Lake. Size and daily limit for game fish: none. Effective September 14, 2009, until further notice - closed to fishing.

(5) **Harris Lake (Grant Co.)** Effective immediately through September 13, 2009, a person may fish in Harris Lake. Size and daily limit for game fish: none. Effective September 14, 2009, until further notice - closed to fishing.

(6) **Sedge Lake (Grant Co.)** Effective immediately through September 13, 2009, a person may fish in Sedge

Lake. Size and daily limit for game fish: none. Effective September 14, 2009, until further notice - closed to fishing.

(7) **Tern Lake (Grant Co.)** Effective immediately through September 13, 2009, a person may fish in Tern Lake. Size and daily limit for game fish: none. Effective September 14, 2009, until further notice - closed to fishing.

(8) **Fishtrap Lake (Lincoln and Spokane Co.)** Effective immediately through October 11, 2009, a person may fish in Fishtrap Lake. Size and daily limit for game fish: none. Effective October 12, 2009, until further notice - closed to fishing.

(9) **Buck Lake (Okanogan Co.)** Effective immediately through October 25, 2009, a person may fish in Buck Lake. Size and daily limit for game fish: none. Effective October 26, 2009, until further notice - closed to fishing.

(10) **Hog (Canyon) Lake (Spokane Co.)** Effective immediately through October 11, 2009, a person may fish in Hog (Canyon) Lake. Size and daily limit for game fish: none. Effective October 12, 2009, until further notice - closed to fishing.

(11) **Hog Canyon Creek (Spokane Co.)** Effective immediately through October 11, 2009, a person may fish in Hog Canyon Creek. Size and daily limit for game fish: none. Effective October 12, 2009, until further notice - closed to fishing.

(12) **West Medical Lake (Spokane Co.)** Effective immediately through October 25, 2009, a person may fish in West Medical Lake. Size and daily limit for game fish: none. Effective October 26, 2009, until further notice - closed to fishing.

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 26, 2009.

Lori Preuss
for Philip Anderson
Director

NEW SECTION

WAC 220-47-50100N Puget Sound all-citizen commercial salmon fishery—Open periods. Notwithstanding the provisions of Chapter 220-47 WAC, effective immediately until further notice, it is unlawful to take, fish for, or possess salmon taken for commercial purposes in Puget Sound Salmon Management and Catch Reporting Areas except in accordance with the open periods, mesh size, areas, species restrictions, notification, and landing requirements set forth in this section, provided that unless otherwise amended, all permanent rules remain in effect:

Areas 7 and 7A:

(1) **Purse Seines** - Open to purse seine gear according to the times, dates, and conditions as prescribed and listed here:

Area	Time	Date
7	5:00 a.m. - 9:00 p.m.	8/27
7A	3:00 p.m. - 9:00 p.m.	8/27

(a) It is unlawful to retain Chinook, sockeye, coho, and chum salmon.

(b) Purse seine fishers must also use a recovery box in compliance with WAC 220-47-301 (7)(a) through (f).

(c) It is unlawful to bring salmon aboard a vessel unless all salmon captured in the seine net are removed from the seine net using a brailer or dip net meeting the specifications in WAC 220-47-325, prior to the seine net being removed from the water. All salmon must be immediately sorted, and those required to be released must be placed in an operating recovery box or released into the water before the next haul may be brought on the deck. However, small numbers of fish may be brought on board the vessel by pulling the net in without mechanical or hydraulic assistance.

(d) It is unlawful to fish for salmon with purse seine gear in Areas 7 and 7A unless the vessel operator has attended a "Fish Friendly" best fishing practices workshop and is in possession of a department issued certification card.

(2) **Gill Nets** – Open to gill net gear with 5 inch minimum and 5 1/2 inch maximum mesh size according to the times, dates, and conditions as prescribed and listed here:

WSR 09-18-044

EMERGENCY RULES

DEPARTMENT OF

FISH AND WILDLIFE

[Order 09-184—Filed August 26, 2009, 3:44 p.m., effective August 27, 2009, 5:00 a.m.]

Effective Date of Rule: August 27, 2009, 5:00 a.m.

Purpose: Amend commercial fishing rules.

Citation of Existing Rules Affected by this Order:
Repealing WAC 220-47-50100N.

Statutory Authority for Adoption: RCW 77.12.047 and 77.04.020.

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

Reasons for this Finding: This regulation provides for Pacific Salmon Commission authorized fisheries in Areas 7 and 7A. There is insufficient time to adopt permanent rules.

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

Area	Time	Date
7	8:00 a.m. - midnight	8/27
7A	3:00 p.m. - midnight	8/27

(a) It is unlawful to retain sockeye salmon; and those salmon required to be released must be done so immediately.

(b) It is unlawful to fish for salmon with gill net gear in Areas 7 and 7A unless the vessel operator has attended a "Fish Friendly" best fishing practices workshop and is in possession of a department issued certification card.

"Quick Reporting Fisheries":

All fisheries opened under this section, and any fishery opening under authority of the Fraser Panel for sockeye or pink salmon in Puget Sound Salmon Management and Catch Reporting Areas (WAC 220-22-030) are designated as "Quick Reporting Required" per WAC 220-47-001.

REPEALER

The following section of the Washington Administrative Code is repealed effective August 28, 2009:

WAC 220-47-50100N Puget Sound all-citizen commercial salmon fishery—
Open periods.

**WSR 09-18-045
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE**

[Order 09-157—Filed August 26, 2009, 3:45 p.m., effective September 1, 2009, 12:01 a.m.]

Effective Date of Rule: September 1, 2009, 12:01 a.m.
Purpose: Amend personal use fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 232-28-62000U; and amending WAC 232-28-619 [232-28-620].

Statutory Authority for Adoption: RCW 77.12.047 and 77.04.020.

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

Reasons for this Finding: The Area 1 coho subarea quota is expected to run out as of August 31. There is insufficient time to adopt permanent rules.

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

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

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

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

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

Date Adopted: August 26, 2009.

Lori Preuss
for Philip Anderson
Director

NEW SECTION

WAC 232-28-62000V Coastal salmon seasons. Notwithstanding the provisions of WAC 232-28-620, effective 12:01 a.m. September 1, 2009, 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 to salmon fishing

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

(a) Area 2:

(i) Open until further notice: daily limit 2 salmon, plus 1 additional pink, except release wild coho.

(b) Area 2-1:

(i) Open August 1 through August 15: daily limit 6 salmon, not more than two of which may be adult salmon.

(iv) 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. Release chum.

(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 August 1 until further notice.

(3) **Area 3:**

(a) Open until further notice: daily limit 2 salmon, plus 2 additional pink, except release wild coho.

(4) **Area 4:**

(a) Open until further notice: daily limit 2 salmon, plus 2 additional pink, except release wild coho.

(i) Beginning August 1, release Chinook east of the Bonilla-Tatoosh Line.

(ii) Beginning August 1, release chum.

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 September 1, 2009:

WAC 232-28-62000U Coastal salmon seasons—
2009 North of Falcon. (09-157)

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

WSR 09-18-047
EMERGENCY RULES
FOREST PRACTICES BOARD

[Filed August 27, 2009, 8:49 a.m., effective August 27, 2009, 8:49 a.m.]

Effective Date of Rule: Immediately.

Purpose: This rule affects northern spotted owl habitat conservation. The forest practices board readopted an emergency rule to establish a temporary process (from January 1, 2009, to December 31, 2009) in which a three-person spotted owl conservation advisory group will evaluate certain northern spotted owl site centers to determine whether they need be maintained while the forest practices board completes its evaluation of rules affecting the northern spotted owl. Previous emergency rules with this same language have been in effect since January 1, 2009, while the board concurrently conducts permanent rule making.

Citation of Existing Rules Affected by this Order: Amending WAC 222-16-010 and 222-16-080.

Statutory Authority for Adoption: RCW 76.09.040.

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 board is working toward a long-term strategy for spotted owl conservation. The creation of the interim spotted owl advisory group is to ensure there is a thorough analysis prior to any decision regarding maintenance of spotted owl site centers, i.e., forest lands currently designated as spotted owl habitat.

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 2, Repealed 0.

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

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 2, Repealed 0.

Date Adopted: August 12, 2009.

Peter Goldmark
Chair

AMENDATORY SECTION (Amending WSR 08-17-092, filed 8/19/08, effective 9/19/08)

WAC 222-16-010 *General definitions. Unless otherwise required by context, as used in these rules:

"Act" means the Forest Practices Act, chapter 76.09 RCW.

"Affected Indian tribe" means any federally recognized Indian tribe that requests in writing from the depart-

ment information on forest practices applications and notification filed on specified areas.

"Alluvial fan" see "sensitive sites" definition.

"Appeals board" means the forest practices appeals board established in the act.

"Aquatic resources" means water quality, fish, the Columbia torrent salamander (*Rhyacotriton kezeri*), the Cascade torrent salamander (*Rhyacotriton cascadae*), the Olympic torrent salamander (*Rhyacotriton olympian*), the Dunn's salamander (*Plethodon dunni*), the Van Dyke's salamander (*Plethodon vandyke*), the tailed frog (*Ascaphus truei*) and their respective habitats.

"Area of resource sensitivity" means areas identified in accordance with WAC 222-22-050 (2)(d) or 222-22-060 (2).

"Bankfull depth" means the average vertical distance between the channel bed and the estimated water surface elevation required to completely fill the channel to a point above which water would enter the flood plain or intersect a terrace or hillslope. In cases where multiple channels exist, the bankfull depth is the average depth of all channels along the cross-section. (See board manual section 2.)

"Bankfull width" means:

(a) For streams - the measurement of the lateral extent of the water surface elevation perpendicular to the channel at bankfull depth. In cases where multiple channels exist, bankfull width is the sum of the individual channel widths along the cross-section (see board manual section 2).

(b) For lakes, ponds, and impoundments - line of mean high water.

(c) For tidal water - line of mean high tide.

(d) For periodically inundated areas of associated wetlands - line of periodic inundation, which will be found by examining the edge of inundation to ascertain where the presence and action of waters are so common and usual, and so long continued in all ordinary years, as to mark upon the soil a character distinct from that of the abutting upland.

"Basal area" means the area in square feet of the cross section of a tree bole measured at 4 1/2 feet above the ground.

"Bedrock hollows" (colluvium-filled bedrock hollows, or hollows; also referred to as zero-order basins, swales, or bedrock depressions) means landforms that are commonly spoon-shaped areas of convergent topography within unchannelled valleys on hillslopes. (See board manual section 16 for identification criteria.)

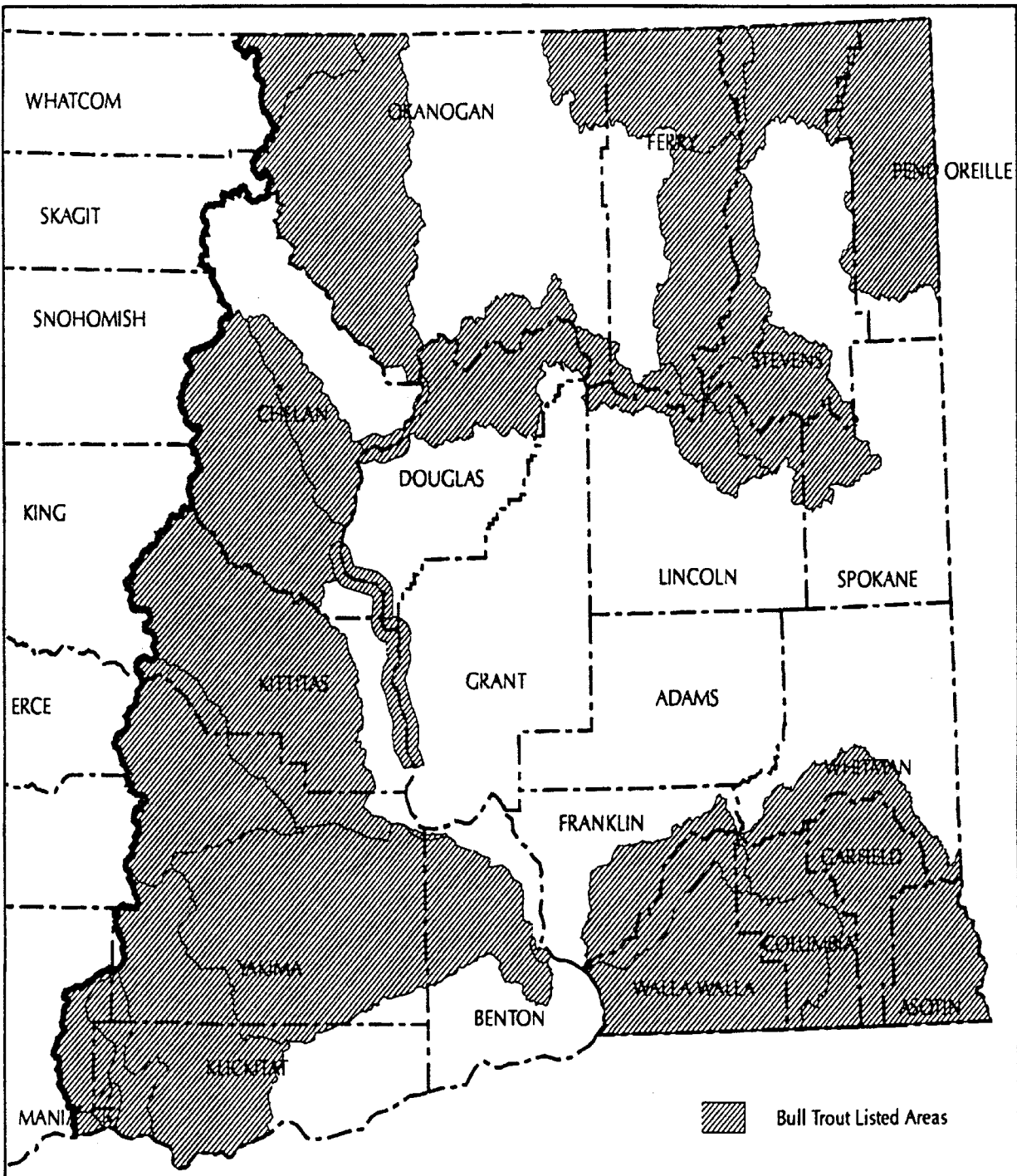
"Board" means the forest practices board established by the act.

"Bog" means wetlands which have the following characteristics: Hydric organic soils (peat and/or muck) typically 16 inches or more in depth (except over bedrock or hardpan); and vegetation such as sphagnum moss, Labrador tea, bog laurel, bog rosemary, sundews, and sedges; bogs may have an overstory of spruce, western hemlock, lodgepole pine, western red cedar, western white pine, Oregon crabapple, or quaking aspen, and may be associated with open water. This includes nutrient-poor fens. (See board manual section 8.)

"Borrow pit" means an excavation site outside the limits of construction to provide material necessary to that construction, such as fill material for the embankments.

"Bull trout habitat overlay" means those portions of Eastern Washington streams containing bull trout habitat as identified on the department of fish and wildlife's bull trout map. Prior to the development of a bull trout field protocol and the habitat-based predictive model, the "bull trout habitat overlay" map may be modified to allow for locally-based corrections using current data, field knowledge, and best professional judgment. A landowner may meet with the departments of natural resources, fish and wildlife and, in consultation with affected tribes and federal biologists, determine whether certain stream reaches have habitat conditions that are unsuitable for supporting bull trout. If such a determination is mutually agreed upon, documentation submitted to the department will result in the applicable stream reaches no longer being included within the definition of bull trout habitat overlay. Conversely, if suitable bull trout habitat is discovered outside the current mapped range, those waters will be included within the definition of "bull trout habitat overlay" by a similar process.

Bull Trout Overlay Map



"Channel migration zone (CMZ)" means the area where the active channel of a stream is prone to move and this results in a potential near-term loss of riparian function and associated habitat adjacent to the stream, except as modified by a permanent levee or dike. For this purpose, near-term means the time scale required to grow a mature forest. (See board manual section 2 for descriptions and illustrations of CMZs and delineation guidelines.)

"Chemicals" means substances applied to forest lands or timber including pesticides, fertilizers, and other forest chemicals.

"Clearcut" means a harvest method in which the entire stand of trees is removed in one timber harvesting operation. Except as provided in WAC 222-30-110, an area remains clearcut until:

It meets the minimum stocking requirements under WAC 222-34-010(2) or 222-34-020(2); and

The largest trees qualifying for the minimum stocking levels have survived on the area for five growing seasons or, if not, they have reached an average height of four feet.

"Columbia River Gorge National Scenic Area or CRGNSA" means the area established pursuant to the Columbia River Gorge National Scenic Area Act, 16 U.S.C. §544b(a).

"CRGNSA special management area" means the areas designated in the Columbia River Gorge National Scenic Area Act, 16 U.S.C. §544b(b) or revised pursuant to 16 U.S.C. §544b(c). For purposes of this rule, the special management area shall not include any parcels excluded by 16 U.S.C. §544f(o).

"CRGNSA special management area guidelines" means the guidelines and land use designations for forest practices developed pursuant to 16 U.S.C. §544f contained in the CRGNSA management plan developed pursuant to 15 U.S.C. §544d.

"Commercial tree species" means any species which is capable of producing a merchantable stand of timber on the particular site, or which is being grown as part of a Christmas tree or ornamental tree-growing operation.

