

**WSR 11-01-029**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**

[Order 10-311—Filed December 3, 2010, 3:38 p.m., effective December 3, 2010, 3:38 p.m.]

Effective Date of Rule: Immediately.

Purpose: Amend commercial fishing rules.

Citation of Existing Rules Affected by this Order:  
 Repealing WAC 220-52-04000Y; 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: Mandatory pick rate allowance for coastal crab will be achieved by the opening dates contained herein. The stepped opening periods/areas will also provide for fair start provisions. Extending the period when vessels not designated on a Dungeness crab coastal fishery license are allowed to transport or deploy pots is necessary to allow for an orderly fishery. Pot limits will reduce the crowding effect in this restricted area. 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Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 1, Amended 0, Repealed 1.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.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: December 3, 2010.

Philip Anderson  
 Director

NEW SECTION

**WAC 220-52-04000Z Commercial crab fishery. Lawful and unlawful gear, methods and other unlawful acts.** (1) Notwithstanding the provisions of WAC 220-52-040, effective immediately until further notice, it is unlawful for any fisher or wholesale dealer or buyer to land or purchase Dungeness crab taken from Grays Harbor, Willapa Bay, Columbia River, or Washington coastal or adjacent waters of the Pacific Ocean through January 31, 2011, from any vessel unless:

(a) A valid Washington crab vessel inspection certificate has been issued to the delivering vessel. Vessel-hold inspection certificates dated from November 30, 2010 to January 13, 2011 are only valid for the area south of 46° 28.00 N. Lat.

(b) The vessel inspection certificate numbers are recorded on all shellfish tickets completed for coastal Dungeness crab landings through January 31, 2011.

(2) Notwithstanding the provisions of WAC 220-52-040, it is permissible for a vessel not designated on a Dungeness crab coastal fishery license to transport or deploy up to 250 pots at any one time for deployment in the coastal crab fishery south of Klipsan Beach (46° 28.00) through 11:59 pm December 14, 2010. The primary or alternate operator of the crab pot gear named on the license associated with the gear must be on board the vessel when the gear is being deployed. All other provisions of the permanent rule remain in effect.

(3) Notwithstanding the provisions of WAC 220-52-040, effective immediately until further notice, it is unlawful for persons participating in the Columbia River, Coastal, or Willapa Bay commercial Dungeness crab fishery to:

(a) Deploy or operate more than 400 shellfish pots if the permanent number of shellfish pots assigned to the Coastal commercial crab fishery license held by that person is 500.

(b) Deploy or operate more than 250 shellfish pots if the permanent number of shellfish pots assigned to the Coastal Dungeness crab fishery license held by that person is 300.

(c) Fail to maintain onboard any participating vessel the excess crab pot buoy tags assigned to the Coastal Dungeness crab fishery license being fished.

(4) Notwithstanding the provisions of WAC 220-52-040, effective immediately until further notice, it is unlawful to possess or deliver Dungeness crab unless the following conditions are met:

(a) Vessels that participated in the coastal Dungeness crab fishery from Klipsan Beach (46° 28.00 North Latitude) to Point Arena, CA, including Willapa Bay and the Columbia River, may possess crab for delivery into Washington ports south of 47° 00.00 N. Lat., provided the crab were taken south of Klipsan (46° 28.00 N. Lat.).

(b) The vessel does not enter the area north of 47° 00.00 N. Lat. unless the operator of the vessel has contacted the Washington Department of Fish and Wildlife and allows a vessel-hold inspection if requested by Fish and Wildlife officers prior to entering this area. Prior to entering the area north of 47° 00.00 N. Lat., the vessel operator must call 360-581-3337, and report the vessel name, operator name, estimated amount of crab to be delivered in pounds, and the estimated date, time, and location of delivery 24 hours prior to entering the area.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 220-52-04000Y	Commercial crab fishery. Lawful and unlawful gear, methods and other unlawful acts. (10-306)
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**WSR 11-01-038**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**

[Order 10-308—Filed December 6, 2010, 1:58 p.m., effective December 8, 2010]

Effective Date of Rule: December 8, 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: Returns of hatchery and natural-origin summer-run steelhead to the upper Columbia River have far exceeded the run criteria of 9,300 counted over Priest Rapids Dam that are required to open a conservation-based fishery under the Endangered Species Act. 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: December 6, 2010.

Joe Stohr  
for Philip Anderson  
Director

NEW SECTION

**WAC 232-28-61900H Exceptions to statewide rules—Columbia River.** Notwithstanding the provisions of WAC 232-28-619, effective December 8, 2010, until further notice, a person may fish for steelhead in waters of the Columbia River from the Highway 24 Bridge (Vernita Bridge) upstream to Priest Rapids Dam. Daily limit is two hatchery steelhead; minimum size is 20 inches in length.

**WSR 11-01-046**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**

[Order 10-312—Filed December 7, 2010, 9:52 a.m., effective December 8, 2010, 8:00 a.m.]

Effective Date of Rule: December 8, 2010, 8:00 a.m.

Purpose: Amend commercial fishing rules.

Citation of Existing Rules Affected by this Order:  
Repealing WAC 220-52-04000X and 220-52-04600Z; and amending WAC 220-52-040 and 220-52-046.

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: Pot limits for selected regions control harvest rates to achieve seasonal objectives and maintain state-tribal sharing agreements. Returning to a fifty pot limit in Region 2 East is the result of receiving final recreational crab harvest estimates that reduced the state commercial share in this region. The area closure in Catch Area 26A West complies with state-tribal agreements to close this zone to avoid handling mortality of softshell crab. 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: December 7, 2010.

Philip Anderson  
Director

NEW SECTION

**WAC 220-52-04000A Commercial crab fishery—Lawful and unlawful gear, methods, and other unlawful acts.** Notwithstanding the provisions of WAC 220-52-040:

1) Effective immediately until further notice, it is unlawful for any person to fish for crabs for commercial purposes with more than 50 pots per license per buoy tag number in Crab Management Region 2 West (which includes Marine Fish-Shellfish Management and Catch Reporting Areas 25B, 25D, and 26A-W). The remaining 50 buoy tags per license

per region must be onboard the designated vessel and available for inspection in Crab Management Region 2 West.

2) Effective 8:00 a.m. December 8, 2010, until further notice, it is unlawful for any person to fish for crabs for commercial purposes with more than 50 pots per license per buoy tag number in Crab Management Region 2 East (which includes Marine Fish-Shellfish Management and Catch Reporting Areas 24A, 24B, 24C, 24D, and 26A-E). The remaining 50 buoy tags per license per region must be onboard the designated vessel and available for inspection in Crab Management Regions 1 and 2 East.

#### NEW SECTION

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

(1) Effective immediately until further notice, it is permissible to fish for Dungeness crab for commercial purposes in the following areas:

(a) Port Gardner: Those waters of Marine Fish-Shellfish Management and Catch Reporting Area 26A west of a line that extends from the spiral staircase at Howarth Park due north to the south end of Gedney Island and intersecting a line projected from the outermost tip of the ferry dock at Mukilteo projected to the green #3 buoy at the mouth of the Snohomish River.

(b) Possession Point to Glendale: That portion of Marine Fish-Shellfish Management and Catch Reporting Area 26A east of a line that extends true north from the green #1 buoy at Possession Point to Possession Point, and west of a line from the green #1 buoy at Possession Point extending northward along the 200-foot depth contour to the Glendale dock.

(c) Langley: That portion of Marine Fish-Shellfish Management and Catch Reporting Area 24C shoreward of the 400-foot depth contour within an area described by two lines projected northeasterly from Sandy Point and the entrance to the marina at Langley.

(d) Those waters of Marine Fish-Shellfish Management and Catch Reporting Area 20A between a line from the boat ramp at the western boundary of Birch Bay State Park to the western point of the entrance of the Birch Bay Marina, and a line from the same boat ramp to Birch Point.

(e) Those waters of Marine Fish-Shellfish Management and Catch Reporting Area 22B in Fidalgo Bay south of a line projected from the red number 4 entrance buoy at Cape Sante Marina to the northern end of the eastern most oil dock.

(f) Those waters of Marine Fish-Shellfish Management and Catch Reporting Area 22A in Deer Harbor north of a line projected from Steep Point to Pole Pass.

(2) Effective 6:00 p.m. December 31, 2010, until further notice, it is permissible to fish for Dungeness crab for commercial purposes in Port Gardner: Those waters of Marine Fish-Shellfish Management and Catch Reporting Area 26A west of a line that extends from the spiral staircase at Howarth Park due north to the south end of Gedney Island and intersecting a line projected from the outermost tip of the ferry dock at Mukilteo projected to the green #3 buoy at the mouth of the Snohomish River.

(3) Effective immediately until further notice, the following areas are closed to commercial crab fishing:

(a) That portion of Marine Fish-Shellfish Management and Catch Reporting Area 25A west of the 123°7.0' longitude line projected from the new Dungeness light due south to the shore of Dungeness Bay.

(b) That portion of Marine Fish-Shellfish Management and Catch Reporting Area 23D west of a line from the eastern tip of Ediz Hook to the ITT Rayonier Dock.

(c) Those waters of Marine Fish-Shellfish Management and Catch Reporting Area 24A east of a line projected due north from the most westerly tip of Skagit Island and extending south to the most westerly tip of Hope Island, thence southeast to Seal Rocks, thence southeast to the green can buoy at the mouth of Swinomish Channel, thence easterly to the west side of Goat Island.

(4) Effective 6:00 p.m. December 31, 2010, until further notice, it is unlawful to fish for Dungeness Crab for commercial purposes in those waters of Marine Fish-Shellfish Management and Catch Reporting Area 26A within the area east of a line from the spiral staircase at Howarth Park due north to the south end of Gedney Island and that portion of 24B east of a line from the north end of Gedney Island to Camano Head and south of a line drawn from Camano Head to Hermosa Point (north end of Tulalip Bay).

#### REPEALER

The following sections of the Washington Administrative code are repealed, effective 8:00 a.m. December 8, 2010:

WAC 220-52-04000X	Commercial crab fishery—Lawful and unlawful gear, methods, and other unlawful acts. (10-304)
WAC 220-52-04600Z	Puget Sound crab fishery—Seasons and areas. (10-296)

**WSR 11-01-064  
EMERGENCY RULES  
DEPARTMENT OF  
FISH AND WILDLIFE**

[Order 10-314—Filed December 8, 2010, 4:09 p.m., effective December 8, 2010, 4:09 p.m.]

Effective Date of Rule: Immediately.

Purpose: Amend commercial fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-52-07300S; and amending WAC 220-52-073.

Statutory Authority for Adoption: RCW 77.12.047 and 77.04.020.

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

Reasons for this Finding: Harvestable amounts of red and green sea urchins exist in the areas described. Prohibiting all diving from licensed sea urchin harvest vessels within Sea Urchin District 3 when those vessels have red sea urchin on-board discourages the taking of red urchins from the district (currently closed to red urchin harvest) and reporting the catch to the adjacent harvest district. Prohibiting transport of urchins from Districts 1 and 2 to other districts will prevent spoiling of product, promote accurate catch accounting, and provide for an orderly fishery. There is insufficient time to adopt permanent rules.

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

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

Number of Sections Adopted on the Agency's Own Initiative: New 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: December 8, 2010.

Philip Anderson  
Director

#### NEW SECTION

**WAC 220-52-07300T Sea urchins** Notwithstanding the provisions of WAC 220-52-073, effective immediately until further notice, it is unlawful to take or possess sea urchins taken for commercial purposes except as provided for in this section:

(1) Green sea urchins: Sea Urchin Districts 1, 2, 3, 4, 6 and 7 are open seven days-per-week.

(2) Red sea urchins: Sea Urchin Districts 1, 2 and 4 are open seven days-per-week.

(3) It is unlawful to dive for any purpose from a commercially licensed sea urchin fishing vessel in Sea Urchin District 3 when the vessel has red sea urchins on-board.

(4) Red and green sea urchins harvested in Sea Urchin Districts 1 and 2 must be landed within Sea Urchin Districts 1 and 2.

#### REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 220-52-07300S Sea urchins. (10-303)

### WSR 11-01-067 EMERGENCY RULES BUILDING CODE COUNCIL

[Filed December 9, 2010, 3:56 p.m., effective January 1, 2011]

Effective Date of Rule: January 1, 2011.

Purpose: To provide additional time for consideration of stakeholder interests and technical assistance regarding the potential economic impacts of existing rules on specific industries.

Citation of Existing Rules Affected by this Order: Amending WAC 51-50-0907, 51-51-0315, and 51-54-0900.

Statutory Authority for Adoption: Chapter 19.27 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: Rules regarding installation of carbon monoxide (CO) alarms in residential settings are currently scheduled to go into effect on January 1, 2011 (statutory requirement), for new construction, and July 1, 2011, for existing units. The implementation date for existing units is not a statutory mandate, and may cause financial hardship on certain industries; additional time is needed to consider ways to mitigate or eliminate the economic impacts, without compromising public safety. Adoption of this emergency rule will eliminate the upcoming requirements for installation of CO alarms in existing dwelling units in 2011, and allow time for further consideration of stakeholder economic interests and alternative amendments.

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 3, 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: November 19, 2010.

