

WSR 10-16-148
EMERGENCY RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
 (Economic Services Administration)

[Filed August 4, 2010, 9:28 a.m., effective August 4, 2010, 9:28 a.m.]

Effective Date of Rule: Immediately.

Purpose: The department is extending the emergency rule filed as WSR 10-10-112 amending sections of chapter 388-448 WAC repealing changes to disability lifeline incapacity criteria, including how the department uses social and vocational factors to determine eligibility filed as WSR 10-08-036. These amendments will repeal changes to the disability lifeline incapacity criteria [and] are required in order for the department to comply with ESSB 6444 as passed by the legislature April 12, 2010. As passed, the bill limits the department's ability to make any changes to the incapacity determination and progressive evaluations process regulations until at least September 30, 2010, except for provisions related to the use of administrative review teams may be amended, and obsolete terminology and functional assessment language may be updated.

Citation of Existing Rules Affected by this Order: Amending WAC 388-448-0050, 388-448-0080, 388-448-0090, 388-448-0100, and 388-448-0110.

Statutory Authority for Adoption: RCW 74.04.050, 74.04.055, 74.04.057, 74.08.090, and 74.04.005.

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: The bill limits the department's ability to make any changes to the incapacity determination and progressive evaluations process regulations until at least September 30, 2010, except for provisions related to the use of administrative review teams may be amended, and obsolete terminology and functional assessment language may be updated. This filing continues the emergency rule filed as WSR 10-10-112 while the department continues the permanent rule-making process. The department has filed a preproposal statement of inquiry (WSR 10-09-074) and a proposed rule-making notice (WSR 10-13-158). The permanent rule-filing process is anticipated to be completed in September 2010.

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 5, 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 5, Repealed 0.

Date Adopted: July 28, 2010.

Katherine I. Vasquez
 Rules Coordinator

AMENDATORY SECTION (Amending WSR 10-08-036, filed 3/31/10, effective 5/1/10)

WAC 388-448-0050 PEP step II—How we determine the severity of mental impairments. If you are diagnosed with a mental impairment by a professional described in WAC 388-448-0020, we use information from the provider to determine ~~((how the)) if your~~ impairment ~~((limits work-related activities)) prevents you from being able to work.~~

(1) We review the following psychological evidence to determine the severity of your mental impairment:

- (a) Psychosocial and treatment history records;
- (b) Clinical findings of specific abnormalities of behavior, mood, thought, orientation, or perception;
- (c) Results of psychological tests; and
- (d) Symptoms observed by the examining practitioner that show how your impairment affects your ability to perform basic work-related activities.

(2) We exclude diagnosis and related symptoms of alcohol or substance abuse or addiction;

(3) ~~((We exclude disorders that don't impair thought, mood, memory, or cognition, such as:~~

- ~~((a) Passive behaviors.~~
- ~~((b) Learning deficits.~~

~~((4)))~~ If you are diagnosed with mental retardation, the diagnosis must be based on the Wechsler Adult Intelligence Scale (WAIS). The following test results determine the severity rating:

Intelligence Quotient (IQ) Score	Severity Rating
((76)) <u>85</u> or above	((None-)) 1(((+)))
((65)) <u>71</u> to ((75)) <u>84</u>	((Moderate-)) 3(((+)))
((64)) <u>70</u> or lower	((Severe-)) 5(((+)))

~~((5)))~~ (4) If you are diagnosed with a mental impairment with physical causes, we assign a severity rating based on the most severe of the following four areas of impairment:

- (a) Short term memory impairment;
- (b) Perceptual or thinking disturbances;
- (c) Disorientation to time and place; or
- (d) Labile, shallow, or coarse affect.

~~((6)))~~ (5) We base the severity of ~~((an impairment diagnosed as a mood, thought, memory, or cognitive))~~ a functional disorder on a clinical assessment of the intensity and frequency of symptoms that:

(a) Affect your ability to perform basic work related activities; and

(b) Are consistent with a diagnosis of a mental impairment as listed in the Diagnostic and Statistical Manual of Mental Disorders, Fourth Edition (DSM-IV).

~~((7))~~ (6) We base the severity rating for a functional mental impairment on accumulated severity ratings for the symptoms in subsection (5)(a) of this section as follows:

Symptom Ratings or Condition	Severity Rating
(a) ((You are diagnosed with a)) <u>The functional ((disorder)) mental impairment is diagnosed with psychotic features;</u> (b) You have had two or more hospitalizations for psychiatric reasons in the past two years; (c) You have had more than six months of continuous psychiatric ((inpatient)) <u>hospital or residential treatment in the past two years;</u> (d) The ((objective evidence and global assessment of functional score are consistent with a significant limitation on performing work activities)) <u>overall assessment of symptoms is rated three; or</u> (e) <u>At least three symptoms are rated three or higher.</u>	((Moderate-)) <u>3</u> ((3))
((e)) <u>(f) The ((objective evidence and global assessment of functioning score are consistent with very significant limitations on ability to perform work activities)) overall assessment of symptoms is rated four; or</u> (g) <u>At least three symptoms are rated four or five.</u>	((Marked-)) <u>4</u> ((4))
((f)) <u>(h) The ((objective evidence and global assessment of functioning score are consistent with the absence of ability to perform work activities)) overall assessment of symptoms is rated five; or</u> (i) <u>At least three symptoms are rated five.</u>	((Severe-)) <u>5</u> ((5))

~~((8))~~ (7) If you are diagnosed with any combination of mental retardation, mental impairment with physical causes, or functional mental impairment, we assign a severity rating as follows:

Condition	Severity Rating
(a) Two or more disorders with ((moderate severity (3))) ratings of three; or (b) One or more disorders rated ((moderate severity (3))) three; and one rated ((marked severity (4))) <u>four.</u>	((Marked-)) <u>4</u> ((4))

Condition	Severity Rating
(c) Two or more disorders rated ((marked (4) severity)) <u>four.</u>	((Severe-)) <u>5</u> ((5))

~~((9))~~ (8) We deny incapacity when you haven't been diagnosed with a significant physical impairment and your overall mental severity rating is one or two;

~~((10))~~ (9) We approve incapacity when you have an overall mental severity rating of ~~((severe-))~~ five~~((5))~~.