"Completion of harvest" means the latest of:

Completion of removal of timber from the portions of forest lands harvested in the smallest logical unit that will not be disturbed by continued logging or an approved slash disposal plan for adjacent areas; or

Scheduled completion of any slash disposal operations where the department and the applicant agree within 6 months of completion of yarding that slash disposal is necessary or desirable to facilitate reforestation and agree to a time schedule for such slash disposal; or

Scheduled completion of any site preparation or rehabilitation of adjoining lands approved at the time of approval of the application or receipt of a notification: Provided, That delay of reforestation under this paragraph is permitted only to the extent reforestation would prevent or unreasonably hinder such site preparation or rehabilitation of adjoining lands.

"Constructed wetlands" means those wetlands voluntarily developed by the landowner. Constructed wetlands do not include wetlands created, restored, or enhanced as part of a mitigation procedure or wetlands inadvertently created as a result of current or past practices including, but not limited to: Road construction, landing construction, railroad construction, or surface mining.

"Contamination" means introducing into the atmosphere, soil, or water, sufficient quantities of substances as may be injurious to public health, safety or welfare, or to domestic, commercial, industrial, agriculture or recreational uses, or to livestock, wildlife, fish or other aquatic life.

"Convergent headwalls" (or headwalls) means tear-drop-shaped landforms, broad at the ridgetop and terminating where headwaters converge into a single channel; they are broadly concave both longitudinally and across the slope, but may contain sharp ridges separating the headwater channels. (See board manual section 16 for identification criteria.)

"Conversion activities" means activities associated with conversions of forest land to land uses other than commercial timber operation. These activities may be occurring

during or after timber harvest on forest land. They may include but are not limited to the following:

- Preparation for, or installation of, utilities on the forest practices activity site. The development or maintenance of existing rights of way providing utilities exclusively for other ownerships shall not be considered conversions of forest land (see WAC 222-20-010(5)).

- Any of, or any combination of, the following activities in preparation for nonforestry use of the land: Grading, filling, or stump removal.

- Preparation for, or construction of, any structure requiring local government approval.

- Construction of, or improvement of, roads to a standard greater than needed to conduct forest practices activities.

- Clearing for, or expansion of, rock pits for nonforest practices uses or developing surface mines.

"Conversion option harvest plan" means a voluntary plan developed by the landowner and approved by the local governmental entity indicating the limits of harvest areas, road locations, and open space.

"Conversion to a use other than commercial timber operation" means a bona fide conversion to an active use which is incompatible with timber growing.

"Cooperative habitat enhancement agreement (CHEA)" see WAC 222-16-105.

"Critical habitat (federal)" means the habitat of any threatened or endangered species designated as critical habitat by the United States Secretary of the Interior or Commerce under Sections 3 (5)(A) and 4 (a)(3) of the Federal Endangered Species Act.

"Critical nesting season" means for marbled murrelets - April 1 to August 31.

"Critical habitat (state)" means those habitats designated by the board in accordance with WAC 222-16-080.

"Cultural resources" means archaeological and historic sites and artifacts, and traditional religious, ceremonial and social uses and activities of affected Indian tribes.

"Cumulative effects" means the changes to the environment caused by the interaction of natural ecosystem processes with the effects of two or more forest practices.

"Daily peak activity" means for marbled murrelets - one hour before official sunrise to two hours after official sunrise and one hour before official sunset to one hour after official sunset.

"Debris" means woody vegetative residue less than 3 cubic feet in size resulting from forest practices activities which would reasonably be expected to cause significant damage to a public resource.

"Deep-seated landslides" means landslides in which most of the area of the slide plane or zone lies below the maximum rooting depth of forest trees, to depths of tens to hundreds of feet. (See board manual section 16 for identification criteria.)

"Demographic support" means providing sufficient suitable spotted owl habitat within the SOSEA to maintain the viability of northern spotted owl sites identified as necessary to meet the SOSEA goals.

"Department" means the department of natural resources.

"Desired future condition (DFC)" is a reference point on a pathway and not an endpoint for stands. DFC means the stand conditions of a mature riparian forest at 140 years of age, the midpoint between 80 and 200 years. Where basal area is the only stand attribute used to describe 140-year old stands, these are referred to as the "Target Basal Area."

"Diameter at breast height (dbh)" means the diameter of a tree at 4 1/2 feet above the ground measured from the uphill side.

"Dispersal habitat" see WAC 222-16-085(2).

"Dispersal support" means providing sufficient dispersal habitat for the interchange of northern spotted owls within or across the SOSEA, as necessary to meet SOSEA goals. Dispersal support is provided by a landscape consisting of stands of dispersal habitat interspersed with areas of higher quality habitat, such as suitable spotted owl habitat

found within RMZs, WMZs or other required and voluntary leave areas.

"Drainage structure" means a construction technique or feature that is built to relieve surface runoff and/or intercepted ground water from roadside ditches to prevent excessive buildup in water volume and velocity. A drainage structure is not intended to carry any typed water. Drainage structures include structures such as: Cross drains, relief culverts, ditch diversions, water bars, or other such structures demonstrated to be equally effective.

"Eastern Washington" means the geographic area in Washington east of the crest of the Cascade Mountains from the international border to the top of Mt. Adams, then east of the ridge line dividing the White Salmon River drainage from the Lewis River drainage and east of the ridge line dividing the Little White Salmon River drainage from the Wind River drainage to the Washington-Oregon state line.

Eastern Washington Definition Map



"Eastern Washington timber habitat types" means elevation ranges associated with tree species assigned for the purpose of riparian management according to the following:

Timber Habitat Types	Elevation Ranges
ponderosa pine	0 - 2500 feet
mixed conifer	2501 - 5000 feet
high elevation	above 5000 feet

"Edge" of any water means the outer edge of the water's bankfull width or, where applicable, the outer edge of the associated channel migration zone.

"End hauling" means the removal and transportation of excavated material, pit or quarry overburden, or landing or

road cut material from the excavation site to a deposit site not adjacent to the point of removal.

"Equipment limitation zone" means a 30-foot wide zone measured horizontally from the outer edge of the bankfull width of a Type Np or Ns Water. It applies to all perennial and seasonal nonfish bearing streams.

"Erodible soils" means those soils that, when exposed or displaced by a forest practices operation, would be readily moved by water.

"Even-aged harvest methods" means the following harvest methods:

- Clearcuts;
- Seed tree harvests in which twenty or fewer trees per acre remain after harvest;

Shelterwood regeneration harvests in which twenty or fewer trees per acre remain after harvest;

Group or strip shelterwood harvests creating openings wider than two tree heights, based on dominant trees;

Shelterwood removal harvests which leave fewer than one hundred fifty trees per acre which are at least five years old or four feet in average height;

Partial cutting in which fewer than fifty trees per acre remain after harvest;

Overstory removal when more than five thousand board feet per acre is removed and fewer than fifty trees per acre at least ten feet in height remain after harvest; and

Other harvesting methods designed to manage for multiple age classes in which six or fewer trees per acre remain after harvest.

Except as provided above for shelterwood removal harvests and overstory removal, trees counted as remaining after harvest shall be at least ten inches in diameter at breast height and have at least the top one-third of the stem supporting green, live crowns. Except as provided in WAC 222-30-110, an area remains harvested by even-aged methods until it meets the minimum stocking requirements under WAC 222-34-010(2) or 222-34-020(2) and the largest trees qualifying for the minimum stocking levels have survived on the area for five growing seasons or, if not, they have reached an average height of four feet.

"Fen" means wetlands which have the following characteristics: Peat soils 16 inches or more in depth (except over bedrock); and vegetation such as certain sedges, hardstem bulrush and cattails; fens may have an overstory of spruce and may be associated with open water.

"Fertilizers" means any substance or any combination or mixture of substances used principally as a source of plant food or soil amendment.

"Fill" means the placement of earth material or aggregate for road or landing construction or other similar activities.

"Fish" means for purposes of these rules, species of the vertebrate taxonomic groups of *Cephalospidomorphi* and *Osteichthyes*.

"Fish habitat" means habitat, which is used by fish at any life stage at any time of the year including potential habitat likely to be used by fish, which could be recovered by restoration or management and includes off-channel habitat.

"Fish passage barrier" means any artificial in-stream structure that impedes the free passage of fish.

"Flood level - 100 year" means a calculated flood event flow based on an engineering computation of flood magnitude that has a 1 percent chance of occurring in any given year. For purposes of field interpretation, landowners may use the following methods:

Flow information from gauging stations;

Field estimate of water level based on guidance for "Determining the 100-Year Flood Level" in the forest practices board manual section 2.

The 100-year flood level shall not include those lands that can reasonably be expected to be protected from flood waters by flood control devices maintained by or under license from the federal government, the state, or a political subdivision of the state.

"Forest land" means all land which is capable of supporting a merchantable stand of timber and is not being actively used for a use which is incompatible with timber growing. Forest land does not include agricultural land that is or was enrolled in the conservation reserve enhancement program by contract if such agricultural land was historically used for agricultural purposes and the landowner intends to continue to use the land for agricultural purposes in the future. For small forest landowner road maintenance and abandonment planning only, the term "forest land" excludes the following:

(a) Residential home sites. A residential home site may be up to five acres in size, and must have an existing structure in use as a residence;

(b) Cropfields, orchards, vineyards, pastures, feedlots, fish pens, and the land on which appurtenances necessary to the production, preparation, or sale of crops, fruit, dairy products, fish, and livestock exist.

"Forest landowner" means any person in actual control of forest land, whether such control is based either on legal or equitable title, or on any other interest entitling the holder to sell or otherwise dispose of any or all of the timber on such land in any manner. However, any lessee or other person in possession of forest land without legal or equitable title to such land shall be excluded from the definition of "forest landowner" unless such lessee or other person has the right to sell or otherwise dispose of any or all of the timber located on such forest land. The following definitions apply only to road maintenance and abandonment planning:

(1) **"Large forest landowner"** is a forest landowner who is not a small forest landowner.

(2) **"Small forest landowner"** is a forest landowner who at the time of submitting a forest practices application or notification meets all of the following conditions:

- Has an average annual timber harvest level of two million board feet or less from their own forest lands in Washington state;

- Did not exceed this annual average harvest level in the three year period before submitting a forest practices application or notification;

- Certifies to the department that they will not exceed this annual harvest level in the ten years after submitting the forest practices application or notification.

However, the department will agree that an applicant is a small forest landowner if the landowner can demonstrate that the harvest levels were exceeded in order to raise funds to pay estate taxes or to meet equally compelling and unexpected obligations such as court-ordered judgments and extraordinary medical expenses.

"Forest practice" means any activity conducted on or directly pertaining to forest land and relating to growing, harvesting, or processing timber, including but not limited to:

Road and trail construction;

Harvesting, final and intermediate;

Precommercial thinning;

Reforestation;

Fertilization;

Prevention and suppression of diseases and insects;

Salvage of trees; and

Brush control.

"Forest practice" shall not include: Forest species seed orchard operations and intensive forest nursery operations; or preparatory work such as tree marking, surveying and road flagging; or removal or harvest of incidental vegetation from forest lands such as berries, ferns, greenery, mistletoe, herbs, mushrooms, and other products which cannot normally be expected to result in damage to forest soils, timber or public resources.

"**Forest road**" means ways, lanes, roads, or driveways on forest land used since 1974 for forest practices. "Forest road" does not include skid trails, highways, or local government roads except where the local governmental entity is a forest landowner. For road maintenance and abandonment planning purposes only, "forest road" does not include forest roads used exclusively for residential access located on a small forest landowner's forest land.

"**Forest trees**" does not include hardwood trees cultivated by agricultural methods in growing cycles shorter than 15 years if the trees were planted on land that was not in forest use immediately before the trees were planted and before the land was prepared for planting the trees. "Forest trees" includes Christmas trees but does not include Christmas trees that are cultivated by agricultural methods, as that term is defined in RCW 84.33.035.

"**Full bench road**" means a road constructed on a side hill without using any of the material removed from the hillside as a part of the road. This construction technique is usually used on steep or unstable slopes.

"**Green recruitment trees**" means those trees left after harvest for the purpose of becoming future wildlife reserve trees under WAC 222-30-020(11).

"**Ground water recharge areas for glacial deep-seated slides**" means the area upgradient that can contribute water to the landslide, assuming that there is an impermeable perching layer in or under a deep-seated landslide in glacial deposits. (See board manual section 16 for identification criteria.)

"**Headwater spring**" means a permanent spring at the head of a perennial channel. Where a headwater spring can be found, it will coincide with the uppermost extent of Type Np Water.

"**Herbicide**" means any substance or mixture of substances intended to prevent, destroy, repel, or mitigate any tree, bush, weed or algae and other aquatic weeds.

"**Horizontal distance**" means the distance between two points measured at a zero percent slope.

"**Hyporheic**" means an area adjacent to and below channels where interstitial water is exchanged with channel water and water movement is mainly in the downstream direction.

"**Identified watershed processes**" means the following components of natural ecological processes that may in some instances be altered by forest practices in a watershed:

- Mass wasting;
- Surface and road erosion;
- Seasonal flows including hydrologic peak and low flows and annual yields (volume and timing);
- Large organic debris;
- Shading; and
- Stream bank and bed stability.

"**Inner gorges**" means canyons created by a combination of the downcutting action of a stream and mass movement on the slope walls; they commonly show evidence of recent movement, such as obvious landslides, vertical tracks of disturbance vegetation, or areas that are concave in contour and/or profile. (See board manual section 16 for identification criteria.)

"**Insecticide**" means any substance or mixture of substances intended to prevent, destroy, repel, or mitigate any insect, other arthropods or mollusk pests.

"**Interdisciplinary team**" (ID Team) means a group of varying size comprised of individuals having specialized expertise, assembled by the department to respond to technical questions associated with a proposed forest practices activity.

"**Islands**" means any island surrounded by salt water in Kitsap, Mason, Jefferson, Pierce, King, Snohomish, Skagit, Whatcom, Island, or San Juan counties.

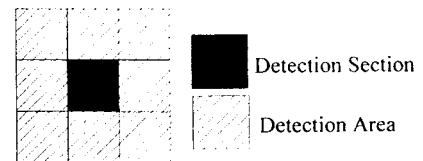
"**Limits of construction**" means the area occupied by the completed roadway or landing, including the cut bank, fill slope, and the area cleared for the purpose of constructing the roadway or landing.

"**Load bearing portion**" means that part of the road, landing, etc., which is supportive soil, earth, rock or other material directly below the working surface and only the associated earth structure necessary for support.

"**Local governmental entity**" means the governments of counties and the governments of cities and towns as defined in chapter 35.01 RCW.

"**Low impact harvest**" means use of any logging equipment, methods, or systems that minimize compaction or disturbance of soils and vegetation during the yarding process. The department shall determine such equipment, methods or systems in consultation with the department of ecology.

"**Marbled murrelet detection area**" means an area of land associated with a visual or audible detection of a marbled murrelet, made by a qualified surveyor which is documented and recorded in the department of fish and wildlife data base. The marbled murrelet detection area shall be comprised of the section of land in which the marbled murrelet detection was made and the eight sections of land immediately adjacent to that section.



"**Marbled murrelet nesting platform**" means any horizontal tree structure such as a limb, an area where a limb branches, a surface created by multiple leaders, a deformity, or a debris/moss platform or stick nest equal to or greater than 7 inches in diameter including associated moss if present, that is 50 feet or more above the ground in trees 32 inches dbh and greater (generally over 90 years of age) and is capable of supporting nesting by marbled murrelets.

"**Median home range circle**" means a circle, with a specified radius, centered on a spotted owl site center. The radius for the median home range circle in the Hoh-Clearwa-

ter/Coastal Link SOSEA is 2.7 miles; for all other SOSEAs the radius is 1.8 miles.

"Merchantable stand of timber" means a stand of trees that will yield logs and/or fiber:

Suitable in size and quality for the production of lumber, plywood, pulp or other forest products;

Of sufficient value at least to cover all the costs of harvest and transportation to available markets.

"Multiyear permit" means a permit to conduct forest practices which is effective for longer than two years but no longer than five years.

"Northern spotted owl site center" means((:

~~(1) Until December 31, 2008, the location of northern spotted owls:~~

~~(a) Recorded by the department of fish and wildlife as status 1, 2 or 3 as of November 1, 2005; or~~

~~(b) Newly discovered, and recorded by the department of fish and wildlife as status 1, 2 or 3 after November 1, 2005.~~

~~(2) After December 31, 2008,)) the location of status 1, 2 or 3 northern spotted owls based on the following definitions:~~

Status 1: Pair or reproductive - a male and female heard and/or observed in close proximity to each other on the same visit, a female detected on a nest, or one or both adults observed with young.

Status 2: Two birds, pair status unknown - the presence or response of two birds of opposite sex where pair status cannot be determined and where at least one member meets the resident territorial single requirements.

Status 3: Resident territorial single - the presence or response of a single owl within the same general area on three or more occasions within a breeding season with no response by an owl of the opposite sex after a complete survey; or three or more responses over several years (i.e., two responses in year one and one response in year two, for the same general area).

In determining the existence, location, and status of northern spotted owl site centers, the department shall consult with the department of fish and wildlife and use only those sites documented in substantial compliance with guidelines or protocols and quality control methods established by and available from the department of fish and wildlife.

