

WSR 11-13-005
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 11-117—Filed June 2, 2011, 2:36 p.m., effective June 2, 2011, 2:36 p.m.]

Effective Date of Rule: Immediately.

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 (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 232-28-61900D; and 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: Extends the season in the area from Bonneville Dam upstream to the Oregon/Washington border for salmonid retention. Harvestable fish remain available based on the in season upriver spring chinook run size forecast (204,000 fish) and harvest guidelines. Continues the ongoing fishery in the area downstream of Bonneville Dam. Continues to stipulate that the hatchery adult chinook bag limit in Deep River is consistent with the adjacent Columbia River when both areas are open. Includes rules that prohibit filleting of fish in the field and full removal of nonlegal fish from the water. Regulation is consistent with guidance from Washington fish and wildlife commission and director and joint state action of May 13, May 25, and June 1, 2011. The fishery is consistent with the *U.S. v. Oregon* Management Agreement and the associated biological opinion. Conforms Washington state rules with Oregon state rules. There is insufficient time to adopt 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 1; Federal Rules or Standards: New 1, Amended 0, Repealed 1; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 1, Amended 0, Repealed 1.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: June 2, 2011.

Philip Anderson
Director

NEW SECTION

WAC 232-28-61900J Exceptions to statewide rules—Columbia River. Notwithstanding the provisions of WAC 232-28-619, it is unlawful to violate the following provisions, provided that unless otherwise amended, all permanent rules remain in effect:

1. Columbia River:

i. Effective immediately through June 15, 2011: From the Rocky Point/Tongue Point line upstream to Bonneville Dam (except for those waters closed under permanent regulations): Daily salmonid limit is 6 fish (hatchery Chinook or hatchery steelhead or sockeye), of which no more than 2 may be adults and no more than 1 may be an adult Chinook. Release all wild Chinook and wild steelhead. Sockeye count toward the daily adult salmonid limit. Salmon minimum size is 12 inches.

ii. Effective immediately through June 15, 2011: From Tower Island power lines in the Bonneville Pool upstream to the Oregon and Washington border, plus the Washington bank between Bonneville Dam and the Tower Island power lines located approximately 6 miles below The Dalles Dam (except for those waters closed under permanent regulations): Daily salmonid limit is 6 fish (hatchery Chinook or hatchery steelhead or sockeye), of which no more than 2 may be adults. Release all wild Chinook and wild steelhead. Sockeye count toward the daily adult salmonid limit. Salmon minimum size is 12 inches.

iii. Effective immediately through June 15, 2011: For the mainstem Columbia River salmon and steelhead fishery from the Rocky Point/Tongue Point line upstream to the Oregon/Washington border, it is unlawful when fishing from vessels which are less than 30 feet in length, substantiated by Coast Guard documentation or Marine Board registration, to totally remove from the water any salmon or steelhead required to be released.

iv. Effective immediately until further notice: On the mainstem Columbia River, salmon and steelhead anglers may not possess in the field fish mutilated so that size, species or fin clip cannot be determined until anglers have reached their automobile or principle means of land transportation and have completed their daily angling.

2. **Deep River (Wahkiakum Co.):** Effective immediately through June 15, 2011: the hatchery adult Chinook daily limit will be the same as the adjacent mainstem Columbia River during those days when the mainstem Columbia River is open for adult Chinook retention. When the adjacent mainstem Columbia River is closed for adult Chinook retention, the salmon daily limit will revert to permanent rules for Deep River.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 232-28-61900D Exceptions to statewide rules—Columbia River. (11-112)

**WSR 11-13-006
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE**

[Order 11-116—Filed June 2, 2011, 2:36 p.m., effective June 3, 2011]

Effective Date of Rule: June 3, 2011.

Purpose: Amend personal use fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 232-28-61900I; and amending WAC 232-28-619.

Statutory Authority for Adoption: RCW 77.12.047 and 77.04.020.

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

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

Reasons for this Finding: Yakama Nation (YN) and Washington department of fish and wildlife fishery managers are forecasting a harvestable return of adult hatchery spring chinook to the Yakima River in 2011. Opening the "Reservation Boundary Reach" increases opportunity to harvest hatchery spring chinook in one of the most productive sections of the Yakima River for salmon fishing. 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: June 2, 2011.

Philip Anderson
Director

NEW SECTION

WAC 232-28-61900I Exceptions to statewide rules—Yakima River. (1) Notwithstanding the provisions of WAC 232-28-619, effective June 3 through June 30, 2011, a person may fish for salmon in waters of the Yakima River from the Highway 223 Bridge (at Granger) upstream to the Burlington Northern railroad bridge approximately 1,200 feet downstream of Sunnyside (Parker) Diversion Dam (20.9 river miles).

(a) Daily limit of two hatchery salmon. Minimum size of 12 inches in length.

(b) Night closure in effect.

(c) One, single-pointed, barbless hook with a gap from point to shank of 3/4 inch or less is required for all species. Use of bait is allowed.

(d) Anglers must purchase a Yakama Nation tribal fishing permit, in addition to a 2011 Washington Department of Fish and Wildlife freshwater fishing license and the Columbia River Salmon/Steelhead Endorsement.

REPEALER

The following section of the Washington Administrative Code is repealed effective July 1, 2011:

WAC 232-28-61900I Exceptions to statewide rules—Yakima River.

WSR 11-13-007
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 11-118—Filed June 2, 2011, 2:38 p.m., effective June 2, 2011, 2:38 p.m.]

Effective Date of Rule: Immediately.

Purpose: The purpose of this rule making is to provide for treaty Indian fishing opportunity in the Columbia River while protecting salmon 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 and federal law governing Washington's relationship with Oregon.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-32-05100W; and amending WAC 220-32-051.

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

Other Authority: *United States v. Oregon*, Civil No. 68-513-KI (D. Or.), Order Adopting 2008-2017 *United States v. Oregon* Management Agreement (Aug. 12, 2008) (Doc. No. 2546); *Puget Sound Gillnetters Ass'n v. Moos*, 92 Wn.2d 939, 603 P.2d 819 (1979); *State v. James*, 72 Wn.2d 746, 435 P.2d 521 (1967); 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: Reopens the treaty Indian fishery downstream of Bonneville Dam. Continues to allow the sale of platform and hook-and-line caught fish from mainstem tribal fisheries and fish caught in Yakama Nation tributary fisheries. Fisheries are consistent with the 2008-2017 Management Agreement and the associated biological opinion. Rule is consistent with action of the Columbia River compact on May 10 and June 1, 2011. Conforms state rules with tribal rules. There is insufficient time to promulgate permanent regulations.

The Yakama, Warm Springs, Umatilla, and Nez Perce Indian tribes have treaty fishing rights in the Columbia River and inherent sovereign authority to regulate their fisheries. Washington and Oregon also have some authority to regulate fishing by treaty Indians in the Columbia River, authority that the states exercise jointly under the congressionally ratified Columbia River compact. *Sohappy v. Smith*, 302 F. Supp. 899 (D. Or. 1969). The tribes and the states adopt parallel regulations for treaty Indian fisheries under the supervision of the federal courts. A court order sets the current parameters. *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 salmon and steelhead stocks in the Columbia River 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 allow for some incidental take of these species in the fisheries as described in the 2008-2017 *U.S. v. Oregon* Management Agreement.

Columbia River fisheries are monitored very closely to ensure consistency with court orders and ESA guidelines. Because conditions change rapidly, the fisheries are managed almost exclusively by emergency rule. As required by court order, the Washington (WDFW) and Oregon (ODFW) departments of fish and wildlife convene public hearings and invite tribal participation when considering proposals for new emergency rules affecting treaty fishing rights. *Sohappy*, 302 F. Supp. at 912. WDFW and ODFW then adopt regulations reflecting agreements reached.

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

Number of Sections Adopted at Request of a Nongovernmental Entity: New 1, Amended 0, Repealed 1.

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: June 2, 2011.

Philip Anderson
Director

NEW SECTION

WAC 220-32-05100X Columbia River salmon seasons above Bonneville Dam. Notwithstanding the provisions of WAC 220-32-050, WAC 220-32-051, WAC 220-32-052 and WAC 220-32-058, effective immediately until further notice, it is unlawful for a person to take or possess salmon, steelhead, sturgeon, shad, carp, catfish, walleye, bass, or yellow perch taken for commercial purposes in Columbia River Salmon Management and Catch Reporting Areas 1F, 1G, and 1H. However, those individuals possessing treaty fishing rights under the Yakima, Warm Springs, Umatilla, and Nez Perce treaties may fish for salmon, steelhead, sturgeon, shad, carp, catfish, walleye, bass, or yellow perch under the following provisions:

1. Open Area: SMCRA 1F, 1G, 1H (Zone 6):
 - a. Season: Immediately until further notice.
 - b. Gear: Hoop nets, dip bag nets, and rod and reel with hook and line.
 - c. Allowable sale: Salmon, steelhead, shad, carp, catfish, walleye, bass, and yellow perch. Sturgeon between 38-54 inches in fork length in the Bonneville Pool and sturgeon between 43-54 inches in fork length in The Dalles and John Day pools may be retained for subsistence purposes. Live release of all oversize and under-size sturgeon is required.
 - d. River mouth sanctuaries (WAC 220-32-058) remain in effect, except the Spring Creek Hatchery sanctuary.
2. Open Area: SMCRA 1E. Each of the four Columbia River treaty tribes has an MOA or MOU with the Washington Department of Fish and Wildlife regarding tribal fisheries in

the area just downstream of Bonneville Dam. Tribal fisheries in this area may only occur in accordance with the appropriate MOA or MOU specific to each tribe.

a. Participants: Tribal members may participate under the conditions described in the 2007 Memorandum of Agreement (MOA) with the Yakama Nation (YN), in the 2010 Memorandum of Understanding (MOU) with the Confederated Tribes of the Umatilla Indian Reservation (CTUIR), in the 2010 MOU with the Confederated Tribes of the Warm Spring Reservation (CTWS), and in the 2011 MOU with the Nez Perce Tribe. Tribal members fishing below Bonneville Dam must carry an official tribal enrollment card.

b. Season: Monday, Tuesday and Wednesdays from June 6 through June 15, 2011. Open hours are 6:00 a.m. to 8:00 p.m. each open day.

c. Gear: Rod and reel with hook-and-line only, limited to one fishing pole per fisher.

d. Allowable Sales: Salmon, steelhead, shad, carp, catfish, walleye, bass, and yellow perch. Sturgeon retention is prohibited, and sturgeon may not be sold or retained for ceremonial or subsistence purposes. Sale of platform or hook-and-line-caught fish is allowed. Sales may not occur on USACE property.

3. Columbia River Tributaries above Bonneville Dam

a. Season: Immediately until further notice, and only during those days and hours when the tributaries listed below are open under lawfully enacted Yakama Nation tribal subsistence fishery regulations for enrolled Yakama Nation members.

b. Area: Drano Lake, and the White Salmon, Klickitat, and Wind rivers.

c. Gear: Hoop nets, dip bag nets, and rod and reel with hook-and-line. Gill nets may only be used in Drano Lake.

d. Allowable Sales: Salmon, steelhead, shad, carp, catfish, walleye, bass, and yellow perch.

4. 24-hour quick reporting required for Washington wholesale dealers, WAC 220-69-240, for all areas.

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

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 220-32-05100W Columbia River salmon seasons above Bonneville Dam. (11-98)

WSR 11-13-032
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 11-119—Filed June 7, 2011, 2:57 p.m., effective June 7, 2011, 2:57 p.m.]

Effective Date of Rule: Immediately.

Purpose: Amend recreational and commercial fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-16-49000B; and amending WAC 220-16-490.

Statutory Authority for Adoption: RCW 77.12.047 and 77.04.020.

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

Reasons for this Finding: This emergency rule is needed to conform state rules to federal action taken by the Pacific Fishery Management Council. 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: June 7, 2011.

Philip Anderson
Director

NEW SECTION

WAC 220-16-49000C Bonilla-Tatoosh line. Notwithstanding the provisions of WAC 220-16-490, effective immediately until further notice, the Bonilla-Tatoosh Line is defined as a line projected from the most westerly point on Cape Flattery (48°22.863' N. lat., 124°43.907' W. long.) to the light on Tatoosh Island, WA (48°23.493' N. lat., 124°44.207' W. long.), then to the light on Bonilla Point on Vancouver Island, British Columbia (at 48°35.73' N. lat., 124°43.00' W. long.).

REPEALER

WAC 220-16-49000B Bonilla-Tatoosh line. (11-14)

WSR 11-13-033
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 11-121—Filed June 7, 2011, 2:58 p.m., effective June 8, 2011, 6:00 a.m.]

Effective Date of Rule: June 8, 2011, 6:00 a.m.

Purpose: Amend commercial fishing rules.

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

Statutory Authority for Adoption: RCW 77.12.047 and 77.04.020.

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

Reasons for this Finding: The 2011 state/tribal shrimp harvest management plans for the Strait of Juan de Fuca and Puget Sound require adoption of harvest seasons contained in this emergency rule. This emergency rule (1) opens the pot fishery season for spot shrimp in Region 3 west of Dungeness Light; (2) opens the Region 1B-20B beam trawl area on June 16; (3) initiates the weekly spot shrimp harvest limit; and (4) initiates the pot mesh size rule for spot shrimp. 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: June 7, 2011.

Philip Anderson
 Director

NEW SECTION

WAC 220-52-05100T Puget Sound shrimp pot and beam trawl fishery—Season. Notwithstanding the provisions of WAC 220-52-051, effective immediately until further notice, it is unlawful to fish for shrimp for commercial purposes in Puget Sound except as provided for in this section:

(1) Shrimp pot gear:

(a) All waters of Shrimp Management Areas 1A, 1B, 1C, 2E, 2W, 3, 4, and 6 are open to the harvest of all non-spot

shrimp species effective immediately, until further notice, except as provided for in this section:

i) In Catch Area 22A, all waters inside and bounded by a line projected from Blakely Marina on the northwest corner of Blakely Island to Upright Head on Lopez Island, following the shoreline southerly on Lopez Island to intersect a line projected due west from Bald Bluff on Blakely Island, are closed until 7:00 a.m. June 16, 2011.