John C. Cochran  
Chair

AMENDATORY SECTION (Amending WSR 10-03-097, filed 1/20/10, effective 7/1/10)

**WAC 51-50-0907 Section 907—Fire alarm and detection systems.**

**[F] 907.2.8 Group R-1.** Fire alarm systems, smoke alarms and carbon monoxide alarms shall be installed in Group R-1

occupancies as required in Sections 907.2.8.1 through 907.2.8.4.

**[F] 907.2.8.4. Carbon monoxide alarms.** For new construction, an approved carbon monoxide alarm shall be installed ~~((by January 1, 2011,))~~ outside of each separate sleeping area in the immediate vicinity of the bedroom in sleeping units ~~((In a building where a tenancy exists, the tenant shall maintain the CO alarm as specified by the manufacturer including replacement of the batteries))~~ within which fuel-fired appliances are installed, and in sleeping units that have attached garages.

**[F] 907.2.8.4.1 Existing sleeping units.** Existing sleeping units within which fuel-fired appliances exist or that have attached garages shall be equipped with carbon monoxide alarms by ~~((July 1, 2011))~~ January 1, 2013.

**[F] 907.2.8.4.2 Alarm requirements.** Single station carbon monoxide alarms shall be listed as complying with UL 2034 and shall be installed in accordance with this code and the manufacturer's installation instructions.

**[F] 907.2.9 Group R-2.** Fire alarm systems, smoke alarms and carbon monoxide alarms shall be installed in Group R-2 occupancies as required in Sections 907.2.9.1 through 907.2.9.3.

**[F] 907.2.9.3. Carbon monoxide alarms.** For new construction, an approved carbon monoxide alarm shall be installed ~~((by January 1, 2011,))~~ outside of each separate sleeping area in the immediate vicinity of the bedroom in dwelling units ~~((In a building where a tenancy exists, the tenant shall maintain the CO alarm as specified by the manufacturer including replacement of the batteries))~~ within which fuel-fired appliances are installed and in dwelling units that have attached garages.

**[F] 907.2.9.3.1 Existing dwelling units.** Existing dwelling units within which fuel-fired appliances exist or that have attached garages shall be equipped with carbon monoxide alarms by ~~((July 1, 2011))~~ January 1, 2013.

**907.2.9.3.2 Alarm requirements.** Single station carbon monoxide alarms shall be listed as complying with UL 2034 and shall be installed in accordance with this code and the manufacturer's installation instructions.

**[F] 907.2.10 Group R-3.** Carbon monoxide alarms shall be installed in Group R-3 occupancies as required in Sections 907.2.10.1 through 907.2.10.3.

**[F] 907.2.10.1 Carbon monoxide alarms.** For new construction, an approved carbon monoxide alarm shall be installed ~~((by January 1, 2011,))~~ outside of each separate sleeping area in the immediate vicinity of the bedroom in dwelling units ~~((In a building where a tenancy exists, the tenant shall maintain the CO alarm as specified by the manufacturer including replacement of the batteries))~~ within which fuel-fired appliances are installed and in dwelling units that have attached garages.

**[F] 907.2.10.2 Existing dwelling units.** Existing dwelling units within which fuel-fired appliances exist or that have

attached garages shall be equipped with carbon monoxide alarms by ~~((July 1, 2011))~~ January 1, 2013.

EXCEPTION: Owner-occupied Group R-3 residences legally occupied prior to July 1, 2010.

**[F] 907.2.10.3 Alarm requirements.** Single station carbon monoxide alarms shall be listed as complying with UL 2034 and shall be installed in accordance with this code and the manufacturer's installation instructions.

**Reviser's note:** The brackets and enclosed material in the text of 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.

**AMENDATORY SECTION** (Amending WSR 10-03-098, filed 1/20/10, effective 7/1/10)

**WAC 51-51-0315 Section R315—Carbon monoxide alarms.**

**R315.1 Carbon Monoxide Alarms.** For new construction, an approved carbon monoxide alarm shall be installed ~~((by January 1, 2011,))~~ outside of each separate sleeping area in the immediate vicinity of the bedroom in dwelling units ~~((In a building where a tenancy exists, the tenant shall maintain the CO alarm as specified by the manufacturer including replacement of the batteries))~~ within which fuel-fired appliances are installed and in dwelling units that have attached garages.

**R315.2 Existing Dwellings.** Existing dwellings within which fuel-fired appliances exist or that have attached garages shall be equipped with carbon monoxide alarms by ~~((July 1, 2011))~~ January 1, 2013.

EXCEPTION: Owner-occupied detached one-family dwellings legally occupied prior to July 1, 2010.

**R315.3 Alarm Requirements.** Single station carbon monoxide alarms shall be listed as complying with UL 2034 and shall be installed in accordance with this code and the manufacturer's installation instructions.

**AMENDATORY SECTION** (Amending WSR 10-03-100, filed 1/20/10, effective 7/1/10)

**WAC 51-54-0900 Chapter 9—Fire protection systems.**

**902.1 Definitions.**

**ALERT SIGNAL.** See Section 402.1.

**ALERTING SYSTEM.** See Section 402.1.

**PORTABLE SCHOOL CLASSROOM.** A structure, transportable in one or more sections, which requires a chassis to be transported, and is designed to be used as an educational space with or without a permanent foundation. The structure shall be trailerable and capable of being demounted and relocated to other locations as needs arise.

**903.2.3 Group E.** An automatic sprinkler system shall be provided for Group E Occupancies.

EXCEPTIONS: 1. Portable school classrooms, provided aggregate area of any cluster or portion of a cluster of portable school classrooms does not exceed 5,000 square feet (1465 m<sup>2</sup>);

and clusters of portable school classrooms shall be separated as required by the building code.

2. Group E Occupancies with an occupant load of 50 or less, calculated in accordance with Table 1004.1.1.

**903.2.8 Group R.** An automatic sprinkler system installed in accordance with Section 903.3 shall be provided throughout all buildings with a Group R fire area.

EXCEPTION: Group R-1 if all of the following conditions apply:

1. The Group R fire area is no more than 500 square feet and is used for recreational use only.
2. The Group R fire area is on only one story.
3. The Group R fire area does not include a basement.
4. The Group R fire area is no closer than 30 feet from another structure.
5. Cooking is not allowed within the Group R fire area.
6. The Group R fire area has an occupant load of no more than 8.
7. A hand held (portable) fire extinguisher is in every Group R fire area.

**903.6.3 Nightclub.** Existing nightclubs constructed prior to July 1, 2006, shall be provided with automatic sprinklers not later than December 1, 2009.

#### SECTION 906—PORTABLE FIRE EXTINGUISHERS

**906.1 Where required.** Portable fire extinguishers shall be installed in the following locations:

1. In new and existing Group A, B, E, F, H, I, M, R-1, R-2, R-4 and S occupancies.
2. Within 30 feet (9144 mm) of commercial cooking equipment.
3. In areas where flammable or combustible liquids are stored, used or dispensed.
4. On each floor of structures under construction, except Group R-3 occupancies, in accordance with Section 1415.1.
5. Where required by the sections indicated in Table 906.1.
6. Special-hazard areas, including, but not limited to, laboratories, computer rooms and generator rooms, where required by the fire code official.

#### SECTION 907—FIRE ALARM AND DETECTION SYSTEMS

**[F] 907.2.8 Group R-1.** Fire alarm systems, smoke alarms and carbon monoxide alarms shall be installed in Group R-1 occupancies as required in this section and Section 907.2.8.4.

**[F] 907.2.8.4(=) Carbon monoxide alarms.** For new construction, an approved carbon monoxide alarm shall be installed ~~((by January 1, 2011,))~~ outside of each separate sleeping area in the immediate vicinity of the bedroom in sleeping units ~~((In a building where a tenancy exists, the tenant shall maintain the CO alarm as specified by the manufacturer including replacement of the batteries))~~ within which fuel-fired appliances are installed, and in sleeping units that have attached garages.

**[F] 907.2.8.4.1 Existing sleeping units.** Existing sleeping units shall be equipped with carbon monoxide alarms by ~~((July 1, 2011))~~ January 1, 2013.

**[F] 907.2.8.4.2 Alarm requirements.** Single station carbon monoxide alarms shall be listed as complying with UL 2034 and shall be installed in accordance with this code and the manufacturer's installation instructions.

**[F] 907.2.9 Group R-2.** Fire alarm systems, smoke alarms and carbon monoxide alarms shall be installed in Group R-2 occupancies as required in Sections 907.2.9.1 through 907.2.9.3.

~~((907.2.9.1))~~ **[F] 907.2.9.1.1 Group R-2 boarding homes.** A manual fire alarm system shall be installed in Group R-2 occupancies where the building contains a boarding home licensed by the state of Washington.

EXCEPTION: In boarding homes licensed by the state of Washington, manual fire alarm boxes in resident sleeping areas shall not be required at exits if located at all constantly attended staff locations, provided such staff locations are visible, continuously accessible, located on each floor, and positioned so no portion of the story exceeds a horizontal travel distance of 200 feet to a manual fire alarm box.

**[F] 907.2.9.3 Carbon monoxide alarms.** For new construction, an approved carbon monoxide alarm shall be installed ~~((by January 1, 2011,))~~ outside of each separate sleeping area in the immediate vicinity of the bedroom in dwelling units ~~((In a building where a tenancy exists, the tenant shall maintain the CO alarm as specified by the manufacturer including replacement of the batteries))~~ within which fuel-fired appliances are installed, and in dwelling units that have attached garages.

**[F] 907.2.9.3.1 Existing dwelling units.** Existing dwelling units within which fuel-fired appliances exist or that have attached garages shall be equipped with carbon monoxide alarms by ~~((July 1, 2011))~~ January 1, 2013.

**[F] 907.2.9.3.2 Alarm requirements.** Single station carbon monoxide alarms shall be listed as complying with UL 2034 and shall be installed in accordance with this code and the manufacturer's installation instructions.

**[F] 907.2.10 Group R-3.** Carbon monoxide alarms shall be installed in Group R-3 occupancies as required in Sections 907.2.10.1 through 907.2.10.3.

**[F] 907.2.10.1 Carbon monoxide alarms.** For new construction, an approved carbon monoxide alarm shall be installed ~~((by January 1, 2011,))~~ outside of each separate sleeping area in the immediate vicinity of the bedroom in dwelling units ~~((In a building where a tenancy exists, the tenant shall maintain the CO alarm as specified by the manufacturer including replacement of the batteries))~~ within which fuel-fired appliances are installed, and in dwelling units that have attached garages.

**[F] 907.2.10.2 Existing dwelling units.** Existing dwelling units within which fuel-fired appliances exist or that have attached garages shall be equipped with carbon monoxide alarms by ~~((July 1, 2011))~~ January 1, 2013.

EXCEPTION: Owner-occupied Group R-3 residences legally occupied prior to July 1, 2010.

**[F] 907.2.10.3 Alarm requirements.** Single station carbon monoxide alarms shall be listed as complying with UL 2034 and shall be installed in accordance with this code and the manufacturer's installation instructions.

**909.6.3 Elevator shaft pressurization.** Where elevator shaft pressurization is required to comply with Exception 6 of IBC Section 708.14.1, the pressurization system shall comply with and be maintained in accordance with IBC 708.14.2.

**909.6.3.1 Activation.** The elevator shaft pressurization system shall be activated by a fire alarm system which shall include smoke detectors or other approved detectors located near the elevator shaft on each floor as approved by the building official and fire code official. If the building has a fire alarm panel, detectors shall be connected to, with power supplied by, the fire alarm panel.

**909.6.3.2 Power system.** The power source for the fire alarm system and the elevator shaft pressurization system shall be in accordance with Section 909.11.

#### SECTION 915 ALERTING SYSTEMS

**915.1 General.** An approved alerting system shall be provided in buildings and structures as required in chapter 4 and this section, unless other requirements are provided by another section of this code.

EXCEPTION: Approved alerting systems in existing buildings, structures or occupancies.

**915.2 Power source.** Alerting systems shall be provided with power supplies in accordance with Section 4.4.1 of NFPA 72 and circuit disconnecting means identified as "EMERGENCY ALERTING SYSTEM."

EXCEPTION: Systems which do not require electrical power to operate.

**915.3 Duration of Operation.** The alerting system shall be capable of operating under nonalarm condition (quiescent load) for a minimum of 24 hours and then shall be capable of operating during an emergency condition for a period of 15 minutes at maximum connected load.

**915.4 Combination system.** Alerting system components and equipment shall be allowed to be used for other purposes.

**915.4.1 System priority.** The alerting system use shall take precedence over any other use.

**915.4.2 Fire alarm system.** Fire alarm systems sharing components and equipment with alerting systems must be in accordance with Section 6.8.4 of NFPA 72.

**915.4.2.1 Signal priority.** Recorded or live alert signals generated by an alerting system that shares components with a fire alarm system shall, when actuated, take priority over fire alarm messages and signals.

**915.4.2.2 Temporary deactivation.** Should the fire alarm system be in the alarm mode when such an alerting system is actuated, it shall temporarily cause deactivation of all fire alarm-initiated audible messages or signals during the time period required to transmit the alert signal.

**915.4.2.3 Supervisory signal.** Deactivation of fire alarm audible and visual notification signals shall cause a supervisory signal for each notification zone affected in the fire alarm system.