"Notice to comply" means a notice issued by the department pursuant to RCW 76.09.090 of the act and may require initiation and/or completion of action necessary to prevent, correct and/or compensate for material damage to public resources which resulted from forest practices.

"Occupied marbled murrelet site" means:

(1) A contiguous area of suitable marbled murrelet habitat where at least one of the following marbled murrelet behaviors or conditions occur:

(a) A nest is located; or

(b) Downy chicks or eggs or egg shells are found; or

(c) Marbled murrelets are detected flying below, through, into or out of the forest canopy; or

(d) Birds calling from a stationary location within the area; or

(e) Birds circling above a timber stand within one tree height of the top of the canopy; or

(2) A contiguous forested area, which does not meet the definition of suitable marbled murrelet habitat, in which any of the behaviors or conditions listed above has been documented by the department of fish and wildlife and which is distinguishable from the adjacent forest based on vegetative characteristics important to nesting marbled murrelets.

(3) For sites defined in (1) and (2) above, the sites will be presumed to be occupied based upon observation of circling described in (1)(e), unless a two-year survey following the 2003 Pacific Seabird Group (PSG) protocol has been completed and an additional third-year of survey following a method listed below is completed and none of the behaviors or conditions listed in (1)(a) through (d) of this definition are observed. The landowner may choose one of the following methods for the third-year survey:

(a) Conduct a third-year survey with a minimum of nine visits conducted in compliance with 2003 PSG protocol. If one or more marbled murrelets are detected during any of these nine visits, three additional visits conducted in compliance with the protocol of the first nine visits shall be added to the third-year survey. Department of fish and wildlife shall be consulted prior to initiating third-year surveys; or

(b) Conduct a third-year survey designed in consultation with the department of fish and wildlife to meet site specific conditions.

(4) For sites defined in (1) above, the outer perimeter of the occupied site shall be presumed to be the closer, measured from the point where the observed behaviors or conditions listed in (1) above occurred, of the following:

(a) 1.5 miles from the point where the observed behaviors or conditions listed in (1) above occurred; or

(b) The beginning of any gap greater than 300 feet wide lacking one or more of the vegetative characteristics listed under "suitable marbled murrelet habitat"; or

(c) The beginning of any narrow area of "suitable marbled murrelet habitat" less than 300 feet in width and more than 300 feet in length.

(5) For sites defined under (2) above, the outer perimeter of the occupied site shall be presumed to be the closer, measured from the point where the observed behaviors or conditions listed in (1) above occurred, of the following:

(a) 1.5 miles from the point where the observed behaviors or conditions listed in (1) above occurred; or

(b) The beginning of any gap greater than 300 feet wide lacking one or more of the distinguishing vegetative characteristics important to murrelets; or

(c) The beginning of any narrow area of suitable marbled murrelet habitat, comparable to the area where the observed behaviors or conditions listed in (1) above occurred, less than 300 feet in width and more than 300 feet in length.

(6) In determining the existence, location and status of occupied marbled murrelet sites, the department shall consult with the department of fish and wildlife and use only those sites documented in substantial compliance with guidelines or protocols and quality control methods established by and available from the department of fish and wildlife.

"Old forest habitat" see WAC 222-16-085 (1)(a).

"Operator" means any person engaging in forest practices except an employee with wages as his/her sole compensation.

"Ordinary high-water mark" means the mark on the shores of all waters, which will be found by examining the beds and banks and ascertaining where the presence and action of waters are so common and usual, and so long continued in all ordinary years, as to mark upon the soil a character distinct from that of the abutting upland, in respect to vegetation: Provided, That in any area where the ordinary high-water mark cannot be found, the ordinary high-water mark adjoining saltwater shall be the line of mean high tide and the ordinary high-water mark adjoining freshwater shall be the line of mean high-water.

"Other forest chemicals" means fire retardants when used to control burning (other than water), nontoxic repellents, oil, dust-control agents (other than water), salt, and other chemicals used in forest management, except pesticides and fertilizers, that may present hazards to the environment.

"Park" means any park included on the parks register maintained by the department pursuant to WAC 222-20-100(2). Developed park recreation area means any park area developed for high density outdoor recreation use.

"Partial cutting" means the removal of a portion of the merchantable volume in a stand of timber so as to leave an uneven-aged stand of well-distributed residual, healthy trees that will reasonably utilize the productivity of the soil. Partial cutting does not include seedtree or shelterwood or other types of regeneration cutting.

"Pesticide" means any insecticide, herbicide, fungicide, or rodenticide, but does not include nontoxic repellents or other forest chemicals.

"Plantable area" is an area capable of supporting a commercial stand of timber excluding lands devoted to permanent roads, utility rights of way, that portion of riparian management zones where scarification is not permitted, and any other area devoted to a use incompatible with commercial timber growing.

"Power equipment" means all machinery operated with fuel burning or electrical motors, including heavy machinery, chain saws, portable generators, pumps, and powered backpack devices.

"Preferred tree species" means the following species listed in descending order of priority for each timber habitat type:

Ponderosa pine habitat type	Mixed conifer habitat type
all hardwoods	all hardwoods
ponderosa pine	western larch
western larch	ponderosa pine
Douglas-fir	western red cedar
western red cedar	western white pine
	Douglas-fir
	lodgepole pine

"Public resources" means water, fish, and wildlife and in addition means capital improvements of the state or its political subdivisions.

"Qualified surveyor" means an individual who has successfully completed the marbled murrelet field training course offered by the department of fish and wildlife or its equivalent.

"Rehabilitation" means the act of renewing, or making usable and reforesting forest land which was poorly stocked or previously nonstocked with commercial species.

"Resource characteristics" means the following specific measurable characteristics of fish, water, and capital improvements of the state or its political subdivisions:

For fish and water:

Physical fish habitat, including temperature and turbidity;

Turbidity in hatchery water supplies; and

Turbidity and volume for areas of water supply.

For capital improvements of the state or its political subdivisions:

Physical or structural integrity.

If the methodology is developed and added to the manual to analyze the cumulative effects of forest practices on other characteristics of fish, water, and capital improvements of the state or its subdivisions, the board shall amend this list to include these characteristics.

"Riparian function" includes bank stability, the recruitment of woody debris, leaf litter fall, nutrients, sediment filtering, shade, and other riparian features that are important to both riparian forest and aquatic system conditions.

"Riparian management zone (RMZ)" means:

(1) **For Western Washington**

(a) The area protected on each side of a Type S or F Water measured horizontally from the outer edge of the bankfull width or the outer edge of the CMZ, whichever is greater (see table below); and

Site Class	Western Washington Total RMZ Width
I	200'
II	170'
III	140'
IV	110'
V	90'

(b) The area protected on each side of Type Np Waters, measured horizontally from the outer edge of the bankfull width. (See WAC 222-30-021(2).)

(2) **For Eastern Washington**

(a) The area protected on each side of a Type S or F Water measured horizontally from the outer edge of the bankfull width or the outer edge of the CMZ, whichever is greater (see table below); and

Site Class	Eastern Washington Total RMZ Width
I	130'
II	110'

Site Class	Eastern Washington Total RMZ Width
III	90' or 100'*
IV	75' or 100'*
V	75' or 100'*

* Dependent upon stream size. (See WAC 222-30-022.)

(b) The area protected on each side of Type Np Waters, measured horizontally from the outer edge of the bankfull width. (See WAC 222-30-022(2).)

(3) **For exempt 20 acre parcels**, a specified area alongside Type S and F Waters where specific measures are taken to protect water quality and fish and wildlife habitat.

"RMZ core zone" means:

(1) **For Western Washington**, the 50 foot buffer of a Type S or F Water, measured horizontally from the outer edge of the bankfull width or the outer edge of the channel migration zone, whichever is greater. (See WAC 222-30-021.)

(2) **For Eastern Washington**, the thirty foot buffer of a Type S or F Water, measured horizontally from the outer edge of the bankfull width or the outer edge of the channel migration zone, whichever is greater. (See WAC 222-30-022.)

"RMZ inner zone" means:

(1) **For Western Washington**, the area measured horizontally from the outer boundary of the core zone of a Type S or F Water to the outer limit of the inner zone. The outer limit of the inner zone is determined based on the width of the affected water, site class and the management option chosen for timber harvest within the inner zone. (See WAC 222-30-021.)

(2) **For Eastern Washington**, the area measured horizontally from the outer boundary of the core zone 45 feet (for streams less than 15 feet wide) or 70 feet (for streams more than 15 feet wide) from the outer boundary of the core zone. (See WAC 222-30-022.)

"RMZ outer zone" means the area measured horizontally between the outer boundary of the inner zone and the RMZ width as specified in the riparian management zone definition above. RMZ width is measured from the outer edge of the bankfull width or the outer edge of the channel migration zone, whichever is greater. (See WAC 222-30-021 and 222-30-022.)

"Road construction" means either of the following:

- (a) Establishing any new forest road;
- (b) Road work located outside an existing forest road prism, except for road maintenance.

"Road maintenance" means either of the following:

- (a) All road work located within an existing forest road prism;
- (b) Road work located outside an existing forest road prism specifically related to maintaining water control, road safety, or visibility, such as:
 - Maintaining, replacing, and installing drainage structures;
 - Controlling road-side vegetation;
 - Abandoning forest roads according to the process outlined in WAC 222-24-052(3).

"Rodenticide" means any substance or mixture of substances intended to prevent, destroy, repel, or mitigate rodents or any other vertebrate animal which the director of the state department of agriculture may declare by regulation to be a pest.

"Salvage" means the removal of snags, down logs, windthrow, or dead and dying material.

"Scarification" means loosening the topsoil and/or disrupting the forest floor in preparation for regeneration.

"Sensitive sites" are areas near or adjacent to Type Np Water and have one or more of the following:

(1) **Headwall seep** is a seep located at the toe of a cliff or other steep topographical feature and at the head of a Type Np Water which connects to the stream channel network via overland flow, and is characterized by loose substrate and/or fractured bedrock with perennial water at or near the surface throughout the year.

(2) **Side-slope seep** is a seep within 100 feet of a Type Np Water located on side-slopes which are greater than 20 percent, connected to the stream channel network via overland flow, and characterized by loose substrate and fractured bedrock, excluding muck with perennial water at or near the surface throughout the year. Water delivery to the Type Np channel is visible by someone standing in or near the stream.

(3) **Type Np intersection** is the intersection of two or more Type Np Waters.

(4) **Headwater spring** means a permanent spring at the head of a perennial channel. Where a headwater spring can be found, it will coincide with the uppermost extent of Type Np Water.

(5) **Alluvial fan** means a depositional land form consisting of cone-shaped deposit of water-borne, often coarse-sized sediments.

(a) The upstream end of the fan (cone apex) is typically characterized by a distinct increase in channel width where a stream emerges from a narrow valley;

(b) The downstream edge of the fan is defined as the sediment confluence with a higher order channel; and

(c) The lateral margins of a fan are characterized by distinct local changes in sediment elevation and often show disturbed vegetation.

Alluvial fan does not include features that were formed under climatic or geologic conditions which are not currently present or that are no longer dynamic.

"Shorelines of the state" shall have the same meaning as in RCW 90.58.030 (Shoreline Management Act).

"Side casting" means the act of moving excavated material to the side and depositing such material within the limits of construction or dumping over the side and outside the limits of construction.

"Site class" means a grouping of site indices that are used to determine the 50-year or 100-year site class. In order to determine site class, the landowner will obtain the site class index from the state soil survey, place it in the correct index range shown in the two tables provided in this definition, and select the corresponding site class. The site class will then drive the RMZ width. (See WAC 222-30-021 and 222-30-022.)

(1) For Western Washington

Site class	50-year site index range (state soil survey)
I	137+
II	119-136
III	97-118
IV	76-96
V	<75

(2) For Eastern Washington

Site class	100-year site index range (state soil survey)	50-year site index range (state soil survey)
I	120+	86+
II	101-120	72-85
III	81-100	58-71
IV	61-80	44-57
V	≤60	<44

(3) For purposes of this definition, the site index at any location will be the site index reported by the *Washington State Department of Natural Resources State Soil Survey*, (soil survey) and detailed in the associated forest soil summary sheets. If the soil survey does not report a site index for the location or indicates noncommercial or marginal forest land, or the major species table indicates red alder, the following apply:

(a) If the site index in the soil survey is for red alder, and the whole RMZ width is within that site index, then use site class V. If the red alder site index is only for a portion of the RMZ width, or there is on-site evidence that the site has historically supported conifer, then use the site class for conifer in the most physiographically similar adjacent soil polygon.

(b) In Western Washington, if no site index is reported in the soil survey, use the site class for conifer in the most physiographically similar adjacent soil polygon.

(c) In Eastern Washington, if no site index is reported in the soil survey, assume site class III, unless site specific information indicates otherwise.

(d) If the site index is noncommercial or marginally commercial, then use site class V.

See also section 7 of the board manual.

"Site preparation" means those activities associated with the removal of slash in preparing a site for planting and shall include scarification and/or slash burning.

"Skid trail" means a route used by tracked or wheeled skidders to move logs to a landing or road.

"Slash" means pieces of woody material containing more than 3 cubic feet resulting from forest practices activities.

"Small forest landowner long-term application" means a proposal from a small forest landowner to conduct forest practices activities for terms of three to fifteen years. Small forest landowners as defined in WAC 222-21-010(13) are eligible to submit long-term applications.

"SOSEA goals" means the goals specified for a spotted owl special emphasis area as identified on the SOSEA maps

(see WAC 222-16-086). SOSEA goals provide for demographic and/or dispersal support as necessary to complement the northern spotted owl protection strategies on federal land within or adjacent to the SOSEA.

"Spoil" means excess material removed as overburden or generated during road or landing construction which is not used within limits of construction.

"Spotted owl conservation advisory group" means a three-person advisory group designated by the board as follows: One person shall be a representative of Washington's forest products industry, one person shall be a representative of a Washington-based conservation organization actively involved with spotted owl conservation, and one person shall be a representative of the department's forest practices program. Members of the group shall have a detailed working knowledge of spotted owl habitat relationships and factors affecting northern spotted owl conservation.

"Spotted owl dispersal habitat" see WAC 222-16-085(2).

"Spotted owl special emphasis areas (SOSEA)" means the geographic areas as mapped in WAC 222-16-086. Detailed maps of the SOSEAs indicating the boundaries and goals are available from the department at its regional offices.

"Stop work order" means the "stop work order" defined in RCW 76.09.080 of the act and may be issued by the department to stop violations of the forest practices chapter or to prevent damage and/or to correct and/or compensate for damages to public resources resulting from forest practices.

"Stream-adjacent parallel roads" means roads (including associated right of way clearing) in a riparian management zone on a property that have an alignment that is parallel to the general alignment of the stream, including roads used by others under easements or cooperative road agreements. Also included are stream crossings where the alignment of the road continues to parallel the stream for more than 250 feet on either side of the stream. Not included are federal, state, county or municipal roads that are not subject to forest practices rules, or roads of another adjacent landowner.

"Sub-mature habitat" see WAC 222-16-085 (1)(b).

"Suitable marbled murrelet habitat" means a contiguous forested area containing trees capable of providing nesting opportunities:

(1) With all of the following indicators unless the department, in consultation with the department of fish and wildlife, has determined that the habitat is not likely to be occupied by marbled murrelets:

(a) Within 50 miles of marine waters;

(b) At least forty percent of the dominant and codominant trees are Douglas-fir, western hemlock, western red cedar or sitka spruce;

(c) Two or more nesting platforms per acre;

(d) At least 7 acres in size, including the contiguous forested area within 300 feet of nesting platforms, with similar forest stand characteristics (age, species composition, forest structure) to the forested area in which the nesting platforms occur.

"Suitable spotted owl habitat" see WAC 222-16-085 (1).

"Temporary road" means a forest road that is constructed and intended for use during the life of an approved forest practices application/notification. All temporary roads must be abandoned in accordance to WAC 222-24-052(3).

"Threaten public safety" means to increase the risk to the public at large from snow avalanches, identified in consultation with the department of transportation or a local government, or landslides or debris torrents caused or triggered by forest practices.

"Threatened or endangered species" means all species of wildlife listed as "threatened" or "endangered" by the United States Secretary of the Interior or Commerce, and all species of wildlife designated as "threatened" or "endangered" by the Washington fish and wildlife commission.

"Timber" means forest trees, standing or down, of a commercial species, including Christmas trees. However, timber does not include Christmas trees that are cultivated by agricultural methods, as that term is defined in RCW 84.33-.035.

"Unconfined avulsing stream" means generally fifth order or larger waters that experience abrupt shifts in channel location, creating a complex flood plain characterized by extensive gravel bars, disturbance species of vegetation of variable age, numerous side channels, wall-based channels, oxbow lakes, and wetland complexes. Many of these streams have dikes and levees that may temporarily or permanently restrict channel movement.

"Validation," as used in WAC 222-20-016, means the department's agreement that a small forest landowner has correctly identified and classified resources, and satisfactorily completed a roads assessment for the geographic area described in Step 1 of a long-term application.

"Water bar" means a diversion ditch and/or hump in a trail or road for the purpose of carrying surface water runoff into the vegetation duff, ditch, or other dispersion area so that it does not gain the volume and velocity which causes soil movement and erosion.

"Watershed administrative unit (WAU)" means an area shown on the map specified in WAC 222-22-020(1).