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

iii) All waters of Shrimp Management Area 1A north of a line projected at 48°.31.5' N latitude are closed.

(b) All waters of Catch Areas 23A-S, 23C, 23D, and 29 are open to the harvest of all shrimp species, effective immediately until further notice.

(c) The shrimp catch accounting week is Wednesday through Tuesday.

(d) It is unlawful for the combined total harvest of spot shrimp by a fisher and/or the fisher's alternate operator to exceed 600 pounds per week.

(e) It is unlawful to pull shellfish pots in more than one Catch Area per day.

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

(2) Shrimp beam trawl gear:

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

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

(c) That portion of Catch Area 20B within SMA 1B will open at 6:00 a.m. May 16, 2011, until further notice.

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

REPEALER

The following section of the Washington Administrative Code is repealed effective 6:00 a.m. June 8, 2011:

WAC 220-52-05100S	Puget Sound shrimp beam trawl fishery—Season. (11-80)
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WSR 11-13-034
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 11-122—Filed June 7, 2011, 2:59 p.m., effective June 22, 2011,
12:01 a.m.]

Effective Date of Rule: June 22, 2011, 12:01 a.m.

Purpose: Amend personal use fishing rules.

Citation of Existing Rules Affected by this Order:
Repealing WAC 220-56-32500X; and amending WAC 220-56-325.

Statutory Authority for Adoption: RCW 77.12.047 and 77.04.020.

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

Reasons for this Finding: This regulation is needed to ensure an orderly fishery, manage within court-ordered sharing requirements, and to ensure conservation. Harvestable amounts of spot shrimp are available for additional days of fishing in Marine Areas 7 and 9. 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: June 7, 2011.

Philip Anderson
Director

NEW SECTION

WAC 220-56-32500Y Shrimp—Areas and seasons.
Notwithstanding the provisions of WAC 220-56-325:

1) Effective immediately until further notice, it is unlawful to fish for or possess shrimp taken for personal use in all waters of Marine Area 7, except as provided for in this section:

a. Open immediately through 11:59 p.m. June 22, 2011.

b. Effective 12:01 a.m. June 23, 2011, until further notice, Marine Area 7 north of a line from Biz Point on Fidalgo Island to Cape Saint Mary on Lopez Island, then north of a line from Davis Point on Lopez Island to Cattle Point on San Juan Island, then north of a line due west from

Lime Kiln Point light to the international boundary, is open as follows:

i. Open to the harvest of all shrimp species except spot shrimp. It is unlawful to possess spot shrimp, and all spot shrimp must immediately be returned to the water unharmed.

ii. It is unlawful to set or pull shrimp gear in waters greater than 200 feet deep.

(c) Effective 12:01 a.m. June 24, 2011, until 11:59 p.m. June 25, 2011, Marine Area 7 south of a line from the Initiative 77 marker on Fidalgo Island to Point Colville on Lopez Island, then south of a line from Davis Point on Lopez Island to Cattle Point on San Juan Island, then south of a line due west from Lime Kiln Point light to the international boundary, is open to the harvest of all shrimp species.

2) Marine Area 9:

a. Open June 22, 2011 from 7:00 a.m. through 3:00 p.m.

b. Effective 12:01 a.m. June 23, 2011, until further notice, all waters equal to or less than 150 feet in depth in Marine Area 9 are open to the harvest of all shrimp species except spot shrimp. All spot shrimp caught must be immediately returned to the water unharmed. It is unlawful to set or pull shrimp gear in waters greater than 150 feet deep.

3) Effective immediately, until further notice, all waters equal to or less than 150 feet in depth in Marine Areas 8-1, 8-2 and 11 are open to the harvest of all shrimp species except spot shrimp. All spot shrimp caught must be immediately returned to the water unharmed. It is unlawful to set or pull shrimp gear in waters greater than 150 feet deep.

4) Effective immediately, until further notice, all waters of Marine Area 4 east of the Bonilla-Tatoosh line, and Marine Areas 5 and 6, are open to the harvest of all shrimp species,

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

REPEALER

The following section of the Washington Administrative Code is repealed effective 12:01 a.m. June 22, 2011:

WAC 220-56-32500X Shrimp—Areas and seasons. (11-104)

WSR 11-13-040
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 11-120—Filed June 8, 2011, 3:34 p.m., effective June 8, 2011, 3:34 p.m.]

Effective Date of Rule: Immediately.

Purpose: The purpose of this rule making is to provide for treaty Indian fishing opportunity in the Columbia River while protecting salmon 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 and federal law governing Washington's relationship with Oregon.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-32-05100X; and amending WAC 220-32-051.

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

Other Authority: *United States v. Oregon*, Civil No. 68-513-KI (D. Or.), Order Adopting 2008-2017 *United States v. Oregon* Management Agreement (Aug. 12, 2008) (Doc. No. 2546); *Puget Sound Gillnetters Ass'n v. Moos*, 92 Wn.2d 939, 603 P.2d 819 (1979); *State v. James*, 72 Wn.2d 746, 435 P.2d 521 (1967); 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: Opens the treaty Indian fishery downstream of Bonneville Dam daily beginning June 9 through the remainder of the spring season (June 15) and maintains the one-pole-per-fisher restriction in that area. Continues to allow the sale of platform and hook-and-line caught fish from mainstem tribal fisheries and fish caught in Yakama Nation tributary fisheries. Fisheries are consistent with the 2008-2017 Management Agreement and the associated biological opinion. Rule is consistent with action of the Columbia River compact on May 10 and June 7, 2011. Conforms state rules with tribal rules. There is insufficient time to promulgate permanent regulations.

The Yakama, Warm Springs, Umatilla, and Nez Perce Indian tribes have treaty fishing rights in the Columbia River and inherent sovereign authority to regulate their fisheries. Washington and Oregon also have some authority to regulate fishing by treaty Indians in the Columbia River, authority that the states exercise jointly under the congressionally ratified Columbia River compact. *Sohappy v. Smith*, 302 F. Supp. 899 (D. Or. 1969). The tribes and the states adopt parallel regulations for treaty Indian fisheries under the supervision of the federal courts. A court order sets the current parameters. *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 salmon and steelhead stocks in the Columbia River 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 allow for some incidental take of these species in the fisheries as described in the 2008-2017 *U.S. v. Oregon* Management Agreement. Columbia River fisheries are monitored very closely to ensure consistency with court orders and ESA guidelines. Because conditions change rapidly, the fisheries are managed almost exclusively by emergency rule. As required by court order, the Washington (WDFW) and Oregon (ODFW) departments of fish and wildlife convene public hearings and invite tribal participation when considering proposals for new emergency rules affecting treaty fishing rights. *Sohappy*, 302 F. Supp. at 912. WDFW and ODFW then adopt regulations reflecting agreements reached.

Number of Sections Adopted in Order to Comply with Federal Statute: New 1, Amended 0, Repealed 1; Federal

Rules or Standards: New 1, Amended 0, Repealed 1; and Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 1, Amended 0, Repealed 1.

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: June 8, 2011.

Lori Preuss
for Philip Anderson
Director

NEW SECTION

WAC 220-32-05100Y Columbia River salmon seasons above Bonneville Dam. Notwithstanding the provisions of WAC 220-32-050, WAC 220-32-051, WAC 220-32-052 and WAC 220-32-058, effective immediately until further notice, it is unlawful for a person to take or possess salmon, steelhead, sturgeon, shad, carp, catfish, walleye, bass, or yellow perch taken for commercial purposes in Columbia River Salmon Management Catch Reporting Areas (SMCRA) 1E, 1F, 1G, and 1H, and in the Wind River, White Salmon River, Klickitat River, and Drano Lake, except as provided in the following subsections. However, those individuals possessing treaty fishing rights under the Yakama, Warm Springs, Umatilla, and Nez Perce treaties may fish for salmon, steelhead, sturgeon, shad, carp, catfish, walleye, bass, or yellow perch under the following provisions:

1. Open Area: SMCRA 1F, 1G, 1H (Zone 6):

a. Season: Immediately until further notice.

b. Gear: Hoop nets, dip bag nets, and rod and reel with hook and line.

c. Allowable sale: Salmon, steelhead, shad, carp, catfish, walleye, bass, and yellow perch. Sturgeon between 38-54 inches in fork length in the Bonneville Pool and between 43-54 inches in fork length in The Dalles and John Day pools may be retained for subsistence purposes. Live release of all oversize and under-size sturgeon is required.

d. River mouth sanctuaries (WAC 220-32-058) remain in effect, except the Spring Creek Hatchery sanctuary.

2. Open Area: SMCRA 1E; Each of the four Columbia River treaty tribes has an MOA or MOU with the Washington Department of Fish and Wildlife regarding tribal fisheries in the area just downstream of Bonneville Dam. Tribal fisheries in this area may only occur in accordance with the appropriate MOA or MOU specific to each tribe.

a. Participants: Tribal members may participate under the conditions described in the 2007 Memorandum of Agreement (MOA) with the Yakama Nation (YN), in the 2010 Memorandum of Understanding (MOU) with the Confederated Tribes of the Umatilla Indian Reservation (CTUIR), in the 2010 MOU with the Confederated Tribes of the Warm

Spring Reservation (CTWS), and in the 2011 MOU with the Nez Perce Tribe. Tribal members fishing below Bonneville Dam must carry an official tribal enrollment card.

b. Season: Immediately through June 15, 2011.

c. Gear: Rod and reel with hook-and-line only; limited to one fishing pole per fisher.

d. Allowable Sales: Salmon, steelhead, shad, carp, catfish, walleye, bass, and yellow perch. Sturgeon retention is prohibited, and sturgeon may not be sold or retained for ceremonial or subsistence purposes. Sale of platform or hook-and-line-caught fish is allowed. Sales may not occur on USACE property.

3. Open Area: Columbia River Tributaries above Bonneville Dam:

a. Season: Immediately until further notice, and only during those days and hours when the tributaries listed below are open under lawfully enacted Yakama Nation tribal subsistence fishery regulations for enrolled Yakama Nation members.

b. Area: Drano Lake, and the Wind, White Salmon, and Klickitat rivers.

c. Gear: Hoop nets, dip bag nets, and rod and reel with hook-and-line. Gill nets may only be used in Drano Lake.

d. Allowable Sales: Salmon, steelhead, shad, carp, catfish, walleye, bass, and yellow perch.

4. 24-hour quick reporting required for Washington wholesale dealers, WAC 220-69-240, for all areas.

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

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

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 220-32-05100X Columbia River salmon seasons above Bonneville Dam. (11-118)

**WSR 11-13-041
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE**

[Order 11-123—Filed June 8, 2011, 3:37 p.m., effective June 8, 2011, 3:37 p.m.]

Effective Date of Rule: Immediately.

Purpose: Amend personal use fishing rules.

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

Statutory Authority for Adoption: RCW 77.12.047 and 77.04.020.

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

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

Reasons for this Finding: There is sufficient halibut quota remaining in Marine Areas 3 and 4 to reopen the recreational halibut fishery for one day. This rule conforms state rules to federal action taken by the National Marine Fisheries Service and the International Pacific Halibut Commission. 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: June 8, 2011.

Lori Preuss
for Philip Anderson
Director

NEW SECTION

WAC 220-56-25500G Halibut—Seasons—Daily and possession limits. Notwithstanding the provisions of WAC 220-56-250 and WAC 220-56-255, effective immediately until further notice, it is unlawful to fish for or possess halibut taken for personal use, except as provided in this section:

(1) **Catch Record Card Area 1** - Closed.

(2) **Catch Record Card Area 2** - Closed.

(i) **Catch Record Card Area 2 (Northern Nearshore fishery)** Those waters from 47°31.70' N. latitude south to 46°58.00' N latitude and east of a line approximating the 30 fathom depth contour as defined by the following coordinates, open seven days per week until further notice:

47°31.70 N. lat, 124°37.03 W. long

47°25.67 N. lat, 124°34.79 W. long

47°12.82 N. lat, 124°29.12 W. long

46°58.00 N. lat, 124°24.24 W. long

(ii) Lingcod may be taken, retained and possessed seaward of the 30 fathom line on any day open to the primary halibut fishery as described in (2) above.

(3) **Catch Record Card Areas 3 and 4** - Open 12:01 a.m. through 11:59 p.m. June 16, 2011. The following area southwest of Cape Flattery is closed to fishing for halibut at all times:

Beginning at 48°18' N., 125°18' W.; thence to

48°18' N., 124°59' W.; thence to

48°11' N., 124°59' W.; thence to

48°11' N., 125°11' W., thence to
48°04' N., 125°11' W.; thence to
48°04' N., 124°59' W.; thence to
48°N., 124°59' W.; thence to
48°N., 125°18' W.; thence to point of origin.

(4) **Catch Record Card Area 5** - Open through June 18, 2011, Thursdays through Saturdays only.

(5) **Catch Record Card Areas 6, 7, 8, 9 and 10** - Closed.

(6) Daily limit one halibut, no minimum size limit. The possession limit is two daily limits of halibut in any form, except the possession limit aboard the fishing vessel is one daily limit.

(7) All other permanent rules remain in effect.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 220-56-25500F	Halibut—Seasons—Daily and possession limits. (11-115)
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**WSR 11-13-045
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE**

[Order 11-124—Filed June 9, 2011, 1:57 p.m., effective June 11, 2011]

Effective Date of Rule: June 11, 2011.

Purpose: Amend personal use fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 232-28-61900K; and amending WAC 232-28-619.

Statutory Authority for Adoption: RCW 77.12.047 and 77.04.020.

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

Reasons for this Finding: As of June 7, 2011, a total of sixty-eight adult spring chinook have returned to the Klickitat Salmon Hatchery. Klickitat Salmon Hatchery is expected to meet its escapement goal of five hundred fish, which will allow additional recreational fishing opportunity. There is insufficient time to adopt permanent rules.