**915.5 Audibility.** Audible characteristics of the alert signal shall be in accordance with Section 7.4.1 of NFPA 72 throughout the area served by the alerting system.

EXCEPTION: Areas served by approved visual or textual notification, where the visible notification appliances are not also used as a fire alarm signal, are not required to be provided with audibility complying with Section 915.6.

**915.6 Visibility.** Visible and textual notification appliances shall be permitted in addition to alert signal audibility.

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

#### WSR 11-01-084

#### EMERGENCY RULES

#### BUILDING CODE COUNCIL

[Filed December 13, 2010, 5:15 p.m., effective January 1, 2011]

Effective Date of Rule: January 1, 2011.

Purpose: To amend the 2009 Washington State Energy Code, Section 101.3.2.6 regarding duct testing and sealing in existing buildings.

Citation of Existing Rules Affected by this Order: Amending WAC 51-11-0101.

Statutory Authority for Adoption: RCW 19.27A.020, 19.27A.025, and 19.27A.045.

Other Authority: Chapters 19.27 and 34.05 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: The state building code council (council), based on the following good cause, finds that an emergency affecting the general welfare of the state of Washington exists. The council further finds that immediate amendment of Section 101.3.2.6 of the 2009 edition of the Washington State Energy Code, revised WAC 51-11-0101, is necessary for the public welfare and that observing the time requirements of notice and opportunity to comment would be contrary to the public interest.

The declaration of emergency affecting the general welfare of the citizens of the state of Washington is based on the following findings:

The Washington State Energy Code 2009 edition ("2009 Energy Code") as adopted by the council pursuant to chapter 34.05 RCW was originally set to become effective on July 1, 2010. A previous emergency rule and permanent rule extended the effective date to January 1, 2011. This rule includes a provision to require duct testing and sealing in existing housing stock when a furnace is replaced. The council was approached by industry representatives who testified that this would provide a hardship to a portion of the population during the current economic climate. The cost for the testing and sealing of ducts on top of the cost of a new furnace could exceed the available budget for those whose furnaces fail this winter. On top of that, a difficult El Nino win-

ter is forecast and could impact the health and safety of those who cannot afford a replacement unit.

The council is currently in the process of considering a permanent rule for this section. The CR-102 will be filed concurrently with this emergency rule and hearings will be scheduled for early 2011.

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 1, 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 0, Repealed 0.

Date Adopted: November 19, 2010.

John C. Cochran  
Council Chair

**AMENDATORY SECTION** (Amending WSR 10-03-115, 10-13-113 and 10-22-056, filed 1/20/10, 6/21/10 and 10/28/10, effective 1/1/11)

**WAC 51-11-0101 Section 101—Scope and general requirements.**

101.1 Title: Chapters 1 through 10 of this Code shall be known as the "Washington State Single-Family Residential Energy Code" and may be cited as such; and will be referred to herein as "this Code."

101.2 Purpose and Intent: The purpose of this Code is to provide minimum standards for new or altered buildings and structures or portions thereof to achieve efficient use and conservation of energy.

The purpose of this Code is not to create or otherwise establish or designate any particular class or group of persons who will or should be especially protected or benefitted by the terms of this Code.

It is intended that these provisions provide flexibility to permit the use of innovative approaches and techniques to achieve efficient use and conservation of energy. These provisions are structured to permit compliance with the intent of this Code by any one of the following three paths of design:

1. A systems analysis approach for the entire building and its energy-using sub-systems which may utilize renewable energy sources, Chapters 4 and 9.

2. A component performance approach for various building elements and mechanical systems and components, Chapters 5 and 9.

3. A prescriptive requirements approach, Chapters 6 and 9.

Compliance with any one of these approaches meets the intent of this Code. This Code is not intended to abridge any safety or health requirements required under any other applicable codes or ordinances.

The provisions of this Code do not consider the efficiency of various energy forms as they are delivered to the building envelope. A determination of delivered energy efficiencies in conjunction with this Code will provide the most efficient use of available energy in new building construction.

101.3 Scope: This Code sets forth minimum requirements for the design of new buildings and structures that provide facilities or shelter for residential occupancies by regulating their exterior envelopes and the selection of their mechanical systems, domestic water systems, electrical distribution and illuminating systems, and equipment for efficient use and conservation of energy.

Buildings shall be designed to comply with the requirements of either Chapter 4, 5, or 6 of this Code and the additional energy efficiency requirements included in Chapter 9 of this Code.

Spaces within the scope of Section R101.2 of the International Residential Code shall comply with Chapters 1 through 10 of this Code. All other spaces, including other Group R Occupancies, shall comply with Chapters 11 through 20 of this Code. Chapter 2 (Definitions), Chapter 7 (Standards), and Chapter 10 (default heat loss coefficients), are applicable to all building types.

101.3.1 Exempt Buildings: Buildings and structures or portions thereof meeting any of the following criteria shall be exempt from the building envelope requirements of Sections 502 and 602, but shall comply with all other requirements for mechanical systems and domestic water systems.

101.3.1.1: Buildings and structures or portions thereof whose peak design rate of energy usage is less than three and four tenths (3.4) Btu/h per square foot or one point zero (1.0) watt per square foot of floor area for space conditioning requirements.

101.3.1.2: Buildings and structures or portions thereof which are neither heated according to the definition of heated space in Chapter 2, nor cooled by a nonrenewable energy source, provided that the nonrenewable energy use for space conditioning complies with requirements of Section 101.3.1.1.

101.3.1.3: Greenhouses isolated from any conditioned space and not intended for occupancy.

101.3.1.4: The provisions of this code do not apply to the construction, alteration, or repair of temporary worker housing except as provided by rule adopted under chapter 70.114A RCW or chapter 37, Laws of 1998 (SB 6168). "Temporary worker housing" means a place, area, or piece of land where sleeping places or housing sites are provided by an employer for his or her employees or by another person,



including a temporary worker housing operator, who is providing such accommodations for employees, for temporary, seasonal occupancy, and includes "labor camps" under RCW 70.54.110.

101.3.2 Application to Existing Buildings: Additions, historic buildings, changes of occupancy or use, and alterations or repairs shall comply with the requirements in the subsections below.

EXCEPTION: The building official may approve designs of alterations or repairs which do not fully conform with all of the requirements of this Code where in the opinion of the building official full compliance is physically impossible and/or economically impractical and:

1. The alteration or repair improves the energy efficiency of the building; or
2. The alteration or repair is energy efficient and is necessary for the health, safety, and welfare of the general public.

In no case, shall building envelope requirements or mechanical system requirements be less than those requirements in effect at the time of the initial construction of the building.

101.3.2.1 Additions to Existing Buildings: Additions to existing buildings or structures may be made to such buildings or structures without making the entire building or structure comply, provided that the new additions shall conform to the provisions of this Code.

EXCEPTION: New additions which do not fully comply with the requirements of this Code and which have a floor area which is less than seven hundred fifty square feet shall be approved provided that improvements are made to the existing occupancy to compensate for any deficiencies in the new addition. Compliance shall be demonstrated by either systems analysis or component performance calculations. The nonconforming addition and upgraded, existing occupancy shall have an energy budget or Target UA which is less than or equal to the unimproved existing building (minus any elements which are no longer part of the building envelope once the addition is added), with the addition designed to comply with this Code.

101.3.2.2 Historic Buildings: The building official may modify the specific requirements of this Code for historic buildings and require in lieu thereof alternate requirements which will result in a reasonable degree of energy efficiency. This modification may be allowed for those buildings which have been specifically designated as historically significant by the state or local governing body, or listed in The National Register of Historic Places or which have been determined to be eligible for listing.

#### 101.3.2.3 Change of Occupancy or Use:

Any space not within the scope of Section 101.3 which is converted to space that is within the scope of Section 101.3 shall be brought into full compliance with this Code.

101.3.2.4 Alterations and Repairs: All alterations and repairs to buildings or portions thereof originally constructed subject to the requirements of this Code shall conform to the provisions of this Code without exception. For all other existing buildings, initial tenant alterations shall comply with the new construction requirements of this Code. Other alterations and repairs may be made to existing buildings and

moved buildings without making the entire building comply with all of the requirements of this Code for new buildings, provided the requirements of Sections 101.3.2.5 through 101.3.2.8 are met.

101.3.2.5 Building Envelope: The result of the alterations or repairs both:

1. Improves the energy efficiency of the building, and

2. Complies with the overall average thermal transmittance values of the elements of the exterior building envelope in Table 5-1 of Chapter 5 or the nominal R-values and glazing requirements of the reference case in Tables 6-1 and 6-2.

EXCEPTIONS:

1. Untested storm windows may be installed over existing glazing for an assumed U-factor of 0.90, however, where glass and sash are being replaced, glazing shall comply with the appropriate reference case in Tables 6-1 and 6-2.
2. Where the structural elements of the altered portions of roof/ceiling, wall or floor are not being replaced, these elements shall be deemed to comply with this Code if all existing framing cavities which are exposed during construction are filled to the full depth with batt insulation or insulation having an equivalent nominal R-value. 2x4 framed walls shall be insulated to a minimum of R-15 and 2x6 framed walls shall be insulated to a minimum of R-21. Roof/ceiling assemblies shall maintain the required space for ventilation. Existing walls and floors without framing cavities need not be insulated. Existing roofs shall be insulated to the requirements of this Code if
  - a. The roof is uninsulated or insulation is removed to the level of the sheathing, or
  - b. All insulation in the roof/ceiling was previously installed exterior to the sheathing or nonexistent.

101.3.2.6 Mechanical Systems: Those parts of systems which are altered or replaced shall comply with Section 503 of this Code. When a space-conditioning system is altered by the installation or replacement of space-conditioning equipment (including replacement of the air handler, outdoor condensing unit of a split system air conditioner or heat pump, cooling or heating coil, or the furnace heat exchanger), the duct system that is connected to the new or replacement space-conditioning equipment shall be ~~((sealed, as confirmed through field verification and diagnostic testing in accordance with procedures for duct sealing of existing duct systems))~~ tested as specified in RS-33. The test results shall ~~((confirm at least one of the following performance requirements:~~

~~1. The measured total duct leakage shall be less than or equal to 8 percent of the conditioned floor area, measured in CFM @ 25 Pascals; or~~

~~2. The measured duct leakage to outside shall be less than 6 percent of the conditioned floor area, measured in CFM @ 25 Pascals; or~~

~~3. The measured duct leakage shall be reduced by more than 50 percent relative to the measured leakage prior to the installation or replacement of the space conditioning equipment and a visual inspection including a smoke test shall demonstrate that all accessible leaks have been sealed; or~~

4. If it is not possible to meet the duct requirements of 1, 2 or 3, all accessible leaks shall be sealed and verified through a visual inspection and through a smoke test by a certified third party)) be provided to the building official and the homeowner.

- EXCEPTIONS:
1. Duct systems that are documented to have been previously sealed as confirmed through field verification and diagnostic testing in accordance with procedures in RS-33.
  2. Ducts with less than 40 linear feet in unconditioned spaces.
  3. Existing duct systems constructed, insulated or sealed with asbestos.

101.3.2.7 Domestic Water Systems: Those parts of systems which are altered or replaced shall comply with section 504.

101.3.2.8 Lighting: Alterations shall comply with Sections 505 and 1132.3.

101.3.3 Mixed Occupancy: When a building houses more than one occupancy, each portion of the building shall conform to the requirements for the occupancy housed therein. Where approved by the building official, where minor accessory uses do not occupy more than ten percent of the area of any floor of a building, the major use may be considered the building occupancy.

101.4 Amendments by Local Government: Except as provided in RCW 19.27A.020(7), this Code shall be the maximum and minimum energy code for single-family residential in each town, city and county.

**WSR 11-01-093**

**EMERGENCY RULES  
DEPARTMENT OF  
FISH AND WILDLIFE**

[Order 10-315—Filed December 15, 2010, 9:41 a.m., effective December 15, 2010, 9:41 a.m.]

Effective Date of Rule: Immediately.  
Purpose: Amend personal use fishing rules.  
Citation of Existing Rules Affected by this Order: Amending WAC 220-56-270.  
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: Eulachon smelt are listed under the Endangered Species Act as "threatened." There are no harvestable populations within the state and the statewide closure will provide additional protection. 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: December 15, 2010.

Philip Anderson  
Director

NEW SECTION

**WAC 220-56-27000I Smelt—Areas and seasons.** Notwithstanding the provisions of WAC 220-56-270, effective immediately until further notice, it is unlawful to fish for or possess *Thaleichthys pacificus* (Eulachon or Columbia River smelt).

**WSR 11-01-102**

**EMERGENCY RULES  
DEPARTMENT OF  
FISH AND WILDLIFE**

[Order 10-317—Filed December 15, 2010, 4:59 p.m., effective December 15, 2010]

Effective Date of Rule: December 15, 2010.  
Purpose: Amend personal use fishing rules.  
Citation of Existing Rules Affected by this Order: Repealing WAC 232-28-61900G.  
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 Whitehorse Hatchery facility hatchery winter steelhead broodstock needs have been met. 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 0, Amended 0, Repealed 1.

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

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

Date Adopted: December 15, 2010.