"Watershed analysis" means, for a given WAU, the assessment completed under WAC 222-22-050 or 222-22-060 together with the prescriptions selected under WAC 222-22-070 and shall include assessments completed under WAC 222-22-050 where there are no areas of resource sensitivity.

"Weed" is any plant which tends to overgrow or choke out more desirable vegetation.

"Western Washington" means the geographic area of Washington west of the Cascade crest and the drainages defined in Eastern Washington.

"Wetland" means those areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions, such as swamps, bogs, fens, and similar areas. This includes wetlands created, restored, or enhanced as part of a mitigation procedure. This does not include constructed wetlands or the following surface waters of the state intentionally constructed from wetland sites: Irrigation and drainage ditches, grass lined swales, canals, agri-

cultural detention facilities, farm ponds, and landscape amenities.

"Wetland functions" include the protection of water quality and quantity, providing fish and wildlife habitat, and the production of timber.

"Wetland management zone" means a specified area adjacent to Type A and B Wetlands where specific measures are taken to protect the wetland functions.

"Wildlife" means all species of the animal kingdom whose members exist in Washington in a wild state. The term "wildlife" includes, but is not limited to, any mammal, bird, reptile, amphibian, fish, or invertebrate, at any stage of development. The term "wildlife" does not include feral domestic mammals or the family Muridae of the order Rodentia (old world rats and mice).

"Wildlife reserve trees" means those defective, dead, damaged, or dying trees which provide or have the potential to provide habitat for those wildlife species dependent on standing trees. Wildlife reserve trees are categorized as follows:

Type 1 wildlife reserve trees are defective or deformed live trees that have observably sound tops, limbs, trunks, and roots. They may have part of the top broken out or have evidence of other severe defects that include: "Cat face," animal chewing, old logging wounds, weather injury, insect attack, or lightning strike. Unless approved by the landowner, only green trees with visible cavities, nests, or obvious severe defects capable of supporting cavity dependent species shall be considered as Type 1 wildlife reserve trees. These trees must be stable and pose the least hazard for workers.

Type 2 wildlife reserve trees are dead Type 1 trees with sound tops, limbs, trunks, and roots.

Type 3 wildlife reserve trees are live or dead trees with unstable tops or upper portions. Unless approved by the landowner, only green trees with visible cavities, nests, or obvious severe defects capable of supporting cavity dependent species shall be considered as Type 3 wildlife reserve trees. Although the roots and main portion of the trunk are sound, these reserve trees pose high hazard because of the defect in live or dead wood higher up in the tree.

Type 4 wildlife reserve trees are live or dead trees with unstable trunks or roots, with or without bark. This includes "soft snags" as well as live trees with unstable roots caused by root rot or fire. These trees are unstable and pose a high hazard to workers.

"Windthrow" means a natural process by which trees are uprooted or sustain severe trunk damage by the wind.

"Yarding corridor" means a narrow, linear path through a riparian management zone to allow suspended cables necessary to support cable logging methods or suspended or partially suspended logs to be transported through these areas by cable logging methods.

"Young forest marginal habitat" see WAC 222-16-085 (1)(b).

AMENDATORY SECTION (Amending WSR 05-12-119, filed 5/31/05, effective 7/1/05)

WAC 222-16-080 Critical habitats (state) of threatened and endangered species. (1) Critical habitats (state) of

threatened or endangered species and specific forest practices designated as Class IV-Special are as follows:

(a) Bald eagle (*Haliaeetus leucocephalus*) - harvesting, road construction, aerial application of pesticides, or site preparation within 0.5 mile of a known active nest site, documented by the department of fish and wildlife, between the dates of January 1 and August 15 or 0.25 mile at other times of the year; and within 0.25 mile of a communal roosting site. Communal roosting sites shall not include refuse or garbage dumping sites.

(b) Gray wolf (*Canis lupus*) - harvesting, road construction, or site preparation within 1 mile of a known active den site, documented by the department of fish and wildlife, between the dates of March 15 and July 30 or 0.25 mile from the den site at other times of the year.

(c) Grizzly bear (*Ursus arctos*) - harvesting, road construction, aerial application of pesticides, or site preparation within 1 mile of a known active den site, documented by the department of fish and wildlife, between the dates of October 1 and May 30 or 0.25 mile at other times of the year.

(d) Mountain (woodland) caribou (*Rangifera tarandus*) - harvesting, road construction, aerial application of pesticides, or site preparation within 0.25 mile of a known active breeding area, documented by the department of fish and wildlife.

(e) Oregon silverspot butterfly (*Speyeria zerene hippolyta*) - harvesting, road construction, aerial or ground application of pesticides, or site preparation within 0.25 mile of an individual occurrence, documented by the department of fish and wildlife.

(f) Peregrine falcon (*Falco peregrinus*) - harvesting, road construction, aerial application of pesticides, or site preparation within 0.5 mile of a known active nest site, documented by the department of fish and wildlife, between the dates of March 1 and July 30; or harvesting, road construction, or aerial application of pesticides within 0.25 mile of the nest site at other times of the year.

(g) Sandhill crane (*Grus canadensis*) - harvesting, road construction, aerial application of pesticides, or site preparation within 0.25 mile of a known active nesting area, documented by the department of fish and wildlife.

(h) Northern spotted owl (*Strix occidentalis caurina*)

(i) **Within a SOSEA boundary** (see maps in WAC 222-16-086), except as indicated in (h)(ii) of this subsection, harvesting, road construction, or aerial application of pesticides on suitable spotted owl habitat within a median home range circle that is centered within the SOSEA or on adjacent federal lands.

(ii) **Within the Entiat SOSEA**, harvesting, road construction, or aerial application of pesticides within the areas indicated for demographic support (see WAC 222-16-086(2)) on suitable spotted owl habitat located within a median home range circle that is centered within the demographic support area.

(iii) **Outside of a SOSEA**, harvesting, road construction, or aerial application of pesticides, between March 1 and August 31 on the seventy acres of highest quality suitable spotted owl habitat surrounding a northern spotted owl site center located outside a SOSEA. The highest quality suitable habitat shall be determined by the department in cooperation with the department of fish and wildlife. Consideration shall

be given to habitat quality, proximity to the activity center and contiguity.

(iv) **Small parcel northern spotted owl exemption.** Forest practices proposed on the lands owned or controlled by a landowner whose forest land ownership within the SOSEA is less than or equal to 500 acres and where the forest practice is not within 0.7 mile of a northern spotted owl site center shall not be considered to be on lands designated as critical habitat (state) for northern spotted owls.

(i) Western pond turtle (*Clemmys marmorata*) - harvesting, road construction, aerial application of pesticides, or site preparation within 0.25 mile of a known individual occurrence, documented by the department of wildlife.

(j) Marbled murrelet (*Brachyramphus marmoratus*)

(i) Harvesting, other than removal of down trees outside of the critical nesting season, or road construction within an occupied marbled murrelet site.

(ii) Harvesting, other than removal of down trees outside of the critical nesting season, or road construction within suitable marbled murrelet habitat within a marbled murrelet detection area.

(iii) Harvesting, other than removal of down trees outside of the critical nesting season, or road construction within suitable marbled murrelet habitat containing 7 platforms per acre outside a marbled murrelet detection area.

(iv) Harvesting, other than removal of down trees outside of the critical nesting season, or road construction outside a marbled murrelet detection area within a marbled murrelet special landscape and within suitable marbled murrelet habitat with 5 or more platforms per acre.

(v) Harvesting within a 300 foot managed buffer zone adjacent to an occupied marbled murrelet site that results in less than a residual stand stem density of 75 trees per acre greater than 6 inches in dbh; provided that 25 of which shall be greater than 12 inches dbh including 5 trees greater than 20 inches in dbh, where they exist. The primary consideration for the design of managed buffer zone widths and leave tree retention patterns shall be to mediate edge effects. The width of the buffer zone may be reduced in some areas to a minimum of 200 feet and extended to a maximum of 400 feet as long as the average of 300 feet is maintained.

(vi) Except that the following shall not be critical habitat (state):

(A) Where a landowner owns less than 500 acres of forest land within 50 miles of saltwater and the land does not contain an occupied marbled murrelet site; or

(B) Where a protocol survey (see WAC 222-12-090(14)) has been conducted and no murrelets were detected. The landowner is then relieved from further survey requirements. However, if an occupied marbled murrelet site is established, this exemption is void.

(2) The following critical habitats (federal) designated by the United States Secretary of the Interior or Commerce, or specific forest practices within those habitats, have been determined to have the potential for a substantial impact on the environment and therefore are designated as critical habitats (state) of threatened or endangered species.

(3) For the purpose of identifying forest practices which have the potential for a substantial impact on the environment with regard to threatened or endangered species newly listed

by the Washington fish and wildlife commission and/or the United States Secretary of the Interior or Commerce, the department shall after consultation with the department of fish and wildlife, prepare and submit to the board a proposed list of critical habitats (state) of threatened or endangered species. This list shall be submitted to the board within 30 days of the listing of the species. The department shall, at a minimum, consider potential impacts of forest practices on habitats essential to meeting the life requisites for each species listed as threatened or endangered. Those critical habitats (state) adopted by the board shall be added to the list in subsection (1) of this section. See WAC 222-16-050 (1)(b).

(4) For the purpose of identifying any areas and/or forest practices within critical habitats (federal) designated by the United States Secretary of the Interior or Commerce which have the potential for a substantial impact on the environment, the department shall, after consultation with the department of fish and wildlife, submit to the board a proposed list of any forest practices and/or areas proposed for inclusion in Class IV - Special forest practices. The department shall submit the list to the board within 30 days of the date the United States Secretary of the Interior or Commerce publishes a final rule designating critical habitat (federal) in the Federal Register. Those critical habitats included by the board in Class IV - Special shall be added to the list in subsection (2) of this section. See WAC 222-16-050 (1)(b).

(5)(a) Except for bald eagles under subsection (1)(a) of this section, the critical habitats (state) of threatened and endangered species and specific forest practices designated in subsections (1) and (2) of this section are intended to be interim. These interim designations shall expire for a given species on the earliest of:

(i) The effective date of a regulatory system for wildlife protection referred to in (b) of this subsection or of substantive rules on the species.

(ii) The delisting of a threatened or endangered species by the Washington fish and wildlife commission and by the United States Secretary of Interior or Commerce.

(b) The board shall examine current wildlife protection and department authority to protect wildlife and develop and recommend a regulatory system, including baseline rules for wildlife protection. To the extent possible, this system shall:

(i) Use the best science and management advice available;

(ii) Use a landscape approach to wildlife protection;

(iii) Be designed to avoid the potential for substantial impact to the environment;

(iv) Protect known populations of threatened and endangered species of wildlife from negative effects of forest practices consistent with RCW 76.09.010; and

(v) Consider and be consistent with recovery plans adopted by the department of fish and wildlife pursuant to RCW 77.12.020(6) or habitat conservation plans or 16 U.S.C. 1533(d) rule changes of the Endangered Species Act.

(6) Regardless of any other provision in this section, forest practices applications shall not be classified as Class IV-Special based on critical habitat (state) (WAC 222-16-080 WAC 222-16-050 (1)(b)) for a species, if the forest practices are consistent with one or more of the following:

(a) Documents addressing the needs of the affected species provided such documents have received environmental review with an opportunity for public comment under the National Environmental Policy Act, 42 U.S.C. section 4321 et seq.:

(i) A habitat conservation plan and incidental take permit; or an incidental take statement covering such species approved by the Secretary of the Interior or Commerce pursuant to 16 U.S.C. § 1536(b) or 1539(a); or

(ii) An "unlisted species agreement" covering such species approved by the U.S. Fish and Wildlife Service or National Marine Fisheries Service; or

(iii) Other conservation agreement entered into with a federal agency pursuant to its statutory authority for fish and wildlife protection that addresses the needs of the affected species; or

(iv) A rule adopted by the U.S. Fish and Wildlife Service or the National Marine Fisheries Service for the conservation of an affected species pursuant to 16 U.S.C. section 1533(d); or

(b) Documents addressing the needs of the affected species so long as they have been reviewed under the State Environmental Policy Act;

(i) A landscape management plan; or

(ii) Another cooperative or conservation agreement entered into with a state resource agency pursuant to its statutory authority for fish and wildlife protection;

(c) A special wildlife management plan (SWMP) developed by the landowner and approved by the department in consultation with the department of fish and wildlife;

(d) A bald eagle management plan approved under WAC 232-12-292;

(e) A landowner option plan (LOP) for northern spotted owls developed pursuant to WAC 222-16-100(1);

(f) A cooperative habitat enhancement agreement (CHEA) developed pursuant to WAC 222-16-105; or

(g) A take avoidance plan issued by the U.S. Fish and Wildlife Service or the National Marine Fisheries Service prior to March 20, 2000;

(h) From January 1, 2009, through December 31, 2009, surveys demonstrating the absence of northern spotted owls at a northern spotted owl site center have been reviewed and approved by the department of fish and wildlife and all three of the following criteria have been met:

(i) The site has been evaluated by the spotted owl conservation advisory group; and

(ii) As part of the spotted owl conservation advisory group's evaluation, the department's representative has consulted with the department of fish and wildlife; and

(iii) The spotted owl conservation advisory group has reached consensus that the site need not be maintained while the board completes its evaluation of rules affecting the northern spotted owl. The spotted owl conservation advisory group shall communicate its findings to the department in writing within sixty days of the department of fish and wildlife's approval of surveys demonstrating the absence of northern spotted owls.

In those situations where one of the options above has been used, forest practices applications may still be classified as Class IV-Special based upon the presence of one or more

of the factors listed in WAC 222-16-050(1), other than critical habitat (state) for the species covered by the existing plan.

(7) The department, in consultation with the department of fish and wildlife, shall review each SOSEA to determine whether the goals for that SOSEA are being met through approved plans, permits, statements, letters, or agreements referred to in subsection (6) of this section. Based on the consultation, the department shall recommend to the board the suspension, deletion, modification or reestablishment of the applicable SOSEA from the rules. The department shall conduct a review for a particular SOSEA upon approval of a landowner option plan, a petition from a landowner in the SOSEA, or under its own initiative.

(8) The department, in consultation with the department of fish and wildlife, shall report annually to the board on the status of the northern spotted owl to determine whether circumstances exist that substantially interfere with meeting the goals of the SOSEAs.

WSR 09-18-052
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 09-185—Filed August 27, 2009, 10:26 a.m., effective August 27, 2009, 10:26 a.m.]

Effective Date of Rule: Immediately.

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

Citation of Existing Rules Affected by this Order: Repealing WAC 220-33-01000K and 220-33-01000L; and amending WAC 220-33-010.

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

Other Authority: *United States v. Oregon*, Civil No. 68-513-KI (D. Or.), Order Adopting 2008-2017 *United States v. Oregon Management Agreement* (Aug. 12, 2008) (Doc. No. 2546); *Northwest Gillnetters Ass'n v. Sandison*, 95 Wn.2d 638, 628 P.2d 800 (1981); Washington fish and wildlife commission policies concerning Columbia River fisheries; 40 Stat. 515 (Columbia River compact).

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

Reasons for this Finding: Eliminates the last night of the late August fishing period. Total catch and upriver bright

catch are both tracking ahead of preseason expectations. Rescinding the final night provides less risk to future commercial fishing periods. The seasons are consistent with the 2008-2017 interim management agreement, the 2009 non-Indian salmon allocation agreement and the 2006-2009 sturgeon accord. The regulation is consistent with compact action of August 26, 2009. 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 2008-2017 *United States v. Oregon Management Agreement* (Aug. 12, 2008) (Doc. No. 2546).

Some Columbia River Basin salmon and steelhead stocks are listed as threatened or endangered under the federal ESA. On May 5, 2008, the National Marine Fisheries Service issued a biological opinion under 16 U.S.C. § 1536 that allows for some incidental take of these species in treaty and nontreaty Columbia River fisheries governed by the 2008-2017 *U.S. v. Oregon Management Agreement*. The Washington and Oregon fish and wildlife commissions have developed policies to guide the implementation of such biological opinions in the states' regulation of nontreaty fisheries.

Columbia River nontreaty fisheries are monitored very closely to ensure compliance with federal court orders, the ESA, and commission guidelines. Because conditions change rapidly, the fisheries are managed almost exclusively by emergency rule. Representatives from the Washington (WDFW) and Oregon (ODFW) departments of fish and wildlife convene public hearings and take public testimony when considering proposals for new emergency rules. WDFW and ODFW then adopt regulations reflecting agreements reached. There is insufficient time to adopt permanent rules.

Number of Sections Adopted in Order to Comply with Federal Statute: New 1, Amended 0, Repealed 2; Federal Rules or Standards: New 1, Amended 0, Repealed 2; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

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

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

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

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

Date Adopted: August 27, 2009.

Lori Preuss
for Philip Anderson
Director

NEW SECTION

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

1. Blind Slough/Knappa Slough Select Area.

a. SEASON: Monday, Tuesday, Wednesday, and Thursday nights from August 31 through October 30, 2009.