AMENDATORY SECTION (Amending WSR 10-08-036, filed 3/31/10, effective 5/1/10)

WAC 388-448-0080 PEP step V—How we determine your ability to function in a work environment if you have a mental impairment. If you have a mental impairment we evaluate your cognitive and social functioning in a work setting. Functioning means your ability to perform ~~((typical))~~ the tasks that would be required ~~((in a routine))~~ of you on the job ~~((setting))~~ and your ability to ~~((interact effectively))~~ get along with your coworkers, supervisors and other people you would be in contact with while ~~((working))~~ on the job.

(1) We evaluate cognitive ~~((and social functioning))~~ factors by assessing your ability to:

(a) Understand, remember, and ~~((persist in tasks by following))~~ follow simple, one or two-step instructions ~~((of one or two steps-))~~;

(b) Understand, remember, and ~~((persists in tasks by following))~~ follow complex instructions ~~((of))~~, with three or more steps~~((-))~~;

(c) Learn new tasks~~((-))~~;

(d) ~~((Perform routine tasks without undue supervision.~~

~~((Be aware of normal hazards and take appropriate precautions.~~

~~((Communicate and perform effectively in a work setting with public contact.~~

~~((Communicate and perform effectively in a work setting with limited public contact))~~ Exercise judgment and make decisions; and

(e) Perform routine tasks without undue supervision.

(2) We approve incapacity when the practitioner's evaluation shows you are:

(a) At least moderately impaired in your ability to understand, remember, and follow simple instructions and at least moderately limited in your ability to:

(i) Learn new tasks, exercise judgment, and make decisions; and

(ii) Perform routine tasks without undue supervision; or

(b) Able to understand, remember, and follow simple instructions, but are:

(i) At least moderately impaired in the ability to understand, remember, and follow instructions with three or more steps; and

(ii) Markedly impaired in the ability to learn new tasks, exercise judgment and make decisions, and perform routine tasks without undue supervision.

(3) The practitioner's evaluation reports your social factors after assessing your ability to:

(a) Relate appropriately to coworkers and supervisors;

(b) Relate appropriately in contacts with the public;

- (c) Tolerate the pressures of a work setting;
 - (d) Perform self-care activities, including personal hygiene; and
 - (e) Maintain appropriate behavior in a work setting.
- (4) We approve incapacity if you are rated at least two in one area of social functioning and at least three in all other areas of social functioning.

AMENDATORY SECTION (Amending WSR 10-08-036, filed 3/31/10, effective 5/1/10)

WAC 388-448-0090 PEP step V—How we determine your ability to function in a work environment if you have a physical impairment. In Step V of the PEP we review the medical evidence you provide and make a determination of how your physical impairment prevents you from working. This determination is then used in Steps VI and VII of the PEP to determine your ability to perform either work you have done in the past or other work.

(1) **"Exertion level"** means ~~((having strength, flexibility, and mobility))~~ the ability to lift, carry, stand ~~((or))~~ and walk ~~((as))~~ with strength needed to fulfill job duties in the following work ~~((levels))~~ categories. For this section, "occasionally" means less than one-third of the time and "frequently" means one-third to two-thirds of the time. We only consider your strength, mobility, and flexibility. We review any work limits you have in the following areas, and then assign an exertion level and determine exertional limitations.

The following table is used to determine your exertion level. Included in this table is a strength factor, which is your ability to perform physical activities, as defined in Appendix C of the Dictionary of Occupational Titles (DOT), Revised Edition, published by the U.S. Department of Labor.

If you ((are able to)):	Then we assign this exertion level
(a) ((Lift no more than)) <u>Can not lift at least two pounds or ((unable to)) stand and/or walk.</u>	Severely limited
(b) <u>Can lift ten pounds maximum and frequently lift or carry lightweight articles. Walking or standing <u>are</u> only <u>required</u> for brief periods.</u>	Sedentary
(c) <u>Can lift twenty pounds maximum and frequently lift and/or carry objects weighing up to ten pounds. Walk six out of eight hours per day or stand during a significant portion of the workday ((-)), <u>with sitting and ((using)) pushing ((or)) pulling arm or leg movements most of the day.</u></u>	Light
(d) <u>Can lift fifty pounds maximum and frequently lift and/or carry up to twenty-five pounds.</u>	Medium
(e) <u>Can lift one hundred pounds maximum and frequently lift and/or carry up to fifty pounds.</u>	Heavy

(2) **"Exertionally related limitation"** means a restriction in mobility, agility or flexibility in the following twelve activities: Balancing, bending, climbing, crawling, crouching, handling, kneeling, pulling, pushing, reaching, sitting, and stooping. If you have exertionally related limitations, we consider them in determining your ability to work.