Philip Anderson  
Director

### REPEALER

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

WAC 232-28-61900G      Exceptions to statewide rules—North Fork Stillaguamish River. (10-301)

### **WSR 11-01-109 EMERGENCY RULES DEPARTMENT OF FISH AND WILDLIFE**

[Order 10-316—Filed December 16, 2010, 1:46 p.m., effective January 1, 2011]

Effective Date of Rule: January 1, 2011.

Purpose: Amend personal use fishing rules.

Citation of Existing Rules Affected by this Order: Amending WAC 220-56-350.

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: Surveys indicate that there is a sufficient clam population to support a year-round season. 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: December 16, 2010.

Philip Anderson  
Director

### NEW SECTION

**WAC 220-56-35000K Clams other than razor clams—Areas and seasons.** Notwithstanding the provisions of WAC 220-56-350, effective immediately until further notice, it is unlawful to take, dig for and possess clams, cockles, and mussels taken for personal use from the following public tidelands except during the open periods specified herein:

(1) Belfair State Park: Open January 1, 2011, until further notice.

### **WSR 11-01-112 EMERGENCY RULES DEPARTMENT OF FISH AND WILDLIFE**

[Order 10-318—Filed December 17, 2010, 1:11 p.m., effective December 18, 2010, 12:01 a.m.]

Effective Date of Rule: December 18, 2010, 12:01 a.m.

Purpose: Amend personal use fishing rules.

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

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 Whatcom Creek and Kendall Creek Hatcheries are expected to meet broodstock needs from returning hatchery winter steelhead to meet basin production goals. This allows the department to repeal the emergency rule and return the fishery to permanent rules.

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

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

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

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

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

Date Adopted: December 17, 2010.

Philip Anderson  
Director

### REPEALER

The following section of the Washington Administrative code is repealed effective 12:01 a.m. December 18, 2010:

WAC 232-28-61900A Exceptions to statewide rules—North Fork Nooksack River and Whatcom Creek. (10-298)

**WSR 11-01-114**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**EARLY LEARNING**

[Filed December 17, 2010, 2:35 p.m., effective January 1, 2011]

Effective Date of Rule: January 1, 2011.

Purpose: The department of early learning (DEL) is amending working connections child care (WCCC) and seasonal child care (SCC) program rules in chapter 170-290 WAC. The rules:

1. Reduce the countable income limit and change eligibility requirements for families to be eligible for WCCC and SCC subsidy benefits to the following:

- Effective January 1, 2011, consumers who are currently receiving child care subsidy benefits must have countable income at or below one hundred seventy-five percent of the federal poverty guidelines (FPG), and may remain income eligible until their countable income is greater than one hundred seventy-five percent of the FPG. Current WCCC and SCC consumers with income above one hundred seventy-five percent of the FPG will no longer receive child care subsidy benefits.
- Effective February 1, 2011, consumers initially applying for benefits must be receiving a temporary assistance for needy families (TANF) grant, and remain income eligible until their countable income is greater than one hundred seventy-five of the FPG, even if they are no longer eligible to receive TANF.

2. Effective February 1, 2011, raise child care copayments for consumers as follows:

- For consumers whose countable monthly income is above eighty-two percent of the FPG up to 137.5% of the FPG, copayments will increase from \$50 to \$60; and
- For consumers whose countable monthly income is above 137.5% of the FPG through one hundred seventy-five percent of the FPG, copayments will increase by amending the sliding scale formula as follows: The dollar amount equal to subtracting 137.5% of FPG from countable income, multiplying

by forty-four percent, then adding \$60 instead of \$50.

3. Allow families applying for SCC subsidy benefits to also be on TANF. The current rules do not allow a family receiving a TANF grant to also receive SCC.

Examples of the income limit changes:

- A family of three that is currently receiving child care subsidy benefits in January 2011 would need countable income at or below \$2,670 per month to qualify, corresponding to one hundred seventy-five percent of the FPG for a family of that size. The family may continue receiving child care subsidies as long as their income remains at or below this level.
- A family of three that is applying for child care subsidies for the first time on or after February 1, 2011, would need countable income of approximately \$1,251 per month to qualify, corresponding to eighty-two percent of the FPG for a family of that size, and be receiving a TANF grant. The family would remain eligible for child care subsidy benefits until their income exceeds one hundred seventy-five percent of the FPG (\$2,670 per month), even if the family is no longer eligible for TANF.

Effective January 1, 2011, these rules will replace emergency rules filed on September 24, 2010, filing number WSR 10-20-032, which are being rescinded. Under the September 2010 emergency rules, the one hundred seventy-five percent income limit was to be phased in over several months. The current emergency rule ends child care benefits on January 1, 2011, for an estimated 1,112 families currently in the WCCC and SCC program with monthly income over one hundred seventy-five percent of the FPG.

More than 35,000 families in Washington state receive DEL child care subsidy assistance each month. For more information about these rules, please visit the DEL web site at <http://www.del.wa.gov/laws/development/income.aspx>.

Citation of Existing Rules Affected by this Order: Amending WAC 170-290-0005, 170-290-0075, 170-290-0085, 170-290-3520, and 170-290-3640.

Statutory Authority for Adoption: RCW 43.215.060 and 43.215.070.

Other Authority: Chapter 43.215 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; 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: Failure to implement WCCC and SCC spending cuts by January 1, 2011, would result in these programs becoming oversubscribed and over budget,

because of insufficient revenues to pay program benefits and higher than anticipated caseloads, causing the state to likely run out of funds for these programs before the end of the state fiscal year ending June 30, 2011 (SFY 2011). If that occurs, the state could be faced with terminating child care subsidies to all families in the WCCC and SCC programs, with serious disruptive effects to children, families, child care providers and the public welfare.

Washington state's economic situation continues to worsen. Current forecasts indicate that state tax revenues will be insufficient to meet appropriations in the 2010-2011 Supplemental Operating Budget Act ESSB 6444 (chapter 37, Laws of 2010 1st sp. sess.). Congress has not acted on extending American Reinvestment and Revitalization Act (ARRA) stimulus funding that the legislature had projected receiving to help balance the budget. See the 2010 Supplemental Omnibus Budget Overview - Operating Only.

In adopting ESSB 6444, the legislature anticipated that federal revenues in the WorkFirst "TANF (temporary assistance to needy families) Box" may fall short of estimates. WorkFirst is the state's "welfare-to-work" program, which includes DEL child care subsidy programs. As the economy declined and unemployment increased, in the last two years the state's WorkFirst caseload has grown by more than thirty percent, from 51,106 cases in July 2008 to 66,634 cases in June 2010.

By August 2010, Washington's WorkFirst program faced a projected \$52 million budget shortfall in SFY 2011. DEL was directed to cut nearly \$14.8 million in child care subsidy costs. This led the department to adopt the emergency rules filed in September, WSR 10-20-032.

By November 2010, the projected WorkFirst deficit had grown to more than \$106 million. The governor directed WorkFirst agencies to further reduce spending by an additional \$52 million to \$54 million, including additional child care subsidy spending cuts. To help reach this target, DEL must end WCCC and SCC subsidies for all families with countable monthly income over one hundred seventy-five percent of the FPG by January 1, 2011, rather than phasing-in the income limit.

Based on DEL's experience with September 2010 emergency rules, filing these emergency rule[s] now is necessary to allow DEL and the department of social and health services\* to:

- Give advance notice to the families who are anticipated to lose child care subsidy supports on January 1;
- Notify child care providers, many of whom would lose income as some of the families they serve lose state-paid child care benefits under these rules and are unable to pay for their own child care; and
- Make system changes so that families may receive accurate WCCC and SCC eligibility determinations based on the rules.

Each month that DEL waits to implement this change would result in more families who may be impacted by the budget shortfall. Reducing the income limit now and ending benefits for some families January 1, 2011, is expected to help the state avoid or delay additional budget cuts and the

broad termination of child care subsidy benefits later in SFY 2011.

The governor has formally declared that a budget shortfall is imminent and has directed state agencies to implement 6.3 percent across-the-board spending cuts to avoid running out of state general funds. Executive Order 10-04 - Ordering Expenditure Reductions in Allotments of State General Fund Appropriations, signed on September 13, 2010, declared that:

- Revenues have fallen short of projections;
- The current official state economic and revenue forecast of general fund revenues is less than the official estimate upon which the state's 2009-2011 biennial operating budget and supplemental operating budget were enacted; and
- The anticipated revenues combined with the beginning cash balance of the general fund are insufficient to meet anticipated expenditures from this fund for the remainder of the current fiscal period (SFY 2011).

On December 15, 2010, Governor Gregoire announced proposed 2011-2013 budget cuts needed to close an additional \$4.6 billion projected shortfall in the next state fiscal biennium, and proposed eliminating or restructuring many state programs, agencies, boards and commissions. "We face unprecedented times," the governor said. "Few alive today have witnessed a recession of this magnitude and length." See the governor's proposed budget for SFY 2011-2013 at this link [http://www.governor.wa.gov/priorities/budget/press\\_packet.pdf](http://www.governor.wa.gov/priorities/budget/press_packet.pdf).

The legislature's anticipated shortfall in the WorkFirst TANF box, combined with the Governor's Executive Order 10-04, demonstrate that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary both to the public interest and to the state's fiscal needs and requirements.

These rules replace emergency rules filed on September 24, 2010, as WSR 10-20-032. Filing substantially similar emergency rules in sequence is permitted under RCW 34.05.-350(2) if "... *conditions have changed or the agency has filed notice of its intent to adopt the rule as a permanent rule, and is actively undertaking the appropriate procedures to adopt the rule as a permanent rule.*"

Conditions have changed. Since DEL filed emergency rules on September 24, 2010, more current revenue projections and WorkFirst caseload forecasts have resulted in a projected WorkFirst deficit more than double the amount predicted at that time. The state cannot spend more money than it receives in revenue - DEL and other agencies must make additional spending reductions to avoid a deficit.

DEL has filed a notice of intent to adopt permanent rules (see WSR 10-15-116 and 10-03-033). Proposed rules to implement the phased-in one hundred seventy-five percent income limit were filed in August 2010 (WSR 10-18-064) and public hearings were held in four locations around the state in October 2010. The department continues to monitor revenue and caseload forecasts to determine if the proposed rules should be adopted as permanent, or if revised proposed rules or additional emergency rules are needed.

DEL has determined that the rules meet office of financial management guidance 3.c regarding the Governor's Executive Order 10-06 suspending noncritical rule making, but allowing rules to proceed that are "... necessary to manage budget shortfalls, maintain fund solvency, or for revenue generating activities ..."

\*DEL and DSHS jointly operate WCCC program, under chapter 265, Laws of 2006, section 501 (uncodified). DEL adopts WCCC policy and rules for the program. DSHS staff receive WCCC applications, determine family eligibility, and process child care subsidy payments.

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: December 17, 2010.

Elizabeth M. Hyde
Director

AMENDATORY SECTION (Amending WSR 9-22-043 [09-22-043], filed 10/28/09, effective 12/1/09)

WAC 170-290-0005 Consumers. (1) In WCCC, an eligible consumer has parental control of one or more children, lives in the state of Washington, and is the child's:

- (a) Parent, either biological or adopted;
(b) Stepparent;
(c) Legal guardian verified by a legal or court document;
(d) Adult sibling or step-sibling;
(e) Nephew or niece;
(f) Aunt;
(g) Uncle;
(h) Grandparent; or
(i) Any of the relatives in (f), (g), or (h) of this subsection with the prefix great (for example, great-aunt).

(2) Consumers may be eligible for WCCC benefits if they:

- (a) Meet eligibility requirements for WCCC described under part II of this chapter;
(b) Participate in an approved activity under WAC 170-290-0040, 170-290-0045, 170-290-0050, or have been approved per WAC 170-290-0055;
(c) Comply with any special circumstances that might affect WCCC eligibility under WAC 170-290-0020; and

(d) ((Have countable income at or below two hundred percent of the federal poverty guidelines (FPG) (under WAC 170-290-0065))) Meet the following income eligibility limits:

(i) Effective January 1, 2011, consumers who are currently receiving child care subsidy benefits:

(A) Must have countable income at or below one hundred seventy-five percent of the federal poverty guidelines (FPG); and

(B) Remain income eligible until their countable income is greater than one hundred seventy-five percent of the FPG; and

(ii) Effective February 1, 2011, consumers initially applying for benefits:

(A) Must be receiving a temporary assistance for needy families (TANF) grant; and

(B) Remain income eligible until their countable income is greater than one hundred seventy-five percent of the FPG, even if the consumer is no longer eligible to receive TANF.

(3) A consumer's eligibility shall end January 1, 2011, if a consumer's countable income is greater than one hundred seventy-five percent of the FPG.

(4) A consumer is not eligible for WCCC benefits when he or she:

(a) Is the only parent in the family and will be away from the home for more than thirty days in a row; or

(b) Has a monthly copayment that is higher than the rate the state will pay for all eligible children in care.

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

AMENDATORY SECTION (Amending WSR 09-22-043, filed 10/28/09, effective 12/1/09)

WAC 170-290-0075 Determining income eligibility and copayment amounts. (1) DSHS takes the following steps to determine a consumer's eligibility and copayment:

- (a) Determine the consumer's family size (under WAC 170-290-0015); and
(b) Determine the consumer's countable income (under WAC 170-290-0065).