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

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

Number of Sections Adopted on the Agency's Own Initiative: New 1, Amended 0, Repealed 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: June 9, 2011.

Joe Stohr
for Philip Anderson
Director

NEW SECTION

WAC 232-28-61900K Exceptions to statewide rules—Klickitat River. Notwithstanding the provisions of WAC 232-28-619, effective June 11 through July 31, 2011, a person may fish for salmon in waters of the Klickitat River from 400 feet upstream of the #5 fishway to boundary markers below Klickitat Salmon Hatchery. Daily limit 6 fish, of which no more than 2 may be adult Chinook. Release wild Chinook.

REPEALER

The following section of the Washington Administrative Code is repealed effective August 1, 2011:

WAC 232-28-619000K	Exceptions to statewide rules—Klickitat River.
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Reviser's note: The section above appears as filed by the agency pursuant to RCW 34.08.040; however, the reference to WAC 232-28-619000K is probably intended to be WAC 232-28-61900K.

**WSR 11-13-056
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE**

[Order 10-125—Filed June 13, 2011, 4:36 p.m., effective June 16, 2011, 9:00 p.m.]

Effective Date of Rule: June 16, 2011, 9:00 p.m.

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

Citation of Existing Rules Affected by this Order: Repealing WAC 220-33-01000X; 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 summer chinook commercial non-Indian seasons for 2011. Based on the preseason forecast, management agreements, and allocation guidance, a total of 5,700 adult chinook are available for harvest. Impacts to ESA-listed salmon are expected to be well within ESA limits. The fishery is consistent with the *U.S. v. Oregon* Management Agreement and the associated biological opinion. Conforms Washington state rules with Oregon state rules. Regulation is consistent with compact action of June 9, 2011. 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 1; Federal Rules or Standards: New 1, Amended 0, Repealed 1; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

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

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

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

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

Date Adopted: June 13, 2011.

Philip Anderson
Director

NEW SECTION

WAC 220-33-01000Y Columbia River seasons below Bonneville. Notwithstanding the provisions of WAC 220-33-010, WAC 220-33-020, and WAC 220-33-030, it is unlawful for a person to take or possess salmon, sturgeon, or shad for commercial purposes from Columbia River Salmon Management and Catch Reporting Areas 1A, 1B, 1C, 1D, 1E and Select Areas, except during the times and conditions listed below:

1. Mainstem Columbia River

a) Dates: 9 PM Thursday June 16, to 5 AM Friday June 17; and

9 PM Wednesday June 22, to 5 AM Thursday June 23, 2011.

b) Area: SMCRA 1A, 1B, 1C, D1, 1E.

c) Sanctuaries: Grays River, Elokomin-A, Cowlitz River, Kalama-A, Lewis-A, Washougal, and Sandy Rivers.

d) Gear: Drift gill nets only; 8-inch minimum mesh. Nets not lawful for use for that time and area may be onboard the boat if properly stored. A "properly stored" net is defined as a net on a drum that is fully covered by tarp (canvas or plastic) and bound with a minimum of ten revolutions of rope with a diameter of 3/8 (0.375) inches or greater.

e) Allowable Sales: Adipose fin-clipped salmon, sockeye, white sturgeon (43-54 inch fork length), and shad. A maximum of five white sturgeon may be possessed or sold by each participating vessel during each calendar week (Sunday through Saturday) that the fishery is open. Limit applies to mainstem only.

f) Miscellaneous Regulations: 24-hour quick reporting is required for Washington wholesale dealers, per WAC 220-69-240.

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

REPEALER

The following section of the Washington Administrative Code is repealed effective 9:00 PM June 16, 2011:

WAC 220-33-01000X Columbia River seasons below Bonneville. (11-105)

WSR 11-13-057
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 11-126—Filed June 13, 2011, 4:37 p.m., effective June 16, 2011,
6:00 a.m.]

Effective Date of Rule: June 16, 2011, 6:00 a.m.

Purpose: The purpose of this rule making is to provide for treaty Indian fishing opportunity in the Columbia River while protecting salmon 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 and federal law governing Washington's relationship with Oregon.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-32-05100Y; and amending WAC 220-32-051.

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

Other Authority: *United States v. Oregon*, Civil No. 68-513-KI (D. Or.), Order Adopting 2008-2017 *United States v. Oregon* Management Agreement (Aug. 12, 2008) (Doc. No. 2546); *Puget Sound Gillnetters Ass'n v. Moos*, 92 Wn.2d 939, 603 P.2d 819 (1979); *State v. James*, 72 Wn.2d 746, 435 P.2d 521 (1967); 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 two weekly gillnet fishing periods for the summer season. Allows the treaty Indian fishery downstream of Bonneville Dam to continue and, beginning June 16, lifts the one-pole regulation. Continues to allow the sale of platform and hook-and-line caught fish from mainstem tribal fisheries and fish caught in Yakama Nation tributary fisheries. Fisheries are consistent with the 2008-2017 Management Agreement and the associated biological opinion. Rule is consistent with action of the Columbia River compact on May 10 and June 9, 2011. Conforms state rules with tribal rules. There is insufficient time to promulgate permanent regulations.

The Yakama, Warm Springs, Umatilla, and Nez Perce Indian tribes have treaty fishing rights in the Columbia River and inherent sovereign authority to regulate their fisheries. Washington and Oregon also have some authority to regulate fishing by treaty Indians in the Columbia River, authority that the states exercise jointly under the congressionally ratified Columbia River compact. *Sohappy v. Smith*, 302 F. Supp. 899 (D. Or. 1969). The tribes and the states adopt parallel regulations for treaty Indian fisheries under the supervision of the federal courts. A court order sets the current parameters. *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 salmon and steelhead stocks in the Columbia River 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 allow for some

incidental take of these species in the fisheries as described in the 2008-2017 *U.S. v. Oregon* Management Agreement. Columbia River fisheries are monitored very closely to ensure consistency with court orders and ESA guidelines. Because conditions change rapidly, the fisheries are managed almost exclusively by emergency rule. As required by court order, the Washington (WDFW) and Oregon (ODFW) departments of fish and wildlife convene public hearings and invite tribal participation when considering proposals for new emergency rules affecting treaty fishing rights. *Sohappy*, 302 F. Supp. at 912. WDFW and ODFW then adopt regulations reflecting agreements reached.

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

Number of Sections Adopted at Request of a Nongovernmental Entity: New 1, Amended 0, Repealed 1.

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: June 13, 2011.

Philip Anderson
Director

NEW SECTION

WAC 220-32-05100Z Columbia River salmon seasons above Bonneville Dam. Notwithstanding the provisions of WAC 220-32-050, WAC 220-32-051, WAC 220-32-052 and WAC 220-32-058, effective immediately until further notice, it is unlawful for a person to take or possess salmon, steelhead, sturgeon, shad, carp, catfish, walleye, bass, or yellow perch taken for commercial purposes in Columbia River Salmon Management Catch Reporting Areas (SMCRA) 1E, 1F, 1G, and 1H, and in the Wind River, White Salmon River, Klickitat River, and Drano Lake, except as provided in the following subsections. However, those individuals possessing treaty fishing rights under the Yakama, Warm Springs, Umatilla, and Nez Perce treaties may fish for salmon, steelhead, sturgeon, shad, carp, catfish, walleye, bass, or yellow perch under the following provisions:

1. Open Area: SMCRA 1F, 1G, 1H (Zone 6):
 - a. Season: 6:00 AM June 16 through 6:00 PM June 18, 2011 and 6:00 AM June 20 through 6:00 PM June 23, 2011
 - b. Gear: Gillnets
 - c. Allowable Sales: Salmon, steelhead, shad, carp, catfish, walleye, bass, and yellow perch. Sturgeon between 38-54 inches in fork length in the Bonneville Pool, and between 43-54 inches in fork length in The Dalles and John Day pools may be retained for subsistence purposes. Live release of all oversize and under-size sturgeon is required

d. River mouth sanctuaries (WAC 220-32-058) remain in effect, except the Spring Creek Hatchery sanctuary

2. Open Area: SMCRA 1F, 1G, 1H (Zone 6):

e. Season: Immediately until further notice.

f. Gear: Hoop nets, dip bag nets, and rod and reel with hook and line.

g. Allowable sale: Salmon, steelhead, shad, carp, catfish, walleye, bass, and yellow perch. Sturgeon between 38-54 inches in fork length in the Bonneville Pool and between 43-54 inches in fork length in The Dalles and John Day pools may be retained for subsistence purposes. Live release of all oversize and under-size sturgeon is required.

h. River mouth sanctuaries (WAC 220-32-058) remain in effect, except the Spring Creek Hatchery sanctuary.

3. Open Area: SMCRA 1E; Each of the four Columbia River treaty tribes has an MOA or MOU with the Washington Department of Fish and Wildlife regarding tribal fisheries in the area just downstream of Bonneville Dam. Tribal fisheries in this area may only occur in accordance with the appropriate MOA or MOU specific to each tribe.

a. Participants: Tribal members may participate under the conditions described in the 2007 Memorandum of Agreement (MOA) with the Yakama Nation (YN), in the 2010 Memorandum of Understanding (MOU) with the Confederated Tribes of the Umatilla Indian Reservation (CTUIR), in the 2010 MOU with the Confederated Tribes of the Warm Spring Reservation (CTWS), and in the 2011 MOU with the Nez Perce Tribe. Tribal members fishing below Bonneville Dam must carry an official tribal enrollment card.

b. Season: Immediately until further notice.

c. Gear: Hook and line, or as defined by each tribe's MOU or MOA.

d. Allowable Sales: Salmon, steelhead, shad, carp, catfish, walleye, bass, and yellow perch. Sturgeon retention is prohibited, and sturgeon may not be sold or retained for ceremonial or subsistence purposes. Sale of platform or hook-and-line-caught fish is allowed. Sales may not occur on USACE property.

4. Open Area: Columbia River Tributaries above Bonneville Dam:

a. Season: Immediately until further notice, and only during those days and hours when the tributaries listed below are open under lawfully enacted Yakama Nation tribal subsistence fishery regulations for enrolled Yakama Nation members.

b. Area: Drano Lake, and the Wind, White Salmon, and Klickitat rivers.

c. Gear: Hoop nets, dip bag nets, and rod and reel with hook-and-line. Gill nets may only be used in Drano Lake.

d. Allowable Sales: Salmon, steelhead, shad, carp, catfish, walleye, bass, and yellow perch.

5. 24-hour quick reporting required for Washington wholesale dealers, WAC 220-69-240, for all areas.

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

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

REPEALER

The following section of the Washington Administrative Code is repealed effective 6:00 a.m. June 16, 2011:

WAC 220-32-05100Y Columbia River salmon seasons above Bonneville Dam. (11-120)

WSR 11-13-064

EMERGENCY RULES

DEPARTMENT OF FISH AND WILDLIFE

[Order 11-127—Filed June 14, 2011, 4:42 p.m., effective June 22, 2011, 12:01 a.m.]

Effective Date of Rule: June 22, 2011, 12:01 a.m.

Purpose: Amend personal use fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-56-32500Y; and amending WAC 220-56-325.

Statutory Authority for Adoption: RCW 77.12.047 and 77.04.020.

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

Reasons for this Finding: This regulation is needed to ensure an orderly fishery, manage within court ordered sharing requirements, and to ensure conservation. Harvestable amounts of spot shrimp are available for one additional day of fishing in the Hood Canal Shrimp District. 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: June 14, 2011.

Sara G. LaBorde
for Philip Anderson
Director

NEW SECTION**WAC 220-56-32500Z Shrimp—Areas and seasons.**

Notwithstanding the provisions of WAC 220-56-325:

1) Effective 9:00 a.m. through 1:00 p.m. June 22, 2011, the Hood Canal Shrimp District is open to the harvest of all shrimp species.

2) Effective immediately until further notice, it is unlawful to fish for or possess shrimp taken for personal use in all waters of Marine Area 7, except as provided for in this section:

a. Open immediately through 11:59 p.m. June 22, 2011.

b. Effective 12:01 a.m. June 23, 2011, until further notice, Marine Area 7 north of a line from Biz Point on Fidalgo Island to Cape Saint Mary on Lopez Island, then north of a line from Davis Point on Lopez Island to Cattle Point on San Juan Island, then north of a line due west from Lime Kiln Point light to the international boundary, is open as follows:

i. Open to the harvest of all shrimp species except spot shrimp. It is unlawful to possess spot shrimp, and all spot shrimp must immediately be returned to the water unharmed.

ii. It is unlawful to set or pull shrimp gear in waters greater than 200 feet deep.

(c) Effective 12:01 a.m. June 24, 2011, until 11:59 p.m. June 25, 2011, Marine Area 7 south of a line from the Initiative 77 marker on Fidalgo Island to Point Colville on Lopez Island, then south of a line from Davis Point on Lopez Island to Cattle Point on San Juan Island, then south of a line due west from Lime Kiln Point light to the international boundary, is open to the harvest of all shrimp species.

3) Marine Area 9:

a. Open June 22, 2011 from 7:00 a.m. through 3:00 p.m.

b. Effective 12:01 a.m. June 23, 2011, until further notice, all waters equal to or less than 150 feet in depth in Marine Area 9 are open to the harvest of all shrimp species except spot shrimp. All spot shrimp caught must be immediately returned to the water unharmed. It is unlawful to set or pull shrimp gear in waters greater than 150 feet deep.

4) Effective immediately, until further notice, all waters equal to or less than 150 feet in depth in Marine Areas 8-1, 8-2 and 11 are open to the harvest of all shrimp species except spot shrimp. All spot shrimp caught must be immediately returned to the water unharmed. It is unlawful to set or pull shrimp gear in waters greater than 150 feet deep.

5) Effective immediately, until further notice, all waters of Marine Area 4 east of the Bonilla-Tatoosh line, and Marine Areas 5 and 6, are open to the harvest of all shrimp species,

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

REPEALER

The following section of the Washington Administrative Code is repealed effective 12:01 a.m. June 22, 2011:

WAC 220-56-32500Y Shrimp—Areas and seasons. (11-122)

WSR 11-13-065**EMERGENCY RULES****DEPARTMENT OF LICENSING**

[Filed June 15, 2011, 8:27 a.m., effective July 1, 2011]

Effective Date of Rule: July 1, 2011.