Open hours are 7 PM - 7 AM from August 25 through September 18 and 6 PM - 8 AM thereafter.

b. AREA: Blind Slough and Knappa Slough. An area closure of an approximately 100-foot radius at the mouth of Big Creek is defined by markers. Concurrent jurisdiction waters include all areas in Knappa Slough and downstream of the Railroad Bridge in Blind Slough.

c. GEAR: 9 3/4-inch maximum mesh size. 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. 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. ALLOWABLE SALES: Salmon and white sturgeon (43-54 inch fork length). A maximum of three white sturgeon may be possessed or sold by each vessel participating each calendar week (Sunday through Saturday). The sturgeon possession/sales limit applies to mainstem fisheries and Select Area fisheries.

2. Tongue Point/South Channel Select Area.

a. SEASON: Monday, Tuesday, Wednesday, and Thursday nights from August 31 through October 30, 2009. Open 7 PM - 7 AM from August 31 - September 18 and 4 PM - 8 AM thereafter.

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

c. GEAR: 6-inch maximum mesh. Gillnet. Monofilament gear is allowed. In the Tongue Point area: Net length maximum of 250 fathoms. 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. South Channel area: Net length maximum of 100 fathoms. No weight restriction on lead line. Use of additional weights or anchors attached directly to the lead line is allowed.

d. ALLOWABLE SALES: Salmon and white sturgeon (43-54 inch fork length). A maximum of three white sturgeon may be possessed or sold by each vessel participating each

calendar week (Sunday through Saturday). The sturgeon possession/sales limit applies to mainstem fisheries and Select Area fisheries

3. Deep River Select Area.

a. SEASON: Monday, Tuesday, Wednesday, Thursday, and Friday nights from August 31 through October 31, 2009. Open 7 PM - 9 AM from August 31 through September 19 and 4 PM - 9 AM thereafter

b. AREA: The Deep River Select Area. Concurrent jurisdiction 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.

d. ALLOWABLE SALES: Salmon and white sturgeon (43-54 inch fork length). A maximum of three white sturgeon may be possessed or sold by each vessel participating each calendar week (Sunday through Saturday). The sturgeon possession/sales limit applies to mainstem fisheries and Select Area fisheries

4. Quick Report: 24-hour quick reporting required for Washington wholesale dealers, pursuant to WAC 220-69-240. When quick reporting is required, Columbia River reports must be submitted within 24 hours of the closure of each fishing period. This Quick report requirement applies to all seasons described above (Columbia River and Select Areas).

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 220-33-01000K Columbia River season below Bonneville. (09-180)

The following section of the Washington Administrative Code is repealed effective November 1, 2009:

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

WSR 09-18-059

EMERGENCY RULES

DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Aging and Disability Services Administration)

[Filed August 28, 2009, 8:33 a.m., effective August 28, 2009, 8:33 a.m.]

Effective Date of Rule: Immediately.

Purpose: The division of developmental disabilities (DDD) is amending chapter 388-845 WAC, DDD home and community based waivers to add a fifth waiver, known as the children's intensive in-home behavioral supports (CIIBS). These rules are necessary to implement the CIIBS waiver and incorporate changes reflected in the waivers submitted to the federal Centers for Medicare and Medicaid Services under

1915(c) of the Social Security Act and implement section 205 (1)(i), chapter 329, Laws of 2008.

Citation of Existing Rules Affected by this Order: Amending WAC 388-845-0001, 388-845-0015, 388-845-0020, 388-845-0030, 388-845-0041, 388-845-0045, 388-845-0050, 388-845-0055, 388-845-0065, 388-845-0100, 388-845-0111, 388-845-0120, 388-845-0200, 388-845-0500, 388-845-0505, 388-845-0900, 388-845-0910, 388-845-1000, 388-845-1015, 388-845-1110, 388-845-1150, 388-845-1200, 388-845-1300, 388-845-1400, 388-845-1600, 388-845-1605, 388-845-1620, 388-845-1650, 388-845-1700, 388-845-1800, 388-845-1900, 388-845-2000, 388-845-2005, 388-845-2100, 388-845-2200, 388-845-3000, 388-845-3085, and 388-845-4005.

Statutory Authority for Adoption: RCW 71A.12.030, 71A.12.120, chapter 194, Laws of 2009, and section 205 (1)(i), chapter 329, Laws of 2008.

Other Authority: Title 71A RCW.

Under RCW 34.05.350 the agency for good cause finds that state or federal law or federal rule or a federal deadline for state receipt of federal funds requires immediate adoption of a rule.

Reasons for this Finding: This emergency rule making is necessary to implement chapter 194, Laws of 2009, and the Centers for Medicare and Medicaid Services approval to begin the new HCBS waiver May 1, 2009. A CR-101 was filed as WSR 08-19-112 on September 17, 2008. This emergency supersedes the emergency filed as WSR 09-10-035. The department is working with stakeholders on revising the draft and plans to file the CR-102 in fall 2009.

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 18, Amended 38, Repealed 0.

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

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

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

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 18, Amended 38, Repealed 0.

Date Adopted: August 13, 2009.

Don Goldsby, Manager
Rules and Policies Assistance Unit

Reviser's note: The material contained in this filing exceeded the page-count limitations of WAC 1-21-040 for appearance in this issue of the Register. It will appear in the 09-19 issue of the Register.

WSR 09-18-060
EMERGENCY RULES
DEPARTMENT OF

SOCIAL AND HEALTH SERVICES
(Aging and Disability Services Administration)

[Filed August 28, 2009, 8:37 a.m., effective August 28, 2009, 8:37 a.m.]

Effective Date of Rule: Immediately.

Purpose: The department is amending rules in chapters 388-71 and 388-106 WAC in accordance with chapter 571, Laws of 2009, (SHB 2361). The law prohibits the department from paying a home care agency licensed under chapter 70.127 RCW for medicaid funded in-home personal care or respite services if the care is provided to a client by a family member. The department may authorize exceptions based on the client's health and safety. These rules will not affect the amount, duration, or scope of the personal care or respite services benefit to which the client may be entitled.

Citation of Existing Rules Affected by this Order: Amending WAC 388-71-0515, 388-71-0540, and 388-106-1303.

Statutory Authority for Adoption: RCW 74.08.090, 74.09.520, chapter 571, Laws of 2009 (SHB 2361).

Other Authority: Washington state 2009-11 budget section 206(17) (ESHB 1244).

Under RCW 34.05.350 the agency for good cause finds that state or federal law or federal rule or a federal deadline for state receipt of federal funds requires immediate adoption of a rule; and that in order to implement the requirements or reductions in appropriations enacted in any budget for fiscal years 2009, 2010, or 2011, which necessitates the need for the immediate adoption, amendment, or repeal of a rule, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the fiscal needs or requirements of the agency.

Reasons for this Finding: SHB 2361 and the Washington state 2009-11 budget prohibit the department from paying a home care agency for medicaid funded in-home personal care or respite services if the care is provided to a client by a family member. On July 1, 2009, the department received a temporary restraining order (TRO) from the United States district court in Tacoma requiring the department to postpone implementation of SHB 2361. The TRO was in effect through August 12, 2009, and the department suspended activities. The TRO is now terminated.

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 3, Repealed 0.

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

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

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

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 3, Repealed 0.

Date Adopted: August 25, 2009.

Stephanie E. Vaughn
Rules Coordinator

AMENDATORY SECTION (Amending WSR 05-11-082, filed 5/17/05, effective 6/17/05)

WAC 388-71-0515 What are the responsibilities of an individual provider or home care agency provider when employed to provide care to a client? An individual provider or home care agency provider must:

(1) Understand the client's plan of care that is signed by the client or legal representative and social worker/case manager, and translated or interpreted, as necessary, for the client and the provider;

(2) Provide the services as outlined on the client's plan of care, as defined in WAC 388-106-0010;

(3) Accommodate client's individual preferences and differences in providing care;

(4) Contact the client's representative and case manager when there are changes which affect the personal care and other tasks listed on the plan of care;

(5) Observe the client for change(s) in health, take appropriate action, and respond to emergencies;

(6) Notify the case manager immediately when the client enters a hospital, or moves to another setting;

(7) Notify the case manager immediately if the client dies;

(8) Notify the department or AAA immediately when unable to staff/serve the client; and

(9) Notify the department/AAA when the individual provider or home care agency will no longer provide services. Notification to the client/legal guardian must:

(a) Give at least two weeks' notice, and

(b) Be in writing.

(10) Complete and keep accurate time sheets that are accessible to the social worker/case manager; and

(11) Comply with all applicable laws and regulations.

(12) A home care agency must not bill the department for in-home medicaid funded personal care or DDD respite services when the agency employee providing care is a family member of the client served, unless approved to do so through an exception to rule under WAC 388-440-0001. For purposes of this section, family member means related by blood, marriage, adoption, or registered domestic partnership.

AMENDATORY SECTION (Amending WSR 07-24-026, filed 11/28/07, effective 1/1/08)

WAC 388-71-0540 When will the department, AAA, or ((~~managed care entity~~)) department designee deny payment for services of an individual provider or home care agency provider? The department, AAA, or department designee will deny payment for the services of a home care agency provider if the services are provided by an employee of the home care agency who is related by blood, marriage, adoption, or registered domestic partnership to the client.

The department, AAA, or ((~~managed care entity~~)) department designee will deny payment for the services of an individual provider or home care agency provider who:

(1) Is the client's spouse, per 42 C.F.R. 441.360(g), except in the case of an individual provider for a chore services client. Note: For chore spousal providers, the department pays a rate not to exceed the amount of a one-person standard for a continuing general assistance grant, per WAC 388-478-0030;

(2) Is the natural/step/adoptive parent of a minor client aged seventeen or younger receiving services under medicaid personal care;

(3) Is a foster parent providing personal care to a child residing in their licensed foster home;

(4) Has been convicted of a disqualifying crime, under RCW 43.43.830 and 43.43.842 or of a crime relating to drugs as defined in RCW 43.43.830;

(5) Has abused, neglected, abandoned, or exploited a minor or vulnerable adult, as defined in chapter 74.34 RCW;

(6) Has had a license, certification, or a contract for the care of children or vulnerable adults denied, suspended, revoked, or terminated for noncompliance with state and/or federal regulations;

(7) Does not successfully complete the training requirements within the time limits required in WAC 388-71-05665 through 388-71-05865;

(8) Is already meeting the client's needs on an informal basis, and the client's assessment or reassessment does not identify any unmet need; and/or

(9) Is terminated by the client (in the case of an individual provider) or by the home care agency (in the case of an agency provider).

In addition, the department, AAA, or ((~~managed care entity~~)) department designee may deny payment to or terminate the contract of an individual provider as provided under WAC 388-71-0546, 388-71-0551, and 388-71-0556.

AMENDATORY SECTION (Amending WSR 06-05-022, filed 2/6/06, effective 3/9/06)

WAC 388-106-1303 What responsibilities do I have as a client of the department? As a client of the department, you have a responsibility to:

(1) Give us enough information to assess your needs;

(2) Let the social services worker into your home so that your needs can be assessed;

(3) Follow your care plan;

(4) Not act in a way that puts anyone in danger;

(5) Provide a safe work place;

(6) Tell your social services worker if there is a change in:

(a) Your medical condition;

(b) The help you get from family or other agencies;

(c) Where you live; or

(d) Your financial situation.

(7) Tell your social services worker if someone else makes medical or financial decision for you;

(8) Choose a qualified provider;

(9) Inform the department and your home care agency if an employee assigned by the home care agency is related to

you by blood, marriage, adoption, or registered domestic partnership.

(10) Keep provider background checks private;

~~((10))~~ (11) Tell your social services worker if you are having problems with your provider; and

~~((11))~~ (12) Choose your own health care. Tell your social services worker when you do not do what your doctor says.

WSR 09-18-064
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 09-190—Filed August 28, 2009, 3:14 p.m., effective August 28, 2009, 3:14 p.m.]

Effective Date of Rule: Immediately.

Purpose: Amend commercial fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-52-04000H; and amending WAC 220-52-040.

Statutory Authority for Adoption: RCW 77.12.047 and 77.04.020.

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

Reasons for this Finding: The weekly landing limit and period is necessary to mitigate handling mortality from sorting soft shelled crab and is in conformity with the coastal Dungeness crab summer fishery management plan. There is insufficient time to adopt permanent rules.

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

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

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

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

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

Date Adopted: August 28, 2009.

Philip Anderson
Director

NEW SECTION

WAC 220-52-04000H Coastal crab fishery—Weekly trip limits. Notwithstanding the provisions of WAC 220-52-040, effective immediately until further notice:

(1) It is unlawful for any person licensed to fish under a Dungeness crab-coastal fishery license to possess or land crab in excess of 2,500 pounds taken during each of the following coastal crab accounting periods:

September 1 through September 7, 2009; and

September 8 through September 15, 2009.

(2) Any crab taken prior to September 1, 2009, and not landed before 11:59 p.m. August 31, 2009, become part of the September 1 through September 7 accounting period catch.

(3) It is unlawful for any person taking crab under subsection (1) of this section to fish for crab during any accounting period while having on board any crab taken in a different accounting period.

REPEALER

The following section of the Washington Administrative Code is repealed effective September 16, 2009:

WAC 220-52-04000H Coastal crab fishery—
Weekly trip limits.

WSR 09-18-067
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 09-188—Filed August 28, 2009, 3:21 p.m., effective August 29, 2009, 5:00 a.m.]

Effective Date of Rule: August 29, 2009, 5:00 a.m.

Purpose: Amend commercial fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-47-50100P.

Statutory Authority for Adoption: RCW 77.12.047 and 77.04.020.

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

Reasons for this Finding: This regulation provides for Pacific Salmon Commission authorized fisheries in Areas 7 and 7A. These emergency rules are necessary to initiate fisheries targeting a harvestable surplus of pink salmon available. There is insufficient time to adopt permanent rules.

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

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

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

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

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

Date Adopted: August 28, 2009.

Philip Anderson
Director

NEW SECTION

WAC 220-47-50100P Puget Sound all-citizen commercial salmon fishery—Open periods. Notwithstanding the provisions of Chapter 220-47 WAC, effective immediately until further notice, it is unlawful to take, fish for, or possess salmon taken for commercial purposes in Puget Sound Salmon Management and Catch Reporting Areas except in accordance with the open periods, mesh size, areas, species restrictions, notification, and landing requirements set forth in this section, provided that unless otherwise amended, all permanent rules remain in effect:

Areas 7 and 7A:

(1) **Purse Seines** - Open to purse seine gear according to the times, dates, and conditions as prescribed and listed here:

Hours	Dates
5:00 AM - 9:00 PM	8/29, 8/31

(a) It is unlawful to retain Chinook, sockeye, coho, and chum salmon.

(b) Purse seine fishers must also use a recovery box in compliance with WAC 220-47-301 (7)(a) through (f).

(c) It is unlawful to bring salmon aboard a vessel unless all salmon captured in the seine net are removed from the seine net using a brailer or dip net meeting the specifications in WAC 220-47-325, prior to the seine net being removed from the water. All salmon must be immediately sorted, and those required to be released must be placed in an operating recovery box or released into the water before the next haul may be brought on the deck. However, small numbers of fish may be brought on board the vessel by pulling the net in without mechanical or hydraulic assistance.

(d) It is unlawful to fish for salmon with purse seine gear in Areas 7 and 7A unless the vessel operator has attended a "Fish Friendly" best fishing practices workshop and is in possession of a department-issued certification card.

(2) **Gill Nets** - Open to gill net gear with 5-inch minimum and 5 1/2-inch maximum mesh size according to the times, dates, and conditions as prescribed and listed here:

Hours	Dates
8:00 AM - Midnight	8/29, 8/31

(a) It is unlawful to retain sockeye salmon; and those salmon required to be released must be done so immediately.

(b) It is unlawful to fish for salmon with gill net gear in Areas 7 and 7A unless the vessel operator has attended a "Fish Friendly" best fishing practices workshop and is in possession of a department issued certification card.

(3) **Reef Nets** - Open to reef net gear according to the times, dates, and conditions as prescribed and listed here:

Hours	Dates
5 AM - 9 PM	8/29, 8/30, 8/31, 9/1

(a) It is unlawful to retain unmarked Chinook, unmarked coho, sockeye and all chum salmon.

(b) It is unlawful to retain marked Chinook unless the reef net operator is in immediate possession of a Puget Sound Reef Net Logbook.

(c) It is unlawful to fish for salmon with reef net gear in Areas 7 and 7A unless the vessel operator has attended a "Fish Friendly" best fishing practices workshop and is in immediate possession of a department-issued certification card.

(4) Waters north and west of the Area 7 "Iwerson Dock Line" (a line projected from Iwerson Dock on Point Roberts to the Georgina Point light at the entrance to Active Pass in the Province of British Columbia) are closed to commercial harvest of salmon previously described in the above sections.

"Quick Reporting Fisheries":

All fisheries opened under this section, and any fishery opening under authority of the Fraser Panel for sockeye or pink salmon in Puget Sound Salmon Management and Catch Reporting Areas (WAC 220-22-030), are designated as "Quick Reporting Required" per WAC 220-47-001.

REPEALER

The following section of the Washington Administrative Code is repealed effective September 2, 2009:

WAC 220-47-50100P Puget Sound all-citizen commercial salmon fishery—
Open periods.

**WSR 09-18-068
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE**

[Order 09-189—Filed August 28, 2009, 3:26 p.m., effective September 1, 2009]

Effective Date of Rule: September 1, 2009.

Purpose: Amend commercial fishing rules.