(2) Before February 1, 2011, if the consumer's family's countable monthly income falls within the range below, then his or her copayment is:

Table with 2 columns: IF A CONSUMER'S INCOME IS: and THEN THE CONSUMER'S COPAYMENT IS:.

(3) On or after February 1, 2011, if the consumer's family countable income falls within the range below, then his or her copayment is:

Table with 2 columns: IF A CONSUMER'S INCOME IS: and THEN THE CONSUMER'S COPAYMENT IS:.

IF A CONSUMER'S INCOME IS:	THEN THE CONSUMER'S COPAYMENT IS:
(b) Above 82% of the FPG up to 137.5% of the FPG	\$60
(c) Above 137.5% of the FPG through 175% of the FPG	The dollar amount equal to subtracting 137.5% of FPG from countable income, multiplying by 44%, then adding \$60
(d) Above 175% of the FPG, a consumer is not eligible for WCCC benefits.	

(4) DSHS does not prorate the copayment when a consumer uses care for part of a month.

~~((4))~~ (5) The FPG is updated every year on April 1. The WCCC eligibility level is updated at the same time every year to remain current with the FPG.

AMENDATORY SECTION (Amending WSR 09-22-043, filed 10/28/09, effective 12/1/09)

**WAC 170-290-0085 Change in copayment.** (1) Once DSHS determines that a consumer is eligible for WCCC benefits, his or her copayment may change when:

- (a) The consumer's monthly income decreases;
- (b) The consumer's family size increases;
- (c) DSHS makes an error in the consumer's copayment computation;
- (d) The consumer did not report all income, activity and household information at the time of eligibility determination or application/reapplication;
- (e) The consumer is no longer eligible for the minimum copayment under WAC 170-290-0090;
- (f) DEL makes a mass change in benefits due to a change in law or program funding;
- (g) The consumer is approved for a new eligibility period; or
- (h) The consumer is approved for the fourteen-day wait period or twenty-eight-day gap period as provided in WAC 170-290-0055.

(2) If a consumer's copayment changes during his or her eligibility period, the change is effective on the first day of the month following DSHS becoming aware of the change.

(3) DSHS does not increase a consumer's copayment during his or her current eligibility period when his or her countable income remains at or below ~~((two hundred percent of the FPG))~~ the maximum eligibility limit as provided in WAC 170-290-0005 (2)(d) and (3), and:

- (a) The consumer's monthly countable income increases;
- or
- (b) The consumer's family size decreases.

AMENDATORY SECTION (Amending WSR 09-22-043, filed 10/28/09, effective 12/1/09)

**WAC 170-290-3520 Eligible consumers.** (1) In SCC, an eligible consumer ~~((is not currently receiving temporary aid for needy families (TANF)))~~ lives in the state of Washington, has parental control of one or more children, and is the child's:

- (a) Parent, either biological or adopted;
- (b) Stepparent;

- (c) Legal guardian as verified by a legal or court document;
- (d) Adult sibling or step-sibling;
- (e) Aunt;
- (f) Uncle;
- (g) Niece or nephew;
- (h) Grandparent; or
- (i) Any of the above relatives in (e), (f), or (h) of this subsection, with the prefix "great," such as great-aunt.

(2) Consumers may be eligible for SCC benefits if they:

- (a) Meet eligibility requirements in this chapter;
- (b) Participate in an approved activity under WAC 170-290-3555; and

(c) Have countable income at or below ~~((two hundred percent of the federal poverty guidelines (FPG)))~~ the maximum eligibility limit described in WAC ~~((170-290-3640))~~ 170-290-0005 (2)(d) and (3).

- (3) Consumers are not eligible for SCC benefits if they:
- (a) Have a copayment, under WAC 170-290-0075, that is higher than the maximum monthly state rate for all of the consumer's children in care;
  - (b) Were employed with one employer more than eleven months in the previous twelve months; or
  - (c) ~~((Are receiving TANF benefits; or~~
  - ~~((d)))~~ Are the only parent in the household and will be away from the home for more than thirty days in a row.

AMENDATORY SECTION (Amending WSR 09-22-043, filed 10/28/09, effective 12/1/09)

**WAC 170-290-3640 Determining income eligibility and copayment.** (1) For the SCC program, DEL determines a consumer's family's income eligibility and copayment by:

- (a) The consumer's family size as defined under WAC 170-290-3540;
- (b) The consumer's average monthly income as calculated under WAC 170-290-3620;
- (c) The consumer's family's average monthly income as compared to the federal poverty guidelines (FPG); and
- (d) The consumer's family's average monthly income as compared to the copayment chart defined in WAC 170-290-0075.

(2) If a consumer's family's income is above ~~((two hundred percent of the FPG as defined in WAC 170-290-0075))~~ the maximum eligibility limit as provided in WAC 170-290-0005 (2)(d) and (3), his or her family is not eligible for the SCC program.

(3) SCC does not prorate the copayment when a consumer uses care for part of a month.

(4) The FPG is updated every year on April 1. The SCC eligibility level is updated at the same time every year to remain current with the FPG.

(5) SCC shall assign a copayment amount based on the family's countable income. The copayment amount will be on the consumer's child care plan. The consumer pays the copayment directly to the provider.

**WSR 11-01-115**  
**RESCISSION OF EMERGENCY RULES**  
**DEPARTMENT OF**  
**EARLY LEARNING**

[Filed December 17, 2010, 2:41 p.m.]

The department of early learning is rescinding emergency rules filed as WSR 10-20-032, effective midnight on December 31, 2010.

The department has filed subsequent emergency rules, WSR 11-01-114, effective January 1, 2011, that will replace and supersede the rules filed as WSR 10-20-032. The rules amend chapter 170-290 WAC revising the income limit and eligibility for the working connections and seasonal child care programs.

Elizabeth M. Hyde  
 Director

**WSR 11-01-120**  
**RESCISSION OF EMERGENCY RULES**  
**DEPARTMENT OF PERSONNEL**

[Filed December 20, 2010, 9:30 a.m.]

The department of personnel is requesting to rescind the emergency rules filed on October 7, 2010, as WSR 10-21-003.

If you have any questions, please contact Kristie Wilson at (360) 664-6408.

Eva Santos  
 Director

**WSR 11-01-150**  
**EMERGENCY RULES**  
**DEPARTMENT OF ECOLOGY**

[Order 10-01—Filed December 21, 2010, 3:42 p.m., effective December 21, 2010, 3:42 p.m.]

Effective Date of Rule: Immediately.

Purpose: This third emergency rule will amend chapter 173-98 WAC, Use and limitations of the water pollution control revolving fund. These amendments will address provisions (e.g., green infrastructure or forgivable principal) in the new 2010 clean water state revolving fund federal appropriation which affect how the agency can distribute funding to local jurisdictions for water pollution control project. Ecology filed a preproposal statement of inquiry (CR-101) on August 19, 2010, WSR 10-18-007, announcing ecology's intent to adopt a permanent rule for chapter 173-98 WAC.

Citation of Existing Rules Affected by this Order: Amending chapter 173-98 WAC.

Statutory Authority for Adoption: RCW 90.48.035.

Other Authority: Chapters 90.50A, 34.05 RCW; RCW 43.21.080.

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: Emergency adoption is necessary to comply with provisions of the 2010 clean water state revolving fund federal appropriation.

Number of Sections Adopted in Order to Comply with Federal Statute: New 2, Amended 9, 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 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: December 20, 2010.

Ted Sturdevant  
 Director

AMENDATORY SECTION (Amending Order 05-16, filed 6/29/07, effective 7/30/07)

**WAC 173-98-030 Definitions.** For the purposes of this chapter:

(1) **Act** means the federal Clean Water Act (33 U.S.C. 1251-1387).

(2) **Activities** see water pollution control activities.

(3) **Annual debt service** means the amount of debt the applicant is obligated to pay on the loan in one year.

(4) **Applicant** means a public body that has applied for funding.

(5) **Best management practices (BMP)** means physical, structural, and/or managerial practices approved by the department that prevent or reduce pollutant discharges.

(6) **Capitalization grant** means a federal grant awarded by the U.S. Environmental Protection Agency (EPA) to the state to help expand the state water pollution control revolving fund.

(7) **Ceiling amount** means the highest level of financial assistance the department can provide to a recipient for an individual project.

~~((7))~~ (8) **Commercial, industrial, and institutional flows** means the portion of the total flows to a facility that originate from commercial establishments, industrial facilities, or institutional sources such as schools, hospitals, and prisons.

~~((8))~~ (9) **Competitive funding** means moneys available for projects through a statewide evaluation process.

~~((9))~~ (10) **Completion date** or **expiration date** means the date indicated in the funding agreement in which all milestones and objectives associated with the goals of the project are met.

~~((10))~~ (11) **Concentrated animal feeding operation (CAFO)** means:

(a) An animal livestock feeding operation that discharges animal waste to the waters of Washington state more



frequently than the twenty-five-year, twenty-four-hour storm event;

(b) An operation that is under a department administrative order, notice of violation, a National Pollution Discharge Elimination System permit;

(c) An operation that will be required to have a National Pollution Discharge Elimination System permit coverage in the near future; or

(d) An operation designated by the Environmental Protection Agency as polluting the waters of Washington state.

~~((11))~~ **(12) Conservation easement** means a recorded legal agreement between a landowner and a public body to allow or restrict certain activities and uses that may take place on his or her property.

~~((12))~~ **(13) Conservation plan** means a document that outlines how a project site will be managed using best management practices to avoid potential negative environmental impacts.

~~((13))~~ **(14) Construction** means to erect, install, expand, or improve water pollution control facilities or activities. Construction includes construction phase engineering and preparation of the operation and maintenance manual.

~~((14))~~ **(15) Cost-effective alternative** means the option selected in an approved facilities plan that meets the requirements of the project, recognizes environmental and other nonmonetary impacts, and offers the lowest cost over the life of the project (i.e., lowest present worth or equivalent annual value).

~~((15))~~ **(16) Department** means the Washington state department of ecology.

~~((16))~~ **(17) Design** means the preparation of the plans and specifications used for construction of water pollution control facilities or activities.

~~((17))~~ **(18) Director** means the director of the Washington state department of ecology or his or her authorized designee.

~~((18))~~ **(19) Draft offer and applicant list** means a catalog of all projects considered and proposed for funding based on an evaluation and the appropriations in the Washington state capital budget.

~~((19))~~ **(20) Easement** means a recorded legal agreement between a public body and a landowner that allows the public body to have access to the landowner's property at any time to inspect, maintain, or repair loan-funded activities or facilities.

~~((20))~~ **(21) Effective date** means the date the loan agreement is signed by the department's water quality program manager.

~~((21))~~ **(22) Eligible cost** means the portion of the facilities or activities project that can be funded.

~~((22))~~ **(23) Energy efficiency projects** means the use of improved technologies and practices to reduce the energy consumption of water quality projects as defined by the Environmental Protection Agency (EPA) under Green Project Reserve.

**(24) Enforcement order** means an administrative requirement issued by the department under the authority of RCW 90.48.120 that directs a public body to complete a specified course of action within an explicit period to achieve compliance with the provisions of chapter 90.48 RCW.

~~((23))~~ **(25) Engineering report** means a document that includes an evaluation of engineering and other alternatives that meet the requirements in chapter 173-240 WAC, Submission of plans and reports for construction of wastewater facilities.

~~((24))~~ **(26) Environmental degradation** means the reduced capacity of the environment to meet social and ecological objectives and needs.

~~((25))~~ **(27) Environmental emergency** means a problem that a public body and the department agree poses a serious, immediate threat to the environment or to the health or safety of a community and requires immediate corrective action.

~~((26))~~ **(28) Environmentally innovative projects** means projects that demonstrate new or innovative approaches to managing water quality issues in a more sustainable way, including projects that achieve pollution prevention or pollutant removal with reduced costs and projects that foster adaptation of water protection programs and practices to climate change.

**(29) Estimated construction cost** means the expected amount for labor, materials, equipment, and other related work necessary to construct the proposed project.

~~((27))~~ **(30) Existing need** means water pollution control facility's capacity reserved for all users, at the time of application, in order to meet the requirements of the water quality based effluent limitations in the associated National Pollution Discharge Elimination System or state waste discharge permit.

~~((28))~~ **(31) Existing residential need** means water pollution control facility's capacity reserved for the residential population, at the time of application, in order to meet the water quality based effluent limitations in the associated National Pollution Discharge Elimination System or state waste discharge permit.

~~((29))~~ **(32) Facilities** see water pollution control facility.

~~((30))~~ **(33) Facilities plan** means an engineering report that includes all the elements required by the state environmental review process (SERP), National Environmental Policy Act (NEPA) as appropriate, other federal statutes, and planning requirements under chapter 173-240 WAC, Submission of plans and reports for construction of wastewater facilities.

~~((31) Federal capitalization grant~~ means a federal grant awarded by the U.S. Environmental Protection Agency (EPA) to the state to help expand the state water pollution control revolving fund.

~~((32))~~ **(34) Final offer and applicant list** means a catalog of all projects considered and proposed for funding and those offered funding.

~~((33))~~ **(35) Force account** means loan project work performed using labor, materials, or equipment of a public body.