Purpose: To ensure continuation of the master license service (MLS) handling fees after June 30, 2011.

Citation of Existing Rules Affected by this Order: Amending WAC 308-300-160.

Statutory Authority for Adoption: RCW 19.02.020(3), 19.02.075 (as amended by 2011 SHB 2017).

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

Reasons for this Finding: Provisions of the enactment of 2011 SHB 2017, section 8 include: (1) Deleting the dollar amount of the MLS handling fees from statute, (2) authorizing the setting of the fee amounts by administrative rule, and (3) setting a cap on the amount those fees may be set at by rule. The legislation was signed into law on May 10, 2011, and becomes effective on July 1, 2011. A handling fee dollar amount authority will not exist for the self-supporting MLS program after June 30, 2011, unless an administrative rule is adopted to set the respective fee amounts. There is insufficient time between the enactment of the law and the effective date of the statute change to conduct normal rule-making activities. An emergency rule adoption allows continued, statutorily-mandated operation of MLS after June 30, 2011, until a permanent rule can be adopted.

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 1, 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: July 1 [June 15], 2011.

Ben T. Shomshor
Rules Coordinator

AMENDATORY SECTION (Amending WSR 10-13-039, filed 6/8/10, effective 7/9/10)

WAC 308-300-160 Total fee payable—Handling of fees. (1) The fee payable will be the total amount of all individual license fees, late filing fees, other penalty fees, and handling fees, and may include additional fees charged to cover credit or debit card processing.

(2) The department will distribute the fees received for individual licenses issued or renewed to the appropriate agencies on an established schedule.

(3) The master license will not be issued until the full amount of the total fee payable is collected. When the fee payment received is less than the total fee payable, the department will bill the applicant for the balance.

(4) The master license service application and renewal handling fees collected under RCW 19.02.075 are not refundable. When a license is denied or when an applicant withdraws an application, a refund of any other refundable portion of the total payment will be made in accordance with the applicable licensing laws.

(5) The master license service handling fee amounts are:

<u>Type of handling fee:</u>	<u>Fee amount:</u>
<u>Master business application filing</u>	<u>\$15.00</u>
<u>License renewal application filing</u>	<u>\$9.00</u>

WSR 11-13-076
EMERGENCY RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
 (Medicaid Purchasing Administration)

[Filed June 16, 2011, 10:54 a.m., effective June 19, 2011]

Effective Date of Rule: June 19, 2011.

Purpose: This is not a policy change. Currently, the rule cross references to WAC 388-478-0020 because the income standards for both family medical programs and the TANF grant program is the same. However, beginning February 1, 2011, the TANF income standard is being reduced so the family medical programs income standard must be called out in WAC 388-478-0065 which in turn requires the change to WAC 388-505-0220.

Citation of Existing Rules Affected by this Order: Amending WAC 388-478-0065 and 388-505-0220.

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

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

Reasons for this Finding: The department cannot change its income standard for family medical programs due to federal "maintenance of effort" requirements. To do so would jeopardize federal funding for the programs as well as result in the loss of eligibility for some clients. This emergency rule is necessary while the permanent rule-making process is completed. The permanent rule is anticipated to be adopted in June 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 2, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

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

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

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

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

Date Adopted: June 13, 2011.

Katherine I. Vasquez
 Rules Coordinator

AMENDATORY SECTION (Amending WSR 05-15-080, filed 7/14/05, effective 8/14/05)

WAC 388-478-0065 Income and resource standards for family medical programs. (1) The categorically needy income level (CNIL) standards for family medical ((is the same as the grant payment standards for the TANF cash program as stated in WAC 388-478-0020:)) are:

(a) For assistance units with obligations to pay shelter costs:

<u>Assistance Unit Size</u>	<u>Payment Standard</u>
<u>1</u>	<u>\$359</u>
<u>2</u>	<u>453</u>
<u>3</u>	<u>562</u>
<u>4</u>	<u>661</u>
<u>5</u>	<u>762</u>
<u>6</u>	<u>866</u>
<u>7</u>	<u>1,000</u>
<u>8</u>	<u>1,107</u>
<u>9</u>	<u>1,215</u>
<u>10 or more</u>	<u>1,321</u>

(b) For assistance units with shelter provided at no cost:

<u>Assistance Unit Size</u>	<u>Payment Standard</u>
<u>1</u>	<u>\$218</u>
<u>2</u>	<u>276</u>
<u>3</u>	<u>341</u>
<u>4</u>	<u>402</u>
<u>5</u>	<u>464</u>
<u>6</u>	<u>526</u>
<u>7</u>	<u>608</u>
<u>8</u>	<u>673</u>
<u>9</u>	<u>739</u>
<u>10 or more</u>	<u>803</u>

(2) The countable resource standards for family medical are the same as those of the TANF/SFA cash program as stated in WAC 388-470-0005.

(3) Each unborn child is counted as a household member when determining household size for:

- (a) Family medical;
- (b) Pregnancy medical; and
- (c) Children's medical.

AMENDATORY SECTION (Amending WSR 08-19-099 and 08-20-014, filed 9/17/08 and 9/18/08, effective 10/18/08 and 10/19/08)

WAC 388-505-0220 Family medical eligibility. (1) A person is eligible for categorically needy (CN) medical assistance when they are:

(a) Receiving temporary assistance for needy families (TANF) cash benefits;

(b) Receiving Tribal TANF;

(c) Receiving cash diversion assistance, except SFA reliable families, described in WAC 388-400-0010(2);

(d) Eligible for TANF cash benefits but choose not to receive; ~~((e))~~

(e) Over the TANF cash payment standard but under the family medical payment standard as described in WAC 388-478-0065; or

(f) Not eligible for or receiving TANF cash assistance, but meet the eligibility criteria for aid to families with dependent children (AFDC) in effect on July 16, 1996 except that:

(i) Earned income is treated as described in WAC 388-450-0210; and

(ii) Resources are treated as described in WAC 388-470-0005 for applicants and 388-470-0026 for recipients.

(2) An adult cannot receive a family medicaid program unless the household includes a child who is eligible for:

(a) Family medicaid;

(b) SSI; or

(c) Children's medicaid.

(3) A person is eligible for CN family medical coverage when the person is not eligible for or receiving cash benefits solely because the person:

(a) Received sixty months of TANF cash benefits or is a member of an assistance unit which has received sixty months of TANF cash benefits;

(b) Failed to meet the school attendance requirement in chapter 388-400 WAC;

(c) Is an unmarried minor parent who is not in a department-approved living situation;

(d) Is a parent or caretaker relative who fails to notify the department within five days of the date the child leaves the home and the child's absence will exceed one hundred eighty days;

(e) Is a fleeing felon or fleeing to avoid prosecution for a felony charge, or is a probation and parole violator;

(f) Was convicted of a drug related felony;

(g) Was convicted of receiving benefits unlawfully;

(h) Was convicted of misrepresenting residence to obtain assistance in two or more states;

(i) Has gross earnings exceeding the TANF gross income level; or

(j) Is not cooperating with WorkFirst requirements.

(4) An adult must cooperate with the division of child support in the identification, use, and collection of medical support from responsible third parties, unless the person meets the medical exemption criteria described in WAC 388-505-0540 or the medical good cause criteria described in chapter 388-422 WAC.

(5) Except for a client described in WAC 388-505-0210(6), a person who is an inmate of a public institution, as defined in WAC 388-500-0005, is not eligible for CN or MN medical coverage.

WSR 11-13-077

EMERGENCY RULES

DEPARTMENT OF

EARLY LEARNING

[Filed June 16, 2011, 11:09 a.m., effective June 16, 2011, 11:09 a.m.]

Effective Date of Rule: Immediately.

Purpose: As directed by the 2011 legislature, effective July 1, 2011, the department of early learning (DEL) is increasing child care license fees as provided in section 617(2) of 2ESHB 1087, the state operating appropriations bill, to raise revenues intended to help balance the 2011-2013 budget. Base license fees are increased by twenty-five percent for all DEL-licensed child care agencies (providers). In addition, per-child fees are increased for child care centers and school-age center programs to \$12 per child - after the first twelve children in care - up to the maximum capacity stated on the center's license.

Citation of Existing Rules Affected by this Order: Amending WAC 170-151-070, 170-295-0060, and 170-296-0170.

Statutory Authority for Adoption: RCW 43.215.255, and 43.215.070 (2)(c); section 617(2) of 2ESHB 1087 (chapter 50, Laws [of] 2011 1st sp. sess.).

Other Authority: EHB 1248 (chapter 2, Laws of 2011 1st sp. sess.).

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

Reasons for this Finding: Section 617(2) of 2ESHB 1087 states, "(2) *In accordance with RCW 43.215.255(2) and 43.135.055, the department is authorized to increase child care center and family home licensure fees in fiscal years 2012 and 2013 for costs to the department for the licensure activity, including costs of necessary inspection. These increases are necessary to support expenditures authorized in this section.*"

The legislature's 2011-2013 Operating Budget Overview -Revenue documents indicate that DEL is required to raise nearly one million dollars during the biennium through this license fee increase. Further, senate ways and means com-

mittee projections indicated that DEL is expected to raise an approximately \$990,826 through FY 2013 (July 1, 2011, through June 30, 2013) by increasing annual license fees for:

- Family home child cares [care centers] to \$30 from the current \$24; and
- Child care centers and school-age center programs:
 - To \$125 (from the current \$100) for the first twelve children in care; plus
 - To \$12 (from the current \$8) per child after the first twelve children, up to the center's maximum capacity stated on the center's license.

In order to achieve the legislatively directed revenue targets, DEL must make the fee increases effective July 1, 2011. Child care license fees collected are deposited to the state general fund and are not retained by DEL.

Family home child cares [care centers] are not charged a per-child fee in addition to their base license - they may care [for] a maximum of twelve children. A child care home or center may be licensed to care for fewer children than the physical capacity of its facility. The maximum number of children to be in care (licensed capacity) is stated on the facility's DEL-issued license. Currently, individual child care centers are licensed from twelve children to more than two hundred fifty children.

This is the first fee increase for licensed family home children cares [child care centers] since 1982. Child care center and school-age center license fees were raised in 2010 - prior to that increase center license fees had remained at the same amount since 1982.

DEL has filed a preproposal statement of inquiry, filing number WSR 11-12-076, and plans to proceed with permanent adoption of these license fee increases.

RCW 34.05.350 (1)(c) was amended by EHB 1248 (chapter 2, Laws of 2011 1st sp. sess.) to permit emergency rule making if the agency finds for good cause, "*(c) That in order to implement the requirements or reductions in appropriations enacted in any budget for fiscal year 2009, 2010, 2011, 2012, or 2013, 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.*"

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 3, Repealed 0.

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

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

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

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

Date Adopted: June 16, 2011.

Elizabeth M. Hyde
Director

AMENDATORY SECTION (Amending WSR 10-24-016, filed 11/19/10, effective 12/20/10)

WAC 170-151-070 How do I apply or reapply for a license? (1) You must comply with the department's application procedures and submit to the department:

(a) A completed department-supplied application for school-age child care center license, including attachments, ninety or more days before the:

- (i) Expiration of your current license;
- (ii) Opening date of your center;
- (iii) Relocation of your center; or
- (iv) Change of the licensee.

(b) A completed background check form for each staff person or volunteer having unsupervised or regular access to the child in care; and

(c) The annual licensing fee is:

(i) ~~((For new licenses issued by the department before July 1, 2010, or for licensees whose annual licensing fees are due before July 1, 2010, forty-eight dollars per year for the first twelve children plus four dollars for each additional child over the licensed capacity of twelve children; or~~

~~((ii)) For new licenses issued ((after June 30, 2010)) before July 1, 2011, or for licensees whose annual licensing fees are due ((after June 30, 2010)) before July 1, 2011, one hundred dollars per year for the first twelve children plus eight dollars for each additional child over the licensed capacity of twelve children; or~~

(ii) For new licenses issued after June 30, 2011, or for licensees whose annual licensing fees are due after June 30, 2011, one hundred twenty-five dollars per year for the first twelve children, plus twelve dollars per year for each additional child over the licensed capacity of twelve children.

(2) In addition to the required application materials specified under subsection (1) of this section, you must submit to the department:

(a) An employment and education resume of the person responsible for the active management of the center and of the site coordinator;

(b) Copies of diplomas or education transcripts of the director and site coordinator; and

(c) Three professional references each for you, the director, and the site coordinator.

(3) You, as the applicant for a license under this chapter must be twenty-one years of age or older.

(4) You must conform to rules and regulations approved or adopted by the:

(a) State department of health and relating to the health care of children at school-age child care centers;

(b) State fire marshal's office, establishing standards for fire prevention and protection of life and property from fire, under chapter 212-12 WAC.

(5) The department must not issue a license to you until the state fire marshal's office has certified or inspected and approved the center.

(6) The department may exempt a school site possessing a fire safety certification signed by the local fire official within six months prior to licensure from the requirement to receive an additional fire safety inspection by the state fire marshal's office.

(7) You must submit a completed plan of deficiency correction, when required, to the department of health and the department licensuror before the department will issue you a license.

(8) You, your director and site coordinator must attend department-provided orientation training.

AMENDATORY SECTION (Amending WSR 10-24-016, filed 11/19/10, effective 12/20/10)

WAC 170-295-0060 What are the requirements for applying for a license to operate a child care center? (1) To apply or reapply for a license to operate a child care center you must:

(a) Be twenty-one years of age or older;
 (b) The applicant, director and program supervisor must attend the orientation programs that we provide, arrange or approve;
 (c) Submit to us a completed and signed application for a child care center license or certification using our forms (with required attachments).