(3) **"Functional physical capacity"** means the degree of strength, agility, flexibility, and mobility you can apply to work-related activities. We consider the effect of the physical impairment on the ability to perform work-related activities when the physical impairment is assigned an overall severity rating of three or four. We determine functional physical capacity based on your exertional, exertionally related and nonexertional limitations. All limitations must be substantiated by the medical evidence and directly related to the diagnosed impairment(s).

(4) **"Nonexertional physical limitation"** means a restriction on work activities that does not affect strength, mobility, agility, or flexibility. Examples are:

(a) Environmental restrictions which could include, among other things, your inability to work in an area where you would be exposed to chemicals; and

(b) Workplace restrictions, such as impaired hearing or speech, which would limit the types of work environments you could work in.

AMENDATORY SECTION (Amending WSR 10-08-036, filed 3/31/10, effective 5/1/10)

WAC 388-448-0100 PEP step VI—How we evaluate capacity to perform relevant past work. If your overall severity rating is ~~((moderate (-)))~~three~~((+))~~ or ~~((marked (-)))~~four~~((+))~~ and we have reached this stage of the PEP and have not approved or denied your application, we decide if you can do the same or similar work as you have done in the past. We look at your current physical and/or mental limitations ~~((from cognitive, social,))~~ and vocational factors to make this decision. Vocational factors are education, relevant work history, and age.

(1) We evaluate education in terms of formal schooling or other training ~~((to acquire skills))~~ that enables you to meet job requirements. We classify education as:

If you	Then your education level is
(a) ((Can't)) <u>Can not</u> read or write a simple communication, such as two sentences or a list of items.	Illiterate
(b) Have no formal schooling ((or vocational training)) beyond the ((tenth)) <u>eleventh</u> grade; or	Limited education
(c) ((Had)) <u>Have</u> participated in special education ((in basic academic classes of reading, writing, or mathematics in high school)).	

If you	Then your education level is
(d) Have received a high school diploma or general equivalency degree (GED); or (e) Have received skills training and were awarded a certificate, degree or license.	High school and above level of education

(2) We evaluate your work experience to determine if you have relevant past work. "Relevant past work" means work that:

(a) ~~((Defined as gainful employment per WAC 388-448-0010-))~~ Is normally done for pay or profit. We exclude work done in a sheltered workshop, a job where you were given special consideration, or activities you may have performed as a student or homemaker;

(b) Has been performed in the past ~~((ten))~~ five years(-);

(c) You ~~((performed))~~ have done long enough for you to ~~((acquire))~~ have acquired the knowledge and skills to continue performing the job. You must meet the specific vocational preparation level as defined in Appendix C of the Dictionary of Occupational Titles.

(3) For each relevant past work situation you have had, we determine:

(a) The exertional or skill requirements of the job~~(-);~~ and

(b) Current cognitive, social, or nonexertional factors that significantly limit your ability to perform past work.

(4) After considering vocational factors, we approve or deny incapacity ~~((when you have))~~ based on the following:

~~((a))~~ The physical and mental ability to perform past work, and there is no significant cognitive, social or nonexertional limitation that would prevent you from performing past work; or

~~(b) Recently acquired specific work skills through completion of schooling or training, for jobs within your current physical or mental capacities))~~

If you	Then we take this action on incapacity
<u>(a) Have a physical or mental ability to perform past work and there is no significant cognitive, social or nonexertional limitation.</u>	<u>Deny</u>
<u>(b) Have recently acquired specific work skills through completion of vocational training, enabling you to work within your current physical or mental capacities.</u>	<u>Deny</u>
<u>(c) Are fifty-five years of age or older and have an impairment that is assigned an overall severity rating of at least three and do not have the physical or mental ability to perform past work or do not have work experience.</u>	<u>Approve</u>

Reviser's note: RCW 34.05.395 requires the use of underlining and deletion marks to indicate amendments to existing rules. The rule published above varies from its predecessor in certain respects not indicated by the use of these markings.

AMENDATORY SECTION (Amending WSR 10-08-036, filed 3/31/10, effective 5/1/10)

WAC 388-448-0110 PEP step VII—How we evaluate your capacity to perform other work. If we decide you cannot do work that you've done before, we then decide if you can do any other work.

(1) We approve incapacity if you have a physical impairment and meet the vocational factors below:

Highest work level assigned by the practitioner	Your age	Your education level	((Your education level)) Other vocational factors
Sedentary	((Fifty-five and older)) <u>Any age</u>	<u>Any level</u>	((Any level)) <u>Does not apply</u>
((Sedentary)) <u>Light</u>	((Any age)) <u>Fifty and older</u>	<u>Any level</u>	((Limited education or limited English proficiency (LEP)) <u>Does not apply</u>
Light	((Fifty)) <u>Thirty-five and older</u>	<u>Illiterate or LEP</u>	((Limited education or LEP)) <u>Does not apply</u>
<u>Light</u>	<u>Eighteen and older</u>	<u>Limited education</u>	<u>Does not have any past work</u>
Medium	Fifty- ((five)) and older	<u>Limited education</u>	((Limited education or LEP)) <u>Does not have any past work</u>
<u>Medium</u>	<u>Fifty-five and older</u>	<u>Any level</u>	<u>Does not apply</u>
<u>Heavy</u>	<u>Fifty-five and older</u>	<u>Any level</u>	<u>Environmental restrictions apply</u>