~~((34))~~ **(36) Forgivable principal** means the portion of a loan made by the department that is not required to be paid back by the borrower if allowable by Congress through federal appropriation.

~~((37))~~ **(37) Funding category** see "water pollution control activities funding category" and "water pollution control facilities funding category."

~~((35))~~ **(38) Funding cycle** means the events related to the competitive process used to allocate moneys from the Washington state water pollution control revolving fund, centennial clean water program, and the Clean Water Act section 319 nonpoint source fund for a state fiscal year.

~~((36))~~ **(39) General obligation debt** means an obligation of the recipient secured by annual ad valorem taxes levied by the recipient and by the full faith, credit, and resources of the recipient.

~~((37))~~ **(40) Green infrastructure projects** means a wide array of practices at multiple scales that manage and treat storm water and maintain and restore natural hydrology.

**(41) Green project reserves** means water efficiency, energy efficiency, green infrastructure, and environmentally innovative projects.

**(42) Indirect cost** means costs that benefit more than one activity of the recipient and not directly assigned to a particular project objective.

~~((38))~~ **(43) Infiltration and inflow** means water, other than wastewater, that enters a sewer system.

~~((39))~~ **(44) Infiltration and inflow correction** means the cost-effective alternative or alternatives and the associated corrective actions identified in an approved facilities plan or engineering report for eliminating or reducing the infiltration and inflow to existing sewer system.

~~((40))~~ **(45) Initiation of operation** means the actual date the recipient begins using, or could begin using, the facilities for its intended purpose. This date may occur prior to final inspection or project completion.

~~((41))~~ **(46) Intended use plan (IUP)** means a document identifying the types of projects proposed and the amount of all money available for financial assistance from the water pollution control revolving fund for a fiscal year as described in section 606(c) of the act.

~~((42))~~ **(47) Landowner agreement** means a written arrangement between a public body and a landowner that allows the public body to have access to the property to inspect project-related components.

~~((43))~~ **(48) Loan agreement** means a contractual arrangement between a public body and the department that involves a disbursement of moneys that must be repaid.

~~((44))~~ **(49) Loan default** means failure to make a loan repayment to the department within sixty days after the payment was due.

~~((45))~~ **(50) Nonpoint source water pollution** means pollution that enters any waters from widespread water-based or land-use activities. Nonpoint source water pollution includes, but is not limited to atmospheric deposition; surface water runoff from agricultural lands, urban areas, and forest lands; subsurface or underground sources; and discharges from some boats or other marine vessels.

~~((46))~~ **(51) Perpetuity** means the point at which the water pollution control revolving fund is earning at least fifty percent of the market rate for tax-exempt municipal bonds on its loan portfolio.

~~((47))~~ **(52) Plans and specifications** means the construction contract documents and supporting engineering

documents prepared in sufficient detail to allow contractors to bid on and construct water pollution control facilities. "Plans and specifications" and "design" may be used interchangeably.

~~((48))~~ **(53) Preliminary project priority list** means a catalog of all projects considered for funding based on the governor's budget and submitted to the Washington state legislature for its consideration during budget development.

~~((49))~~ **(54) Principal forgiveness** means a loan made by the department using the water pollution control revolving fund under which some or all of the principal may be forgiven by the department, if allowable by Congress through federal appropriation.

**(55) Project** means a water quality improvement effort funded with a grant or loan.

~~((50))~~ **(56) Project completion or expiration** means the date indicated in the funding agreement in which all milestones and objectives associated with the goals are met.

~~((51))~~ **(57) Public body** means a state of Washington county, city or town, conservation district, other political subdivision, municipal corporation, quasi-municipal corporation, those Indian tribes recognized by the federal government, or institutions of higher education when the proposed project is not part of the school's statutory responsibility.

~~((52))~~ **(58) Public health emergency** means a situation declared by the Washington state department of health in which illness or exposure known to cause illness is occurring or is imminent.

~~((53))~~ **(59) Recipient** means a public body that has an effective loan agreement with the department.

~~((54))~~ **(60) Reserve account** means an account created by the recipient to secure the payment of the principal and interest on the water pollution control revolving fund loan.

~~((55))~~ **(61) Revenue-secured debt** means an obligation of the recipient secured by a pledge of the revenue of a utility.

~~((56))~~ **(62) Revolving fund** means the water pollution control revolving fund.

~~((57))~~ **(63) Riparian buffer or zone** means a swath of vegetation along a channel bank that provides protection from the erosive forces of water along the channel margins and external nonpoint sources of pollution.

~~((58))~~ **(64) Scope of work** means a detailed description of project tasks, milestones, and measurable objectives.

~~((59))~~ **(65) Senior lien obligations** means all revenue bonds and other obligations of the recipient outstanding on the date of execution of a loan agreement (or subsequently issued on a parity therewith, including refunding obligations) or issued after the date of execution of a loan agreement having a claim or lien on the gross revenue of the utility prior and superior to the claim or lien of the loan, subject only to maintenance and operation expense.

~~((60))~~ **(66) Service area population** means the number of people served in the area of the project.

~~((61))~~ **(67) Severe public health hazard** means a situation declared by the Washington state department of health in which the potential for illness exists, but illness is not occurring or imminent.

~~((62))~~ **(68) Sewer** means the pipe and related pump stations located on public property, or on public rights of way and easements that convey wastewater from buildings.

~~((63))~~ **(69) Side sewer** means a sanitary sewer service extension from the point five feet outside the building foundation to the publicly owned collection sewer.

~~((64))~~ **(70) State environmental review process** (SERP) means the National Environmental Policy Act (NEPA)-like environmental review process adopted to comply with the requirements of the Environmental Protection Agency's Code of Regulations (40 CFR § 35.3140). SERP combines the State Environmental Policy Act (SEPA) review with additional elements to comply with federal requirements.

~~((65))~~ **(71) Total eligible project cost** means the sum of all expenses associated with a water quality project that are eligible for funding.

~~((66))~~ **(72) Total project cost** means the sum of all expenses associated with a water quality project.

~~((67))~~ **(73) Water efficiency projects** means the use of improved technologies and practices to deliver equal or better water quality services with less water.

**(74) Water pollution** means contamination or other alteration of the physical, chemical, or biological properties of any waters of the state, including change in temperature, taste, color, turbidity, or odor of the waters; or any discharge of a liquid, gas, solid, radioactive substance, or other substance into any waters of the state that creates a nuisance or renders such waters harmful, detrimental, or injurious to the public, to beneficial uses, or to livestock, wild animals, birds, fish, or other aquatic life.

~~((68))~~ **(75) Water pollution control activities or activities** means actions taken by a public body for the following purposes:

- (a) To prevent or mitigate pollution of underground water;
- (b) To control nonpoint sources of water pollution;
- (c) To restore the water quality of freshwater lakes; and
- (d) To maintain or improve water quality through the use of water pollution control facilities or other means.

~~((69))~~ **(76) Water pollution control activities funding category** means that portion of the water pollution control revolving fund dedicated to nonpoint source pollution projects.

~~((70))~~ **(77) Water pollution control facility or facilities** means any facilities or systems for the control, collection, storage, treatment, disposal, or recycling of wastewater, including, but not limited to, sanitary sewage, storm water, residential, commercial, industrial, and agricultural wastes. Facilities include all necessary equipment, utilities, structures, real property, and interests in and improvements on real property.

~~((71))~~ **(78) Water pollution control facilities funding category** means that portion of the water pollution control revolving fund dedicated to facilities projects.

~~((72))~~ **(79) Water pollution control revolving fund** (revolving fund) means the water pollution control revolving fund established by RCW 90.50A.020.

~~((73))~~ **(80) Water resource inventory area** (WRIA) means one of the watersheds in the state of Washington, each

composed of the drainage areas of a stream or streams, as established in the Water Resources Management Act of 1971 (chapter 173-500 WAC).

AMENDATORY SECTION (Amending Order 05-16, filed 6/29/07, effective 7/30/07)

**WAC 173-98-040 Water pollution control revolving fund (revolving fund) uses.** The revolving fund may be used for the following purposes:

- (1) To provide loans to finance the planning, design, and/or construction of water pollution control facilities;
- (2) To provide loans for nonpoint source pollution control management projects that implement the Washington's water quality management plan to control nonpoint sources of pollution, and for developing and implementing a conservation and management plan under section 320 of the act;
- (3) To provide loans for up to twenty years reserve capacity for water pollution control facilities;
- (4) To buy or refinance the debt obligations incurred by applicants after March 7, 1985, for the construction of water pollution control facilities;
- (5) To guarantee or purchase insurance for local obligations to improve credit market access or reduce interest rates;
- (6) As a source of revenue or security for the payment of principal and interest on revenue or general obligation bonds issued by the state if the proceeds of those bonds will be deposited in the revolving fund; and
- (7) To finance administration costs incurred by the department as authorized by the act and chapter 90.50A RCW.

(8) To provide loan subsidies in the form of reduced interest rates and forgivable principal to public bodies for statewide, high-priority water quality projects that are consistent with the Clean Water Act, 33 U.S.C. 1251-1387 as defined by the EPA and allowable by Congress through federal appropriation bills.

AMENDATORY SECTION (Amending Order 05-16, filed 6/29/07, effective 7/30/07)

**WAC 173-98-100 Eligible.** Certain projects or project elements, including, but not limited to the following, may be eligible for loan assistance:

- (1) **Aquatic plant control** when the water quality degradation is due to the presence of aquatic plants, and the source(s) of pollution is addressed sufficiently to ensure that the pollution is eliminated;
- (2) **BMP implementation** on private property:
  - (a) Best management practices that consist of new, innovative, or alternative technology not yet demonstrated in the department's region in which it is proposed;
  - (b) Best management practices in the riparian buffer or zone, such as revegetation or fence construction and where a conservation easement or landowner agreement is granted by the landowner; and
  - (c) Other water quality best management practices that are evaluated and approved by the department on a case-by-case basis, and where a conservation easement or landowner agreement is granted by the landowner.
- (3) **BMP implementation** on public property;

(4) **Capacity for growth.** Loans for up to twenty years capacity for water pollution control facilities. Capacity in excess of the twenty year design capacity are not eligible;

(5) **Computer equipment and software** specific to the funded project and preapproved by the department;

(6) **Confined animal feeding operations (CAFO)** water pollution control projects located in federally designated national estuaries;

(7) **Conservation planning;**

(8) **Design-build or design-build-operate** (alternative contracting/service agreements) for water pollution control facilities and other alternative public works contracting procedures;

(9) **Diagnostic studies** to assess current water quality;

(10) **Education and outreach** efforts for the public;

(11) **Environmental checklists, assessments, and impact statements** necessary to satisfy requirements for the SEPA, the NEPA, and the SERP;

(12) **Equipment and tools** as identified in a loan agreement;

(13) **Facilities** for the control, storage, treatment, conveyance, disposal, or recycling of domestic wastewater and storm water for residential, and/or a combination of residential, commercial, institutional and industrial:

(a) **Planning:**

(i) **Comprehensive sewer planning**, including wastewater elements of capital facilities planning under the growth management act;

(ii) **Storm water planning;**

(iii) **Facilities planning** for water pollution control facilities;

(b) **Design** preparation of plans and specifications for water pollution control facilities;

(c) **Construction of:**

(i) Facilities for the control, storage, treatment, conveyance, disposal, or recycling of domestic wastewater and storm water;

(ii) Combined sewer overflow abatement;

(iii) Facilities to meet existing needs plus twenty years for growth;

(iv) Side sewers or individual pump stations or other appurtenances on private residential property if solving a nonpoint source pollution problem, such as failing on-site septic systems;

(v) Side sewers existing on public property or private property (with an easement) to correct infiltration and inflow and replace existing water pollution control facilities; and

(vi) New sewer systems to eliminate failing or failed on-site septic systems;

(d) **Value engineering** for water pollution control facilities;

(e) **Design or construction** costs associated with design-build or design-build-operate contracts.

(14) **Green project reserves** such as water efficiency, energy efficiency, green infrastructure, and environmentally innovative projects or project elements as outlined in WAC 173-98-125 and as defined by EPA guidance, and allowed by Congress in federal appropriation bills.