(2) The application package must include the following attachments:

(a) The annual licensing fee. The fee is based on your licensed capacity, and is:

~~(i) ((For new licenses issued by the department before July 1, 2010, or for licensees whose annual licensing fees are due before July 1, 2010, forty-eight dollars for the first twelve children plus four dollars for each additional child over the licensed capacity of twelve children; or~~

~~(ii)) For new licenses issued ((after June 30, 2010)) before July 1, 2011, or for ((licensees)) licensees whose annual license fees are due ((after June 30, 2010)) before July 1, 2011, one hundred dollars per year for the first twelve children plus eight dollars for each additional child over the licensed capacity of twelve children; or~~

~~(ii) For new licenses issued after June 30, 2011, or for licensees whose annual license fees are due after June 30, 2011, one hundred twenty-five dollars per year for the first twelve children, plus twelve dollars for each additional child over the licensed capacity of twelve children;~~

(b) If the center is solely owned by you, a copy of your:

(i) Photo identification issued by a government entity; and

(ii) Social Security card that is valid for employment or verification of your employer identification number((-);

(c) If the center is owned by a corporation, verification of the corporation's employer identification number;

(d) An employment and education resume for:

(i) The person responsible for the active management of the center; and

(ii) The program supervisor((-);

(e) Diploma or education transcript copies of the program supervisor;

(f) Three professional references each, for yourself, the director, and the program supervisor;

(g) Articles of incorporation if you choose to be incorporated;

(h) List of staff (form is provided in the application);

(i) Written parent communication (child care handbook);

(j) Copy of transportation insurance policy (liability and medical);

(k) In-service training program (for facilities employing more than five persons);

(l) A floor plan of the facility drawn to scale;

(m) A copy of your health care plan reviewed and signed by an advisory physician, physician's assistant, or registered nurse;

(n) A copy of your policies and procedures that you give to parents; and

(o) A copy of your occupancy permit.

(3) You must submit to the department a completed background check form for all persons required to be authorized by DEL to care for or have unsupervised access to the children in care under chapter 170-06 WAC; and

(4) You must submit your application and reapplication ninety or more calendar days before the date:

(a) You expect to open your new center;

(b) Your current license is scheduled to expire;

(c) You expect to relocate your center;

(d) You expect to change licensee; or

(e) You expect a change in your license category.

AMENDATORY SECTION (Amending WSR 08-08-012, filed 3/19/08, effective 4/19/08)

WAC 170-296-0170 Am I required to pay a fee when applying for a family home child care license? (1) For new licenses issued by the department before July 1, 2011, or for licensees whose annual licensing fees are due before July 1, 2011, you must pay a nonrefundable license fee of twenty-four dollars. ((This))

(2) For new licenses issued by the department after June 30, 2011, or for licensees whose annual license fees are due after June 30, 2011, you must pay a nonrefundable license fee of thirty dollars.

(3) Payments must be in the form of a check or money order. You must pay the license fee each year before or on your anniversary date.

WSR 11-13-078

EMERGENCY RULES DEPARTMENT OF FISH AND WILDLIFE

[Order 11-128—Filed June 16, 2011, 2:43 p.m., effective June 20, 2011]

Effective Date of Rule: June 20, 2011.

Purpose: Amend commercial fishing rules.

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

Statutory Authority for Adoption: RCW 77.12.047 and 77.04.020.

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

Reasons for this Finding: Harvestable amounts of sea cucumbers are available in sea cucumber districts listed. 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: June 16, 2011.

Philip Anderson
Director

NEW SECTION

WAC 220-52-07100K Sea cucumbers. Notwithstanding the provisions of WAC 220-52-071, effective June 20, 2011, until further notice, it is unlawful to take or possess sea cucumbers taken for commercial purposes except as provided for in this section:

(1) Sea cucumber harvest using shellfish diver gear is allowed in Sea Cucumber Districts 1, 2 and 3 on Monday and Tuesday of each week.

(2) Sea cucumber harvest using shellfish diver gear is allowed in Sea Cucumber District 5 seven days per week.

WSR 11-13-079
EMERGENCY RULES
COLUMBIA RIVER
GORGE COMMISSION

[Filed June 16, 2011, 3:57 p.m., effective June 16, 2011, 3:57 p.m.]

Effective Date of Rule: Immediately.

Purpose: The commission's 2011-2013 budget will force the commission to reduce staff. As a result, the executive director can no longer assure that she can review applications for completeness within fourteen days or issue standard development review decisions within seventy-two days or expedited review applications within thirty days, which the commission's rules specify. The temporary rule does not propose new hard time periods, but rather sets the fourteen day and seventy-two day time periods as goals. The executive

director anticipates meeting these time periods in most cases, but needs the flexibility of surpassing them to manage overall workload and staff resources.

Citation of Existing Rules Affected by this Order: Amending 350-81-036, 350-81-042, and 350-81-054.

Statutory Authority for Adoption: RCW 43.97.015.

Other Authority: ORS 196.150, 16 U.S.C. § 544e (c)(1).

Under RCW 34.05.350 the agency for good cause finds that immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest; and that in order to implement the requirements or reductions in appropriations enacted in any budget for fiscal years 2009, 2010, or 2011, which necessitates the need for the immediate adoption, amendment, or repeal of a rule, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the fiscal needs or requirements of the agency.

Reasons for this Finding: The commission has reduced its planning staff from 4.5 FTE down to 1.5 FTE during the past biennium. The commission's 2011-2013 budget will force the commission to further reduce staff. In March 2011, the commission adopted rule changes that eliminated hard deadlines in many of its rules as a way to manage overall workload and staff resources. At that time, the commission did not want to change the time periods for issuing development review decisions. However, as a result of the reduction in staff that will be necessary in response to the 2011-2013 budget, the commission must now change those time periods too.

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 3, 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: June 14, 2011.

Nancy A. Andring
Rules Coordinator

Amendatory Section

350-81-036

Acceptance of Application

~~Within 14 days of the receipt of an application, the~~ Executive Director shall review the application for completeness and if complete, shall accept the application for review.

(1) No application shall be accepted until all documented omissions and deficiencies have been corrected by the applicant. The Executive Director shall notify the applicant of all omissions and deficiencies in writing ~~within 14 days of receipt of the application.~~ The Executive Director shall review supplemental application materials ~~within 14 days after receipt of the materials~~ to determine if the application is complete.

(2) No application for a proposed use, which is explicitly prohibited by this ordinance, shall be accepted.

(a) The application shall be returned to the applicant.

(b) A letter, signed by the Executive Director, stating that the proposed use is prohibited and citing the guideline which explicitly prohibits the proposed use, shall be sent to the applicant.

(c) Issuance of this letter shall not prohibit the applicant from appealing the decision pursuant to 350-70.

(3) As a goal, the Executive Director shall attempt to accept the application as complete or notify the applicant of omissions and deficiencies within 14 days of receipt of the application. The Executive Director shall attempt to review supplemental materials within 14 days of receipt. The 14-day time periods in this rule are effective retroactively to all development review applications that have been submitted to the Commission and for which the Executive Director has not made a decision.

Amendatory Section

350-81-042

Decision of the Executive Director

(1) In making a decision on a proposed use or development the Executive Director shall:

(a) Consult with the applicant and such agencies as the Executive Director deems appropriate;

(b) Consider information submitted by the applicant and all other relevant information available;

(c) Consider all comments submitted pursuant to Commission Rule 350-81-040; and

(d) Solicit and consider the comments of the Forest Service.

(2) The Executive Director shall approve a proposed use or development only if it is consistent with the standards of section 6 and the purposes of P.L. 99-663 and Commission Rule 350-81.

(a) In approving a proposed development action, the Executive Director may impose conditions as necessary to ensure consistency with the guidelines of Commission Rule 350-81.

(b) Conditions attached to approval of a proposed development action shall be recorded in county deeds and records to ensure notice of the conditions to successors in interest. The Executive Director's decision shall include this requirement.

(3) The Executive Director shall issue a decision on a proposed use or development including findings of fact and conclusions of law and any conditions to ensure consistency with the standards of section 6 and the purposes of P.L. 99-663 and Commission Rule 350-81. As a goal, the Executive Director shall attempt to issue a decision within 72 days after acceptance of the application. ~~within 72 days after acceptance~~

~~of the application except in one or more of the following situations:~~

~~(a) The applicant consents to an extension of time.~~

~~(b) The Executive Director determines that additional information is required pursuant to Commission Rule 350-81-040.~~

~~(c) The Executive Director determines that additional information is necessary to evaluate land use issues and the impacts of the proposed use to scenic, cultural, natural, and recreation resources.~~

~~(d) Unforeseen circumstances including, but not limited to, weather, illness, etc.~~

(4) The Executive Director shall send a copy of the decision to the applicant, the Forest Service, the applicable state, the four Indian tribal governments, the applicable county and/or city and each person who submitted comments under Commission Rule 350-81-040. The decision shall set forth the rights of appeal under Commission Rule 350-70.

(5) The decision of the Executive Director shall be final unless a Notice of Appeal is filed in accordance with Commission Rule 350-70. An applicant who chooses to proceed with an approved development during the appeal period shall assume all associated risks and liabilities.

(6) The 72-day time period in this rule is effective retroactively to all development review applications that have been submitted to the Commission and for which the Executive Director has not made a decision.

Amendatory Section

350-81-054

Procedures for Expedited Review Process

(1) Applications

(a) Prior to initiating any use or development which requires review and approval by the Executive Director, an application shall be completed pursuant to 350-81-054.

(b) The Executive Director shall accept and review the application pursuant to 350-81-054 for consistency with the appropriate guidelines of this rule.

(c) The Commission may charge a fee for review of applications after a public hearing. The Gorge Commission shall set the fee.

(d) Standard application forms shall be available at the Commission Office, and shall be provided to county and city planning offices for which this ordinance is effective and the Forest Service.

(e) Applications for uses eligible for expedited review shall include the information required for review uses listed in 350-81-032(5). They shall also include elevation drawings if the proposed development would be visible from a key viewing area. The drawing shall show natural grade and finished grade.

(2) Acceptance of Application

~~(a) Within 14 days of the receipt of an application,~~ ~~the~~ Executive Director shall review the application for completeness, and if complete, shall accept the application for review.

(b) No application shall be accepted until all documented omissions and deficiencies have been corrected by the applicant. The Executive Director shall notify the applicant of all omissions and deficiencies in writing ~~within 14 days of receipt of the application.~~ The Executive Director shall

review supplemental application materials ~~within 14 days after receipt of the materials~~ to determine if the application is complete.

(c) As a goal, the Executive Director shall attempt to accept the application as complete or notify the applicant of omissions and deficiencies in writing within 14 days of receipt of the application. The Executive Director shall attempt to review supplemental application materials within 14 days of receipt of the materials.

(3) Notice of Development Review

(a) Within 7 days of the acceptance of an application, the Executive Director shall issue notice of a proposed development review. The notice shall provide the following information:

- (A) The name of the applicant;
- (B) The general and specific location of the subject property;
- (C) A brief description of the proposed action;
- (D) The deadline for rendering a decision; and
- (E) The deadline for filing comments on the proposed action.

(b) The notice shall state that the application and supporting documents are available for inspection at the Commission office during normal working hours.

(c) The notice shall state the applicant must comply with all applicable local, state, and federal laws.

(d) The notice shall be mailed to the Forest Service, the four Indian tribal governments, applicable county or city planning office(s), libraries and other agencies and interested parties that request a notice or that the Executive Director determines should be notified.

(e) A copy of the notice shall be filed in the records of the Commission.

(4) Comment Period: Any interested person or party shall submit written comments within 10 days from the date a notice is sent.

(5) Written Decision

(a) In making a decision on a proposed use or development the Executive Director shall:

- (A) Consult with the applicant and such agencies as the Executive Director deems appropriate;
- (B) Consider information submitted by the applicant and all other relevant information available;
- (C) Consider all comments submitted pursuant to 350-81-054(4); and
- (D) Solicit and consider the comments of the Forest Service.

(b) The Executive Director shall approve a proposed use or development only if it is consistent with the standards of section 6 and the purposes of P.L. 99-663 and Commission Rule 350-81.

(A) In approving a proposed development action, the Executive Director may impose conditions as necessary to ensure consistency with the guidelines of Commission Rule 350-81.

(B) Conditions attached to approval of a proposed development action shall be recorded in county deeds and records to ensure notice of the conditions to successors in interest. The Executive Director's decision shall include this requirement.

(c) The Executive Director shall issue a decision on a proposed use or development including findings of fact and conclusions of law and any conditions to ensure consistency with the standards of section 6 and the purposes of P.L. 99-663 and Commission Rule 350-81 ~~within 30 days after acceptance of the application~~. As a goal, the Executive Director shall attempt to issue a decision within 30 days after acceptance of the application.

(d) The decision of the Executive Director shall be final unless a Notice of Appeal is filed in accordance with Commission Rule 350-70. An applicant who chooses to proceed with an approved development during the appeal period shall assume all associated risks and liabilities.

(6) Notice of Decision and Opportunity to Appeal

(a) The Executive Director shall send a copy of a decision issued under the expedited review process to the four Indian tribal governments, the Forest Service, landowners within 200 feet of the perimeter of the subject parcel, and anyone who submitted comments pursuant to 350-81-054(4).

(b) Any person shall be allowed to appeal a decision issued under the expedited review process in accordance with Commission Rule 350-70.

(7) Expiration of Approvals. Approvals issued under the expedited review process shall expire in accordance with the standards for expiration of approvals for review uses (Commission Rule 350-81-044, above).

(8) Changes or Alterations to an Approved Action. Changes or alterations to an approval issued under the expedited review process shall be made in accordance with the standards for changes or alterations to approved actions for review uses (Commission Rule 350-81-046, above).

(9) The time periods in this rule are effective retroactively to all expedited review applications that have been submitted to the Commission and for which the Executive Director has not made a decision.

WSR 11-13-080

EMERGENCY RULES

DEPARTMENT OF PERSONNEL

[Filed June 17, 2011, 8:18 a.m., effective July 1, 2011]

Effective Date of Rule: July 1, 2011.