(2) We approve incapacity when you have a ~~((moderate three) or marked (four))~~ mental ~~((health))~~ impairment ~~((and we have objective medical evidence, including a mental status exam (MSE) per WAC 388-448-0050, that demonstrates social or cognitive factors described in WAC 388-448-0080,~~

~~interfere with working as follows))~~ only and meet the age and social functioning limitations below:

- ~~((a))~~ You have a moderate impairment in your ability to:
 - (i) ~~Be aware of normal hazards and take appropriate precautions.~~

- (ii) Communicate and perform effectively in a work setting with public contact.
- (iii) Understand, remember, and persist in tasks by following complex instructions of three or more steps.
- (b) You have marked impairment in your ability to:
 - (i) Be aware of normal hazards and take appropriate precautions.
 - (ii) Communicate and perform effectively in a work setting with limited public contact.
 - (c) You have a marked impairment in your ability to:
 - (i) Understand, remember, and persist in tasks by following simple instructions of one or two steps;
 - (ii) Perform routine tasks without undue supervision;
 - (iii) Communicate and perform effectively in a work setting with limited public contact.))

<u>Social limitation</u>	<u>Age</u>
(a) Can not appropriately relate to coworkers and supervisors (rated three); and (b) Can not tolerate the pressures of a work setting (rated four).	Fifty years and older
(c) Can not tolerate the pressures for a work setting (rated five).	Eighteen to fifty-four
(d) A mental disorder severity rated four; (e) One or more symptoms from WAC 388-448-0050(4) (rated five); (f) Can not appropriately relate to coworkers and supervisors (rated three); and (g) Can not tolerate the pressures of a work setting (rated four).	Eighteen to forty-nine

(3) We approve incapacity when you have ((at least a moderate (three) mental health impairment, a moderate (three) physical impairment and we have objective medical evidence, including a mental status exam (MSE) per WAC 388-448-0050, that demonstrate social or cognitive factors, as described in WAC 388-448-0080,)) both mental and physical impairments and vocational factors interfere with working as follows:

<u>((Work Level))</u> <u>Your age</u>	<u>Your education</u>	<u>Your other restrictions</u>
((Sedentary)) <u>Any age</u>	<u>Any level</u>	(a) ((You are moderately impaired in your ability to: (i) Understand, remember, and persist in tasks by following complex instructions of three or more steps;

<u>((Work Level))</u> <u>Your age</u>	<u>Your education</u>	<u>Your other restrictions</u>
		((ii) Learn new tasks; (iii) Perform routine tasks without undue supervision)) <u>Can not appropriately relate to coworkers and supervisors (rated three); and</u> (b) <u>Can not tolerate pressures of a work setting (rated four).</u>
((Sedentary)) Fifty or older	<u>Limited education</u>	((b) You are moderately impaired in your ability to: (i) Communicate and perform effectively in a work setting with public contact)) (c) <u>Restricted to medium work level or less.</u>
((Light)) <u>Eighteen to forty-nine</u>	<u>Limited education</u>	((c) You are markedly impaired in your ability to: (i) Understand, remember, and persist in tasks by following complex instructions of three or more steps; (ii) Learn new tasks; (iii) Perform routine tasks without undue supervision)) (d) <u>Restricted to light work level.</u>
((Light))		((d) You are markedly impaired in your ability to:

((Work Level)) Your age	Your education	Your other restrictions
		((i) Communicate and perform effectively in a work setting with public contact.))
((Medium))		((e) You are markedly impaired in your ability to: (i) Understand, remember, and persist in tasks by following simple instructions of one or two steps. (ii) Learn new tasks. (iii) Perform routine tasks without undue supervision.))

~~(4) ((We deny incapacity if we decide you don't meet the criteria listed above)) If we do not find that you are incapacitated by the end of Step VII of the PEP, an administrative review team (ART) makes the incapacity decision. The review team consists of two or more persons within the community service office (CSO) who are not in the position of providing direct eligibility or incapacity services to you. The ART reviews the medical evidence and your vocational factors.~~

Reviser's note: RCW 34.05.395 requires the use of underlining and deletion marks to indicate amendments to existing rules. The rule published above varies from its predecessor in certain respects not indicated by the use of these markings.

**WSR 10-17-001
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE**

[Order 10-200—Filed August 4, 2010, 2:07 p.m., effective August 7, 2010]

Effective Date of Rule: August 7, 2010.

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: The 2010 return of sockeye will be sufficient to provide for the Lake Wenatchee spawning escapement goal, and additional sockeye will be present to provide for sport fishing opportunity. There is insufficient time to adopt permanent rules.

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

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

Number of Sections Adopted on the Agency's Own Initiative: New 1, Amended 0, Repealed 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 4, 2010.

Philip Anderson
Director

NEW SECTION

WAC 232-28-61900S Exceptions to statewide rules—Lake Wenatchee. Notwithstanding the provisions of WAC 232-28-619, effective August 7, 2010, until further notice, a person may fish for salmon in Lake Wenatchee. Daily limit two sockeye, minimum size 12 inches in length. Selective Gear Rules in effect for all species. Release bull trout, steelhead, Chinook salmon and sockeye with one or more holes punched in the tail. Night closure in effect.

**WSR 10-17-002
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE**

[Order 10-202—Filed August 4, 2010, 2:32 p.m., effective August 4, 2010, 2:32 p.m.]

Effective Date of Rule: Immediately.