(15) **Ground water protection activities** such as well-head protection and critical aquifer recharge area protection;

~~((15))~~ (16) **Hardship assistance** for wastewater treatment facilities construction, storm water, and on-site septic system repair and replacement;

~~((16))~~ (17) **Indirect costs** as defined in the most recently updated edition of *Administrative Requirements for Ecology Grants and Loans* (publication #91-18);

~~((17))~~ (18) **Lake implementation and associated planning activities** on lakes with public access;

~~((18))~~ (19) **Land acquisition:**

(a) As an integral part of the treatment process (e.g., land application); or

(b) For wetland habitat preservation;

~~((19))~~ (20) **Landscaping for erosion control** directly related to a project, or site-specific landscaping in order to mitigate site conditions and comply with requirements in the SERP;

~~((20))~~ (21) **Legal expenses** will be determined on a case-by-case basis, such as development of local ordinances, use of a bond counsel, review of technical documents;

~~((21))~~ (22) **Light refreshments** for meetings when preapproved by the department;

~~((22))~~ (23) **Monitoring BMP effectiveness;**

~~((23))~~ (24) **Monitoring equipment** used for water quality assessment;

~~((24))~~ (25) **Monitoring water quality;**

~~((25))~~ (26) **Model ordinances** development and dissemination of model ordinances to prevent or reduce pollution from nonpoint sources;

~~((26))~~ (27) **On-site septic systems:**

(a) **On-site septic system repair and replacement** for residential and small commercial systems;

(b) **On-site wastewater** system surveys;

(c) **Local loan fund** program development and implementation;

~~((27))~~ (28) **Planning** comprehensive basin, watershed, and area-wide water quality development;

~~((28))~~ (29) **Refinancing** of water pollution control facility debt;

~~((29))~~ (30) **Riparian and wetlands habitat restoration** and enhancement, including revegetation;

~~((30))~~ (31) **Sales tax;**

~~((31))~~ (32) **Spare parts** initial set of spare parts for equipment that is critical for a facility to operate in compliance with discharge permit requirements;

~~((32))~~ (33) **Stream restoration projects;**

~~((33))~~ (34) **Total maximum daily load study** development and implementation;

~~((34))~~ (35) **Training** to develop specific skills that are necessary to directly satisfy the funding agreement scope of work. Training, conference registration or annual meeting fees must be preapproved by the department;

~~((35))~~ (36) **Transferring ownership** of a small wastewater system to a public body;

~~((36))~~ (37) **Wastewater or storm water utility development;**

~~((37))~~ (38) **Wastewater or storm water utility rate** or development impact fee studies;

~~((38))~~ (39) **Water quality education** and stewardship programs.

NEW SECTION

**WAC 173-98-125 Green project reserves projects.**

When considering eligibility of green project reserves, the department will consider guidance documents provided by the EPA as well as the provisions provided in subsections (1) through (4) of this section.

(1) **Water efficiency.** Water efficiency is the use of improved technologies and practices to deliver equal or better water quality services with less water. Water efficiency projects are building activities that implement capital water efficiency projects. Water efficiency projects can be stand-alone projects, and they do not need to be part of a larger capital improvement project.

(2) **Energy efficiency.** Energy efficiency is the use of improved technologies and practices to reduce the energy consumption of water quality projects. Energy efficiency projects can be stand-alone projects and they do not need to be part of a larger capital improvement project.

(3) **Green infrastructure.** Green infrastructure includes a wide array of practices at multiple scales that manage and treat storm water and maintain and restore natural hydrology. Green infrastructure projects can be stand-alone projects and they do not need to be part of a larger capital improvement project.

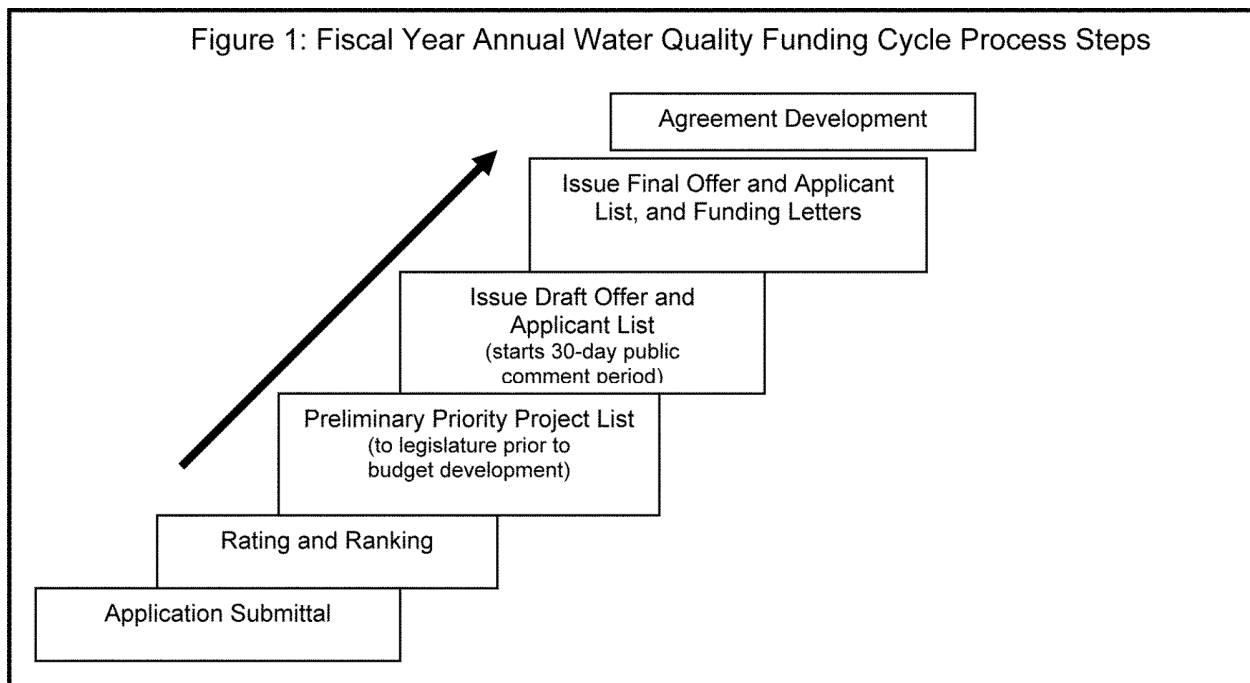
(a) On a regional scale, green infrastructure is the preservation and restoration of natural landscape features, such as forests, flood plains and wetlands, coupled with policies that reduce overall impervious impacts in a watershed.

(b) On the local scale, green infrastructure consists of site- and neighborhood-specific practices, such as bioretention, trees, green roofs, porous pavements and cisterns.

(4) **Environmentally innovative projects.** Environmentally innovative projects demonstrate new or innovative approaches to managing water quality issues in a more sustainable way, including projects that achieve pollution prevention or pollutant removal with reduced costs and projects that foster adaptation of water protection programs and practices to climate change.

AMENDATORY SECTION (Amending Order 05-16, filed 6/29/07, effective 7/30/07)

**WAC 173-98-210 Ecology's responsibilities.** (1) A general funding cycle schedule is provided in figure 1.



(2) In general, ecology will provide the following services although annual modifications may be made to accommodate varying schedules and requirements:

- (a) Make available the application and applicable guidelines before the associated funding cycle begins;
- (b) Conduct at least one application workshop in each of ecology's four regions;
- (c) Conduct preapplication workshops to discuss regional level priorities if applicable;
- (d) After the application deadline, complete an initial review of project proposals for funding eligibility;

- (e) Request other agencies to provide evaluation assistance as needed;
- (f) Rate and rank the applications using a consistent scoring system;
- (g) Prepare a combined preliminary project priority list, after evaluation and scoring of all applications;
- (h) Submit preliminary project priority list to the state legislature for budget consideration;
- (i) Develop a combined draft offer and applicant list and a draft revolving fund IUP;

- (j) Facilitate a public review and comment period for the combined draft offer and applicant list and revolving fund IUP;
- (k) Sponsor at least one public meeting to explain the combined draft offer and applicant list and the revolving fund IUP;
- (l) Develop a combined "final offer and applicant list" and a final revolving fund IUP. Public comments collected during draft public review period will be incorporated and result in a responsiveness summary;
- (m) Issue funding decision letters to all applicants; and
- (n) Negotiate, develop, and finalize loan agreements.

**AMENDATORY SECTION** (Amending Order 05-16, filed 6/29/07, effective 7/30/07)

**WAC 173-98-300 Wastewater treatment facilities construction.** (1) There are three primary factors considered in determining hardship funding for the construction portion of wastewater treatment facilities projects:

- (a) Service area population;
- (b) Existing residential need at the time of application; and
- (c) Level of financial burden placed on the ratepayers.

(2) **Service area population.** Applicants with a service area population of twenty-five thousand or less can request hardship-funding consideration by submitting a financial hardship analysis form along with the funding application. If the service area population is different from the population of the applicant, the applicant must show that the hardship assistance is solely used to benefit the population of the service area.

(3) **Existing residential need.** The applicant and the department calculate the water pollution control facilities construction costs that are associated with existing residential need at the time of application.

(4) **Level of financial burden.**

(a) Financial burden for the sewer ratepayer is determined by calculating the residential sewer user fee as a percent of the median household income (MHI). The residential sewer user fee is calculated using the construction cost estimates including:

- (i) Estimated construction cost;
- (ii) Existing annual operation and maintenance costs;
- (iii) Discounted, existing annual operation and maintenance costs as a result of constructing the project;

(6) **Figure 2. Loan Hardship-Funding Continuum**

Sewer User Fee divided by MHI	Below 2.0%	2.0% and above, but Below 3.0%	3.0% and above, but below 5.0%	5.0% and above
<b>Hardship Designation</b>	<i>Nonhardship</i> (Low sewer user rates in relation to MHI) (Not funded with grant dollars)	<i>Moderate Hardship</i>	<i>Elevated Hardship</i>	<i>Severe Hardship</i> (Very high sewer user rates in relation to median household income (MHI))
<b>Loan Hardship-Funding Continuum</b>	Loan at 60% of market rate	Loan at 40% of market rate	Loan at 20% of market rate	Loan at 0% interest

- (iv) Projected future annual operation and maintenance costs for the total facility;
- (v) The applicant's current and future annual debt service on the project;
- (vi) The revolving fund annual debt service for the funded project;
- (vii) Other grants;
- (viii) The applicant's level of debt for other wastewater facilities not associated with the project;
- (ix) The total number of households existing at the time of application that will be served by the project;
- (x) The nonresidential share of the total annual costs is deducted; and
- (xi) Median household income;
- (b) The sewer user fee as a percentage of MHI is the basis for the department's loan hardship-funding continuum shown in figure 2;

(c) The most recent available census data determines the median household income. This data is updated yearly based on inflation rates as measured by the federal Bureau of Labor Statistics and published as the *Consumer Price Index*; and

(d) If median household income data are not available for a community or if the community disputes the data used by the department, the department may allow an applicant to conduct a scientific survey to determine the median household income.

(5) **Loan terms and interest rates.** The department uses the loan hardship-funding continuum to determine the hardship-loan interest rates. Forgivable principal loans may be provided with revolving funds as specified in WAC 173-98-330. Not more than fifty percent of the funding category can be awarded to any one applicant per funding cycle. In addition to a reduced interest rate, the applicant may receive longer loan repayment terms, not to exceed twenty years.

For example:

Assuming that the average market rate for tax-exempt municipal bonds is five percent, the following would apply.

When an applicant with a service area population of twenty-five thousand or less can demonstrate that its sewer user rates for the proposed project are between three and five percent of the median household income, the applicant may be eligible for a twenty-year repayment term and a one percent interest rate. This interest rate represents twenty percent of the average market rate for tax-exempt municipal bonds (see figure 2).

AMENDATORY SECTION (Amending Order 05-16, filed 6/29/07, effective 7/30/07)

**WAC 173-98-310 On-site septic system repair and replacement programs.** (1) Applicants may apply for a revolving fund loan to establish or continue programs that provide funding for on-site septic repair and replacement for homeowners and small commercial enterprises.

(2) **Final loan blended interest rate.** The department may adjust the recipient's interest rates based on the interest rates that the recipient charged to homeowners and small commercial enterprises. To receive the adjusted interest rate, the recipient must issue loans shown in figure 3.

(3) Figure 3 shows the interest rate schedule for loans targeted to homeowners at three levels of county median household income. For information on how the market rate is determined, see WAC 173-98-400.

Figure 3.

Homeowner Income is:	20-Year Term	5-Year Term	Hardship Level
Above 80% county MHI	60% of MR	30% of MR	Nonhardship
50 - 80% county MHI	30% of MR	Up to 15% of MR	Moderate
Below 50% county MHI	Up to 15% of MR	0%	Severe

((Figure 4-))

Figure 4 shows the interest rate schedules for loans targeted to small commercial enterprises at three levels of annual gross revenue. For example, in order for a small commercial enterprise to be considered for moderate to severe hardship, the business must provide documentation to substantiate that annual gross revenue is less than one hundred thousand dollars.

Figure 4.

Small Commercial Enterprise Annual Gross Revenue is:	20-Year Term	5-Year Term	Hardship Level
Above \$100,000	60% of MR	30% of MR	Nonhardship
\$50,000 - \$100,000	30% of MR	Up to 15% of MR	Moderate
Below \$50,000	Up to 15% of MR	0%	Severe

Sewer User Fee divided by MHI	Below 2.0%	2.0% and above, but Below 3.0%	3.0% and above, but Below 5.0%	5.0% and above
Hardship Designation	<i>Nonhardship</i> (Low sewer user rates in relation to MHI)	<i>Moderate Hardship</i>	<i>Elevated Hardship</i>	<i>Severe Hardship</i> (Very high sewer user rates in relation to MHI)

(4) The recipient agrees to submit a final compilation of the local loans provided to homeowners and small commercial enterprises throughout the duration of the project. The list will include information provided by the RECIPIENT regarding the number and final dollar amounts of loans funded in the following respective homeowner income and small commercial enterprise revenue levels:

- (a) Homeowner income:
  - (i) Above 80% of county MHI
  - (ii) 50 to 80% of county MHI
  - (iii) Below 50% of county MHI
- (b) Small commercial enterprise annual gross revenue:
  - (i) Above \$100,000
  - (ii) \$50,000 to \$100,000
  - (iii) Below \$50,000

NEW SECTION

**WAC 173-98-330 Forgivable principal.** (1) **Forgivable principal.** The department will apply the funding hardship continuum provided in figure 7 below to determine the amount of forgiveness principal. Financial hardship will be determined based on the provisions in WAC 173-98-300.