Purpose: These changes are a result of the passage of ESSB 5860. This bill requires that during the 2011-13 biennium, base salaries are reduced three percent for all state employees except for elected officials whose salaries are established by the commission on salaries for elected officials; employees at state institutions of higher education; certificated employees of the state School for the Blind and the Center for Childhood Deafness and Hearing Loss; commissioned officers of the state patrol; represented ferry workers of the department of transportation; and employees whose monthly full-time equivalent salary is less than \$2,500 per month. Employees subject to the salary reduction accrue additional temporary salary reduction (TSR) leave of up to 5.2 hours per month. Per language in the bill, amounts paid during the 2011-13 fiscal biennium to state employees who cash-out annual or sick leave at the time of retirement or sick

leave in excess of sixty days at any time are not reduced by temporary compensation reductions.

There are provisions in the bill which require us to make changes and additions to the current rules in order to implement the temporary salary reduction and TSR leave as described in the bill.

Citation of Existing Rules Affected by this Order: Amending WAC 357-31-225, 357-31-150, 357-28-285, 357-28-260, 357-31-245, 357-31-255, 357-31-265, 357-31-390, and 357-31-535.

Statutory Authority for Adoption: Chapter 41.06 RCW.

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

Reasons for this Finding: ESSB 5860 states that the director of the department of personnel shall adopt rules as necessary to implement the TSR and accrual and use of TSR leave.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 2, Amended 9, 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 2, Amended 9, Repealed 0.

Date Adopted: June 17, 2011.

Eva Santos
Director

AMENDATORY SECTION (Amending WSR 05-01-205, filed 12/21/04, effective 7/1/05)

WAC 357-28-260 At what rate must overtime be compensated? Overtime worked by an overtime eligible employee must be compensated at a rate of one and one-half times the employee's regular rate. Compensation for overtime worked between July 1, 2011, and June 29, 2013, will not be subject to the three percent temporary salary reduction under ESSB 5860.

AMENDATORY SECTION (Amending WSR 05-01-205, filed 12/21/04, effective 7/1/05)

WAC 357-28-285 When must compensatory time be paid in cash? (1) The accumulation of unused compensatory time of any amount that exceeds two hundred forty hours, or four hundred eighty hours for employees engaged in public safety or emergency response activity, must be paid in cash at the regular rate earned by the employee at the time the employee receives such payment. Payments made between

July 1, 2011, and June 29, 2013, will not be subject to the three percent temporary salary reduction under ESSB 5860.

(2) Upon termination of employment, an employee must be paid for unused compensatory time in accordance with applicable state and federal law. Payments made between July 1, 2011, and June 29, 2013, will not be subject to the three percent temporary salary reduction under ESSB 5860.

AMENDATORY SECTION (Amending WSR 09-11-068, filed 5/14/09, effective 6/16/09)

WAC 357-31-150 Can an employee be paid for accrued sick leave? In accordance with the attendance incentive program established by RCW 41.04.340, employees are eligible to be paid for accrued sick leave as follows:

(1) In January of each year, an employee whose sick leave balance at the end of the previous year exceeds four hundred eighty hours may elect to convert the sick leave hours earned in the previous calendar year, minus those hours used during the year, to monetary compensation.

(a) No sick leave hours may be converted which would reduce the calendar year-end balance below four hundred eighty hours.

(b) Monetary compensation for converted hours is paid at the rate of twenty-five percent and is based on the employee's current salary. Monetary compensation for converted hours which is paid between July 1, 2011, and June 29, 2013, will not be subject to a temporary salary reduction.

(c) All converted hours are deducted from the employee's sick leave balance.

(d) Hours which are accrued, donated and returned from the shared leave program in the same calendar year may be included in the converted hours for monetary compensation.

(e) For the purpose of this section, hours which are contributed to a sick leave pool per WAC 357-31-570 are considered hours used.

(2) Employees who separate from state service because of retirement or death must be compensated for their total unused sick leave accumulation at the rate of twenty-five percent. The employer may deposit equivalent funds for a retiring employee in a medical expense plan as provided in WAC 357-31-375. Compensation must be based on the employee's salary at the time of separation. Compensation for unused sick leave which is paid between July 1, 2011, and June 29, 2013, will not be subject to a temporary salary reduction. For the purpose of this subsection, retirement does not include "vested out-of-service" employees who leave funds on deposit with the department of retirement systems (DRS).

(3) No contributions are to be made to the department of retirement systems (DRS) for payments under subsection (1) or (2) of this section, nor are such payments reported to DRS as compensation.

AMENDATORY SECTION (Amending WSR 05-08-137, filed 4/6/05, effective 7/1/05)

WAC 357-31-225 When employees separate from state service, are they entitled to a lump sum payment of unused vacation leave? (1) When an employee who has completed six continuous months of employment separates from service by reason of resignation with adequate notice,

layoff, trial service reversion, separation, dismissal, retirement, or death, the employee is entitled to a lump sum payment of unused vacation leave. The payment is computed by using the formula published by the office of financial management. Payments made between July 1, 2011, and June 29, 2013, will not be subject to a temporary salary reduction. No contributions are to be made to the department of retirement systems (DRS) for lump sum payment of excess vacation leave accumulated under the provisions of WAC 357-31-215(2), nor shall such payment be reported to the DRS as compensation.

(2) General government permanent employees may defer the payment of accumulated vacation leave to which they are entitled for a period of thirty calendar days in any of these circumstances:

(a) If the separation resulted from a layoff, trial service reversion, or conclusion of a project or nonpermanent appointment and there is a reasonable probability of reemployment(;;); or

(b) If the separation resulted from an employee returning to a classified position from an exempt position under the provision of RCW 41.06.070.

AMENDATORY SECTION (Amending WSR 09-17-062, filed 8/13/09, effective 9/16/09)

WAC 357-31-245 What happens if an employee uses accrued vacation leave, accrued sick leave, accrued compensatory time, recognition leave, accrued temporary salary reduction leave, or receives holiday pay during a period when he/she is receiving time loss compensation? An employee who uses accrued vacation leave, accrued sick leave, accrued compensatory time, recognition leave, accrued temporary salary reduction leave, or receives holiday pay during a period when he/she is receiving time loss compensation is entitled to time-loss compensation and full pay for vacation leave, sick leave, compensatory time, recognition leave, temporary salary reduction leave, and holiday pay.

AMENDATORY SECTION (Amending WSR 07-11-093, filed 5/16/07, effective 7/1/07)

WAC 357-31-255 What types of leave may an employee use when absent from work or arriving late to work because of inclement weather? When the employer determines inclement weather conditions exist, the employer's leave policy governs the order in which accrued leave and compensatory time may be used to account for the time an employee is absent from work due to the inclement weather. The employer's policy must allow the use of accrued vacation leave, accrued sick leave up to a maximum of three days in any calendar year, accrued temporary salary reduction leave, and the use of leave without pay in lieu of paid leave at the request of the employee. The employer's policy may allow leave with pay when an employee is absent due to inclement weather.

AMENDATORY SECTION (Amending WSR 07-11-096, filed 5/16/07, effective 7/1/07)

WAC 357-31-265 What is the effect of suspended operations on employees who are not required to work during the closure? At a minimum, employees not required to work during suspended operations must be allowed to use their personal holiday ((;)), accrued vacation leave, or accrued temporary salary reduction leave. Overtime eligible employees must also be allowed to use accrued compensatory time to account for the time lost due to the closure. Overtime eligible employees may be allowed to use leave without pay and given an opportunity to make up work time lost (as a result of suspended operations) within the work week. For overtime eligible employees, compensation for making up lost work time must be in accordance with WAC 357-28-255, 357-28-260, and 357-28-265 if it causes the employee to work in excess of forty hours in the workweek, and must be part of the employer's suspended operations procedures. The amount of compensation earned under this section must not exceed the amount of salary lost by the employee due to suspended operation.

If the employer's suspended operations procedure allows, employees may be released without a loss in pay.

AMENDATORY SECTION (Amending WSR 10-23-120, filed 11/17/10, effective 12/18/10)

WAC 357-31-390 What criteria does an employee have to meet to be eligible to receive shared leave? An employee may be eligible to receive shared leave if the agency head or higher education institution president has determined the employee meets the following criteria:

(1) The employee:

(a) Suffers from, or has a relative or household member suffering from, an illness, injury, impairment, or physical or mental condition which is of an extraordinary or severe nature;

(b) The employee has been called to service in the uniformed services;

(c) A state of emergency has been declared anywhere within the United States by the federal or any state government and the employee has the needed skills to assist in responding to the emergency or its aftermath and volunteers their services to either a governmental agency or to a non-profit organization engaged in humanitarian relief in the devastated area, and the governmental agency or nonprofit organization accepts the employee's offer of volunteer services;

(d) The employee is a victim of domestic violence, sexual assault, or stalking as defined in RCW 41.04.655; or

(e) During the 2009-2011 fiscal biennium only, an employee whose monthly full-time equivalent base salary is two thousand five hundred dollars or less is eligible to use shared leave in lieu of temporary layoff as described in chapter 32, Laws of 2010.

(2) The illness, injury, impairment, condition, call to service, emergency volunteer service, consequence of domestic violence, sexual assault, or stalking, or temporary layoff under chapter 32, Laws of 2010, has caused, or is likely to cause, the employee to:

(a) Go on leave without pay status; or

(b) Terminate state employment.

(3) The employee's absence and the use of shared leave are justified.

(4) The employee has depleted or will shortly deplete their:

(a) Compensatory time, recognition leave as described in WAC 357-31-565, personal holiday, accrued vacation leave, accrued temporary salary reduction leave, and accrued sick leave if the employee qualifies under subsection (1)(a) of this section; or

(b) Compensatory time, recognition leave as described in WAC 357-31-565, personal holiday, accrued vacation leave, accrued temporary salary reduction leave, and paid military leave allowed under RCW 38.40.060 if the employee qualifies under subsection (1)(b) of this section; or

(c) Compensatory time, recognition leave as described in WAC 357-31-565, personal holiday, accrued temporary salary reduction leave, and accrued vacation leave if the employee qualifies under (1)(c) or (d) of this section; or

(d) Compensatory time, recognition leave as described in WAC 357-31-565, accrued temporary salary reduction leave, and accrued vacation leave if the employee qualifies under subsection (1)(e) of this section.

(5) The employee has abided by employer rules regarding:

(a) Sick leave use if the employee qualifies under subsection (1)(a) of this section; or

(b) Military leave if the employee qualifies under subsection (1)(b) of this section.

(6) If the illness or injury is work-related and the employee has diligently pursued and been found to be ineligible for benefits under chapter 51.32 RCW if the employee qualifies under subsection (1)(a) of this section.

AMENDATORY SECTION (Amending WSR 09-17-056 and 09-18-113, filed 8/13/09 and 9/2/09, effective 12/3/09)

WAC 357-31-535 Who designates absences which meet the criteria of the Family and Medical Leave Act? The employer designates absences which meet the criteria of the Family and Medical Leave Act. Paid or unpaid leave used for that designated absence must be counted towards the twelve weeks of the Family and Medical Leave Act entitlement. Time spent on temporary salary reduction leave will not count towards the twelve weeks of the Family and Medical Leave Act entitlement.

Because the Family and Medical Leave Act of 1993 (29 U.S.C. 2601 et seq.) does not recognize registered domestic partners, an absence to care for an employee's registered domestic partner is not counted towards the twelve weeks of the Family and Medical Leave Act entitlement.

NEW SECTION

WAC 357-31-740 What is temporary salary reduction (TSR) leave and which employees are eligible to earn TSR leave? Temporary salary reduction (TSR) leave is paid leave prescribed under ESSB 5860. Employees who are subject to the three percent temporary salary reduction under ESSB 5860 may be credited up to a maximum of 5.2 hours of TSR leave per month.

NEW SECTION

WAC 357-31-745 What provisions apply to temporary salary reduction (TSR) leave? (1) Full-time employees whose pay has been reduced in accordance with ESSB 5860 and who have been in pay status for 80 nonovertime hours in a month will accrue 5.2 hours of TSR leave. Time spent on temporary layoff as provided in WAC 357-46-063 is considered time in pay status for the purpose of this subsection.

(2) Part-time employees earn TSR leave on a pro rata basis in accordance with WAC 357-31-125.

(3) Employees may use TSR leave as soon as it is accrued.

(4) Employers must identify how employees will request the use of TSR leave.

(5) There is no requirement for TSR leave to be used prior to sick leave or vacation leave unless the employer specifies otherwise.

(6) An employee's request to use TSR leave must be approved under the following conditions:

(a) As a result of the employee's serious health condition.

(b) To care for a spouse, registered domestic partner, parent, parent-in-law, or grandparent of the employee who has a serious health condition or an emergency health condition.

(c) To care for a minor/dependent child with a health condition that requires treatment or supervision.

(d) For parental leave as provided in WAC 357-31-460.

(e) If the employee or the employee's family member, as defined in chapter 357-01 WAC, is a victim of domestic violence, sexual assault, or stalking as defined in RCW 49.76.020. An employer may require the request for leave under this section be supported by verification in accordance with WAC 357-31-730.

(f) In accordance with WAC 357-31-373, for an employee to be with a spouse or registered domestic partner who is a member of the armed forces of the United States, National Guard, or reserves after the military spouse or registered domestic partner has been notified of an impending call or order to active duty, before deployment, or when the military spouse or registered domestic partner is on leave from deployment.

(7) In accordance with the employer's leave policy, approval for the reasons listed in (6)(a) through (f) above may be subject to verification that the condition or circumstance exists.

(8) TSR leave has no cash value and balances must be used by July 1, 2013; however, employees may carry forward up to 16 hours of TSR leave that must be used prior to September 1, 2013.

(9) TSR leave may not be donated as shared leave.

(10) TSR leave may be approved for any reason vacation leave and sick leave may be approved.

(11) Unused TSR leave transfers with an employee when the employee changes state employers, without a break in service, and moves to a position which earns TSR leave.

(12) Time spent on temporary layoff as provided in WAC 357-46-063 will not impact an employees TSR leave accrual.