Purpose: Amend commercial fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-52-05100I; 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 2010 state/tribal shrimp harvest management plans for the Strait of Juan de Fuca and Puget Sound require adoption of harvest seasons contained in

this emergency rule. This emergency rule closes the spot shrimp season in Shrimp Management Area 1A and Catch Area 25A, and the beam trawl season in Shrimp Management Area 1B, as the quotas will be reached; and it lowers the spot shrimp weekly limits in some areas to prevent overharvest of the area 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 4, 2010.

Philip Anderson
Director

NEW SECTION

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

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

(ii) All waters of Catch Area 23B are closed to the harvest of spot shrimp.

(iii) Effective 11:59 p.m. August 9, 2010, all waters of Catch Area 25A are closed to the harvest of spot shrimp.

(iv) Effective 11:59 p.m. August 9, 2010, all waters of Shrimp Management Area (SMA) 1A are closed to the harvest of all shrimp species, except that those waters of SMA 1A south of line projected at 48° .31.5' N latitude are open to the harvest of all species except spot shrimp.

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

outside of the opposite knot of one mesh, when the mesh is stretched vertically.

(c) The shrimp accounting week is Tuesday through Monday.

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

i) It is unlawful for the total harvest of spot shrimp by a fisher and/or the fisher's alternate operator to exceed 300 pounds per week in SMA 1C, or to exceed 350 lbs per week in Catch Areas 23A-C and 26B-1.

ii) Effective immediately, until 11:59 p.m. August 9, 2010, in it is unlawful for the total harvest of spot shrimp by a fisher and/or the fisher's alternate operator to exceed 300 pounds per week in SMA 1A.

(e) 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 the pots are being moved to.

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

(2) Shrimp beam trawl gear:

(a) 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) All waters of Catch Area 20A are open.

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

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

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 220-52-05100I	Puget Sound shrimp pot and beam trawl fishery—Season. (10-194)
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WSR 10-17-016
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 10-203—Filed August 5, 2010, 3:58 p.m., effective August 5, 2010, 3:58 p.m.]

Effective Date of Rule: Immediately.

Purpose: Amend commercial fishing rules.

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

Statutory Authority for Adoption: RCW 77.12.047 and 77.04.020.

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

Reasons for this Finding: It is projected that there remains a small but sufficient harvestable quota of salmon for the troll fleet that remains to be caught. 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 5, 2010.

Philip Anderson
 Director

NEW SECTION

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

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

August 6 through August 10, 2010.
 August 13 through August 17, 2010.
 August 20 through August 24, 2010.
 August 27 through August 31, 2010.
 September 3 through September 7, 2010.

September 10 through September 14, 2010.

(2) Landing and possession limit of 30 Chinook and 50 coho per boat per each entire open period for the entire catch areas 1, 2, 3 and 4 through September 14.

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

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

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

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

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

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

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

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

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

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

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

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 220-24-04000Y All-citizen commercial salmon troll. (10-195)

The following section of the Washington Administrative Code is repealed effective September 16, 2010:

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

WSR 10-17-053
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 10-205—Filed August 12, 2010, 9:38 a.m., effective August 12, 2010, 9:38 a.m.]

Effective Date of Rule: Immediately.

Purpose: Amend commercial fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-52-05100J; 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 2010 state/tribal shrimp harvest management plans for the Strait of Juan de Fuca and Puget Sound require adoption of harvest seasons contained in this emergency rule. This emergency rule closes the spot shrimp season in SMA 1C, 2W and Catch Area 23A-W, reopens the nonspot shrimp season in SMA 1B, as the quotas will be reached, and lowers the spot shrimp weekly limits in some areas to prevent overharvest of the area 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 12, 2010.

Philip Anderson
Director

NEW SECTION

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

(i) All waters of Marine Fish-Shellfish Management and Catch Reporting Area (Catch Area) 23A-E, 23A-W and the Discovery Bay Shrimp District are closed.

(ii) All waters of Shrimp Management Area (SMA) 1B, Catch Areas 23B and 25A are closed to the harvest of spot shrimp.

(iii) Effective 11:59 p.m. August 16, 2010, all waters of SMA 1C and 2W are closed to the harvest of spot shrimp.

(iv) Effective 11:59 p.m. August 16, 2010, all waters of SMA 1A are closed to the harvest of all shrimp species, except that those waters of SMA 1A south of line projected at 48°31.5' N latitude are open to the harvest of all species except spot shrimp.

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

(c) The shrimp accounting week is Tuesday through Monday.

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

i) It is unlawful for the total harvest of spot shrimp by a fisher and/or the fisher's alternate operator to exceed 350 lbs per week in Catch Area 23A-C.

ii) Effective immediately, until 11:59 p.m. August 16, 2010, it is unlawful for the total harvest of spot shrimp by a fisher and/or the fisher's alternate operator to exceed 300 pounds per week in SMA 1A, and 1C, or to exceed 350 lbs per week in SMA 2W.

(e) It is unlawful to pull shellfish pots for commercial purposes in more than one Catch Area per day. Fishers may move all of their shellfish pot gear from one Catch Area to another Catch 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 Catch Area the pots are being moved to.

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

(2) Shrimp beam trawl gear:

(a) 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) All waters of Catch Area 20A are open.

(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 220-52-05100J Puget Sound shrimp pot and beam trawl fishery—Season. (10-202)

**WSR 10-17-054
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE**

[Order 10-206—Filed August 12, 2010, 9:40 a.m., effective August 15, 2010]

Effective Date of Rule: August 15, 2010.