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

Statutory Authority for Adoption: RCW 77.12.047 and 77.04.020.

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

Reasons for this Finding: Harvestable surplus of coho available, agreement over scheduling of commercial fisheries reached with tribal comanagers. National Oceanic and Atmospheric Administration approval given for expected

preseason forecast of summer chum. There is insufficient time to adopt permanent rules.

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

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

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

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

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

Date Adopted: August 28, 2009.

Philip Anderson
Director

NEW SECTION

WAC 220-47-41100G Puget Sound gill net fishery.

Notwithstanding the provisions of WAC 220-47-411:

(1) Effective September 1, 2009, it is unlawful to take, fish for or possess salmon taken with skiff gill net gear in Salmon Management and Catch Reporting Area 12A.

(2) Effective 7:00 a.m. through 7:00 p.m. September 2, 2009, it is permissible take, fish for or possess salmon taken with skiff gill net gear in Salmon Management and Catch Reporting Area 12A.

(3) Unless otherwise amended, all permanent rules remain in effect.

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 7:01 p.m. September 2, 2009:

WAC 220-47-41100G Puget Sound gill net fishery.

WSR 09-18-074

EMERGENCY RULES DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Health and Recovery Services Administration)

[Filed August 31, 2009, 8:31 a.m., effective September 1, 2009]

Effective Date of Rule: September 1, 2009.

Purpose: These amendments are required to meet the 2009-2011 final legislative budget reductions for pharmaceuticals. Specifically, the department is reducing the coverage of cough and cold products to a few basic products (expecto-

rant, decongestant, cough suppressant, and saline dose [nose] drops).

Citation of Existing Rules Affected by this Order: Amending WAC 388-530-2000 and 388-530-2100.

Statutory Authority for Adoption: RCW 74.04.050, 74.08.090.

Other Authority: Section 1109, chapter 564, Laws of 2009 (ESHB 1244).

Under RCW 34.05.350 the agency for good cause finds that in order to implement the requirements or reductions in appropriations enacted in any budget for fiscal years 2009, 2010, or 2011, which necessitates the need for the immediate adoption, amendment, or repeal of a rule, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the fiscal needs or requirements of the agency.

Reasons for this Finding: Emergency rule adoption is required in order for the department to fully meet the legislatively mandated appropriation reduction in section 1109, chapter 564, Laws of 2009 (ESHB 1244) for pharmaceuticals for fiscal years 2010-2011 by September 1, 2009.

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

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

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

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

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 2, Repealed 0.

Date Adopted: July 27, 2009.

Stephanie E. Vaughn
Rules Coordinator

AMENDATORY SECTION (Amending WSR 09-05-007, filed 2/5/09, effective 3/8/09)

WAC 388-530-2000 Covered—Outpatient drugs, devices, and drug-related supplies. (1) The department covers:

(a) Outpatient drugs, including over-the-counter drugs, as defined in WAC 388-530-1050, subject to the limitations and requirements in this chapter, when:

(i) The drug is approved by the Food and Drug Administration (FDA);

(ii) The drug is for a medically accepted indication as defined in WAC 388-530-1050;

(iii) The drug is not excluded from coverage under WAC 388-530-2100;

(iv) The manufacturer has a signed drug rebate agreement with the federal Department of Health and Human Services (DHHS). Exceptions to the drug rebate requirement are

described in WAC 388-530-7500 which describes the drug rebate program; and

(v) Prescribed by a provider with prescriptive authority (see exceptions for family planning and emergency contraception for women eighteen years of age and older in WAC 388-530-2000 (1)(b), and over-the-counter (OTC) drugs to promote smoking cessation in WAC 388-530-2000 (1)(g).

(b) Family planning drugs, devices, and drug-related supplies per chapter 388-532 WAC and as follows:

(i) Over-the-counter (OTC) family planning drugs, devices, and drug-related supplies without a prescription when the department determines it necessary for client access and safety.

(ii) Family planning drugs that do not meet the federal drug rebate requirement in WAC 388-530-7500 on a case-by-case basis; and

(iii) Contraceptive patches, contraceptive rings, and oral contraceptives, only when dispensed in at least a three-month supply, unless otherwise directed by the prescriber. There is no required minimum for how many cycles of emergency contraception may be dispensed.

(c) Prescription vitamins and mineral products, only as follows:

(i) When prescribed for clinically documented deficiencies;

(ii) Prenatal vitamins, when prescribed and dispensed to pregnant women; or

(iii) Fluoride prescribed for clients under the age of twenty-one.

(d) OTC drugs, vitamins, and minerals when determined by the department to be the least costly therapeutic alternative for a medically accepted indication. The list of covered OTC drugs, vitamins, and minerals can be found at <http://hrsa.dshs.wa.gov/pharmacy>. Subsection (1)(d) does not apply to products prescribed for the treatment of cough or cold symptoms. See WAC 388-530-2000 (1)(i) and 388-530-2100 (1)(b)(v) for coverage of products prescribed for the treatment of cough and cold symptoms.

(e) Drug-related devices and drug-related supplies as an outpatient pharmacy benefit when:

(i) Prescribed by a provider with prescribing authority;

(ii) Essential for the administration of a covered drug;

(iii) Not excluded from coverage under WAC 388-530-2100; and

(iv) Determined by the department, that a product covered under chapter 388-543 WAC Durable medical equipment and supplies should be available at retail pharmacies.

(f) Preservatives, flavoring and/or coloring agents, only when used as a suspending agent in a compound.

(g) Over-the-counter (OTC) drugs, without a prescription, to promote smoking cessation only for clients who are eighteen years of age or older and participating in a department-approved smoking cessation program. Limitation extensions as described in WAC 388-501-0169 are prohibited for the age and counseling requirements in this section.

(h) Prescription drugs to promote smoking cessation only for clients who are eighteen years of age or older and participating in a department-approved smoking cessation program. Limitation extensions as described in WAC 388-

501-0169 are prohibited for the age and counseling requirements in this section.

(i) For the treatment of cough and cold symptoms:

(i) Only the following generic, single ingredient formulations:

(A) Guaifenesin 100 mg/5 ml liquid or syrup;

(B) Dextromethorphan 15 mg/5 ml liquid or syrup;

(C) Pseudoephedrine 30 mg or 60 mg tablets;

(D) Saline nasal spray 0.65%; and

(ii) Generic combination product dextromethorphan-guaifenesin 10-100 mg/5 ml syrup, including sugar-free formulations.

(2) The department does not reimburse for any drug, device, or drug-related supply not meeting the coverage requirements under this section.

AMENDATORY SECTION (Amending WSR 09-05-007, filed 2/5/09, effective 3/8/09)

WAC 388-530-2100 Noncovered—Outpatient drugs and pharmaceutical supplies. (1) The department does not cover:

(a) A drug that is:

(i) Not approved by the Food and Drug Administration (FDA); or

(ii) Prescribed for a nonmedically accepted indication, including diagnosis, dose, or dosage schedule that is not evidenced-based.

(b) A drug prescribed:

(i) For weight loss or gain;

(ii) For infertility, frigidity, impotency;

(iii) For sexual or erectile dysfunction; ~~((or))~~

(iv) For cosmetic purposes or hair growth; or

(v) For treatment of cough or cold symptoms, except as listed in WAC 388-530-2000 (1)(d).

(c) Drugs used to treat sexual or erectile dysfunction, in accordance with section 1927 (d)(2)(K) of the Social Security Act, unless such drugs are used to treat a condition other than sexual or erectile dysfunction, and these uses have been approved by the Food and Drug Administration.

(d) Drugs listed in the federal register as "less-than-effective" ("DESI" drugs) or which are identical, similar, or related to such drugs.

(e) Outpatient drugs for which the manufacturer requires as a condition of sale that associated tests or monitoring services be purchased exclusively from the manufacturer or manufacturer's designee.

(f) A product:

(i) With an obsolete national drug code (NDC) for more than two years;

(ii) With a terminated NDC;

(iii) Whose shelf life has expired; or

(iv) Which does not have an eleven-digit NDC.

(g) Over-the-counter (OTC) drugs, vitamins, and minerals, except ~~((when determined by the department to be the least costly therapeutic alternative for a medically accepted indication))~~ as allowed under WAC 388-530-2000(d).

(h) Any drug regularly supplied by other public agencies as an integral part of program activity (e.g., immunization vaccines for children).

(i) Free pharmaceutical samples.

(j) Over-the-counter or prescription drugs to promote smoking cessation unless the client is eighteen years old or older and participating in a department-approved cessation program.

(2) If a noncovered drug is prescribed through the early and periodic screening, diagnosis, and treatment (EPSDT) process, an authorization request may be submitted indicating that the request is EPSDT related, and the request will be evaluated according to the process in WAC 388-501-0165. (See WAC 388-534-0100 for EPSDT rules).

(3) A client can request an exception to rule (ETR) as described in WAC 388-501-0160.

Date Adopted: August 31, 2009.

Philip Anderson
Director

NEW SECTION

WAC 232-28-61900D Exceptions to statewide rules—Snake River. Notwithstanding the provisions of WAC 232-28-619:

(1) Effective September 1 through October 15, 2009, a person may fish for and possess salmon in waters of the Snake River from the Highway 12 Bridge upstream to the no fishing zone below Ice Harbor Dam, and from the Highway 261 Bridge crossing the Snake River upstream to the no fishing zone below Little Goose Dam. Daily limit of two adult hatchery Chinook, plus four jack Chinook salmon (either adipose clipped or unclipped).

(a) However, when fishing along the "wall" and walkway area upstream of the juvenile fish bypass return pipe below Little Goose Dam, the daily limit is one adult hatchery Chinook and up to two jack Chinook salmon.

(b) Barbless hooks only when fishing for Chinook or steelhead.

(c) Night closure is in effect.

REPEALER

The following section of the Washington Administrative Code is repealed effective October 16, 2009:

WAC 232-28-61900D Exceptions to statewide rules—Snake River.

WSR 09-18-077 EMERGENCY RULES DEPARTMENT OF FISH AND WILDLIFE

[Order 09-181—Filed August 31, 2009, 9:52 a.m., effective September 1, 2009]

Effective Date of Rule: September 1, 2009.

Purpose: Amend personal use fishing rules.

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

Statutory Authority for Adoption: RCW 77.12.047 and 77.04.020.

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

Reasons for this Finding: There are sufficient numbers of upriver bright fall chinook and wild Snake River fall chinook returning to the Columbia River such that, within allowable limits for potential impacts upon wild fish in the lower Snake River, a fishery can be opened on the lower Snake River. There is insufficient time to adopt permanent rules.

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

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

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

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

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

WSR 09-18-078 EMERGENCY RULES SUPERINTENDENT OF PUBLIC INSTRUCTION

[Filed August 31, 2009, 10:23 a.m., effective August 31, 2009, 10:23 a.m.]

Effective Date of Rule: Immediately.

Purpose: To allow school districts to transfer revenue from those received as general apportionment to their student achievement account to offset the reduction caused by the state fiscal stabilization fund grants.

Statutory Authority for Adoption: RCW 28A.150.360.

Under RCW 34.05.350 the agency for good cause finds that immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest; and that in order to implement the requirements or reductions in appropriations enacted in any budget for fiscal years 2009, 2010, or 2011, which necessitates the need for the immediate adoption, amendment, or repeal of a rule, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the fiscal needs or requirements of the agency.

Reasons for this Finding: School districts received state fiscal stabilization fund grants during the 2008-09 school year. These grants were in place of other revenues for May 2009 through August 2009. Payments for student achievement for July and August 2009 were not made from state moneys; instead they were paid through the state fiscal stabilization fund grant awards. This reduction in student achievement moneys will have an effect on a district's ability to carry over unspent student achievement money into the 2009-10 school year. To bring their final student achievement revenue balance equal to the amount calculated for the 2008-09 school year, school districts need authority to transfer revenues from general apportionment to student achievement. This rule must be in effect before the end of the school year on August 31, 2009.

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

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

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

Date Adopted: August 31, 2009.

Randolph I. Dorn
Superintendent of
Public Instruction

NEW SECTION

WAC 392-121-450 Transfer of general apportionment revenues School districts may make a one-time transfer of revenues from those revenues received as General Apportionment (Revenue Code 3100) into their Student Achievement account (Revenue Code 4166) to assist in the closing of the 2008-2009 school year.

The amount of such transfer is limited to the amount of a school district's allocation for Student Achievement moneys for July and August 2009, as outlined in chapter 541, Laws of 2009.

Revenues transferred in this manner shall be considered as Student Achievement revenues for all purposes including carryover calculations.

WSR 09-18-081
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 09-191—Filed August 31, 2009, 1:39 p.m., effective August 31, 2009, 1:39 p.m.]

Effective Date of Rule: Immediately.

Purpose: Commercial fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-52-04000H and 220-52-04000I; and 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 weekly landing limit and period is necessary to mitigate handling mortality from sorting soft shelled crab and is in conformity with the coastal Dungeness crab summer fishery management plan. There is insufficient time to adopt permanent rules.

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

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

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

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

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

Date Adopted: August 31, 2009.

Joe Stohr
for Philip Anderson
Director

NEW SECTION

WAC 220-52-04000I Coastal crab fishery—Weekly trip limits. Notwithstanding the provisions of WAC 220-52-040, effective immediately until further notice:

(1) It is unlawful for any person licensed to fish under a Dungeness crab-coastal fishery license to possess or land crab in excess of 4,500 pounds taken during each of the following coastal crab accounting periods:

September 1 through September 7, 2009; and
September 8 through September 15, 2009.

(2) Any crab taken prior to September 1, 2009, and not landed before 11:59 p.m. August 31, 2009, become part of the September 1 through September 7 accounting period catch.

(3) It is unlawful for any person taking crab under subsection (1) of this section to fish for crab during any accounting period while having on board any crab taken in a different accounting period.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 220-52-04000H Coastal crab fishery—
Weekly trip limits.

The following section of the Washington Administrative Code is repealed effective September 16, 2009:

WAC 220-52-04000I Coastal crab fishery—
Weekly trip limits. (09-190)

WSR 09-18-084

EMERGENCY RULES

DEPARTMENT OF REVENUE

[Filed August 31, 2009, 2:44 p.m., effective August 31, 2009, 2:44 p.m.]

Effective Date of Rule: Immediately.

Other Findings Required by Other Provisions of Law as Precondition to Adoption or Effectiveness of Rule: Emergency rule findings are required, see below.

Purpose: Effective January 1, 2010, reseller permits will replace resale certificates as the means to substantiate wholesale purchases. Section 404, chapter 563, Laws of 2009 authorizes the department of revenue (department) to accept applications for reseller permits, issue reseller permits, adopt rules, and take any other action before January 1, 2010, necessary to ensure the effective implementation of the legislation. The department is adopting these rules on an emergency basis to explain the application process and eligibility requirements for businesses to receive department-issued reseller permits.

The adopted rules are WAC 458-20-10201 Application process and eligibility requirements for reseller permits and 458-20-10202 Brief adjudicative proceedings for matters related to reseller permits.

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

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

Reasons for this Finding: The department is adopting these rules on an emergency basis because permanent rules cannot be adopted at this time. These rules will provide needed guidance on reseller permits that the department will begin issuing in September 2009.

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 2, Amended 0, Repealed 0.

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

Number of Sections Adopted on the Agency's Own Initiative: New 2, Amended 0, Repealed 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 31, 2009.

Alan R. Lynn
Rules Coordinator

NEW SECTION

WAC 458-20-10201 Application process and eligibility requirements for reseller permits.

Part I - General

(101) **Introduction.** Effective January 1, 2010, seller's permits issued by the department of revenue (department) replace resale certificates as the documentation necessary to substantiate the wholesale nature of a sales transaction pursuant to Chapter 563, Laws of 2009 (SB 6173) ("the act"). To reduce the potential for confusion, a "seller's permit" will be described as a "reseller permit." The act provides unique requirements and provisions for construction contractors. (See Part III of this section.) The act authorizes the department to accept applications for reseller permits, issue reseller permits, adopt rules, and take any other action before January 1, 2010, necessary to ensure the effective implementation of the act. This section explains the criteria under which the department will automatically issue a reseller permit, the application process for both construction contractors and taxpayers engaging in other business activities when the department does not automatically issue or renew a reseller permit, and the criteria that may result in the denial of an application for a reseller permit.

(102) **What is a reseller permit?** A reseller permit is the document issued to a taxpayer by the department, a copy of which the taxpayer provides to a seller to substantiate a wholesale purchase. A wholesale purchase is not subject to retail sales tax. See RCW 82.04.060; 82.08.020. Reseller permits are to be used for wholesale purchases made on and after January 1, 2010.

In addition to this section, information regarding the reseller permit is available at the following sources:

- <http://apps.leg.wa.gov/billinfo/>, through which a copy of Chapter 563, Laws of 2009 (SB 6173) and background information about the legislation can be obtained;
- <http://dor.wa.gov/resellerpermit>, which is the department's specific webpage for information relating to reseller permits; and

- WAC 458-20-10202, which explains the process a taxpayer uses when appealing the department's denial of an application for a reseller permit.