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

WSR 11-13-081
EMERGENCY RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
(Medicaid Purchasing Administration)

[Filed June 17, 2011, 8:24 a.m., effective June 17, 2011, 8:24 a.m.]

Effective Date of Rule: Immediately.

Purpose: Upon order of the governor, the medicaid purchasing administration (MPA) must reduce its budget expenditures for the current fiscal year ending June 30, 2011, by 6.3 percent. To achieve this expenditure reduction, MPA is eliminating optional medical services from program benefit packages for clients twenty-one years of age and older. These medical services include vision, hearing, and dental. Chapter 388-531 WAC is being amended to include medical services previously listed in the programs to be eliminated that are necessary to, and included within, appropriate mandatory medical services under federal statutes and rules.

Citation of Existing Rules Affected by this Order: Amending WAC 388-531-0100, 388-531-0150, 388-531-0200, 388-531-0250, 388-531-0400, 388-531-1000, and 388-531-1300.

Statutory Authority for Adoption: RCW 74.08.090.

Other Authority: Section 209(1), chapter 37, Laws of 2010 (ESSB 6444).

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

Reasons for this Finding: Governor Gregoire issued Executive Order 10-04 on September 13, 2010, under the authority of RCW 43.88.110(7). In the executive order, the governor required DSHS and all other state agencies to reduce their expenditures in state fiscal year 2011 by approximately 6.3 percent. As a consequence of the executive order, funding is no longer available as of January 1, 2011, for the benefits that are being eliminated as part of these regulatory amendments. Delaying the adoption of these cuts to optional services could jeopardize the state's ability to maintain the mandatory medicaid services for the majority of DSHS clients. This CR-103E extends the emergency adoption for these rules currently in place and is necessary to rees-

establish WAC 388-531-0150 (1)(n) which was erroneously struck out under WSR 11-10-029, filed April 27, 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 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 2, Amended 7, 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 2, Amended 7, Repealed 0.

Date Adopted: June 15, 2011.

Katherine I. Vasquez
Rules Coordinator

Reviser's note: The material contained in this filing exceeded the page-count limitations of WAC 1-21-040 for appearance in this issue of the Register. It will appear in the 11-14 issue of the Register.

WSR 11-13-083
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 11-129—Filed June 17, 2011, 9:40 a.m., effective June 20, 2011, 3:00 p.m.]

Effective Date of Rule: June 20, 2011, 3:00 p.m.

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

Citation of Existing Rules Affected by this Order: Repealing WAC 220-33-03000G and 220-33-03000H; and amending WAC 220-33-030.

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: Extends the standard shad commercial season in the 2S and Washougal Reef areas for four additional days. Further defines gear restrictions in both the 2S and Washougal Reef areas. Harvestable numbers of shad are available, and industry has expressed interest in extending the season as market strength has improved. Rules continue to allow sales of shad when caught under an experimental gear permit issued by the state of Oregon. Washington supports innovative fishing techniques for shad. Incidental impacts to nontarget species are expected to be minimal, and are covered in a biological opinion. This rule is consistent with actions of the Columbia River compact hearing of May 4, and June 16, 2011. This rule is consistent with requirements of the ESA. There is insufficient time to promulgate permanent regulations.

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: June 17, 2011.

Philip Anderson
Director

NEW SECTION

WAC 220-33-03000H Commercial shad—Columbia River. Notwithstanding the provisions of WAC 220-33-030:

1. Area 2S.

a. Area: Within SMCRA 1D and 1E, specifically waters from a true north/south line through Light #50 near the mouth of the Sandy River upstream to the commercial fishing boundary near Beacon Rock.

b. Season: Monday through Friday immediately through June 24, 2011. Open hours are daily 3:00 p.m. to 10:00 p.m.

c. Gear: Drift gill net only. Single-wall, unslackened, floater gill net; 5 3/8" - 6 1/4" mesh size restrictions; 10-lb breaking strength; and the net may not exceed 150 fathoms in length or 40 meshes in depth. Rip lines are authorized spaced not closer than 20 corks apart

d. Allowable sales: Only shad may be kept and sold. All other fish must be immediately returned to the water unharmed.

2. Washougal Reef.

a. Area: Within SMCRA 1D and 1E, specifically waters inside a line commencing at the white six-second equal-interval light approximately 3/4 miles east of the Washougal Woolen Mill pipeline and projected westerly to the Washougal blinker light, thence to the four-second blinker light on the east end of Lady Island, thence easterly and along the shoreline of Lady Island to the State Highway 14 Bridge, thence easterly across the State Highway 14 Bridge to the mainland.

b. Season: Monday through Friday immediately through June 24, 2011, open hours are daily 8:00 p.m. to 12:00 a.m.

c. Gear: Drift gill net only. Single-wall, unslackened, floater gill net, with breaking strength of less than 30 pounds. Mesh size: 5 3/8 inches to 6 1/4 inches. Net may not exceed 150 fathoms in length or 40 meshes in depth

d. Allowable sales: Only shad may be kept and sold. All other fish must be immediately returned to the water unharmed.

3. Mainstem Columbia River

a. Stipulations: Shad may be taken and sold for commercial purposes with experimental fishing gear. A permit issued by the State of Oregon as described in the Oregon Administrative Rule 635-006-0020 is required to use experimental gear types for shad. Conditions under which shad may be taken and sold for commercial purposes will be specified in the permit.

b. Area: SMCRA 1A-1E

c. Season: Immediately through July 15, 2011

d. Gear: experimental, including but not limited to purse seines

e. Allowable sales: Only shad may be kept and sold. All salmonids, sturgeon, and non-target species taken as incidental catch in operation of such gear shall immediately, with care and least possible injury, be released and transferred to the water without violence.

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

REPEALER

The following section of the Washington Administrative Code is repealed effective 3:00 p.m. June 20, 2011:

WAC 220-33-03000G Commercial shad—Columbia River. (11-88)

The following section of the Washington Administrative Code is repealed effective July 16, 2011:

WAC 220-33-03000H Commercial shad—Columbia River.

WSR 11-13-088
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 11-130—Filed June 17, 2011, 10:49 a.m., effective June 22, 2011, 12:01 a.m.]

Effective Date of Rule: June 22, 2011, 12:01 a.m.

Purpose: Amend commercial fishing rules.

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

Statutory Authority for Adoption: RCW 77.12.047 and 77.04.020.

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

Reasons for this Finding: The 2011 state/tribal shrimp harvest management plans for the Strait of Juan de Fuca and Puget Sound require adoption of harvest seasons contained in this emergency rule. This emergency rule (1) opens the Puget Sound pot fishery season for spot shrimp; and (2) opens the Region 1B-21A beam trawl area on July 1. 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: June 17, 2011.

Sara G. LaBorde
for Philip Anderson
Director

NEW SECTION

WAC 220-52-05100U Puget Sound shrimp pot and beam trawl fishery—Season. Notwithstanding the provisions of WAC 220-52-051, effective immediately until further notice, it is unlawful to fish for shrimp for commercial purposes in Puget Sound except as provided for in this section:

(1) Shrimp pot gear:

(a) All waters of Shrimp Management Areas (SMA) 1A, 1C, 2E, 2W, 3, 4, and 6 are open to the harvest of all shrimp species effective immediately, until further notice, except as provided for in this section:

i) All waters of SMA 1B and the Discovery Bay Shrimp District are closed.

(b) The shrimp catch accounting week is Wednesday through Tuesday.

(c) Effective immediately, until 11:59 p.m. June 28, 2011, it is unlawful for the combined total harvest of spot shrimp by a fisher and/or the fisher's alternate operator to exceed 300 pounds per week.

(d) Effective 12:01 a.m. June 29, 2011, until further notice, it is unlawful for the combined total harvest of spot shrimp by a fisher and/or the fisher's alternate operator to exceed 600 pounds per week.

(e) It is unlawful to pull shellfish pots in more than one Catch Area per day.

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

(2) Shrimp beam trawl gear:

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

(b) Those portions of Catch Areas 20B and 22A within SMA 1B are open, immediately until further notice.

(c) That portion of Catch Area 21A within SMA 1B will open at 6:00 a.m. July 1, 2011, until further notice.

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

REPEALER

The following section of the Washington Administrative Code is repealed effective 12:01 a.m. June 22, 2011:

WAC 220-52-05100T Puget Sound shrimp beam
trawl fishery—Season. (11-
121)

WSR 11-13-101
EMERGENCY RULES
DEPARTMENT OF
LABOR AND INDUSTRIES

[Filed June 21, 2011, 8:52 a.m., effective June 21, 2011, 8:52 a.m.]

Effective Date of Rule: Immediately.

Purpose: This rule is being adopted on an emergency basis to be consistent with the Washington horse racing commission's (WHRC) emergency rule adoption (WSR 11-09-077) to permit discounted short-duration license fees at Class A, B, and C racing associations. Class A and B associations' short-duration licenses will be for two thirty-day periods while Class C licenses will allow three seven-day limits. The industrial insurance fees associated with Classes A and B will be 33.3 percent of the full annual license fee; the fees associated with Class C will be twenty percent of the annual license fee.

This action is being taken at the specific request of the Washington Horsemen's Benevolent and Protective Association, the industry group representing those this amendment would affect, exempting it from Executive Order 10-06.

Citation of Existing Rules Affected by this Order: Amending WAC 296-17A-6614, 296-17A-6615, 296-17A-6616, 296-17A-6617, 296-17A-6622, and 296-17A-6623.

Statutory Authority for Adoption: RCW 51.16.035, 51.16.100, 51.04.020.

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 WHRC has already filed a CR-103E to implement the new temporary licenses. The department of labor and industries needs to establish classifications and rates for these licenses to enable the commission to charge and collect the appropriate fees.

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 6, 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 6, Repealed 0.

Date Adopted: June 21, 2011.

Judy Schurke
Director

AMENDATORY SECTION (Amending WSR 07-24-045, filed 12/1/07, effective 1/1/08)

WAC 296-17A-6614 Classification 6614.

6614-00 Parimutuel horse racing: All employees, except grooms and exercise riders N.O.C. - major tracks
(to be assigned only by the horse racing underwriter)

Applies to licensed employees of licensed horse trainers at a major parimutuel horse racing track such as Emerald Downs in Auburn. This classification applies to on and off track employees such as assistant trainers and pony riders. Coverage provided in this classification is funded by premiums collected at the time of licensing and is valid from the time of licensing through the end of the calendar year. Trainers premiums are collected on a per license basis.

This classification excludes the following employees:

(1) Licensed grooms working at major tracks are reported separately in classification 6615;

(2) Licensed assistant trainers and pony riders working at a nonprofit track are reported separately in classification 6616;

(3) Licensed exercise riders working at a major track are reported separately in classification 6622;

(4) Licensed exercise riders at a nonprofit track are reported separately in classification 6623; and

(5) Unlicensed employees who work on a farm or ranch are reported in classification 7302.

Special note: All employees whether working at a major track or employed off track must be licensed by the Washington state horse racing commission to be covered under this section.

6614-30 Temporary parimutuel horse racing: All employees, except grooms and exercise riders N.O.C. - major tracks: Temporary thirty-day license.

(to be assigned only by the horse racing underwriter)

Applies to licensed employees of licensed horse trainers at a major parimutuel horse racing track such as Emerald Downs in Auburn. This classification applies to on and off track employees such as assistant trainers and pony riders. Coverage provided in this classification is funded by premiums collected at the time of licensing and is valid from the time of licensing for thirty days. Temporary trainers premiums are collected on a per license basis for thirty days.

This classification excludes the following employees:

(1) Temporary licensed grooms working at major tracks are reported separately in classification 6615-30;

(2) Temporary licensed exercise riders at a major track are reported separately in classification 6622-30; and

(3) Unlicensed employees who work on a farm or ranch are reported in classification 7302.

Special note: All employees whether working at a major track or employed off track must be licensed by the Washington state horse racing commission to be covered under this section.

AMENDATORY SECTION (Amending WSR 07-24-045, filed 12/1/07, effective 1/1/08)

WAC 296-17A-6615 Classification 6615.

6615-00 Parimutuel horse racing: Grooms - major tracks (to be assigned only by the horse racing underwriter)

Applies to licensed grooms performing services for licensed horse trainers at a major parimutuel horse racing track such as Emerald Downs in Auburn. This classification includes all on or off track duties of a licensed groom such as, but not limited to, cleaning or mucking horses stalls, feeding, and bathing the horses. For workers' compensation purposes, a groom is considered to be an employee of the trainer when the groom is hired by the trainer or when the trainer notifies the commission of the trainer's intent to hire the groom. Coverage provided in this classification is funded by the premiums collected from the trainer at the time of licensing and is valid from the time of licensing through the end of the calendar year.

This classification excludes the following:

(1) Licensed grooms working at a nonprofit track are reported separately in classification 6617;

(2) Licensed assistant trainers and pony riders working at major tracks are to be reported separately in classification 6614;

(3) Licensed assistant trainers and pony riders working at nonprofit tracks are reported separately in classification 6616;

(4) Licensed exercise riders working at a major track are reported separately in classification 6622;

(5) Licensed exercise riders working at a nonprofit track are reported separately in classification 6623;

(6) Unlicensed employees who work on a farm or ranch are reported separately in classification 7302.

Special note: All grooms whether working at a major track or employed off track must be licensed by the Washington state horse racing commission to be covered under this section.

6615-30 Temporary parimutuel horse racing: Grooms - major tracks: Temporary thirty-day license.

(to be assigned only by the horse racing underwriter)

Applies to licensed grooms performing services for licensed horse trainers at a major parimutuel horse racing track such as Emerald Downs in Auburn. This classification includes all on or off track duties of a licensed groom such as, but not limited to, cleaning or mucking horse stalls, feeding, and bathing the horses. For workers' compensation purposes, a groom is considered to be an employee of the trainer when the groom is hired by the trainer or when the trainer notifies the commission of the trainer's intent to hire the groom. Cov-

erage provided in this classification is funded by the premiums collected from the trainer at the time of licensing and is valid from the time of licensing for thirty days.