Purpose: Amend commercial fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-52-04000R; 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: This rule is necessary to avoid harvest of soft-shelled Dungeness crab. 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 12, 2010.

Philip Anderson
Director

NEW SECTION

WAC 220-52-04000S 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 4,000 pounds taken during each of the following coastal crab accounting periods:

August 15 through August 21, 2010;
August 22 through August 28, 2010;
August 29 through September 4, 2010;
September 5 through September 11, 2010;
September 12 through September 15, 2010.

(2) Any crab taken prior to August 15, 2010, and not landed before 11:59 p.m. August 14, 2010, become part of the August 15 through August 21, 2010, 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 August 15, 2010:

WAC 220-52-04000R Coastal crab fishery—
Weekly trip limits. (10-177)

WSR 10-17-066
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 10-204—Filed August 13, 2010, 11:10 a.m., effective August 16, 2010]

Effective Date of Rule: August 16, 2010.

Purpose: Amend personal use fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 232-28-61900T; 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: Emergency rule is needed to close the season effective August 16 through September 30, 2010, which was omitted from the permanent rule. 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 13, 2010.

Lori Pruess
for Philip Anderson
Director

NEW SECTION

WAC 232-28-61900T Exceptions to statewide rules—Tahuya River. Notwithstanding the provisions of WAC 232-28-619:

(1) Effective August 16 through September 30, 2010, it is unlawful to fish for game fish in waters of the Tahuya River from the marker one mile above North Shore Road Bridge, upstream.

(2) Effective October 1 through October 31, 2010, night closure is in effect in waters of the Tahuya River from the marker one mile above North Shore Road Bridge upstream.

REPEALER

The following section of the Washington Administrative Code is repealed effective November 1, 2010:

WAC 232-28-61900T Exceptions to statewide rules—Tahuya River.

WSR 10-17-067
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 10-207—Filed August 13, 2010, 2:31 p.m., effective August 15, 2010]

Effective Date of Rule: August 15, 2010.

Purpose: Amend commercial fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-40-02700K; and amending WAC 220-40-027.

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: Provisions of this permit-only gillnet fishery in Willapa Bay and the lawful fishing area within Salmon Management and Catch Reporting Area 2H were agreed upon during the North of Falcon season setting process. These provisions were not included or accurately described in the permanent rule. The purpose of the permit fishery is to collect detailed biological data for chinook and coho in Willapa Bay. There is insufficient time to promulgate permanent rules.

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

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

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

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

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

Date Adopted: August 13, 2010.

Philip Anderson
Director

NEW SECTION

Fishing periods:

WAC 220-40-02700K Salmon—Willapa Bay fall fishery. Notwithstanding the provisions of WAC 220-40-027 and 220-40-020, effective August 15 through November 30, 2010, it is unlawful to fish for salmon in Willapa Bay for commercial purposes or to possess salmon taken from those waters for commercial purposes, except that:

1. Gil net gear may be used to fish for salmon and white sturgeon only as shown below. All non-legal sturgeon, all steelhead, and all other species including Chinook, coho, chum and white sturgeon, must be handled with care to minimize injury to the fish and must be released immediately to the river/bay:

Time:	Area:
6:00 p.m. August 15 through 6:00 p.m. August 16, 2010.	Areas 2G east of a line projected true south from the most waterward exposed end of the rock jetty located near Washaway Beach, except:
	Closed Waters Area (Net Free Zone): That portion of SMCRA 2G lying within the following boundary lines: Western Boundary: Those waters east of a line drawn from the most waterward exposed end of the jetty at Toke Point (46°42.446'N, 123°57.973'W), to Willapa Marker 2 (46°41.529'N, 123°57.973'W), then 180 degrees true to Goose Point (46°38.184'N, 123°57.584'W). Eastern boundary includes those waters west of a North-South line through Marker 29.
	Area 2H, Area 2J north of a true east-west line drawn through the North Entrance Marker to the Nahcotta Boat Basin (RF #2), and Area 2M.
6:00 p.m. September 22 through 6:00 p.m. September 23, 2010; AND 6:00 p.m. September 27 through 6:00 p.m. September 28, 2010.	Area 2K
6:00 p.m. September 12 through 5:59 p.m. September 15, 2010.	Areas 2G east of a line projected true south from the most waterward exposed end of the rock jetty located near Washaway Beach, except:
	Closed Waters Area (Net Free Zone): That portion of the SMCRA 2G lying within the following boundary lines: Western Boundary: Those waters east of a line drawn from the most waterward exposed end of the jetty at Toke Point (46°42.446'N, 123°57.973'W), to Willapa Marker 2 (46°41.529'N, 123°57.973'W), then 180 degrees true to Goose Point (46°38.184'N, 123°57.584'W). Eastern boundary includes those waters west of a north-south line (180 degrees true) through Range Marker "B" (46°42.564'N, 123°51.3'W) between Channel Markers 26 and 28.
	Area 2H, Area 2J north of a true east-west line drawn through the North Entrance Marker to the Nahcotta Boat Basin (RF #2), and Area 2M.
6:00 p.m. September 15 through 6:00 p.m. September 22, 2010.	Areas 2G east of a line projected true south from the most waterward exposed end of the rock jetty located near Washaway Beach, Area 2H west of Willapa Channel Marker 40, Area 2J north of a true east-west line drawn through the North Entrance Marker to the Nahcotta Boat Basin (RF #2), and Area 2M.
6:01 p.m. September 22 through 6:00 p.m. September 30, 2010.	Areas 2G east of a line projected true south from the most waterward exposed end of the rock jetty located near Washaway Beach, Area 2H, Area 2J north of a true east-west line drawn through the North Entrance Marker to the Nahcotta Boat Basin (RF #2), and Area 2M.
6:00 p.m. October 1, 2010, through 6:00 p.m. October 2, 2010.	Areas 2G east of a line projected true south from the most waterward exposed end of the rock jetty located near Washaway Beach, Area 2H, Area 2J north of a true east-west line drawn through the North Entrance Marker to the Nahcotta Boat Basin (RF #2), and Area 2M.
12:00 p.m. November 6 through 12:00 p.m. November 30, 2010.	Areas 2G, 2H, 2J, and 2M.