Buyers and sellers should refer to the following for information regarding the resale certificate, which is the document used to substantiate the wholesale nature of a sales transaction occurring prior to January 1, 2010:

- WAC 458-20-102 (Resale Certificates), which explains the taxpayer's responsibilities regarding the use of a resale certificate, the seller's responsibility for retaining a resale certificate, and the implications for a taxpayer not properly using a certificate and a seller not obtaining a certificate from the taxpayer. It is important to note that sellers should retain resale certificates for five years from the date of last use (e.g., December 31, 2014, for sales made in 2009) as the certificates may be requested by the department to verify the wholesale nature of a sale made prior to January 1, 2010.

Part II - Businesses other than contractors

(201) Can any business obtain a reseller permit? No. This act was passed by the Legislature to address the significant retail sales tax noncompliance problem resulting from both the intentional and unintentional misuse of resale certificates. The department will not issue a reseller permit unless the business can substantiate that the business is entitled to make wholesale purchases. Some businesses may not receive a reseller permit, and if they do make wholesale purchases, they will need to pay retail sales tax to the seller and then claim a "taxable amount for tax paid at source" deduction or request a refund from the department as discussed in subsection (206) of this section.

(202) How does a business obtain a reseller permit? The department will initially automatically issue a reseller permit to some businesses. These businesses will be notified in September 2009. Those businesses that do not receive an automatically issued reseller permit may apply to the department to obtain a reseller permit. Beginning in September 2009, applications will be available at: <http://dor.wa.gov/resellerpermit> or by calling 1-800-647-7706. Completed applications should be mailed or faxed to the department at:

Department of Revenue
Taxpayer Account Administration
P.O. Box 47476
Olympia, WA 98504-7476
Fax: (360) 586-0527

(203) When does a business apply for a reseller permit? A business can apply for a reseller permit anytime after September 1, 2009. In order for approved applicants to receive their reseller permits by January 1, 2010, the department recommends that businesses submit their fully completed applications no later than October 15, 2009.

(204) What criteria will the department consider when making its decision whether a business will receive a reseller permit?

(a) Except as provided in paragraph (b) of this subsection, a business other than a construction contractor will

receive a reseller permit if it satisfies the following criteria (construction contractors should refer to subsection (305) of this section for an explanation of the requirements unique to them):

(i) The business has an active tax reporting account with the department;

(ii) The business must have reported gross income on tax returns covering a monthly or quarterly period during the immediately preceding six months or, if the business reports on an annual basis, on the immediately preceding annual tax return; and

(iii) Five percent or more of the business's gross income reported during the applicable six or twelve-month period described in (a)(ii) of this subsection was reported under a retailing, wholesaling, or manufacturing business and occupation (B&O) tax classification.

(b) Notwithstanding paragraph (a) of this subsection, the department may deny an application for a reseller permit if:

(i) The Department determines that an applicant is not entitled to make purchases at wholesale based on the nature of the applicant's business;

(ii) The applicant has been assessed the penalty for the misuse of a resale certificate or a reseller permit; or

(iii) The department determines that denial of the application is in the best interest of collecting the taxes due under Title 82 RCW.

(c) For purposes of this subsection, "gross income" means gross proceeds of sales as defined in RCW 82.04.070 and value of products manufactured as determined under RCW 82.04.450.

(d) In the event that a business has reorganized, the new business resulting from the reorganization may be denied a reseller permit if the former business would not have qualified for a reseller permit under paragraphs (a) or (b) of this subsection. For purposes of this subsection, "reorganize" means:

(i) The transfer, however effected, of a majority of the assets of one business to another business where any of the persons having an interest in the ownership or management in the former business maintain an ownership or management interest in the new business, either directly or indirectly;

(ii) A mere change in identity or form of ownership, however effected; or

(iii) The new business is a mere continuation of the former business based on significant shared features such as owners, personnel, assets, or general business activity.

(205) What if I am a new business and don't have a past reporting history? New businesses will generally be issued permits if they indicate they will engage in activity taxable under a retailing, wholesaling, or manufacturing B&O tax classification.

(206) What if I don't get a reseller permit and some of my purchases do qualify as wholesale purchases? It is possible that some taxpayers that do not qualify for a reseller permit will make wholesale purchases. In these circumstances, the taxpayer must pay retail sales tax on these purchases and then claim a "taxable amount for tax paid at source" deduction on the taxpayer's excise tax return. See also WAC 458-20-102 (11)(b). Alternatively, the taxpayer may request a refund from the department of retail sales tax if

paid on purchases that are later resold without being used ("intervening use") by the taxpayer or for purchases that would otherwise have met the definition of wholesale sale if the taxpayer had provided the seller with a reseller permit or uniform exemption certificate as authorized in RCW 82.04.-470. See also WAC 458-20-229 (Refunds). However, such a deduction in respect to the purchase of services is not permitted if the services are not of a type that can be sold at wholesale under the definition of wholesale sale in RCW 82.04.060.

Part III - Construction contractors

(301) How does a contractor obtain a reseller permit?

The act does not authorize the department to automatically issue a reseller permit to "contractors." Contractors must apply for a reseller permit and meet certain eligibility requirements.

(302) **How do I determine whether I am a "contractor"?** For purposes of the reseller permit:

(a) A "contractor" is any person engaging in the activities described by:

(i) RCW 82.04.050 (2)(b), which are activities generally referred to as "retail construction" when performed for consumers, "wholesale construction" when performed for a person other than a consumer (e.g., a prime contractor), and "speculative construction" or "speculative building" when the taxpayer is constructing on land that it owns. See also WAC 458-20-170 (Constructing and repairing of new or existing buildings or other structures upon real property) for additional information;

(ii) RCW 82.04.050(8), which are activities often referred to as "public road construction." See also WAC 458-20-171 (Building, repairing or improving streets, roads, etc., which are owned by a municipal corporation or political subdivision of the state or by the United States and which are used primarily for foot or vehicular traffic) for additional information; and

(iii) RCW 82.04.050(10), which are activities often referred to as "U.S. government construction" or "government contracting." See also WAC 458-20-17001 (Government contracting—Construction, installations, or improvements to government real property) for additional information.

(b) "Retail construction" is defined as the constructing, repairing, decorating, or improving of new or existing buildings or other structures under, upon, or above real property of or for consumers, including the installing or attaching of any article of tangible personal property therein or thereto, whether or not such personal property becomes a part of the realty by virtue of installation, and it also includes the sale of services or charges made for the clearing of land and the moving of earth excepting the mere leveling of land used in commercial farming or agriculture. Retail construction activity generally involves residential and commercial construction performed for others, including road construction for the state of Washington. It generally includes construction activities that are not specifically designated as speculative building; government contracting; public road construction; logging road construction; radioactive waste cleanup on federal lands; or designated hazardous site cleanup jobs.

(c) "Materials" is defined as tangible personal property that becomes incorporated into the real property being constructed, repaired, decorated, or improved. Materials are the type of tangible personal property that contractors on retail construction projects purchase at wholesale, such as lumber, concrete, paint, wiring, pipe, roofing materials, insulation, nails, screws, drywall, and flooring material. Materials do not include consumable supplies, tools, or equipment, whether purchased or rented, such as bulldozers. However, for purposes of the percentage discussed in (305)(a)(iii) of this section, purchases of consumable supplies, tools, and equipment rentals may be included with material purchases if all such purchases are commingled in the applicant's records and it would be impractical to exclude such purchases.

(d) "Labor" is defined as the work of subcontractors (including personnel provided by temporary staffing companies) hired by a contractor to perform a portion of the construction services in respect to real property owned by a third party. In the case of speculative builders, labor includes the work of any construction contractor hired by the speculative builder. Labor does not include the work of taxpayer's employees. Nor does the term include consultants, engineers, construction managers, or other independent contractors hired to oversee a project. However, for purposes of the percentage discussed in (305)(a)(iii) of this section, purchases of labor may include the wages of taxpayer's employees and amounts paid to consultants, engineers, construction managers or other independent contractors hired to oversee a project if all such purchases are commingled in the applicant's records and it would be impractical to exclude such purchases.

(303) **How does a contractor apply for a reseller permit?** A contractor applies for a reseller permit in the same manner as non-contractor taxpayers apply as provided in subsection (202) of this section. Contractors who the department has determined may be eligible for a reseller permit will be notified in September 2009 and receive an application with their notification. The application identifies information specific to contractors that must be provided.

(304) **When does a contractor apply for a reseller permit?** The same guidelines for non-contractor applicants as provided in subsection (203) of this section also apply to contractor applicants.

(305) **What are the criteria specific to contractors to receive a reseller permit?**

(a) The Department may issue a permit to a contractor that:

(i) Provides a completed application with no material misstatement as that term is defined in paragraph (c) of this subsection;

(ii) Demonstrates it is entitled to make purchases at wholesale; and

(iii) Reported on its application that more than twenty-five percent of its total dollar amount of material and labor purchases in the preceding twelve months were for retail construction activities performed by the contractor. The department may, however, approve an application not meeting this criterion if the department is satisfied that approval is unlikely to jeopardize collection of the taxes due under Title 82 RCW.

(b) If the criteria in subsection (305)(a) are satisfied, the department will then consider the following factors when determining whether to issue a reseller permit to a contractor:

(i) Whether the contractor has an active tax reporting account with the department;

(ii) Whether the contractor has reported gross income on tax returns covering a monthly or quarterly period during the immediately preceding six months or, if the contractor reports on an annual basis, on the immediately preceding annual tax return;

(iii) Whether the contractor has the appropriate certification and licensing with the Washington State Department of Labor & Industries;

(iv) Whether the contractor has been assessed the penalty for the misuse of a resale certificate or a reseller permit; and

(v) Any other factor resulting in a determination by the department that denial of the contractor's application is in the best interest of collecting the taxes due under Title 82 RCW.

(c) For purposes of this subsection, a "material misstatement" is a false statement knowingly or purposefully made by the applicant with the intent to deceive or mislead the department. For example, a contractor who reports on its application that it had more than twenty-five percent of its purchases of materials and labor during the preceding twelve months for retail construction activity when it in fact did not have any purchases of materials and labor during the preceding twelve months for retail construction activity has made a "material misstatement."

(d) For purposes of this subsection, "gross income" means gross proceeds of sales as defined in RCW 82.04.070 and value of products manufactured as determined under RCW 82.04.450.

(e) The provisions of subsection (204)(d) of this section are equally applicable to contractors.

(306) What if a contractor does not obtain a reseller permit and some of its purchases do qualify as wholesale purchases? The provisions of subsection (206) of this section are equally applicable to contractors.

NEW SECTION

WAC 458-20-10202 Brief adjudicative proceedings for matters related to reseller permits. (1) Introduction. The Department of Revenue (department) conducts adjudicative proceedings pursuant to chapter 34.05 RCW, the Administrative Procedure Act (APA). The department adopts in this section the brief adjudicative procedures as provided in RCW 34.05.482 through 34.05.494 for the administration of brief adjudicative proceedings for the following matters related to reseller permits:

(a) A determination of whether an applicant for a reseller permit meets the criteria for a reseller permit per WAC 458-20-10201; and

(b) On the administrative appeal of an initial order denying the taxpayer's application for a reseller permit, a determination as to whether the department's order denying the application was correctly based on the criteria for approving reseller permits as set forth in WAC 458-20-10201.

This section explains the procedure and process pertaining to the adopted brief adjudicative proceedings.

(2) **Record in brief adjudicative proceedings.** The record with respect to a taxpayer's appeal per RCW 34.05.-482 through 34.05.485 of the department's denial of an application for a reseller permit will consist of:

(a) The taxpayer's application for the reseller permit, the taxpayer's notice of appeal, the taxpayer's written response, if any, to the reasons set forth in the department's notice of denial of a reseller permit, and all records relied upon by the department or submitted by the taxpayer; and

(b) All correspondence between the taxpayer requesting the reseller permit and the department regarding the application for the reseller permit.

(3) **Conduct of brief adjudicative proceedings.** If the department denies an application for a reseller permit, it will notify the taxpayer of the denial in writing, stating the reasons for the denial. To initiate an appeal of the denial of the reseller permit application, the taxpayer must file a written appeal no later than twenty-one days after service of the department's written notice that the taxpayer's application has been denied.

(a) A form notice of appeal of the denial of a reseller permit application ("Reseller Permit Appeal Petition") is available at: <http://dor.wa.gov/resellerpermit> or by calling 1-800-647-7706. The completed form should be mailed or faxed to the department at:

Department of Revenue
Taxpayer Account Administration
P.O. Box 47476
Olympia, WA 98504-7476
Fax: (360) 586-0527

(b) A presiding officer, who will be either the assistant director of the taxpayer account administration division or such other person as designated by the director of the department (director), will conduct brief adjudicative proceedings. The presiding officer for brief adjudicative proceedings will have agency expertise in the subject matter but will not otherwise have participated in responding to the taxpayer's application for a reseller permit.

(c) As part of the appeal, the taxpayer or the taxpayer's representative may present written documentation and explain the taxpayer's view of the matter. The presiding officer may request additional documentation from the taxpayer or the department and will designate the date by which the documents must be submitted.

(d) No witnesses may appear to testify.

(e) In addition to the record, the presiding officer for brief adjudicative proceedings may employ agency expertise as a basis for decision.

(f) Within twenty-one days of receipt of the taxpayer's appeal of the denial of a reseller permit, the presiding officer will enter an initial order, including a brief explanation of the decision per RCW 34.05.485. All orders in these brief adjudicative proceedings will be in writing. The initial order will become the department's final order unless an appeal is filed with the department's appeals division per subsection (4) of this section.

(4) **Review of initial orders from brief adjudicative proceeding.** A taxpayer that had its application for a reseller permit denied in an initial order issued per subsection (3) of

this section may request a review by the department by filing a petition for review or by making an oral request for review with the department's appeals division within twenty-one days after the service of the initial order on the taxpayer. A form for an appeal of an initial order per subsection (3) of this section denying the taxpayer's application for a reseller permit is available at: <http://dor.wa.gov/resellerpermit>. A request for review should state the reasons the review is sought. A taxpayer making an oral request for review may at the same time mail a written statement to the below address stating the reasons for the appeal and its view of the matter. The address, telephone number, and fax number of the appeals division are:

Appeals Division, Reseller Permit Appeals
 Department of Revenue
 P.O. Box 47476
 Olympia, WA 98504-7476
 Telephone Number - (800) 647-7706
 Fax - (360) 586-0527

(a) A reviewing officer, who will be either the assistant director of the appeals division or such other person as designated by the director, will conduct brief adjudicative proceedings and determine whether the department's denial of the taxpayer's application was correctly based on the criteria for approving reseller permits as set forth in WAC 458-20-10201. The reviewing officer will review the record and, if needed, convert the proceeding to a formal adjudicative proceeding.

(b) The agency record need not constitute the exclusive basis for the reviewing officer's decision. The reviewing officer will have the authority of a presiding officer.

(c) The order of the reviewing officer will be in writing and include a brief statement of the reasons for the decision, and it must be entered within twenty days of the petition for review. The order will include a notice that judicial review may be available. The order of the reviewing officer represents the final decision of the department.

(d) A request for administrative review is deemed denied if the department does not issue an order on review within twenty days after the petition for review is filed or orally requested.

(5) Conversion of a brief adjudicative proceeding to a formal proceeding. The presiding officer or reviewing officer may convert the brief adjudicative proceeding to a formal proceeding at any time on motion of the taxpayer, the department, or the presiding/reviewing officer's own motion.

(a) The presiding/reviewing officer will convert the proceeding when it is found that the use of the brief adjudicative proceeding violates any provision of law, when the protection of the public interest requires the agency to give notice to and an opportunity to participate to persons other than the parties, and when the issues and interests involved warrant the use of the procedures of RCW 34.05.413 through 34.05.479.

(b) When a proceeding is converted from a brief adjudication to a formal proceeding, the director may become the presiding officer or may designate a replacement presiding officer to conduct the formal proceedings upon notice to the taxpayer and the department.

(c) In the conduct of the formal proceedings, WAC 458-20-10002 will apply to the proceedings.

(6) **Court appeal.** Court appeal from the final order of the department is available pursuant to Part V, chapter 34.05 RCW. However, court appeal may be available only if a review of the initial decision has been requested under subsection (4) of this section and all other administrative remedies have been exhausted. See RCW 34.05.534.

(7) **Computation of time.** In computing any period of time prescribed by this section or by the presiding officer, the day of the act or event after which the designated period is to run is not to be included. The last day of the period is to be included, unless it is a Saturday, Sunday or a legal holiday, in which event the period runs until the next day which is not a Saturday, Sunday or legal holiday. When the period of time prescribed is less than seven days, intermediate Saturdays, Sundays and holidays are excluded in the computation. Service as discussed in subsection (8) of this section is deemed complete upon mailing.

(8) **Service.** All notices and other pleadings or papers filed with the presiding or reviewing officer must be served on the taxpayer, their representatives/agents of record, and the department.

(a) Service is made by one of the following methods:

- (i) In person;
- (ii) By first-class, registered or certified mail;
- (iii) By fax and same-day mailing of copies;
- (iv) By commercial parcel delivery company; or
- (v) By electronic delivery pursuant to RCW 82.32.135.

(b) Service by mail is regarded as completed upon deposit in the United States mail properly stamped and addressed.

(c) Service by electronic fax is regarded as completed upon the production by the fax machine of confirmation of transmission.

(d) Service by commercial parcel delivery is regarded as completed upon delivery to the parcel delivery company, properly addressed with charges prepaid.