This classification excludes the following:

(1) Licensed assistant trainers and pony riders working at major tracks are to be reported separately in classification 6614-30;

(2) Licensed exercise riders working at a major track are reported separately in classification 6622-30;

(3) Unlicensed employees who work on a farm or ranch are reported separately in classification 7302.

Special note: All grooms whether working at a major track or employed off track must be licensed by the Washington state horse racing commission to be covered under this section.

AMENDATORY SECTION (Amending WSR 07-24-045, filed 12/1/07, effective 1/1/08)

WAC 296-17A-6616 Classification 6616.

6616-00 Parimutuel horse racing: All employees except grooms and exercise riders, N.O.C. - nonprofit tracks (to be assigned only by the horse racing underwriter)

Applies to licensed employees of licensed horse trainers at a nonprofit track. This classification applies to on or off track employees such as assistant trainers and pony riders. Coverage provided in this classification is funded by premiums collected at the time of licensing and is valid from the time of licensing through the end of the calendar year. Trainer's premiums are collected on a per license basis.

This classification excludes the following:

~~(1-)~~ (1) Licensed assistant trainers and pony riders working at a major track are reported separately in classification 6614;

~~(2-)~~ (2) Licensed grooms working at a major track are reported separately in classification 6615;

~~(3-)~~ (3) Licensed grooms working at a nonprofit track are reported separately in classification 6617;

~~(4-)~~ (4) Licensed exercise riders working at a major track are reported in classification 6622;

~~(5-)~~ (5) Licensed exercise riders at a nonprofit track are reported in classification 6623;

~~(6-)~~ (6) Unlicensed employees who work on a farm or ranch are reported separately in classification 7302.

Special note: All employees whether working at a nonprofit track or employed off track must be licensed by the Washington state horse racing commission to be covered under this section.

6616-07 Temporary parimutuel horse racing: All employees except grooms and exercise riders, N.O.C. - nonprofit tracks: Temporary seven-day license.

(to be assigned only by the horse racing underwriter)

Applies to licensed employees of licensed horse trainers at a nonprofit track. This classification applies to on or off track employees such as assistant trainers and pony riders. Coverage provided in this classification is funded by premiums collected at the time of licensing and is valid from the time of licensing for seven days. Temporary trainer's premiums are collected on a per license basis for seven days.

This classification excludes the following:

(1) Licensed grooms working at a nonprofit track are reported separately in classification 6617-07;

(2) Temporary licensed exercise riders at a nonprofit track are reported in classification 6623-07;

(3) Unlicensed employees who work on a farm or ranch are reported separately in classification 7302.

Special note: All employees whether working at a nonprofit track or employed off track must be licensed by the Washington state horse racing commission to be covered under this section.

AMENDATORY SECTION (Amending WSR 07-24-045, filed 12/1/07, effective 1/1/08)

WAC 296-17A-6617 Classification 6617.

6617-00 Parimutuel horse racing: Grooms - nonprofit tracks

(to be assigned only by the horse racing underwriter)

Applies to licensed grooms performing services for licensed horse trainers at a nonprofit track. This classification includes all on or off track duties of a licensed groom such as, but not limited to, cleaning or mucking horse stalls, feeding, and bathing the horses. For workers' compensation purposes, a groom is considered to be an employee of the trainer when the groom is hired by the trainer or when the trainer notifies the commission of the trainer's intent to hire the groom. Coverage provided in this classification is funded by the premiums collected from the trainer at the time of licensing and is valid from the time of licensing through the end of the calendar year.

This classification excludes the following:

(1) Licensed grooms working at a major track are reported separately in classification 6615;

(2) Licensed assistant trainers and pony riders working at major tracks are reported separately in classification 6614;

(3) Licensed assistant trainers and pony riders working at nonprofit tracks are reported separately in classification 6616;

(4) Licensed exercise riders working at a major track are reported separately in classification 6622;

(5) Licensed exercise riders working at a nonprofit track are reported separately in classification 6623; and

(6) Unlicensed employees who work on a farm or ranch are reported separately in classification 7302.

Special note: All grooms whether working at a nonprofit track or employed off track must be licensed by the Washington state horse racing commission to be covered by this section.

6617-07 Temporary parimutuel horse racing: Grooms - nonprofit tracks: Temporary seven-day license.

(to be assigned only by the horse racing underwriter)

Applies to licensed grooms performing services for licensed horse trainers at a nonprofit track. This classification includes all on or off track duties of a licensed groom such as, but not limited to, cleaning or mucking horse stalls, feeding, and bathing the horses. For workers' compensation purposes, a groom is considered to be an employee of the trainer when the groom is hired by the trainer or when the

trainer notifies the commission of the trainer's intent to hire the groom. Coverage provided in this classification is funded by the premiums collected from the trainer at the time of licensing and is valid from the time of licensing for seven days.

This classification excludes the following:

(1) Temporary licensed assistant trainers and pony riders working at nonprofit tracks are reported separately in classification 6616-07;

(2) Temporary licensed exercise riders working at a nonprofit track are reported separately in classification 6623-07; and

(3) Unlicensed employees who work on a farm or ranch are reported separately in classification 7302.

Special note: All grooms whether working at a nonprofit track or employed off track must be licensed by the Washington state horse racing commission to be covered by this section.

AMENDATORY SECTION (Amending WSR 07-24-045, filed 12/1/07, effective 1/1/08)

WAC 296-17A-6622 Classification 6622.

6622-00 Parimutuel horse racing: Exercise riders - major tracks

(to be assigned only by the horse racing underwriter)

Applies to licensed exercise riders of licensed horse trainers at a major parimutuel horse racing track such as Emerald Downs. This classification applies to on and off track employment of licensed exercise riders. Jockeys are considered exercise riders when validly licensed as exercise riders and performing exercise rider duties while employed by a licensed trainer. Coverage provided in this classification is funded by premiums collected at the time of licensing and is valid from the time of licensing through the end of the calendar year. Trainers' premiums are collected on a per license basis.

This classification excludes the following:

(1) Licensed grooms at major tracks are reported separately in classification 6615;

(2) Licensed grooms working at nonprofit tracks are reported separately in 6617;

(3) Licensed assistant trainers and pony riders working at a major track are reported separately in classification 6614;

(4) Licensed assistant trainers and pony riders working at a nonprofit track are reported separately in 6616;

(5) Licensed exercise riders at a nonprofit track are reported separately in 6623; and

(6) Unlicensed employees who work on a farm or ranch are reported separately in classification 7302.

Special note: All exercise riders whether working at a major track or employed off track must be licensed by the Washington state horse racing commission to be covered by this section.

6622-30 Temporary parimutuel horse racing: Exercise riders - major tracks: Temporary thirty-day license.

(to be assigned only by the horse racing underwriter)

Applies to licensed exercise riders of licensed horse trainers at a major parimutuel horse racing track such as

Emerald Downs. This classification applies to on and off track employment of licensed exercise riders. Jockeys are considered exercise riders when validly licensed as exercise riders and performing exercise rider duties while employed by a licensed trainer. Coverage provided in this classification is funded by premiums collected at the time of licensing and is valid from the time of licensing for thirty days. Temporary trainers' premiums are collected on a per license basis for thirty days.

This classification excludes the following:

(1) Temporary licensed grooms at major tracks are reported separately in classification 6615-30;

(2) Temporary licensed assistant trainers and pony riders working at a major track are reported separately in classification 6614-30;

(3) Unlicensed employees who work on a farm or ranch are reported separately in classification 7302.

Special note: All exercise riders whether working at a major track or employed off track must be licensed by the Washington state horse racing commission to be covered by this section.

AMENDATORY SECTION (Amending WSR 07-24-045, filed 12/1/07, effective 1/1/08)

WAC 296-17A-6623 Classification 6623.

6623-00 Parimutuel horse racing: Exercise riders - non-profit tracks

(to be assigned only by the horse racing underwriter)

Applies to licensed exercise riders of licensed horse trainers at a nonprofit track. This classification applies to on or off track employment of exercise riders. Jockeys will be considered exercise riders when validly licensed as exercise riders and performing exercise rider duties while employed by a licensed trainer. Coverage provided in this classification is funded by premiums collected at the time of licensing and is valid from the time of licensing through the end of the calendar year. Trainer premiums are collected on a per license basis.

This classification excludes the following:

(1) Licensed assistant trainers and pony riders working at a major track are reported separately in classification 6614;

(2) Licensed assistant trainers and pony riders working at a nonprofit track are reported separately in 6616;

(3) Licensed grooms working at a major track are reported separately in classification 6615;

(4) Licensed grooms working at a nonprofit track are reported separately in classification 6617;

(5) Licensed exercise riders working at a major track are reported separately in 6622; and

(6) Unlicensed employees who work on a farm or ranch are reported separately in classification 7302.

Special note: All exercise riders whether working at a nonprofit track or employed off track must be licensed by the Washington state horse racing commission to be covered by this section.

6623-07 Temporary parimutuel horse racing: Exercise riders - nonprofit tracks: Temporary seven-day license.
(to be assigned only by the horse racing underwriter)

Applies to licensed exercise riders of licensed horse trainers at a nonprofit track. This classification applies to on or off track employment of exercise riders. Jockeys will be considered exercise riders when validly licensed as exercise riders and performing exercise rider duties while employed by a licensed trainer. Coverage provided in this classification is funded by premiums collected at the time of licensing and is valid from the time of licensing for seven days. Temporary trainer premiums are collected on a per license basis for seven days.

This classification excludes the following:

(1) Licensed assistant trainers and pony riders working at a nonprofit track are reported separately in 6616-07;

(2) Temporary licensed grooms working at a nonprofit track are reported separately in classification 6617-07;

(3) Unlicensed employees who work on a farm or ranch are reported separately in classification 7302.

Special note: All exercise riders whether working at a nonprofit track or employed off track must be licensed by the Washington state horse racing commission to be covered by this section.

WSR 11-13-107

RESCISSION OF EMERGENCY RULES

DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Aging and Disability Services Administration)

[Filed June 21, 2011, 10:54 a.m.]

The aging and disability services administration requests the rescission of the emergency rule-making order filed as WSR 11-10-028 on April 27, 2011.

Katherine I. Vasquez
Rules Coordinator

WSR 11-13-118

EMERGENCY RULES

DEPARTMENT OF

FISH AND WILDLIFE

[Order 11-131—Filed June 21, 2011, 3:12 p.m., effective June 21, 2011, 3:12 p.m.]

Effective Date of Rule: Immediately.

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

Citation of Existing Rules Affected by this Order: Repealing WAC 220-33-01000Y; 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: Corrects language in allowable sales section. Sales of all salmon, not just adipose fin clipped fish, are allowed. The fishery is consistent with the *U.S. v Oregon* Management Agreement and the associated biological opinion. Conforms Washington state rules with Oregon state rules. Regulation is consistent with compact action of June 9, 2011. 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 1; Federal Rules or Standards: New 1, Amended 0, Repealed 1; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

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

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

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

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

Date Adopted: June 21, 2011.

Philip Anderson

Director

NEW SECTION

WAC 220-33-0100Z Columbia River seasons below Bonneville. Notwithstanding the provisions of WAC 220-33-010, WAC 220-33-020, and WAC 220-33-030, it is unlawful for a person to take or possess salmon, sturgeon, or shad for commercial purposes from Columbia River Salmon Management and Catch Reporting Areas 1A, 1B, 1C, 1D, 1E and Select Areas, except during the times and conditions listed below:

1. Mainstem Columbia River

a) Dates: 9 PM Wednesday June 22, to 5 AM Thursday June 23, 2011.

b) Area: SMCRA 1A, 1B, 1C, D1, 1E.

c) Sanctuaries: Grays River, Elokomin-A, Cowlitz River, Kalama-A, Lewis-A, Washougal, and Sandy Rivers.

d) Gear: Drift gill nets only; 8-inch minimum mesh. Nets not lawful for use for that time and area may be onboard the boat if properly stored. A "properly stored" net is defined as a net on a drum that is fully covered by tarp (canvas or plastic) and bound with a minimum of ten revolutions of rope with a diameter of 3/8 (0.375) inches or greater.

e) Allowable Sales: Salmon, sockeye, white sturgeon (43-54 inch fork length), and shad. A maximum of five white sturgeon may be possessed or sold by each participating vessel during each calendar week (Sunday through Saturday) that the fishery is open. Limit applies to mainstem only.

f) Miscellaneous Regulations: 24-hour quick reporting is required for Washington wholesale dealers, per WAC 220-69-240.

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

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 220-33-0100Y Columbia River seasons below Bonneville. (11-125)

WSR 11-13-119
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 11-132—Filed June 21, 2011, 3:59 p.m., effective June 21, 2011,
3:59 p.m.]

Effective Date of Rule: Immediately.

Purpose: Amend commercial fishing rules.

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

Statutory Authority for Adoption: RCW 77.12.047 and
77.04.020.

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

Reasons for this Finding: We are nearing the quota of 20,600 chinook, a closure and restriction of catch is needed to remain within the quota. These rules are adopted at the recommendation of the Pacific Fisheries Management Council and National Marine Fisheries Service in accordance with preseason fishing plans. There is insufficient time to adopt permanent rules.

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

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

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

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

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

Date Adopted: June 21, 2011.

Philip Anderson
Director

NEW SECTION

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

(1) Salmon Management and Catch Reporting Areas 1, 2, 3, and that portion of Area 4 west of 125°05'00" W longitude and south of 48°23'00" N latitude, open: Immediately through 11:59 p.m. June 21, 2011; and 12:01 a.m. June 23 through June 30, 2011.

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

(3) Minimum size for Chinook salmon is 28 inches in length. No minimum size for pink, sockeye or chum salmon. It is unlawful to possess coho salmon.

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

(5) For the period June 23 through June 30, 2011, no more than 30 Chinook for the entire period per vessel.

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

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

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

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

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

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

the total number for each species, and the total weight for each species, including halibut.

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

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 220-24-04000A All-citizen commercial
salmon troll. (11-67)

The following section of the Washington Administrative Code is repealed effective July 1, 2011:

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