2. The Tokeland Boat basin is closed to commercial fishing during the openings in Salmon Management and Catch Reporting Area (SMCRA) 2G, described in this section. The Tokeland Boat basin is that portion of SMCRA 2G bounded

on the south by the shoreline of the boat basin, on the west by the seawall, and on the north and east by a line from the Tokeland Channel Marker "3" (flashing green, 4-seconds), to Tokeland Channel Marker "4," to the tip of the seawall.

Permit-only fishery for Chinook and coho fishery. Only permitted licensees are allowed to participate in this fishery, and these must adhere to all conditions described herein and as outlined in their permit.

Specific date and time of permit fishery opening will be described in permit. Those dates will be restricted to, and occur within, August 22-24, August 29-31, September 6-8, and October 10-12, 2010.

Sub-areas for permit fishery:

Sub-Area	Description
1	Commercial gillnet area 2J: Nahcotta east to Diamond Pt. (46°29.914'N, 123°58.888'W), then north to Island Sands Light 54 (46°32.3'N, 123°58.6'W) then a true east-west line from Light 54
2	Commercial gillnet area 2M: Northern boundary: Diamond Pt. (46°29.914'N, 123°58.888'W), north to Island Sands Light 54 (46°32.3'N, 123°58.6'W), then a true east-west line to landfall. Southern Boundary A: North of a true east-west line to landfall from Diamond Point. Southern Boundary B: North of Stanley Point to Paradise Point on NW and from Stanley Point directly NE to landfall.
3	Commercial gillnet Area 2G: Southern boundary: a true east-west line to landfall from Island Sands Light 54 (46°32.3'N, 123°58.6'W). Northern boundary: Grassy Island (46°38'N, 124 02.2'W) to Goose Pt (46°38.184'N, 123°57.584'W)
4	Commercial gillnet Area 2G and 2H: Focus will be near the Willapa Airport between Channel Markers 29 and 35.

Gear

1. Gill net gear restrictions - All areas:
 - a. Drift gill net gear only. It is unlawful to use set net gear. It is permissible to have on-board a commercial vessel more than one net, provided the nets are of a mesh size that is legal for the fishery, and the length of any one net does not exceed one thousand five hundred feet in length.
 - b. Nets with a mesh size different from that being actively fished must be 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 that is 3/8 (0.375) inches or greater.
 - c. It is unlawful to use a gill net to fish for salmon if the lead line weighs more than two pounds per fathom of net as measured on the cork line, provided that it is lawful to have a gill net with a lead line weighing more than two pounds per fathom aboard a vessel when the vessel is fishing in or in transiting through Willapa Bay.
 - d. From August 15 through October 12, 2010: Mesh size cannot be less than six inch minimum mesh and cannot exceed nine-inch maximum mesh.
 - e. From August 15 through October 12, 2010, all non-retained salmon, non-legal sturgeon, ALL steelhead, and all other species including Chinook, coho, chum, and white sturgeon must be handled with care to minimize injury to fish and must be released immediately to the river/bay or to an operating recovery box when fishing in SMCRA 2G, 2H, 2J, 2K, and 2M.
 - f. Only one net may be fished at a time; other nets must be properly stored.
 - g. Each boat must have two operable recovery boxes or one box with two chambers on board when fishing in SMCRA 2G, 2H, 2J, 2K, and 2M. Each box must be operating during any time the net is being retrieved or picked. The flow in the recovery box must be a minimum of 16 gallons per minute in each chamber of the box, not to exceed 20 gallons per minute. Each chamber of the recovery box must meet the following dimensions as measured from within the box: The inside length measurement must be at or within 39-

1/2 inches to 48 inches, the inside width measurements must be at or within 8 to 10 inches, and the inside height measurement must be at or within 14 to 16 inches.

h. Each chamber of the recovery box must include a water inlet hole between 3/4 inch and 1 inch in diameter, centered horizontally across the door or wall of the chamber and 1-3/4 inches from the floor of the chamber. Each chamber of the recovery box must include a water outlet hole opposite the inflow that is at least 1-1/2 inches in diameter. The center of the outlet hole must be located a minimum of 12 inches above the floor of the box or chamber. The fisher must demonstrate to department employees, Fish and Wildlife enforcement officers, or other peace officers, upon request, that the pumping system is delivering the proper volume of fresh river/bay water into each chamber.

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

j. Any fish that is bleeding or lethargic must be placed in the recovery box prior to being released to the river/bay.

k. All fish placed in recovery boxes must be released to the river/bay prior to landing or docking.

Permit-only fishery for Chinook and coho fishery. Only permitted licensees are allowed to participate in this fishery, and they must adhere to all conditions described herein and as outlined in their permit. All gear requirements of the general commercial season described above apply during permit-only fisheries unless otherwise described in the permit.