(e) Service by electronic delivery is regarded as completed on the date that the department electronically sends the information to the parties or electronically notifies the parties that the information is available to be accessed by them.

(f) Service to a taxpayer, their representative/agent of record, the department, and presiding officer must be to the address shown on the notice described in subsection (3)(a) of this section.

(g) Service to the reviewing officer must be to the appeals division at the address shown in subsection (4) of this section.

(h) Where proof of service is required, the proofs of service must include:

- (i) An acknowledgment of service;
- (ii) A certificate, signed by the person who served the document(s), stating the date of service; that the person did serve the document(s) upon all or one or more of the parties of record in the proceeding by delivering a copy in person to (names); and that the service was accomplished by a method of service as provided in this subsection.

(9) **Continuance.** The presiding officer or reviewing officer may grant a request for a continuance by motion of the taxpayer, the department, or on its own motion.

WSR 09-18-095

EMERGENCY RULES

DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Aging and Disability Services Administration)

[Filed September 1, 2009, 12:16 p.m., effective September 3, 2009]

Effective Date of Rule: September 3, 2009.

Purpose: The division of developmental disabilities is amending WAC 388-831-0010 and 388-831-0030 to include individuals who have a history of violent behavior which demonstrates the likelihood to commit a violent act. This amendment reflects the legislation contained in RCW 71A.12.210. The department is proceeding to adopt these rules on a permanent basis.

Citation of Existing Rules Affected by this Order: Amending WAC 388-831-0010 and 388-831-0030.

Statutory Authority for Adoption: RCW 71A.12.030, 71A.12.210.

Other Authority: Title 71A RCW.

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

Reasons for this Finding: This rule is necessary for the preservation of public health, safety or general welfare by expanding the population who have community protection issues and may be eligible for services. This group of individuals was inadvertently omitted from the permanent rule filed previously. This emergency rule extends the emergency rule filed as WSR 09-10-084 while the department continues stakeholder work and the permanent rule-making process. The department anticipates filing the CR-102 by October 15, 2009.

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

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

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

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 2, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 2, Repealed 0.

Date Adopted: August 13, 2009.

Don Goldsby, Manager
Rules and Policies Assistance Unit

AMENDATORY SECTION (Amending WSR 08-20-118, filed 9/30/08, effective 10/31/08)

WAC 388-831-0010 Definitions. The definitions in this section apply throughout the chapter unless the context clearly requires otherwise.

"Certified community protection program residential services" means access to twenty-four hour supervision, instruction, and support services as identified in the person's individual support plan.

"Community protection program" See WAC 388-831-0020.

"Constitutes a risk to others" means a determination of a person's risk and/or dangerousness based upon a thorough assessment by a qualified professional. Actuarial risk assessment instruments should be used to supplement clinical judgment whenever appropriate.

"Department" means the department of social and health services.

"Developmental disability" means that condition defined in WAC 388-823-0040 and RCW 71A.10.020(3).

"Disclosure" means providing copies of professional assessments, incident reports, legal documents, and other information pertaining to community protection issues to ensure the provider has all relevant information. Polygraph and plethysmograph reports are excluded from disclosure.

"Division" means the division of developmental disabilities (DDD).

"Managed successfully" means that a person supported by a community protection program does not engage in the behavior identified in WAC 388-831-0030 and RCW 71A.12.210.

"Opportunistic behavior" means an act committed on impulse, which is not premeditated. In determining whether an act is opportunistic, the original motive or intent of the offense or crime will be considered.

"Predatory" means acts directed toward strangers, individuals with whom a relationship has been established or promoted for the primary purpose of victimization, or casual acquaintances with whom no substantial personal relationship exists. Predatory behavior may be characterized by planning and/or rehearsing the act, stalking, and/or grooming the victim.

"Program participant" means a person who has agreed to and is receiving services and supports in the community protection program.

"Qualified professional" means a licensed psychologist, psychiatrist, or a certified or affiliate sex offender treatment provider with at least three years prior experience working with individuals with developmental disabilities, and:

- If the person being assessed has demonstrated sexually aggressive or sexually violent behavior, that person must be assessed by a certified sex offender treatment provider, or affiliate sex offender treatment provider working under the supervision of a certified sex offender treatment provider; or

• If the person being assessed has demonstrated violent, dangerous, or aggressive behavior, that person must be assessed by a licensed psychologist or psychiatrist who has received specialized training in the treatment of or has at least three years prior experience treating violent or aggressive behavior.

"Restrictive procedures" or "Restrictions" means procedures that restrict a client's freedom of movement, restrict access to client property, prevent a client from doing something the client wants to do, require a client to do something the client does not want to do, or remove something the client owns or has earned.

"Risk assessment" means the written opinion of a qualified professional stating, at a minimum:

- Whether a person meets the criteria in WAC 388-831-0030 and RCW 71A.12.210; and
- What restrictions are necessary to keep people safe.

"Service provider" means a person or agency contracted with the department or a sub-contractor who delivers services and supports to a community protection program participant.

"Specialized environment" means a place where the program participant has agreed to supervision in a safe, structured manner specifying rules, requirements, restrictions, and expectations for personal responsibility in order to maximize community safety.

"Treatment team" means the program participant and the group of people responsible for the development, implementation, and monitoring of the person's individual supports and services. This group may include, but is not limited to, the case resource manager, therapist, residential provider, employment/day program provider, and the person's legal representative and/or family, provided the person agrees to the family member's involvement.

~~("Violent offense" means any felony defined as a violent offense in RCW 9.94A.030.)~~

"Violent" or "violence" means acts that meet the criteria for crimes listed in RCW 9.94A.030(32), 9.94A.030(45), 9.94A.030(46), 9.94A.030(54), or 9A.48.040, whether or not the person who committed the acts has been charged with or convicted of the crime.

"Waiver" means the community-based program funded under section 1915(c) of Title XIX of the federal social security act and chapter 388-845 WAC.

AMENDATORY SECTION (Amending WSR 08-20-118, filed 9/30/08, effective 10/31/08)

WAC 388-831-0030 Who are individuals with community protection issues? You are considered an individual with community protection issues if:

(1) You have been determined to have a developmental disability as defined in WAC 388-823-0040 and RCW 71A.10.020(3); and

(2) You have been identified by DDD as a person who meets one or more of the following:

(a) You have been charged with or convicted of a crime of sexual violence as defined in chapter 9A.44 or 71.09 RCW;

(b) You have been charged with or convicted of a crime involving sexual acts directed towards strangers or individuals with whom a relationship has been established or promoted for the primary purpose of victimization, or persons of casual acquaintance with whom no substantial personal relationship exists;

(c) You have been charged with or convicted of one or more violent crimes as defined in RCW 9.94A.030(45);

(d) You have not been charged with or convicted of a crime identified in (2)(a), (b), or (c) above, but you have a history of violent, stalking, sexually violent, predatory and/or opportunistic behavior which a qualified professional has determined demonstrates a likelihood to commit a violent, sexually violent and/or predatory act (~~(based on current behaviors that may escalate to violence, as determined by a qualified professional)~~); and

(3) You constitute a current risk to others as determined by a qualified professional.

(4) Charges or crimes that result in acquittal are excluded.

**WSR 09-18-104
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE**

[Order 09-193—Filed September 1, 2009, 3:45 p.m., effective September 2, 2009, 5:00 a.m.]

Effective Date of Rule: September 2, 2009, 5:00 a.m.

Purpose: Amend commercial fishing rules.

Citation of Existing Rules Affected by this Order:
Repealing WAC 220-47-50100Q.

Statutory Authority for Adoption: RCW 77.12.047 and 77.04.020.

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

Reasons for this Finding: This regulation provides for Pacific Salmon Commission authorized fisheries in Areas 7 and 7A. These emergency rules are necessary to initiate fisheries targeting a harvestable surplus of pink salmon available. There is insufficient time to adopt permanent rules.

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

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

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

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

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Mak-

ing: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: September 1, 2009.

Lori Preuss
for Philip Anderson
Director

NEW SECTION

WAC 220-47-50100Q Puget Sound all-citizen commercial salmon fishery—Open periods. Notwithstanding the provisions of Chapter 220-47 WAC, effective immediately until further notice, it is unlawful to take, fish for, or possess salmon taken for commercial purposes in Puget Sound Salmon Management and Catch Reporting Areas except in accordance with the open periods, mesh size, areas, species restrictions, notification, and landing requirements set forth in this section, provided that unless otherwise amended, all permanent rules remain in effect:

Areas 7 and 7A:

(1) **Purse Seines** - Open to purse seine gear according to the times, dates, and conditions as prescribed and listed here:

Hours	Dates
10:00 AM - 9:00 PM	9/3
5:00 AM - 9:00 PM	9/4

(a) It is unlawful to retain Chinook, sockeye, coho, and chum salmon.

(b) Purse seine fishers must also use a recovery box in compliance with WAC 220-47-301 (7)(a) through (f).

(c) It is unlawful to bring salmon aboard a vessel unless all salmon captured in the seine net are removed from the seine net using a brailer or dip net meeting the specifications in WAC 220-47-325, prior to the seine net being removed from the water. All salmon must be immediately sorted, and those required to be released must be placed in an operating recovery box or released into the water before the next brail may be brought on the deck. However, small numbers of fish may be brought on board the vessel by pulling the net in without mechanical or hydraulic assistance.

(d) It is unlawful to fish for salmon with purse seine gear in Areas 7 and 7A unless the vessel operator has attended a "Fish Friendly" best fishing practices workshop and is in possession of a department-issued certification card.

(2) **Gill Nets** - Open to gill net gear with 5 inch minimum and 5 1/2 inch maximum mesh size according to the times, dates, and conditions as prescribed and listed here:

Hours	Dates
10:00 AM - Midnight	9/3
8:00 AM - Midnight	9/4

(a) It is unlawful to retain sockeye salmon; and those salmon required to be released must be done so immediately.

(b) It is unlawful to fish for salmon with gill net gear in Areas 7 and 7A unless the vessel operator has attended a "Fish Friendly" best fishing practices workshop and is in possession of a department-issued certification card.

(3) **Reef Nets** - Open to reef net gear according to the times, dates, and conditions as prescribed and listed here:

Hours	Dates
5 AM - 9 PM	9/2, 9/3, 9/4

(a) It is unlawful to retain unmarked Chinook, unmarked coho, sockeye and all chum salmon.

(b) It is unlawful to retain marked Chinook unless the reef net operator is in immediate possession of a Puget Sound Reef Net Logbook.

(c) It is unlawful to fish for salmon with reef net gear in Areas 7 and 7A unless the vessel operator has attended a "Fish Friendly" best fishing practices workshop and is in immediate possession of a department-issued certification card.

(4) Waters north and west of the Area 7 "Iwerson Dock Line" (a line projected from Iwerson Dock on Point Roberts to the Georgina Point light at the entrance to Active Pass in the Province of British Columbia) are closed to commercial harvest of salmon previously described in the above sections.

"Quick Reporting Fisheries":

All fisheries opened under this section, and any fishery opening under authority of the Fraser Panel for sockeye or pink salmon in Puget Sound Salmon Management and Catch Reporting Areas (WAC 220-22-030), are designated as "Quick Reporting Required" per WAC 220-47-001.

REPEALER

The following section of the Washington Administrative Code is repealed effective September 5, 2009:

WAC 220-47-50100Q Puget Sound all-citizen commercial salmon fishery—Open periods.

**WSR 09-18-119
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE**

[Order 09-192—Filed September 2, 2009, 9:51 a.m., effective September 2, 2009, 9:51 a.m.]

Effective Date of Rule: Immediately.

Purpose: Amend commercial fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-52-07100Y; and amending WAC 220-52-071.

Statutory Authority for Adoption: RCW 77.12.047 and 77.04.020.

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

Reasons for this Finding: Harvestable amounts of sea cucumbers are available in the sea cucumber districts listed.

Prohibition of all diving within two days of scheduled sea cucumber openings discourages the practice of fishing on closed days and hiding the unlawful catch underwater until the legal opening. There is insufficient time to adopt permanent rules.

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

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

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

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

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

Date Adopted: September 2, 2009.

Lori Preuss
for Philip Anderson
Director

NEW SECTION

WAC 220-52-07100Z Sea cucumbers. Notwithstanding the provisions of WAC 220-52-071, effective immediately until further notice, it is unlawful to take or possess sea cucumbers taken for commercial purposes except as provided for in this section:

(1) Sea cucumber harvest using shellfish diver gear is allowed in Sea Cucumber Districts 1, 2 and 3 on Monday, Tuesday and Wednesday of each week.

(2) Sea cucumber harvest using shellfish diver gear is allowed in Sea Cucumber District 5 on Monday through Friday of each week.

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

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 220-52-07100Y Sea cucumbers. (09-146)

**WSR 09-18-120
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE**

[Order 09-193—Filed September 2, 2009, 9:58 a.m., effective September 6, 2009, 12:01 a.m.]

Effective Date of Rule: September 6, 2009, 12:01 a.m.

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

Citation of Existing Rules Affected by this Order: Repealing WAC 220-33-01000L and 220-33-01000M; and amending WAC 220-33-010.

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

Other Authority: *United States v. Oregon*, Civil No. 68-513-KI (D. Or.), Order Adopting 2008-2017 *United States v. Oregon Management Agreement* (Aug. 12, 2008) (Doc. No. 2546); *Northwest Gillnetters Ass'n v. Sandison*, 95 Wn.2d 638, 628 P.2d 800 (1981); Washington fish and wildlife commission policies concerning Columbia River fisheries; 40 Stat. 515 (Columbia River compact).

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

Reasons for this Finding: Eliminates retention and sale of white sturgeon in the select areas because the guideline for sturgeon in these areas is projected to be achieved. The seasons are consistent with the 2008-2017 interim management agreement, the 2009 non-Indian salmon allocation agreement and the 2006-2009 sturgeon accord. The regulation is consistent with compact action of September 1, 2009. 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 2008-2017 *United States v. Oregon Management Agreement* (Aug. 12, 2008) (Doc. No. 2546).

Some Columbia River Basin salmon and steelhead stocks are listed as threatened or endangered under the federal ESA. On May 5, 2008, the National Marine Fisheries Service issued a biological opinion under 16 U.S.C. § 1536 that allows for some incidental take of these species in treaty and nontreaty Columbia River fisheries governed by the 2008-2017 *U.S. v. Oregon Management Agreement*. The Washington and Oregon fish and wildlife commissions have developed policies to guide the implementation of such bio-

logical opinions in the states' regulation of nontreaty fisheries.

Columbia River nontreaty fisheries are monitored very closely to ensure compliance with federal court orders, the ESA, and commission guidelines. Because conditions change rapidly, the fisheries are managed almost exclusively by emergency rule. Representatives from the Washington (WDFW) and Oregon (ODFW) departments of fish and wildlife convene public hearings and take public testimony when considering proposals for new emergency rules. WDFW and ODFW then adopt regulations reflecting agreements reached. There is insufficient time to adopt permanent rules.

Number of Sections Adopted in Order to Comply with Federal Statute: New 1, Amended 0, Repealed 2; Federal Rules or Standards: New 1, Amended 0, Repealed 2; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

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

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

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

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

Date Adopted: September 2, 2009.

Lori Preuss
for Philip Anderson
Director

NEW SECTION

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

1. **Blind Slough/Knappa Slough Select Area.**

a. SEASON: Monday, Tuesday, Wednesday, and Thursday nights from immediately through October 30, 2009.

Open hours are 7 PM - 7 AM from August 25 through September 18 and 6 PM - 8 AM thereafter.

b. AREA: Blind Slough and Knappa Slough. An area closure of an approximately 100-foot radius at the mouth of Big Creek is defined by markers. Concurrent jurisdiction waters include all areas in Knappa Slough and downstream of the Railroad Bridge in Blind Slough.

c. GEAR: 9 3/4-inch maximum mesh size. 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. 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. ALLOWABLE SALES: Salmon.

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

a. SEASON: Monday, Tuesday, Wednesday, and Thursday nights from immediately through October 30, 2009. Open 7 PM - 7 AM from August 31 - September 18 and 4 PM - 8 AM thereafter.

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

c. GEAR: 6-inch maximum mesh. Gillnet. Monofilament gear is allowed. In the Tongue Point area: Net length maximum of 250 fathoms. 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. South Channel area: Net length maximum of 100 fathoms. No weight restriction on lead line. Use of additional weights or anchors attached directly to the lead line is allowed.

d. ALLOWABLE SALES: Salmon.

3. **Deep River Select Area.**

a. SEASON: Monday, Tuesday, Wednesday, Thursday, and Friday nights immediately through October 31, 2009. Open 7 PM - 9 AM from August 31 through September 19 and 4 PM - 9 AM thereafter

b. AREA: The Deep River Select Area. Concurrent jurisdiction 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.

d. ALLOWABLE SALES: Salmon.

4. **Quick Report:** 24-hour quick reporting required for Washington wholesale dealers, pursuant to WAC 220-69-240. When quick reporting is required, Columbia River reports must be submitted within 24 hours of the closure of each fishing period. This Quick report requirement applies to all seasons described above (Columbia River and Select Areas).

REPEALER

The following section of the Washington Administrative Code is repealed effective 12:01 a.m. September 6, 2009:

WAC 220-33-01000L Columbia River season below Bonneville. (09-185)

The following section of the Washington Administrative Code is repealed effective November 1, 2009:

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