For example:

Assuming that the average market rate for tax-exempt municipal bonds is five percent, the following would apply:

Figure 6.

Applicant information:
<ul style="list-style-type: none"> <li>• Service area population &lt; 25,000</li> <li>• Sewer user rates are 3% to below 5% of the median household income</li> </ul>
Applicant MAY be eligible for:
<ul style="list-style-type: none"> <li>• 20-year repayment term at a 1% interest rate</li> <li>• Up to 75% of the loan principal may be forgiven based on existing residential need</li> </ul>

The interest rate in the example in figure 6 represents twenty percent of the average market rate for tax-exempt municipal bonds.

(2) **Figure 7. Forgivable principal hardship continuum** (to determine amounts of forgivable principal loan allowed for eligible costs using revolving funds):

Sewer User Fee divided by MHI	Below 2.0%	2.0% and above, but Below 3.0%	3.0% and above, but Below 5.0%	5.0% and above
<b>Loan Hardship-Funding Continuum</b>	Not eligible for forgivable principal loan	50% forgivable principal loan up to ceiling amount defined in WAC 173-98-520	75% forgivable principal loan up to ceiling amount defined in WAC 173-98-520	100% forgivable principal loan up to ceiling amount defined in WAC 173-98-520

(3) The department will limit the amount of forgivable principal to a maximum of fifty percent of total eligible costs for a green project reserves project. If demand is limited for green project reserves projects, the ceiling amount may be raised to fully utilize available funding for the green project reserves category.

AMENDATORY SECTION (Amending Order 05-16, filed 6/29/07, effective 7/30/07)

**WAC 173-98-400 Loan interest rates.** (1) Interest will accrue on each disbursement as it is paid to the recipient.

(2) The department bases loan interest rates on the average market interest rate. The average market interest rate is:

(a) Based on the daily market rate published in the bond buyer's index for tax-exempt municipal bonds; and

(b) Taken from the period sixty to thirty days before the annual funding application cycle begins.

(3) See WAC 173-98-300 or 173-98-3010 for hardship interest rates.

**Figure ((6)) 8: Loan Terms and Interest Rates**

Repayment Period	Interest Rate
Up to 5 years:	30% of the average market rate.
More than 5 but no more than 20 years:	60% of the average market rate.

(4) The director may approve lower interest rates for the annual funding application cycle if a financial analysis of the revolving fund demonstrates that lower interest rates for that year are not detrimental to the perpetuity of the revolving fund.

AMENDATORY SECTION (Amending Order 05-16, filed 6/29/07, effective 7/30/07)

**WAC 173-98-500 Funding categories.** (1) The revolving fund is split into two funding categories:

(a) Water pollution control facilities category: Eighty percent of the revolving fund is used for facilities projects as established under section 212 of the act; and

(b) Water pollution control activities category: Twenty percent of the revolving fund will be available for the implementation of programs or projects established under section 320 of the act (National Estuary Program) and section 319 of the act, the "Washington's water quality management plan to control nonpoint sources of pollution."

(2) If the demand is limited in either funding category, the department can shift moneys between the funding categories.

(3) The capitalization grant for federal fiscal year 2010 includes conditions for funding additional subsidization and

green project reserves which creates new funding set aside for these specific purposes:

(a) Additional subsidization in the form of forgivable principal: Allowable amounts are based on minimums and maximums established in the 2010 Title VI appropriation.

(b) Green project reserves: Not less than twenty percent of the capitalization grant is dedicated for green project reserves.

(4) Additional subsidization in the form of forgivable principal and reduced interest rates may be provided for eligible green project reserves projects.

AMENDATORY SECTION (Amending Order 05-16, filed 6/29/07, effective 7/30/07)

**WAC 173-98-520 Ceiling amounts.** (1) Water pollution control facilities category:

(a) Not more than fifty percent of the revolving fund in this category will be available to any one applicant per funding cycle; and

(b) No more than five million dollars is available for each smaller combined design-construct project (step four). See WAC 173-98-530 for information on smaller combined design-construct projects (step four).

(2) Water pollution control activities category: Not more than fifty percent of the revolving fund in this category will be available to any one applicant per funding cycle.

(3) Partially funded projects: If a project is offered partial funding due to the lack of available revolving fund moneys, and the recipient is demonstrating progress on the project, the recipient may apply for the remaining eligible project costs in the subsequent funding cycle.

(4) Water pollution control facilities construction bid overruns:

(a) If the low responsive responsible construction bid(s) exceeds the engineer's estimate of construction costs, the department may approve funding increases for up to ten percent of the engineer's original estimate;

(b) The ceiling amounts that were established in the fiscal year in which the project was offered funding apply; and

(c) First priority for funding bid overruns will be given to hardship communities based on the severity of financial need.

(5) Water pollution control facilities construction change orders:

(a) The department may approve funding for change orders for up to five percent of the eligible portion of the low responsive responsible construction bid(s);

(b) The ceiling amounts that were established in the fiscal year in which the project was offered funding apply; and

(c) First priority for funding change orders will be given to hardship communities based on the severity of financial need.



(6) The ceiling amount for forgivable principal provided for financial hardship for WAC 173-98-330 is five million dollars.

(7) Green project reserves category: Not more than fifty percent of the revolving fund in this category will be available to any one applicant per funding cycle.

(8) The ceiling amount for forgivable principal provided for eligible green project reserves projects is fifty percent of total eligible project costs. If demand is limited for green project reserves projects, the ceiling amount may be raised to fully utilize available funding.

**WSR 11-01-151**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**

[Order 10-319—Filed December 21, 2010, 4:09 p.m., effective January 18, 2011]

Effective Date of Rule: January 18, 2011.

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

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

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

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

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

Reasons for this Finding: Sets the 2011 winter season sturgeon fishery. Season is based on a catch guideline of four hundred fish for the winter season. The minimal catch is not expected to affect management policies to be decided in February. The commission has been briefed on white sturgeon population status, and the allocated sturgeon represents an overall reduction of twenty nine percent to the annual sturgeon harvest guideline. Regulation is consistent with compact action of December 17, 2010. 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.

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: December 21, 2010.

Philip Anderson  
Director

NEW SECTION

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

**1) AREA:** SMCRA 1A, 1B, 1C, 1D, and 1E (Zones 1-5)

**2) SEASON:** 6 PM Tuesday January 18 - 6 PM Wednesday January 19, 2011;

6 PM Tuesday January 25 - 6 PM Wednesday January 26, 2011;

6 PM Tuesday February 1 - 6 PM Wednesday February 2, 2011;

6 PM Tuesday February 8 - 6 PM Wednesday February 9, 2011.

**3) GEAR:** Drift gillnet only. 9-inch minimum mesh. Nets fished any time between official sunset and official sunrise must have lighted buoys on both ends of the net. If the net is attached to the boat, then one lighted buoy on the end of the net opposite the boat is required.

**4) ALLOWABLE SALES:** White Sturgeon and adipose fin-clipped salmon. A maximum of ten white sturgeon may be possessed or sold by each participating vessel during each calendar week (Sunday through Saturday) that the fishery is open. Green sturgeon retention prohibited. Sturgeon sales limited to sturgeon 43-54 inches in fork length (as measured from nose to the fork in the tail).

**5) SANCTUARIES:** Sandy River

**6) 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.

#### REPEALER

The following section of the Washington Administrative code is repealed:

WAC 220-33-01000Q Columbia River season below Bonneville. (10-282)

The following section of the Washington Administrative Code is repealed effective 6:01 p.m. February 9, 2011:

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

**WSR 11-01-152  
EMERGENCY RULES  
DEPARTMENT OF  
FISH AND WILDLIFE**

[Order 10-320—Filed December 21, 2010, 4:09 p.m., effective January 1, 2011]

Effective Date of Rule: January 1, 2011.

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

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

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

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

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

Reasons for this Finding: A large aggregation of white sturgeon holding in the shallow slough east of Rooster Rock State Park between Sand Island and the Oregon shore was observed in 2010, and could potentially return in 2011. This area was a very high catch area for sturgeon anglers, and the area was closed in 2010. Closing the area early will reduce the risk of potential need for in-season management later in the season. This rule should not displace nonsturgeon anglers, as the slough receives little effort for other species. Rule is consistent with Washington department of fish and wildlife's compact hearing action of December 17, 2010. There is insufficient time to adopt permanent rules.

Number of Sections Adopted in Order to Comply with Federal Statute: New 1, Amended 0, Repealed 0; Federal Rules or Standards: New 1, 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: December 21, 2010.

Philip Anderson  
Director

#### NEW SECTION

**WAC 232-28-61900J Exceptions to statewide rules—Columbia River.** Notwithstanding the provisions of WAC 232-28-619, effective January 1 through April 30, 2011, all angling is prohibited from a line between the upstream end of Sand Island, located east of Rooster Rock State Park on the Columbia River, to a marker on the Oregon shore, downstream to a line between the lower end of Sand Island and a marker on the Oregon shore.

**WSR 11-01-153**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**

[Order 10-322—Filed December 21, 2010, 4:10 p.m., effective December 21, 2010, 4:10 p.m.]

Effective Date of Rule: Immediately.

Purpose: Amend commercial fishing rules.

Citation of Existing Rules Affected by this Order:  
 Repealing WAC 220-52-04000A and 220-52-04600B; and  
 amending WAC 220-52-040 and 220-52-046.

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: Pot limits for selected regions control harvest rates to achieve seasonal objectives and maintain state-tribal sharing agreements. This regulation closes Puget Sound Crab Management Region 2 East because the state commercial crab harvest will reach its quota for this region on the prescribed date. 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: December 21, 2010.

Philip Anderson  
 Director

NEW SECTION

**WAC 220-52-04000B 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, it is unlawful for any person to fish for crabs for commercial purposes with more than 50 pots per license per buoy tag number in Crab Management Region 2 West (which includes Marine Fish-Shellfish Management and Catch Reporting Areas 25B, 25D, and 26A-W). The remaining 50 buoy tags per license per region must be onboard the designated vessel and available for inspection in Crab Management Region 2 West.

NEW SECTION

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

(1) Effective 7:00 p.m., December 31, 2010, until further notice, it will be unlawful to fish for or possess Dungeness Crab for commercial purposes in those waters of Crab Management Region 2 East (Marine Fish-Shellfish Management and Catch Reporting Areas 24A, 24B, 24C, 24D and 26A East).

(2) Effective immediately until further notice, it is permissible to fish for Dungeness crab for commercial purposes in the following areas:

(a) Those waters of Marine Fish-Shellfish Management and Catch Reporting Area 20A between a line from the boat ramp at the western boundary of Birch Bay State Park to the western point of the entrance of the Birch Bay Marina and a line from the same boat ramp to Birch Point.

(b) Those waters of Marine Fish-Shellfish Management and Catch Reporting Area 26A-W in Useless Bay north and east of a line from the south end of the Double Bluff State Park seawall (47°58.782'N, 122°30.840'W) projected 110 degrees true to the boulder on shore (47°57.690'N, 122°26.742'W).

(c) Those waters of Marine Fish-Shellfish Management and Catch Reporting Area 22B in Fidalgo Bay south of a line projected from the red number 4 entrance buoy at Cape Sante Marina to the northern end of the eastern most oil dock.

(d) Those waters of Marine Fish-Shellfish Management and Catch Reporting Area 22A in Deer Harbor north of a line projected from Steep Point to Pole Pass.

(3) Effective immediately until further notice, the following areas are closed to commercial crab fishing:

(a) That portion of Marine Fish-Shellfish Management and Catch Reporting Area 25A west of the 123° 7.0' longitude line projected from the new Dungeness light due south to the shore of Dungeness Bay.

(b) That portion of Marine Fish-Shellfish Management and Catch Reporting Area 23D west of a line from the eastern tip of Ediz Hook to the ITT Rayonier Dock.

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 220-52-04000A Commercial crab fishery— Lawful and unlawful gear, methods, and other unlawful acts. (10-312)

WAC 220-52-04600B Puget Sound crab fishery— Seasons and areas. (10-312)

**WSR 11-01-154**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**

[Order 10-321—Filed December 21, 2010, 4:10 p.m., effective January 1, 2011]

Effective Date of Rule: January 1, 2011.

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: Washington's sport fishing rules in this area of the Columbia River are not similar to Oregon's. To avoid confusion for sport anglers, the implementation of the barbless rule will be delayed. 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: December 21, 2010.

Philip Anderson  
 Director

NEW SECTION

**WAC 231-28-61900K Exceptions to statewide rules—Columbia River** Notwithstanding the provisions of WAC 232-28-619, effective January 1, 2011, until further notice, it is permissible to fish with barbed hooks from the mouth of the Columbia River to McNary Dam.

**Reviser's note:** The section above was filed by the agency as WAC 231-28-61900K. However, the other rules for the department of fish and wildlife are found in Title 232 WAC. The section above appears to be WAC 232-28-61900K, but pursuant to the requirements of RCW 34.08.040, it is published in the same form as filed by the agency.