Other

2. Quick reporting is required for wholesale dealers and fishers retailing their catch under a "direct retail endorsement." According to WAC 220-69-240(12), reports must be made by 10:00 a.m. the day following landing.

3. NOAA Fisheries has listed the southern population of green sturgeon as threatened under the Endangered Species Act, effective July 6, 2006. Most of the green sturgeon taken in Washington fisheries are from the Columbia River stock,

which is part of the southern population. Therefore, the retention of green sturgeon is prohibited; to protect this federally listed stock.

4. It is unlawful to fish for salmon with gill net gear in Areas 2G, 2H, 2J, 2K, and 2M unless the vessel operator has attended a "Fish Friendly" best fishing practices workshop and is in possession of a department-issued certification card.

5. Fishers must take department staff on-board, if requested by WDFW, when participating in these openings, to observe fishing operations and/or collect biological data on the catch.

Permit-only fishery for Chinook and coho fishery. Each permittee must adhere to all conditions described below and as outlined in their permit.

6. To facilitate data collection, WDFW personnel must be notified by calling 360/480-5159 a minimum of **4 hours** in advance of landing. Unless otherwise instructed, fishers must provide access to salmon for sampling.

7. It is unlawful to fish for salmon with gillnet gear in Willapa Bay Sub-Areas 1, 2, 3, and 4 unless the vessel operators have attended a "Fish Friendly" best fishing practices workshop and are in possession of a department-issued certification card. The vessel operators must be able to present this card to WDFW staff or Enforcement officers if requested.

8. Catch is limited to 100 hatchery Chinook, identified by having a clipped adipose fin and a healed scar in the location of the fin; or 25 wild Chinook, whichever comes first.

9. Fishers must maintain a legible, accurate, and complete harvest log for all salmon fishing activity during the permit fishery. A GPS of fishing location(s) must be maintained and provided to the Department such that logs will be received no later than the second day following landing.

Logs must be submitted to: WDFW Region 6 Office, Barbara McClellan, 48 Devonshire Rd., Montesano, WA 98563

10. Licensees for this fishery must fish all five fishing periods in the area assigned to them, and they must attend a pre-fishery meeting that will be arranged following their selection. The licensees selected to fish Area 2 must fish in sub-sections A and B for each fishing period as described in their permit.

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

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

REPEALER

The following section of the Washington Administrative Code is repealed effective December 1, 2010:

WAC 220-40-02700K	Salmon—Willapa Bay fall fishery.
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WSR 10-17-072 EMERGENCY RULES DEPARTMENT OF FISH AND WILDLIFE

[Order 10-208—Filed August 15, 2010, 2:13 p.m., effective August 17, 2010, 5:00 a.m.]

Effective Date of Rule: August 17, 2010, 5:00 a.m.

Purpose: Amend commercial fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-47-50100W; and amending WAC 220-47-501.

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 amount of sockeye 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 15, 2010.

Joe Stohr
for Philip Anderson
Director

NEW SECTION

WAC 220-47-50100W 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
8:00 AM - 4:00 PM	8/17

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

(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 and rockfish 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
3:00 PM - 11:00 PM	8/17

(a) It is unlawful to retain rockfish.

(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
8:00 AM - 4:00 PM	8/17

(a) It is unlawful to retain rockfish, unmarked Chinook, unmarked coho, and chum.

(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) **"Quick Reporting Fisheries":**

All fisheries opened under this section, and any fishery opening under authority of the Fraser Panel for sockeye 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 18, 2010:

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

**WSR 10-17-108
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE**

[Order 10-209—Filed August 17, 2010, 2:20 p.m., effective August 17, 2010, 2:20 p.m.]

Effective Date of Rule: Immediately.

Purpose: Amend commercial fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-52-05100K; 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 2010 state/tribal shrimp harvest management plans for the Strait of Juan de Fuca and Puget Sound require adoption of harvest seasons contained in this emergency rule. This emergency rule closes the spot shrimp season in Catch Areas 23A-C and 26B-1, as the quotas will be reached, and lowers the spot shrimp weekly limits in some areas to prevent overharvest of the area 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 17, 2010

Philip Anderson
Director

NEW SECTION

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

(i) All waters of Marine Fish-Shellfish Management and Catch Reporting Area (Catch Area) 23A-C, 23A-E, 23A-W and the Discovery Bay Shrimp District are closed.

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

(iii) Effective 6:00 p.m. August 19, 2010, all waters of Catch Area 26B-1 are closed.

(iv) All waters of SMA 1A are closed to the harvest of all shrimp species, except that those waters of SMA 1A south of line projected at 48° 31.5' N latitude are open to the harvest of all species except spot shrimp.

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

(c) The shrimp accounting week is Tuesday through Monday.

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

i) Effective 11:59 p.m. August 23, 2010, until further notice, it is unlawful for the total harvest of spot shrimp by a fisher and/or the fisher's alternate operator to exceed 300 lbs per week in Catch Areas 26B-2 and 26D.

(e) It is unlawful to pull shellfish pots for commercial purposes in more than one Catch Area per day. Fishers may move all of their shellfish pot gear from one Catch Area to another Catch 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 Catch Area the pots are being moved to.

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

(2) Shrimp beam trawl gear:

(a) 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) All waters of Catch Area 20A are open.

(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 220-52-05100K	Puget Sound shrimp pot and beam trawl fishery—Season. (10-205)
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